

**PT: SELECTED ANSWER 2**

**To:** Jan Dauss

**From:** Applicant

**Re:** State v Hughes - First Draft of Oral Arguments for Voluntariness Motion

Ms. Dauss,

You have asked me to prepare the first draft of your oral arguments in the Hughes matter concerning voluntariness of the Defendant's statement. You have asked me to weave the facts into your argument as they relate to each of the elements of the controlling law. I also understand that I am not to address the *Miranda* issue itself.

Please see the draft below. I am available to discuss.

Applicant

**DRAFT BEGINS**

Your Honor,

The defense seeks to have Mr. Hughes' statement excluded on the basis that it was involuntarily made in violation of Mr. Hughes' rights against making coerced confessions under the Due Process Clause.

The key issue before the court is whether Mr. Hughes' statement was not the result of a rational intellect and free will. As the parties and Your Honor discussed in the pretrial hearings, the controlling precedent in this case is *Mincey v Arizona* (U.S. 1978) ("*Mincey*"). In that case, the Court established that the question posed by the Due Process clause is whether the influences brought to bear upon the accused were such as to overbear the individual's will to resist and bring about confessions not freely self-determined." The *Mincey* court established that this is a contextual analysis that requires the court to 1) assess the maturity of the defendant and their education and physical condition, and 2) assess the facts of the interrogation itself, with regards to whether the facts of the interrogation itself indicate that a voluntary statement was not made.

If it pleases the court, the State of Columbia will present its argument on the *Mincey* factors by presenting that the characteristics of the accused and the interrogation show that the statement was made voluntarily and knowingly and was not the result of undue coercion by officers. Your Honor, we also note that the facts of this case bear a strong resemblance to a 2007 decision of the Columbia Supreme Court, *State v Perdomo*. In that case, the Court also applied the *Mincey* factors. Where helpful, the State will draw comparisons to that case to highlight the key issues.

### **The Characteristics of Mr. Hughes**

#### **Mr. Hughes is educated and mature**

As noted by the court in *Mincey*, the education, maturity, and characteristics of the individual are relevant to the analysis. Where the speaker is educated and

knowledgeable and mature, they are more likely to have been able to understand the nature of the questioning and to govern themselves in a voluntary manner.

Here, Mr. Hughes is educated, having spent two years at the University of Columbia. His answers also evidence a feeling of responsibility and involvement for his mother, and also to engage in the purchase and sale of goods, indicating that he is mature and thinks that he is capable of acting to protect himself and his loved ones. In short, Mr. Hughes' education and the manner in which he describes his own decision-making indicate that he is mature and thinks of himself as someone that has agency, and is capable of acting to preserve his own rights.

Therefore, because Mr. Hughes is educated and appears to be mature for his age and interested in asserting his own rights, it is more likely that the statement was made voluntarily.

#### Mr. Hughes wanted to participate in the interview

In *Mincey*, the court stressed that the accused had clearly not wanted the interview to take place, requesting many times that the interview end. Where the individual clearly does not want to participate in the interview, the *Mincey* court found, there is a stronger likelihood that any statement they made implicating themselves was not voluntary and was not made in a communicative effort to be helpful or to discuss the issues.

Here, Mr. Hughes clearly wanted to participate in the interview. The transcript shows that Mr. Hughes repeatedly exclaimed his side of the story, adding details and rationalizations and explanations. Importantly, he also asked, "You guys aren't leaving,

are you?" when the detectives indicated that they would be pausing the interview while Mr. Hughes received care. Similarly, the court in *Perdomo* found that the accused had clearly wanted to talk to the officers, discussing his gratefulness at being OK and discussing his mother, and other matters. In that case, as here, the fact that the accused wanted to speak to officers and did not try to end the interview or otherwise evidence a lack of intent to talk, is evidence in support of the fact that Mr. Hughes made his statements in a voluntary manner.

Therefore, because Mr. Hughes wanted to help detectives, it is more likely that his statement was voluntary.

#### The interview took place a reasonable time after treatment

The *Mincey* precedent makes clear that a key question is whether the interview was conducted a reasonable time after the accused was receiving treatment so as to ensure that the accused was not still under active treatment and therefore not in a physical or mental condition to speak to anyone.

Here, Detectives spoke with Mr. Hughes in the evening, around 7:50 PM in the hospital unit, 2 hours after surgery. At this time, Mr. Hughes was sitting upright, was not still in treatment, and was not sedated. It is true that in the *Mincey* decision, the court found that the accused was being interviewed only mere hours after intensive surgery, and that this contributed heavily to the court's assessment that the statement was not voluntary.

However, the *Mincey* court's analysis can be distinguished here on the facts. In *Mincey*, the court found that the accused could not talk because of tubes in his mouth,

and he wrote on a piece of paper, and his responses were incoherent and often related to the issue of pain and asking the interrogation to cease. Here, Mr. Hughes' treatment was not as invasive or intense as in *Mincey* and, unlike the accused in *Mincey*, Mr. Hughes did not have any tubes in his mouth and was able to speak freely, if a little awkwardly. Mr. Hughes also was not actively being treated. While a medical professional did come in to take his blood, that kind of minimally invasive check-up is not akin to the active sedation and treatment of the accused in the ICU as in *Mincey*.

Therefore, while the interview did take place only a few hours after treatment like in *Mincey*, *Mincey* is distinguishable on the facts, and the interrogation here was not done while the accused was still clearly sedated and actively being treated.

Mr. Hughes was lucid and he spoke clearly and deliberately

In *Mincey*, the court held that the accused was clearly not lucid because many of his writings to the police were incoherent and he was still on intravenous pain medications. The defendant actually lost consciousness many times during the interrogation. The court found that because of these factors, it was likely that the accused was not in a position to voluntarily offer any information or to protect his own rights vis-a-vis the State as it tried to obtain information from him.

Here, by contrast, Mr. Hughes was not under intravenous medication like the accused in *Mincey*. Rather, he appears to have been given normal pain medication, which he said made him feel "drugged up." However, Mr. Hughes' drugged-up state looks far more like the drug state of the accused in *Perdomo*, where the accused was being given simple vicodin for pain as needed, and not like the heavily sedated and

intravenously sedated accused in *Mincey*. In that case, the court found that, while he was clearly feeling the effects of medication, the lucid nature of his responses indicated that they were not intense effects that overrode his ability to recall and discuss facts and make decisions.

Similarly here, Mr Hughes was clearly lucid and he spoke deliberately. He was able to provide extensive detail regarding the incident as he remembered it, showing that his short-term memory was functioning adequately. Further, he also had long-term memory to communicate, in discussing the issue of the Covette engine that had been bought and sold months ago. Mr. Hughes also communicated and clearly discussed his recollection of how his mother and uncle both acted and spoke, and so Mr. Hughes was clearly lucid despite the normal pain medication he was receiving. His speech did not appear to be slurred or confused like the writings in *Mincey*, nor did he lose consciousness during interrogation.

Therefore, because Mr. Hughes was not intravenously sedated, and because he was clearly lucid, his use of pain medication is distinguishable from the accused in *Mincey* and is more like the accused in *Perdomo*.

### **The Interrogation Itself**

The interview was casual in tone, open-ended and not aggressive, and Mr. Hughes was allowed to tell his story without interruption.

A key finding in the *Perdomo* case was that the interview was casual, open-ended in the scope of discussion, and not at all aggressive. By contrast, the *Mincey* interrogation included a relentless series of questions posed at an accused coming in

and out of consciousness. In each of these cases, the nature of the conversation was crucial to a finding that the statements were and were not voluntary, respectively.

Here, as in *Perdomo*, the conversation was open-ended. Mr. Hughes was allowed to generally describe the events as they unfolded. He was able to provide follow-up details and further explain his meaning and his intent. The officers did not cut Mr. Hughes off and direct the conversation entirely. Rather, they allowed Mr. Hughes to direct the subject matter of the interrogation. They also spoke in a casual and frank manner, for example stating that they would "hang around" and "get out of Mr. Hughes" hair. This casual, open-ended conversation allowed Mr. Hughes to be comfortable and know that he was having a conversation of which he was a participating member, not that he was being subject to a one-way interrogation controlled and directed entirely by the officers.

Therefore, because the conversation here was open-ended and casual, and Mr. Hughes was largely allowed to control the discussion and the manner of speaking, it is far more akin to the permissible conversation in *Perdomo* as compared to the one-way relentless and intense interrogation in *Mincey*.

The interview lasted a reasonable duration, and included breaks and pauses

The *Mincey* court found that the interrogation in that case was intense and went for hours, ceasing only during intervals when the defendant lost consciousness. The statements at issue were thus found to be the result of relentless interrogation on a painfully and seriously wounded man, and deemed coercive and involuntary.

Here, the interrogation was paused casually to allow for a blood sample to be taken, and Mr. Hughes expressed hope that it would resume. The interview only lasted 30

minutes, and ended in time for Mr. Hughes to watch the football game. Accordingly, this case is heavily distinguishable from the events in *Mincey*, and more akin to the short, 20-minute duration interview in *Perdomo*, which the court found to be appropriate and supported the finding that the statement was voluntary and not the result of impermissible coercion.

Therefore, the short nature of the interview, which included a break for a blood treatment, supports the finding that the statement was not the result of a relentless interrogation of a wounded man, and rather a short reasonable interview with a person that was relaxing following a surgery.

### **Conclusion**

For the reasons set out above, the interrogation in this case is clearly akin to the permissible interrogation in the *Perdomo* matter, and entirely distinguishable from the facts of the *Mincey* precedent. For this reason, we request that the court dismiss the motion to exclude the statement as being unduly coercive and a violation of the Due Process Clause as it applies to the State through the 14th Amendment.