Revised

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 85-1517

TITLE COLORADO, Petitioner V. JOHN LEROY SPRING

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IN THE SUPREME COURT OF THE UNITED STATES

COLORADO,

Petitioner

v. : No. 85-1517

JOHN LEROY SPRING

Washington, D.C.

Tuesday, December 9, 1986

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 1:00 p.m.

APPEARANCES:

MS. MAUREEN PHELAN, ESQ., Assistant Attorney General of Colorado, Denver, Colorado; on behalf of the Petitioner.

LAWRENCE S. ROBBINS, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C.; as amicus curiae supporting petitioner.

SETH JEREMY BENEZRA, ESQ., Boulder, Colorado; on behalf of the Respondent.

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P R O C E E D I N G S

CHIEF JUSTICE REHNQUIST: We will hear arguments next in No. 85-1517, Colorado against Spring.

Ms. Phelan, you may proceed whenever you're ready.

ORAL ARGUMENT OF MS. MAUREEN PHELAN, ESQ.,
ON BEHALF OF THE PETITIONER

MS. PHELAN: Mr. Chief Justice, and may it please the Court:

This case is here today on a petition -- or for a writ, rather, of certiorari to the Colorado Supreme Court, which did suppress a statement made by the defendant.

I will very briefly summarize the facts, and then I'll explain why the court below misconstrued this Court's decision in Miranda v. Arizona.

And I would like to point out that in my opening brief in this Court I really did not go into all of the facts that supported the trial court's conclusion that this waiver was knowing and voluntary. So this is really my opportunity to get those facts out.

Again, the case involves the validity of this Miranda waiver. The facts are that the defendant here agreed to sell some stolen guns to Federal agents. They were Alcohol, Tobacco and Firearms agents working

undercover.

He was arrested during the sale. He was put into a police car, and he was given his Miranda warnings at this time.

In addition, he was also given an additional warning that he had the right to stop questioning at any time; and he also had the right to stop questioning for the purpose of obtaining counsel at any time.

He was then driven down to the local ATF offices -- this was in Kansas City -- and he was again given the warnings, and again, given the additional warnings.

At that time, he signed a written waiver, and this written waiver is included in the record. It's very specific. It states that he did not want an attorney at this time; that he was willing to answer questions; that he understood what he was doing; and that no promises, threats, pressure or force had been placed upon him.

Some of the additional factors showing that this waiver was voluntary is the fact that this defendant was 23 years old, and at the time of this transaction, had quite a lot of prior involvement with the criminal justice system.

He had murdered his aunt when he was 10 years

old, and shot another aunt at the same time. And then when he was 18 and first released from his juvenile detention, he was convicted in Iowa of a robbery.

About two weeks later, he was convicted also in Iowa of a forgery case. And a couple of years later, at the age of 20, convicted again in Iowa of robbery without aggravation.

There's nothing in the record to show that this defendant was anything less than average intelligence. There's no indication of any sort of incompetence, no claim of any --

QUESTION: I wonder about that last statement.

MS. PHELAN: I'm sorry, Your Honor?

QUESTION: Nothing in the record to show that he's less than average intelligence?

MS. PHELAN: Yes, Your Honor.

QUESTION: Well -- what was it he said, I shot some guy once? Was that what he said?

MS. PHELAN: Yes, Your Honor.

QUESTION: That's a pretty brilliant statement.

MS. PHELAN: The fact -- the other factors would also show there was no long, intensive interrogation in this case. He spoke quite readily and quite freely with the officers when he did agree to speak.

This interrogation did occur during normal business hours. It was at 3:00 o'clock in the afternoon.

He was asked during this interrogation about the gun charges, where he had obtained the guns, things of that nature. And at the end of it, he was asked several questions concerning a homicide in Colorado.

The ATF agents knew about this homicide because the informant who had told them about the gun transactions had also told them that this defendant had admitted to them that -- or had admitted to him, the informant, that he had murdered someone in Colorado.

Based on all of these factors, the trial court found that the defendant here was properly advised; that he was aware of his rights; that he responded freely, voluntarily and intelligently; and specifically found that there was no element of duress or coercion used against him.

The Colorado Supreme Court, however, agreed with the defendant that his waiver could not have been knowing and intelligent.

What the Colorado Supreme Court did was apply the totality of the circumstances test, and they held that his awareness that they might question him -- or rather, actually, his lack of awareness that they might

question him about this Colorado murder was one factor to consider in the totality of the circumstances.

However, then the Colorado Supreme Court took that one step further and held that this was a determinative factor, because if he didn't know all of the possible subjects of interrogation, then he couldn't be aware of the consequences of his waiver.

And in fact, the Colorado Supreme Court took the entire analysis another step further and held that this factor, his lack of awareness of the possible subjects of interrogation, is such an important factor that the totality of the circumstances test has to actually be applied to that sole factor.

And so it must be determined now, in Colorado, apparently in each case, whether or not the defendant understands all of the possible subjects that he could be interrogated upon after he agrees to speak with the police.

So based upon this, the Colorado Supreme Court held that this waiver was not knowing, intelligent and voluntary.

And I would insert at this time that the defense has tried to raise an issue here of voluntariness. And although the Colorado Supreme Court's opinion is written in that classic formula of,

found to be -- or not proven to be knowing, intelligent and voluntary, if we look back at the Colorado Supreme Court's opinion, it's written completely in terms of, and it discusses only, the knowing and intelligent aspects of this waiver.

So it's clear that the Colorado Supreme Court confused this knowing and intelligent aspects with a wise waiver.

They have found that --

QUESTION: With what kind of waiver?

MS. PHELAN: I'm sorry, Your Honor?

QUESTION: They confused it with some kind of a waiver, you said. And I just didn't catch the adjective in front of waiver.

MS. PHELAN: It's a wise waiver, Your Honor.

In other words, they have confused this issue of knowing and intelligent, or especially intelligent, I suspect; they think that in order to be an intelligent waiver, it has to be a wise waiver; and that the consequences that the defendant must be aware of go far beyond the consequence that his statement can and will be used against him. It has to -- he has to be aware of far-reaching circumstances surrounding his circumstances.

Miranda simply does not go so far by its

terms. Miranda requires that the defendant makes his waiver knowing what his rights are.

Miranda requires that he makes his waiver knowing the consequences of waiver. And Miranda specifically states what those consequences are.

He must know that the State can, and will, use this statement against him.

So we would simply submit that by its terms, the Colorado Supreme Court went way too far.

Miranda has described traditional police methods. But Miranda did not, by its own terms, actually condemn those methods, as the defendant has tried to imply in his brief.

What Miranda did was, describe certain traditional police interrogation methods, and then impose a balancing test on this; and has given to criminal suspects something of a shield against these traditional police interrogation methods.

CHIEF JUSTICE REHNQUIST: We'll resume there at 1:00 o'clock, Ms. Phelan.

MS. PHELAN: Yes, Your Honor.

(Whereupon, at 12:00 noon, a luncheon recess was taken.)

AFTERNOON SESSION

(1:00 p.m.)

CHIEF JUSTICE REHNQUIST: We'll resume argument where we left off, Ms. Phelan.

MS. PHELAN: May I proceed, Your Honor?

Mr. Chief Justice, and may it please the Court:

Before the break, I was discussing the Miranda rule, and the balance that that rule was trying to obtain.

Of course the two competing societal concerns have been discussed many times now since Miranda. We have the very compelling societal interest in finding and punishing criminals.

But we have, on the opposite end of that scale, the possible risk that police will go too far in their efforts and compel admissions in violation of the Fifth Amendment.

So the Miranda case did try, despite this --

QUESTION: Ms. Phelan, may I ask you, if the respondent had told police that he was willing to talk to them about the firearms offense --

MS. PHELAN: Yes, Your Honor.

QUESTION: -- but nothing more --

MS. PHELAN: Yes.

QUESTION: -- could the officers have then asked him about an unrelated offense, do you suppose?

MS. PHELAN: No, Your Honor, I think that that would be a partial waiver.

QUESTION: Do we have any concern that that was implicitly what the defendant did here, or at least his understanding?

MS. PHELAN: No, Your Honor.

QUESTION: And what if the trial court were to find, or to think, that implicitly the defendant understood and intended to waive his rights only as far as the firearms was concerned?

MS. PHELAN: Then I'm sure the trial court would find only a partial waiver, and suppress any statements concerning anything else.

QUESTION: And do you think that the mere fact that all he is told about and all that, as far as the circumstances indicate, he would think about was the firearms --

MS. PHELAN: Yes, Your Honor.

QUESTION: -- offense, would not raise that kind of a question?

MS. PHELAN: No, Your Honor. And of course, he would always be free to ask the police, if he had any concern, if had a guilty conscience, for example, and

was wondering what they might know about, he certainly has the option of asking them what they would like to discuss, and of making that partial waiver.

But there is no indication in this record at all that he intended that --

QUESTION: And he could always stop.

MS. PHELAN: Yes, he could, Your Honor. Plus, the consequence which is spelled out to him in the warnings is that anything you say will be used against you. So that's pretty clear, that whatever we start talking about, if you say something that can be used against you, we will use it against you.

The balance which was struck by Miranda was to give the defendant some control, as you pointed out, so that the defendant has the power to control somewhat the time of interrogation; the subjects of interrogation; whether or not an attorney will be present at interrogation.

Therefore, the court held -- and this was underscored recently in Moran v. Burbine -- that traditional interrogation may continue, but only if the defendant does understand that he has the right to silence, right to counsel, and that anything he says will be used against him.

The Colorado Supreme Court rule upsets this

Miranda balance, and with no benefit. The rule harms legitimate law enforcement for the obvious reason that if we have to get into discussing things far beyond the rights, things that may go to his self-interest, then it will discourage confessions.

There's the further possibility that it could actually danger -- endanger, rather, police out in the field, because what they may know, which they wish to discuss with him further, may concern something like a continuing investigation out in the field concerning undercover agents. And in fact we know there were undercover agents involved in this case.

On the other hand, to balance it off, there is nothing to balance it off, because this doesn't protect the defendant's Fifth Amendment rights any more. It only protects him against himself. And there's no provision in the Constitution that a defendant has to be protected from himself; only from the police.

QUESTION: Well, the Fifth Amendment really protects you from yourself in a way in saying that you can't be required to compulsorily incriminate yourself.

MS. PHELAN: That's protecting you from the police, Your Honor.

This rule adopted by the Colorado Supreme Court would completely destroy the bright line rule that

Miranda has crafted. One of the obvious virtues of Miranda, mentioned by this Court over and over again, is that it is very clear. It's very easy to understand. It's very easy for the police to use. They know how to use it. They've all got little cards that they carry around in a pocket, and when they arrest someone, they pull out the little card, and they read the rights. It's very clear.

The rule advocated, or found, by the Colorado Supreme Court is not clear at all. It would completely destroy this bright line test.

It's not clear at all how specific the police would have to be in discussing all of the possible subjects of interrogation; it -- it adds in a question of police judgment that Miranda was never designed to have. Because the police will have to use judgment in any interrogation situation in deciding whether or not the defendant has opened up possible new subjects of interrogation.

They would have to use their judgment to decide at exactly what point they would have to stop and readvise him.

QUESTION: What about a more narrow proposition that when the State, going into the interrogation, misleads the suspect into thinking that

they want to question him about subject A, when at that time, when they're going in, they intend to question him about subject B, that's no good.

Why would that be such a disaster?

MS. PHELAN: Well, that is a more difficult question, Your Honor. It --

QUESTION: But isn't that the question we have here?

MS. PHELAN: No, Your Honor. There's -- there's no misleading here. There's just a lack of information.

QUESTION: They arrested him on a firearms charge, right?

MS. PHELAN: Yes, Your Honor. And it certainly wasn't -- was not a sham.

QUESTION: Did he know he was arrested on a firearms charge?

MS. PHELAN: Under the circumstances, he should have.

QUESTION: He knew that that's what the charge was that he was arrested on.

MS. PHELAN: Yes, Your Honor.

QUESTION: And then they say, we want to ask you some questions.

MS. PHELAN: But they didn't specifically say,

we want to ask you some questions about the firearms.

QUESTION: Oh, he thought it was on, what, theology?

MS. PHELAN: Well, Your Honor, I would suspect that he should have known that it was anything --

QUESTION: On the firearms charge, I would guess.

MS. PHELAN: On anything that they might know about it.

QUESTION: I wouldn't have guessed that.

MS. PHELAN: Well, for example, Your Honor, as part of the firearms charges, where he obtained the firearms was in Iowa in a residential burglary. And he would really have no way of knowing that the police might know about that.

But should they specifically say, you may also be a suspect in a burglary?

It would seem as though, if they give him the rights, he knows he doesn't have to speak to the police, then that is the actual information that he needs to know.

I think to go back to your initial question --

QUESTION: Well, that may be a good rule. But is, at least, not a disastrous confusion that we would be creating if we adopted the rule that if you arrest

somebody on charge A, knowing at the time that you intend to question him not about charge A but about charge B, the waiver is ineffectual.

MS. PHELAN: Well, Your Honor, this Court could, of course, adopt that rule, and add on that fifth Miranda requirement. But there would be -- in a sense, the Court would then be opening up the floodgates. Because the theoretical underpinnings for that rule would have to be that the consequences that he would have to be aware of are all those consequences that go to his self-interest.

The next hypothetical case I could see before this Court would be one where they told him the nature of the charges but they didn't tell him all the elements.

The next one after that would be one where they didn't explain the possible severity of the punishment.

QUESTION: Well, Ms. Phelan, is that really a fair treatment of Justice Scalia's suggestion? Because there is language in Miranda, and I think you've acknowledge this, that if there's trickery involved, or something like that, that then that would make waiver invalid.

I suppose at least it'd be theoretically

possible to say that in order to avoid trickery there is an obligation to give some information about the extent of the proposed interrogation.

And I -- I thought you suggested earlier, maybe I misunderstood you, that if they had said to him, we want to question you about the firearms charge, said nothing else, would that raise a question about what they did here?

MS. PHELAN: Do you mean if they specifically, quote, we want to talk to you about the firearms charges and nothing else, end quote.

QUESTION: Well, I -- all right, take that case. Supposing they said that.

MS. PHELAN: Okay. Then I think that that may go to his essential understanding of his rights. That may serve -- we would have to get the real facts in a case to see that, but it may serve to undercut his understanding that anything he says can be used against him.

QUESTION: Well, what if instead, they left the words, and nothing else, out?

MS. PHELAN: If they just said --?

QUESTION: We would like to question you -- we have probable cause to believe you're engaged in trafficking in illegal firearms. We want to question

you about that subject, period.

MS. PHELAN: And of course, you have the right to remain silent, et cetera, et cetera.

QUESTION: And all the rest, of course.

MS. PHELAN: Yes, Your Honor, I would say that was perfectly valid.

QUESTION: But if they added the words, "and nothing else." "The only thing we want to ask you about is the firearms." Then you say that might be different?

MS. PHELAN: "And nothing else." Well, I don't want to really take the position and say that that would be valid or invalid, because it's really not the case here.

I think that that's one of those cases that will really depend on the facts as they end up showing up in the record. But it could serve to undercut --

QUESTION: Why does it go to his -- why does what Justice Stevens has been asking you go to whether he understood his rights? Doesn't it go to what the scope of his waiver was?

We just had a scope of waiver case -- case before this. And isn't this -- doesn't that question go to the scope of the waiver?

MS. PHELAN: Yes, Your Honor.

QUESTION: If somebody says, we want to

question you about the firearms, and he says, okay. What is he saying okay to? He's saying okay to questioning about the firearms.

MS. PHELAN: Well, of course, it wouldn't be a vacuum. We want to question you about the firearms. You have the right to remain silent, et cetera, et cetera. Okay, I'll speak to you.

And we have a very specific waiver in this case --

QUESTION: About the firearms, I mean if that's the question, isn't it?

MS. PHELAN: Yes, Your Honor. But we also have -- for example, in this case, the very specific waiver saying, I'm willing to answer questions. It's not limited. It's not a limited waiver.

QUESTION: It seems to me the issue is, whether, when he said that, he meant only, and could reasonably have meant, only questions about the firearms offense.

But there's no indication in this record that that's how the question was put to him.

MS. PHELAN: No, Your Honor.

QUESTION: He was arrested on the firearms charge, and simply asked, will you be willing to talk to us?

MS. PHELAN: He was arrested during this firearm sale. He was given the rights. There's no indication in the record that anybody mentioned anything about charges.

From the circumstances, he would certainly assume that it had to do with the sale.

QUESTION: The Colorado Supreme Court suggested, though, that the agents acted deceptively. I think they -- the court stated that the agents led the respondent to believe that he would be questioned about one crime, but then interrogated him about a totally unrelated offense.

MS. PHELAN: Your Honor, I think that reflects a less than careful reading of the trial court's specific findings of fact here.

The trial court found no --

QUESTION: So you think that the Supreme Court was in error --

MS. PHELAN: Yes, Your Honor.

QUESTION: -- when it made that statement?

MS. PHELAN: Yes, Your Honor. And plus, I don't think that that's really the lynchpin of the Supreme Court's decision.

I really think that they were intent on adding on this -- this fifth warning requirement.

I see that my white light is on. So if there are no further questions, I would save my further time for rebuttal.

CHIEF JUSTICE REHNQUIST: Thank you, Ms. Phelan. You have no further time.

We'll hear now from you, Mr. Robbins.

ORAL ARGUMENT OF LAWRENCE S. ROBBINS, ESQ.,
AS AMICUS CURIAE ON BEHALF OF THE PETITIONER

MR. ROBBINS: Mr. Chief Justice, and may it please the Court:

I'd like to begin my remarks by addressing the questions regarding deception that were posed at the tail end of my co-counsel's argument a few moments ago.

First, a factual question raised by Justice O'Connor about what it is exactly the Supreme Court of Colorado said.

As I recollect the opinion, Your Honor, what they said was that there's some suggestion that the police may have told respondent that their questions would be in connection with a particular subject matter.

The Colorado Supreme Court, I don't think, goes further than to say that that might be reflected in the record.

My reading of the record suggests that there's no -- not even a whisper of that. In point of fact, the

written waiver executed by respondent on March the 30, 1979, is not even in the slightest tied in to a particular crime.

And that written waiver, which acknowledged the receipt of the rights, the understanding of the rights, and the decision to waive the rights, which respondent signed, and which this Court in North Carolina v. Butler said is strong evidence that the waiver is valid, was in no respect -- did in no respect incorporate any specific crime.

There's no testimony that the agents, the ATF agents, in proposing the waiver to the respondent told him that it would be in connection with a particular crime.

With all respect to the Colorado Supreme Court, I suggest that that is simply an invention that is in no respect reflected in anybody's testimony.

Mr. Spring, by the way, did not testify at the suppression hearing, so that point couldn't have emerged from his testimony either.

There's simply nothing to suggest that kind of trickery.

More fundamentally, however -- and this addresses, I think, the questions posed by Justices Scalia and Stevens -- it does not seem to the United

States that trickery and deception within the meaning of Miranda could possibly comprehend the kind of deception and trickery that the Supreme Court of Coloraco may have been averting to.

In point of fact, respondent suggests in his brief that the agents structured their questions in such a way as to enshroud their real agenda. As respondent sees it, the agents tricked him into believing that they were simply investigating a firearms case; not a homicide case; and so deceived, the respondent involuntarily waived his rights.

Well, there's no disputing that under Miranda a waiver cannot be the product of trickery or deception. There's no quarrel about that.

But even if the failure, the simple failure, to disclose the topics of interrogation were part of a calculated effort by the agents to deceive the respondent -- a conclusion, by the way, which the trial court flatly rejected, and which neither appellate court disturbed in the slightest -- that is simply not the kind of deception that Miranda is talking about.

As this Court held last term in Moran v. Burbine the kind of trickery that can vitiate a waiver is conduct, "that deprives a defendant of knowledge essential to his ability to understand the nature of his

rights and the consequences of abandoning them."

I suggest that questions posed of a suspect, even if structured in such a way as to camouflage the officers' true agenda, cannot fit within this closely cabined rubric of deception as proscribed by Miranda.

QUESTION: Why wouldn't it affect the consequence of abandoning his rights? He thinks the consequence is that he may give some information about the firearms offense, and it turns out he's giving information about a murder?

MR. ROBBINS: In a sense, it refers to the consequences. But I think as Moran against Burbine makes plain, Justice Scalia, consequence is a bounded concept. It doesn't refer to every consequence that may emanate from the choice a suspect makes.

The only consequence -- the only consequence -- that Miranda is intended to inform the suspect about is the simple and single consequence that anything he says can be used against him.

The respondent knew that much, and more than that, he's not entitled to know. It follows from this Court's explanation of the concept of deception in Moran, the kind -- the limited concept of deception that Miranda forbids, that hiding the ball, as it were, in this fashion, could not be the kind of deception that

Miranda forbids.

QUESTION: Well, Mr. Robbins, does that mean that for example if the police officers falsely told him they had a lot of evidence that implicated him, and it was just totally contrived, that wouldn't affect his understanding of his Constitutional rights, but that would not be the kind of deception that would be implicated by Miranda?

MR. ROBBINS: It would not.

QUESTION: And you think that would therefore be completely permissible?

MR. ROBBINS: That may be a different question, Justice Stevens. And I'd like --

QUESTION: It seems to me it's this question, because it's outside the Constitutional right waiver category.

MR. ROBBINS: Well, there are limits, mandated by the due process clause, that may arguably be implicated by police conduct.

Miranda is a different set of rules. It is intended to engraft specific prophylactic rules.

QUESTION: But my example wouldn't fit the trickery, so forth, language in Miranda. It would be --

MR. ROBBINS: I'm sorry?

QUESTION: The example I put would not fit the

trickery language in Miranda; rather, it might be a due process violation --

MR. ROBBINS: It might in a proper case.

QUESTION: Yes, and that's --

MR. ROBBINS: Although it does seem to me that that particular case is foreclosed by certain of the decisions of this Court about misstating the nature of the evidence. And I think this Court catalogued some of those cases in deciding the issue of trickery in Moran v. Burbine.

More fundamentally, it seems to me, the complaint that respondent suggests about trickery in this case, betrays an aversion to the very concept of interrogation that simply cannot be squared with what this Court has uniformly said about the necessity of conducting lawful interrogation.

Simply to assert, as respondent does, that the agents played their cards close to the vest during the interrogation, says no more than that they did their job well.

Police interrogation obviously may not take the coercive forms forbidden by this Court over the years. But neither, I suggest, is it to be governed by the rules of Victorian etiquette.

Simply to describe police methods as deceptive

substitutes metaphor for analysis. Indeed, a good deal of what constitutes effective and lawful police work is effective precisely because it is deceptive.

Wire-tapping is deceptive. Using informants is deceptive. Consensual monitors are deceptive. Body recorders are deceptive.

They are all deceptive. But when used appropriately and lawfully, there's nothing unconstitutional about them, and nothing forbidden by Miranda about them.

Whereas here, the police did nothing that can be said to have obscured the meaning of the Miranda warnings, nor in any sense intimidated respondent into waiving them, a court has no authority, under the Constitution or under Miranda, to refuse, as the Colorado Supreme Court did, to enforce that waiver.

If there are no further questions, thank you very much.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Robbins.

We'll hear now from you, Mr. Benezra.

ORAL ARGUMENT OF SETH JEREMY BENEZRA, ESQ.,

ON BEHALF OF THE RESPONDENT

MR. BENEZRA: Mr. Chief Justice, and may it please the Court:

The issue presented in this case is a narrow one. The issue is not whether police officers, prior to questioning, must inform a suspect of all the possible subjects of interrogation.

Rather the issue is whether the Colorado Supreme Court, given the particular facts and circumstances of this case, where Mr. Spring was being investigated on weapons charges, and was then interrogated on a completely unrelated homicide, correctly concluded that in the totality of the circumstances, the prosecution had not met its burden of proving a valid waiver.

The petitioner has given you its view of the facts in this case. I would make the following additions and corrections.

Early in February of 1979, John Spring was involved in the shooting death of Donald Walker in Craig, Colorado.

In mid-February of that year, Spring told George Dennison, of Kansas City, Missouri, about the shooting.

In late February, Dennison contacted Harold Wactor, an agent with the Kansas City office of the Bureau of Alcohol, Tobacco and Firearms. Dennison informed Wactor that Spring was involved in a plan to

steal firearms, transport them interstate, and sell them.

Dennison also informed Wactor of Spring's involvement in the Walker homicide.

On March 23rd, 1979, informant Dennison set up a telephone conversation with Spring which was tape recorded by ATF agents, and during which, Spring arguably implicated himself in the murder.

On March 30th, Spring was arrested in Kansas City, Missouri, during an actual hand-to-hand sale of stolen firearms to Federal agents.

To reiterate, at the time of Spring's arrest on firearms charges, the Federal agents knew of the Colorado homicide; knew of Spring's involvement in the crime; and were in possession of a taped phone conversation in which Spring arguably implicated himself in the murder.

Following his arrest, Spring was read his right by Federal agents. Spring waived those rights. Spring was not advised that he was a murder suspect. And as the Colorado Supreme Court noted, there was no basis to conclude that Spring could reasonably have expected that the interrogation would extend to the -- to the Walker murder.

Spring was questioned first about the firearms

transaction. He was then asked if he had a criminal record; if he had shot anyone else; if he had been to Colorado; and finally, whether he had shot Donnie Walker west of Denver.

As the Colorado Supreme Court noted, nothing about the interrogation, leading up to the final questions regarding Walker and Colorado, would have suggested to Spring that a topic of inquiry would be the Colorado homicide.

The Colorado Supreme Court applied the totality of the circumstances test enunciated by this Court in North Carolina v. Butler, and Fare v. Michael C, in holding that Spring had not validly waived his rights with regard to the homicide.

In reaching its conclusion, the court noted that at the time of the waiver on firearms charges, Spring was totally unaware, and had no reason to be aware, that he was to be questioned about the Colorado homicide.

The court emphasized that the record offered little with regard to Spring's intelligence, or his acquaintance with the criminal justice system.

And just to respond to some of the comments of the petitioner, nothing in the record of the suppression hearing -- nothing in the transcript of the suppression

hearing indicates anything about a prior criminal record, with the exception of a juvenile record for shooting his aunt. So that information was not before the trial court, and I'm not sure what the source of that information is.

The court took into account the particular circumstances surrounding the interrogation, including the fact that the Federal agents had information about a much more serious crime; withheld that information from Spring; as well as the dramatic shift in the focus of the interrogation which occurred in a misleading fashion.

It thus seems clear that the court was concerned with the impact of the interrogation techniques employed, on Spring's opportunity to exercise his rights with regard to the homicide.

Given all these circumstances, the Colorado Supreme Court held that the prosecution had not met its burden of proving a valid waiver with regard to the homicide.

In Miranda v. Arizona, this Court held that to protect the individual's privilege against self-incrimination, concrete Constitutional guidelines must be established for police officers and for courts to follow.

The Court thus held that prior to custodial interrogation, a suspect must be advised of the now-familiar Miranda warnings.

Like the warnings, a suspect's waiver of his rights is indispensable to the admissibility of his statements. This Court has held that a waiver must be knowing, intelligent and voluntary, and must be made with an understanding of the consequences of waiver.

In deciding whether --

QUESTION: What do you think, though, the Miranda Court intended when it talked about knowing the consequences, Mr. Benezra? I've always thought that it was the fact that what you said could be used against you, and really nothing more. But I think the Colorado Supreme Court took a considerably broader approach, didn't it?

MR. BENEZRA: This Court, in Miranda, indicated that the consequence of waiving the rights was that the statement would be used against you.

This Court did not indicate, however, that that was the only consequence a defendant needs to be aware of. The Colorado Supreme Court's analysis does not seem to turn on an evaluation of the consequences really facing the defendant in this case.

QUESTION: Well, surely, he's supposed to know

that he can remain silent.

MR. BENEZRA: That's correct.

QUESTION: And that he can have an attorney.

MR. BENEZRA: That's correct.

QUESTION: And isn't -- isn't, as far as waiver is concerned, isn't there a new waiver everytime a question is asked and he answers it? Because at that time he can always refuse to answer, and say, I prefer to remain silent?

MR. BENEZRA: That's correct.

QUESTION: And if it's perfectly -- suppose that all the questions that were asked here were very relevant to the firearms charge; just suppose that. The only thing is that the police had some suspicion about the fact that he might be implicated in a murder. And they really intended to ask him about the -- I mean, they were driven to ask these questions not only on the firearms charge but on the murder.

I don't suppose that there'd be anything wrong with that. Perfectly valid questions; perfectly relevant to the firearms charge.

MR. BENEZRA: It also went to -- also went to the murder, is that the question?

QUESTION: Also went to the murder, but he never suspected that he was suspected of the murder.

MR. BENEZRA: I don't think that would be a problem in Colorado.

QUESTION: Yes. Well, suppose that the questions, however -- it was perfectly clear, when they asked a certain question, that this has nothing to do with the firearms charge. They say, well now, we want to talk about this murder. And they ask him a question and he answers it.

Now, why isn't that a valid waiver?

MR. BENEZRA: That may very well be a valid waiver under the rule in Colorado.

QUESTION: Well, why is that different from this? They got to the question, and you said that when they got to this -- these two questions, it was perfectly plain they were leaving the firearms charge.

Why wasn't that as plain to him?

QUESTION: And he had refused to answer some earlier questions too, hadn't he?

MR. BENEZRA: On this particular -- on this particular day?

QUESTION: Yes, I thought that he --

MR. BENEZRA: I don't believe the record indicates that.

QUESTION: Not that day, but on another day?

QUESTION: Well, he knew he could --

QUESTION: He knew he didn't have to answer. He had previously declined to respond to some questions that they asked.

MR. BENEZRA: That's correct. I think the -- what the Colorado Supreme Court was considering in this case was that there was a subtle shift from these questions that bore no direct relation to the Colorado homicide to the questions that did.

And I think the Court heavily weighed the fact that the record was silent with regard to his intelligence --

QUESTION: Well, does it make any difference whether it's a subtle shift or a dramatic shift? You now characterize it as a subtle shift. What if, in so many words, the agent had said, all right, now let's go back to several years before, go back to this canyon in Colorado and talk about what happened there? Not subtle at all.

QUESTION: And he answers.

MR. BENEZRA: I think that would present a very different case. I think in that case the court may very well find that he's on sufficient notice at that point.

The court was concerned here with the shift. The court was also concerned that there was very little

in the record about the defendant's background and his experience with the criminal justice system.

And I think what's implicit in this decision is the view that he may not have realized at that point that the subject matter was shifting; and he may not have therefore had the opportunity to exercise his Constitutional rights.

And I think that's what's implicit from the discussion of all the circumstances that the court goes through in the case.

QUESTION: Mr. Benezra, I'm not quite clear on what the argument here is.

Is your argument one or the other of these, or both of these: that he didn't understand the scope of his waiver, he had been deceived so he didn't have the knowledge that was necessary; or is it rather that the scope of his waiver did not extend to these questions?

MR. BENEZRA: I think it is that the scope of his waiver did not extend to these questions; that he -- there was no evidence that he waived his rights with regard to the homicide. And that is the language that the Colorado Supreme Court used.

In the instant case, the Colorado Supreme Court held that one factor to be assessed under the totality approach is the extent to which a suspect is

aware, or reasonably should be aware, of the subject matter of the interrogation prior to its commencement.

The court specifically rejected the per se rule, which had been adopted by the Colorado intermediate court for rendering invalid any waiver where a defendant is not specifically advised by the police of the nature of the offense prior to questioning.

The court held that in all such cases the proper standard for determining the validity of a waiver is the totality of the circumstances.

The Colorado Supreme Court's decision is correct. Under certain --

QUESTION: (Inaudible) scope. It means the scope of the waiver, right?

MR. BENEZRA: Yes, it goes to the scope of the waiver.

The Colorado Supreme Court's decision --

QUESTION: I know, but may I just ask you, you've accepted Justice Scalia's suggestion that they just decided on the scope of the waiver. But I'm not sure you get that out of the Colorado Supreme Court opinion. Don't they say the waiver was invalid?

At least I know that's how Justice Erickson read the majority opinion. He said the waiver was

invalid.

Or do I misread it?

MR. BENEZRA: The court, in its opinion, indicated that he had not made a knowing and intelligent and voluntary waiver with regard to the homicide.

QUESTION: Oh, I see. Okay.

MR. BENEZRA: The Colorado Supreme Court's decision is also supported by this Court's decision in Fare v. Michael C. In Fare, this Court, in upholding the validity of the respondent's Miranda waiver, noted that the respondent was aware that he was to be questioned about a murder.

Fare suggests that a suspect's awareness of the nature of the offense is a relevant factor under the totality of the circumstances.

Petitioner asserts that the ruling of the Colorado Supreme Court would, in practice, require the police to take on the role of counsel.

According to petitioner, police officers would have to inform the suspect of possible charges, the evidence they have, the legal elements of the offense, possible defenses, likely penalties.

Simply put, nothing about the Colorado Supreme Court's decision goes so far. Spring speaks only about the facts of this particular case, where Spring was led,

by all the circumstances, to believe he would be questioned only about firearms, where ATF agents obtained a waiver with regard to that offense, but where Spring was then questioned about a totally unrelated homicide.

It is also important to note that while a number of jurisdictions have adopted the totality of the circumstances approach employed by the Colorado Supreme Court in Spring, they have similarly rejected waiver challenges on the grounds suggested by petitioner.

In Moran v. Burbine, this Court described Miranda as an attempt to reconcile society's interest in effective law enforcement with the coercive nature of the interrogation process by giving the defendant the power to exert some control over the course of the interrogation.

The Colorado Supreme Court's decision in Spring recognized that on the particular facts here, where Spring was unaware that he was a homicide suspect, ATF agents were able to subtly manipulate the custodial process, and elicit incriminating information before Mr. Spring had the opportunity to make a knowing and intelligent decision to exercise his rights.

The Colorado court assessed the totality of the circumstances in determining that Spring had not

validly waived his rights with regard to the homicide. The court properly considered Spring's lack of awareness of the nature of the offense and its assessment.

The court emphasized that the record offered little with regard to Spring's intelligence or acquaintance with the criminal justice system.

The court took into account the particular interrogation techniques employed, and apparently, their impact on Spring's opportunity to exercise his rights with regard to the homicide.

Spring reveals a careful and thorough analysis of the totality of the circumstances as is required by this Court's decisions, and its decision should therefore be affirmed.

If this Court has no further questions --

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Benezra.

The case is submitted.

(Whereupon, at 1:34 p.m., the case in the above-entitled matter was submitted.)

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

#85-1517 - COLORADO, Petitioner V. JOHN LEROY SPRING

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BY Paul A. Richardson

(REPORTER)