

SUPREME COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania v. Keith Lamar Foster

No. 34 WAP 2023 (Pa. 2025) · No. 34 WAP 2023 · Decided March 20, 2025

SUMMARY

In this concurring opinion, Justice Wecht agrees that Keith Foster’s statement was not involuntary under the Fifth Amendment, despite police deception about his status as a suspect. The opinion emphasizes that Foster did not preserve a distinct claim under Article I, Section 9 of the Pennsylvania Constitution and that the decision does not resolve whether such deception could violate the state constitution. Justice Wecht also notes that constitutionally permissible deception may nevertheless be unwise and supports potential legislative reforms.

CASE DETAILS

|                       |                                                                                                                                                                                                       |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Pennsylvania                                                                                                                                                                         |
| WRITING FOR THE COURT | Justice Wecht; Justice McCaffery; Justice Donohue; Justice Dougherty                                                                                                                                  |
| JURISDICTION          | Supreme Court of Pennsylvania                                                                                                                                                                         |
| DECIDED               | March 20, 2025                                                                                                                                                                                        |
| DOCKET                | 34 WAP 2023                                                                                                                                                                                           |
| DISPOSITION           | other                                                                                                                                                                                                 |
| PROCEDURAL POSTURE    | Appeal from the Superior Court's order reversing the Court of Common Pleas of Allegheny County and remanding.                                                                                         |
| STANDARD OF REVIEW    | The opinion applies the federal constitutional totality-of-the-circumstances standard for determining whether a confession was voluntary.                                                             |
| PRECEDENTIAL VALUE    | Published concurring opinion accompanying a Supreme Court of Pennsylvania decision; the concurrence joins the Majority's disposition and articulates agreement with the federal Fifth Amendment rule. |
| PARTIES               | Keith Lamar Foster v. Commonwealth of Pennsylvania                                                                                                                                                    |

TOPICS

- fifth amendment
- criminal procedure
- due process
- suppression of evidence
- appellate procedure

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether falsely telling a suspect that he is not a suspect, standing alone, renders a resulting confession involuntary under the Fifth Amendment to the United States Constitution.
2. Whether the Pennsylvania Constitution imposes a more protective limitation on police deception during interrogation was not decided because Foster failed to preserve the distinct state constitutional claim.

## HOLDINGS

1. Falsely telling a suspect that he is not a suspect, by itself, does not render the suspect's resulting statement involuntary under the Fifth Amendment.
2. Foster waived his distinct claim that the statement was involuntary under Article I, Section 9 of the Pennsylvania Constitution because he did not comply with the issue-preservation rule requiring a litigant to assert in the trial court that the state provision should be interpreted more expansively than its federal counterpart and to provide reasons for doing so.

## KEY QUOTATIONS

*“The Supreme Court of the United States has ruled that, while lies and deceptive tactics are “relevant” factors within a “totality of the circumstances” test, they are “insufficient” standing alone to render an “otherwise voluntary confession inadmissible.””* (at 1)

*“Thus, I join the Majority opinion.”* (at 3)

## FACTUAL BACKGROUND

During an interview, Detective Sellers falsely assured Keith Foster that he was not a suspect. Foster subsequently made a statement that was challenged as involuntary under the Fifth Amendment. Foster also sought to invoke Article I, Section 9 of the Pennsylvania Constitution, but the concurrence states that he failed to preserve that distinct state constitutional claim.

## PROCEDURAL HISTORY

The Court of Common Pleas of Allegheny County entered an order on April 18, 2022. The Superior Court reversed that order and remanded on June 22, 2023. The Commonwealth appealed to the Supreme Court of Pennsylvania. In the concurrence, Justice Wecht agreed with the Majority's resolution of the Fifth Amendment voluntariness issue and stated that Foster had waived a distinct claim under Article I, Section 9 of the Pennsylvania Constitution.

## DISPOSITION

other

## CASES CITED

- Frazier v. Cupp, 394 U.S. 731, 739 (1969)
- Commonwealth v. Bishop, 217 A.3d 833, 840, 850 (Pa. 2019)
- State v. Gomez, 932 P.2d 1 (N.M. 1997)

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