

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)

OPINION

PER CURIAM.

[J-69-2024] [MO: McCaffery, J.] IN THE SUPREME COURT OF PENNSYLVANIA WESTERN DISTRICT COMMONWEALTH OF PENNSYLVANIA,: No. 34 WAP 2023 Appellee: Appeal from the Order of the: Superior Court entered June 22,: 2023, at No. 519 WDA 2022, v.: Reversing the Order of the Court of: Common Pleas of Allegheny County: entered April 18, 2022, at No. CP- KEITH LAMAR FOSTER,: 02-CR-006450-2021, and: remanding.

Appellant:: ARGUED: October 10, 2024 CONCURRING OPINION JUSTICE WECHT DECIDED: MARCH 20, 2025 I agree that Keith Foster’s statement was not made involuntarily for purposes of the Fifth Amendment to the United States Constitution.¹ 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.”² Foster’s proposed rule—that a statement is given involuntarily whenever the suspect is “stripped of [an] understanding of his status as a suspect”³—is therefore foreclosed by United States Supreme Court precedent.

1 U.S. CONST. amend. V (“No person shall... be compelled in any criminal case to be a witness against himself[.]”). 2 *Frazier v. Cupp*, 394 U.S. 731, 739 (1969). 3 Brief for Foster at 21. I write separately to underscore the narrowness of today’s decision. Foster did not preserve a distinct claim that his statement to Detective Sellers was involuntary under Article I, Section 9 of the Pennsylvania Constitution.⁴ Our ruling today does not address whether a circumstance in which a law enforcement officer falsely tells a suspect that he is not a suspect would render a subsequent confession involuntary under the Pennsylvania Constitution.

As Foster notes, some state courts interpreting their own state constitutions have held that police deception regarding whether the interviewee is a suspect may—even standing alone—render any subsequent confession involuntary.⁵ I agree with the Majority here that the question of whether the Pennsylvania Constitution imposes similar limits “appears worthy of our review in another case.”⁶ I also emphasize that today’s decision does not purport to answer the question of whether law enforcement officers ought to be permitted to deceive suspects.

Although Detective Sellers’ false assurances in this case did not render Foster’s statement involuntary under the Fifth Amendment, allowing officers to deceive interviewees may well be unwise. The Pennsylvania Association of Criminal Defense Lawyers argues that 4 See PA.

CONST. art. I, § 9 (“In all criminal prosecutions the accused... cannot be compelled to give evidence against himself[.]”).

As the Majority details, Foster waived his state constitutional claim because he did not comply with *Commonwealth v. Bishop*, 217 A.3d 833 (Pa. 2019), which held that litigants in this situation must “assert in the trial court that the state constitutional provision at issue should be interpreted more expansively than the federal counterpart and provide reasons for interpreting the state provision differently from the federal provision.” *Id.* at 840 (quoting the New Mexico Supreme Court’s decision in *State v. Gomez*, 932 P.2d 1 (N.M.

1997), for reasons that still elude me). As I explained in *Bishop*, this issue-preservation regime “makes an *Edmunds* analysis a *de facto* prerequisite for preserving departure claims,” even though our Court has held that an *Edmunds* analysis is not required. *Id.* at 850 (Wecht, J., dissenting). I continue to believe that the *Bishop* rule serves no legitimate purpose.

5 Brief for Foster at 39 n.18 (citing decisions from Colorado, Hawaii, Indiana, Kansas, Montana, and Oregon). 6 Majority Opinion at 10 n.9. [J-69-2024] [MO: McCaffery, J.] - 2 the use of deception in interrogations “threatens police legitimacy” and “is at the core of a significant number of wrongful convictions.”⁷ PACDL further contends that, given the “growing scientific understanding” of the link between police deception and false confessions, “it no longer makes sense to excuse deception.”⁸ PACDL notes that, in recognition of this link between police deception and false confessions, several states have enacted statutes prohibiting police officers from lying to minors during interrogations.⁹ Given these concerns, today’s decision should not be interpreted as endorsing the practice of deceiving or tricking suspects during interrogations.

Today, we apply the United States Supreme Court’s Fifth Amendment jurisprudence. That the United States Constitution tolerates a practice does not necessarily mean that the practice is wise. The federal constitutional floor could always be raised. Our sister branches would be well within their ambit of authority to enact legislation prohibiting interrogation tactics (even constitutionally permissible ones) that risk generation of false confessions.

Today’s decision does not foreclose the possibility of such reforms. 7 Amicus Curiae Brief for PACDL at 12, 3. 8 *Id.* at 18. 9 *Id.* at 20-22; see, e.g., CAL. WELF. & INST. CODE § 625.7(a) (“During a custodial interrogation of a person 17 years of age or younger relating to the commission of a misdemeanor or felony, a law enforcement officer shall not employ threats, physical harm, deception, or psychologically manipulative interrogation tactics.”); DEL.

CODE tit. 11 § 2022(b)(1) (“[A] statement of a person, who at the time of the interrogation was under 18 years of age, is inadmissible in any criminal or delinquency court proceeding if it was made during a custodial interrogation in which deceptive tactics were used.”); OR. REV. STAT. § 133.403(1) (“A statement made by a person during a custodial interview conducted by a peace

officer is presumed to be involuntary if the person is under 18 years of age and... the court determines that the peace officer intentionally used information known by the officer to be false to elicit the statement.”).

[J-69-2024] [MO: McCaffery, J.] - 3 These additional points aside, I agree with today’s Majority that falsely telling a suspect that he is not a suspect, by itself, does not render the suspect’s resulting statements involuntary under the Fifth Amendment.

Thus, I join the Majority opinion. Justice Donohue joins this concurring opinion. Justice Dougherty joins this concurring opinion except for footnote 4. [J-69-2024] [MO: McCaffery, J.] -

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