IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALEX D. JUSTICE,	§	
	§	No. 34, 2013
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware, in and for
v.	§	Sussex County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 1203006756
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: July 3, 2013
Decided: July 11, 2013

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

O R D E R

This 11th day of July 2013, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Alex Justice, Sr., the defendant-below ("Justice"), appeals from a Superior Court sentencing order for Rape Second Degree and Unlawful Sexual Contact. On appeal, Justice claims the trial court erred by refusing to suppress his statement to the police. He urges that the State failed to establish by a preponderance of the evidence that when Justice waived his *Miranda*[1] rights while intoxicated, he was capable of knowing what he told to the police, or that he

[1] *Miranda v. Arizona*, 384 U.S. 436, 471 (1966).

voluntarily intended to disclose that information. We find no merit to Justice's appeal and affirm.

2. On March 3, 2012, D.C.,[2] a 13-year-old girl, encountered Justice, a 42-year-old man, who was drinking a beer. Justice offered to get D.C. something to drink. D.C. agreed. Justice bought a bottle of gin and beer, and he and D.C. went to an outdoor location. D.C. was cold. Justice told her that if she drank the gin, it would warm her up. D.C. drank nearly the entire bottle. Soon after, Justice began to kiss D.C., removed her underwear, and orally sodomized her.

3. Justice invited D.C. back to his house. D.C. refused, saying she needed to go home. Justice's son came to pick them up and dropped them off at Justice's house. Justice then repeatedly engaged in oral copulation and penile-vaginal intercourse with D.C., at least four times. Three days later, a forensic nurse examiner at Peninsula Regional Medical Center examined D.C. and found semen in D.C.'s vagina. The semen was later matched to Justice's DNA.

4. Justice was arrested on a warrant issued by the Delmar Police Department. When Justice asked why he was being placed under arrest, the arresting officer replied that it was in connection with a rape charge. Justice was taken to the station and given his *Miranda* warnings. Justice then gave a statement to the effect that, some days earlier, he had sex with a 28-year-old woman named

[2] Pursuant to Supreme Court Rule 10.2(9)(b), the minor child is identified only by her initials.

Honesty at his house. Justice then gave an alibi for his activities on the day in question.

5. Shortly after Justice gave his statement to the police, he appeared by videophone before a Justice of the Peace to determine bail. The court issued a form order indicating the conditions of his release. Justice did not sign the form on the space where designated. Instead, the signature line contained the word "intoxicated." The form order was issued less than an hour after Justice signed his *Miranda* waiver.

6. Justice was indicted on eight counts of Sex Offender Unlawful Sexual Contact Against a Child. The trial was bifurcated, and the trial jury considered seven counts of Rape Second Degree and one count of Unlawful Sexual Contact Second Degree. At the trial, the State sought to introduce Justice's statement. Defense counsel objected, and the trial court overruled the objection. The jury convicted Justice of one count of Rape Second Degree and Unlawful Sexual Contact Second Degree. The jury acquitted Justice of all other charges.

7. The trial court separately conducted a bench trial, determined Justice was a sex offender at the time of the offense, and sentenced him to life in prison. This appeal followed.

8. We review the Superior Court's denial of a motion to suppress for abuse of discretion.[3] We review *de novo* the formulation and application of legal concepts to undisputed facts.[4] "To the extent the trial court's legal decision is based on its own factual findings, it is reviewable to determine whether there was sufficient evidence to support the findings . . . ."[5]

9. This Court has held that *Miranda* rights are effectively waived if the waiver was "voluntary in the sense that it was a product of free and deliberate choice rather than intimidation, coercion or deception," and was "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it."[6] We have repeatedly stated that "prior intoxication does not, *per se*, invalidate an otherwise proper waiver of *Miranda* rights."[7] "The State has the burden of showing not only that the defendant was advised of his Miranda rights but [also] that he knowingly and intelligently waived those rights."[8]

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[3] *Seward v. State*, 723 A.2d 365, 370 (Del. 1999).

[4] *Jones v. State*, 745 A.2d 856, 860 (Del. 1999).

[5] *Downs v. State*, 570 A.2d 1142, 1144 (Del. 1990).

[6] *Rambo v. State*, 939 A.2d 1275, 1278-79 (Del. 2007) (internal citation omitted).

[7] *Hubbard v. State*, 16 A.3d 912, 919 (Del. 2011); *see also Howard v. State*, 458 A.2d 1180, 1183 (Del. 1983) ("To the extent that he was intoxicated when he was questioned, that intoxication does not *per se* invalidate an otherwise proper waiver of rights.") (citations omitted).

[8] *Howard*, 458 A.2d at 1183.

10. The police officer who informed Justice of his *Miranda* rights testified that he did not recall if Justice exhibited any odor of alcohol, slurred speech, or bloodshot eyes, nor did he notice that Justice had trouble maintaining balance while giving his statement.[9] Justice was also responsive in his statement,[10] wherein he gave a detailed and extensive alibi.[11] The State adduced sufficient evidence to meet its burden of showing that Justice gave his statement voluntarily.

11. Moreover, the only evidence of record indicating intoxication is the handwritten notation of "intoxicated" on the bail form. The source of that notation is unknown both to the State and to Justice. The police officer who processed Justice when the form was completed had no recollection of Justice being intoxicated or of writing "intoxicated" on the form. That notation on the form does not outweigh the other evidence that Justice's waiver was knowing and voluntary.

12. Justice argues the trial court never conducted a full legal analysis of his state of mind at the time of his *Miranda* waiver. This Court has never held that any particular form of colloquy is required at a suppression hearing. The trial court

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[9] *See Mealey v. State*, 347 A.2d 651, 652-53 (Del. 1975) (finding an allegedly intoxicated defendant gave a knowing and intelligent waiver of *Miranda* rights, as the defendant appeared sober, was not incoherent, and had no difficulty speaking).

[10] *See Fleming v. State*, 609 A.2d 668, 1992 WL 135159, at *1-2 (Del. Mar. 11, 1992) (finding a knowing waiver of *Miranda* rights when, among other indicators, the defendant gave "focused and responsive answers" to police questions); *Traylor v. State*, 458 A.2d 1170, 1176 (Del. 1983) (holding that a defendant's heroine intoxication did not render his *Miranda* warning invalid, as his "admissions and denials in his remarks . . . indicate his capacity and intent").

[11] *See Hubbard*, 16 A.3d at 919 (finding a knowing and voluntary waiver when the defendant gave a "detailed" statement of his recollections of the arrest).

did not make a finding that Justice was intoxicated. Rather, it focused its analysis on the proposition that even if Justice was intoxicated, that fact—alone and without more—does not render the statement inadmissible. We agree.

13. Even if the knowing and voluntary character of Justice's *Miranda* waiver was subject to doubt, and the admission of his statement was error, any error was harmless. The State's evidence established the relative ages of Justice and D.C., D.C. testified to the sexual encounter and, most significantly, the DNA evidence connected Justice's DNA to the semen found in D.C.'s vagina. The Superior Court did not err by denying Justice's motion to suppress his statement to the police.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice