

## **PT: SELECTED ANSWER 1**

Good morning and may it please the court. Jan Dauss on behalf of the State, Your Honor.

After a 30-minute interview in which the defendant spoke in complex, complete sentences, painted a vivid, self-serving story that he had acted in self-defense, and even invited the detectives to stay when they left the room so he could receive medical care, the defendant now moves to suppress his confession on the basis that it was not the result of his rational intellect and free will under *Mincey v. Arizona*. The defense argument fails for multiple reasons and is squarely foreclosed by the Columbia Supreme Court's decision in *Perdomo*.

The *Perdomo* Court announced multiple factors that courts should consider when confronted with involuntary-confession suppression arguments. They're grouped into two main categories: the defendant's maturity, education, and health, and the details of the interrogation itself. I want to start first with a focus on the defendant, and then I'll move into the conduct of the detectives in the interrogation.

Let's look first at the defendant's characteristics. The defendant is employed. He spent two years in college. This is a man who has a place in society and is not vulnerable to coercion. The statements he made in his interrogation confirm that he's a smart guy.

When the detectives asked him what happened, he said, quote, "I received a phone call from my mom's brother, Peter Gault, this morning around 11 o'clock. He wanted to know the whereabouts of a Corvette engine he had been storing . . . ." These are cogent

sentences, Your Honor. They are not the product of a man unable to think. The defendant talking about how he "received a phone call from" his "mom's brother," and saying the victim "wanted to know the whereabouts of a Corvette engine"? How often do you come across the word "whereabouts" in normal conversation? The defendant is intelligent, and he was intelligent at the time of the interrogation.

The defendant was aware of specific key facts that he could recall from memory. He mentioned to the detectives he had sold a Corvette engine for \$800 several months ago. This is not the kind of fact that a person struggling with mental function is able to recall on the spot. And that example is a lot like *Perdomo*, where the defendant was able to name the company he worked for and recite its telephone number from memory. The *Perdomo* Court held that defendant gave a voluntary confession in part relying on that finding.

Here, when the defendant was questioned, he said he was "a little drugged up," but he could speak. And he spoke in full sentences. He told a story from beginning to end about what happened. Over the course of multiple questions, the defendant offered longer and longer explanations and excuses for his conduct. This was not a man who "wanted *not* to answer" the detectives, like in *Mincey*. This was a man who wanted to exculpate himself, right then and there.

The context confirms this, Your Honor. The defendant's story paints him in the best light over and over. The defendant makes a conscious choice to frame himself as acting in self-defense. Right off the bat, the defendant tells the detectives that the victim, Mr. Gault, "became angry." The defendant says he feared for his mother's safety and that the victim "had a short temper and . . . was hot-headed." The defendant's story portrays

himself as the hero. He's going to go save his mother from Mr. Gault. This is not the interrogation of a man who is "weakened by pain and shock" and "barely conscious," so that "his will" is "simply overborne" by the detectives, like in *Mincey*. This is the calculated attempt to get away with it from a guy who's able to think about the best way to try to do that.

The defendant's cold calculation is really drawn into focus by his deception. The defendant deceived the officers about the knife. Early on in the questioning, the defendant tells the officers that he took an eight-inch wrench from his work locker for "protection." Later on in his story, he tells the detectives that - after the victim said "I'm gonna kill you," according to the defendant, of course - he stabbed the victim with his knife. When the detectives asked where the knife came from, the defendant said, "I guess I forgot to mention that I got it from my work locker when I got the wrench." This kind of deception was a key factor in *Perdomo* in finding that defendant's confession was voluntary.

I expect you'll hear the defense argue that the defendant was not given the opportunity to tell detectives about the knife, because hospital staff caused the interview to break just after the defendant mentioned the wrench. That's no excuse. The defendant repeatedly volunteered facts about what happened rather than needing to be asked for them, and he said later in the interview that he "forgot to mention" the knife. It wasn't that his opportunity to mention it was cut off. It's that he didn't want to bring it up, because he thought it would be bad for his self-defense story.

Because this picture of the defendant as an intelligent, savvy, shrewd communicator

is so clear, the court need not focus too much time on the defendant's physical condition at the time of questioning. But even if you choose to do so, Your Honor, the defendant's physical condition confirms the finding that his confession was voluntary.

The defendant had been injured at 11:30 a.m. before the detectives interviewed him at 7:50 p.m. That's more than eight hours later. At that time, the defendant was sitting in a hospital bed at a 45-degree angle. He had a stab wound and a "redness" on his forehead. He said he was "a little drugged up."

A comparison on this point to *Mincey* and *Perdomo* is especially useful. In *Mincey*, the defendant had a tube in his mouth and could not speak at all. The defendant had to communicate in writing, and some of those writings were "incoherent" and "on their face showed he was confused and unable to think clearly." That defendant was going in and out of consciousness during questioning, Your Honor. The *Mincey* Court found his confession was "the result of virtually continuous questioning of a seriously and painfully wounded man on the edge of consciousness" and thus involuntary.

In *Perdomo*, the defendant suffered from bleeding in his brain and was in "obvious pain" at the time of questioning. He had been in surgery to have his spleen removed, and was lying flat on his bed, broken ribs all over his chest, intravenous solutions hooked to his veins. And the *Perdomo* defendant was still under the influence of narcotic pain medication at the time he was questioned. In fact, he received morphine five and a half hours before the interrogation and he received multiple doses of Vicodin after questioning.

Still, the *Perdomo* Court held that the defendant's confession was not involuntary. It

found that it did not rise to the level of not being the product of a rational intellect and a free will, like in *Mincey*. Even the *Perdomo* facts were not enough. And the facts here are nowhere near as bad. *Perdomo* involved a brain bleed - this case has "redness" on the forehead. *Perdomo* involved a defendant flat on his back, no spleen, broken ribs, tubes hooked up to his veins - this case has a mostly upright defendant, who is speaking in clear, complete sentences through some breathing tubes. And *Perdomo* involved a defendant who had taken morphine within five and a half hours of questioning. This case has a defendant who said he was "a little drugged up" before he went on to construct his self-defense story. In fact, the defendant wanted to stay up after the interview to watch the UC game. He was in good enough spirits and health to stay up and watch the game, Your Honor.

The defense is going to tell you that the *Perdomo* interrogation was four days after his accident. But that was due to the extent of the *Perdomo* defendant's injuries. His injuries were far more extensive. The detectives in that case waited for the hospital to give permission for them to speak with him. And the detectives in this case did the same thing. They called the hospital to ask if the defendant was medically cleared to be interrogated, and they waited until they got that permission.

When we look at the defendant's maturity, education, and mental and physical health, we get a clear picture, Your Honor. The defendant is college educated. He is someone who knows that self-defense is his only way out. And he is someone who had the capacity to develop a story in his self interest and then tell that story to the detectives. His physical health is worlds apart from *Perdomo*, let alone *Mincey*. And even *Perdomo* was not enough for the defendant to establish his confession was

involuntary. This category of factors weighs heavily in the state's favor.

Turning next to the second category, there is vanishingly little in the interrogation that could suggest coercion by the detectives. It simply isn't there. The *Perdomo* Court has instructed to look at the duration, location, and continuity of the interrogation as three factors that could suggest coercion. Starting with those, none of them establish an involuntary confession.

The defendant was questioned for less than 30 minutes. The questioning began at 7:50 p.m., included a short break for medical care, and concluded at 8:20 p.m. A 30-minute interview – max – is not coercive. In *Mincey*, the interview was 3 hours. The *Perdomo* interview was 20 minutes. Again, comparing this case to those, this one is much, much more like *Perdomo*.

The location is also entirely reasonable. The defendant was partially upright in his hospital bed. The *Perdomo* interview was at the hospital too. This is where these conversations should be expected to be had. The defendant was injured in the course of murdering Mr. Gault, so of course the detectives are going to come to him there.

And the interview - even though it was just 30 minutes - was not continuous. This is a key fact in *Mincey*. The *Mincey* defendant repeatedly asked for the questioning to stop. He even invoked his right to counsel several times. The officer in *Mincey* just kept pushing for three hours. We don't have anything like that here. In fact, when hospital staff came into the room to provide medical care to the defendant, the officers stopped questioning immediately and took a break. So this 30-minute interrogation wasn't even a continuous 30 minutes, Your Honor. There was a break in there.

I want to point out something here that I think is a key fact in support of the voluntariness of the defendant's confession. When the officers took that break, the defendant said, "You guys aren't leaving, are you?" He asked for them to stay. The defendant wasn't done with them yet. Why was that? Because he hadn't finished his story. The defendant saw the detectives as his chance to spin a yarn about self-defense. The defendant needed those detectives in the room with him. That's the complete opposite of an involuntary statement, Your Honor. The defendant insisted on those detectives staying with him so that he could keep talking.

And that goes directly to the remaining factors that the *Perdomo* Court explained we should focus on here: whether the officers dominated the conversation and whether they allowed the defendant to tell his story and try to clarify with follow up questions. Looking through the transcript, it's clear that if anyone dominated the conversation, it was the defendant. Multiple times, he told multiple sentences of his story in response to "Mm-hm" from a detective. The detectives also asked questions like "So what happened then?" and "How do you know that?" Your Honor, this reads more like a direct examination of a friendly witness than it does an interrogation. And through it all, the defendant is speaking clearly, he's using complete sentences, he's using that college-educated grammar, and he's building a self-serving story of self-defense.

Finally, these officers' questions aren't aggressive or accusatory, and they weren't threatening to the defendant at all. They didn't have their weapons drawn or anything like that. They keep asking him what happened. In fact, throughout the entire interrogation, the officers brush off the defendant one time - and it was to keep him on track about what happened when he said that he wanted to call his mother. It wasn't

aggressive like the defense will tell you, Your Honor: it was an open-ended attempt to keep the conversation on track. The question was simply "What happened next?" And the defendant picked up there and kept telling the story he wanted to tell.

Throughout the whole time, the detectives are very gracious to the defendant. When the defendant slips up and mentions the knife for the first time, a detective says "I'm sorry. I guess I missed where your knife comes into the story." They don't get aggressive or accusatory with him. And they tell him that he's been generous with his time and should rest. They tell him to enjoy the UC game that he insists on staying up to watch. They are professional and polite throughout, just like they're trained to be. There's no evidence at all that they were coercive.

Your Honor, the *Perdomo* factors overwhelmingly establish that the defendant's confession was voluntary. The defendant's education and maturity levels are well above average. The defendant's health at the time of questioning was strong relative to *Perdomo*, where the Columbia Supreme Court held the confession to be voluntary. And the details of this interrogation show that it was brief, it had a break, and it involved no coercive questions or behavior whatsoever. I ask that the Court deny the defendant's motion to exclude the statement as involuntary. I welcome any questions the Court may have.

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