
IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,

Plaintiff-Respondent,
Respondent on Review,

v.

DEBORAH LYNN REED,

Defendant-Appellant
Petitioner on Review.

Lincoln County Circuit Court
Case Nos. 19CR12088, 18CR64481

CA A170999 (Control), A171000

S069360

PETITIONER'S REPLY BRIEF ON THE MERITS

Review of the Decision of the Court of Appeals
from a judgment of the Circuit Court for Lincoln County
Honorable Sheryl Bachart, Judge

Opinion Filed: February 9, 2022

Author of Opinion: SHORR, J.

Concurring Judge: ORTEGA, P. J.

Before: Ortega, Presiding Judge, and Shorr, Judge, and Powers, Judge

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PETITIONER'S REPLY BRIEF

INTRODUCTION

Defendant relies on the statement of the case set forth in her brief on the merits filed on September 12, 2022. Defendant here renews the arguments in that brief and replies specifically to two of the contentions in the respondent's brief on the merits.

First, defendant responds to the state's insistence that defendant's brief on the merits advances a novel *per se* rule that would require *Miranda* warnings in advance of *any* stationhouse or law-enforcement-facility interrogation, thereby, in the state's view, upending the totality of the circumstances inquiry set forth in this court's case law for determining when *Miranda* warnings are required. As explained below, defendant does not propose a *per se* rule, and the approach that she does propose would not require this court to overrule its prior cases.

Second, the state argues that pertinent, defendant-specific characteristics have no part in the "reasonable person" component of the compelling circumstances inquiry. The state asserts that the United States Supreme Court has "expressly disavowed any suggestion" that any personal characteristic of a defendant, save for the age of a child defendant, can play a part in the "reasonable person" aspect of the custody analysis. Resp Br 23 (citing *J.D.B. v.*

North Carolina, 564 US 261, 275, 131 S Ct 2394 (2011), which holds that the “reasonable person” standard correctly includes consideration of age in determining whether a child defendant is in custody for *Miranda* purposes).

Defendant clarifies what the Supreme Court was referring to in the text that the state cites and explains that the Supreme Court has not, in fact, delivered any such sweeping disavowal. To the contrary, the court’s reasoning in *J.D.B.* strongly suggests that other personal characteristics of a defendant could readily form part of the objective “reasonable person” standard in the custody or compelling circumstances analysis.

ARGUMENT

- I. **Defendant does not advance a *per se* rule requiring *Miranda* warnings before any stationhouse interrogation; defendant asks this court to explain that a law enforcement facility is not a facially neutral location, with the result that interrogation in those locations is more likely to constitute interrogation in police-dominated compelling circumstances that necessitate *Miranda* warnings.**

The state argues that defendant proposes a *pro se* rule requiring *Miranda* warnings before any police-station interview. The state wields the worrying “*per se* rule” concept too readily, to the detriment of a clear understanding of defendant’s proposed rule. *See* Resp Br 1, 18-20. Defendant does not ask this court to hold that law-enforcement-facility interrogation requires *Miranda* warnings in every instance. Rather, defendant asks this court to recognize that, absent affirmative mitigating circumstances, interrogation in a law-enforcement

facility will likely constitute interrogation in a police-dominated atmosphere that requires *Miranda* warnings. Pet Br 22-24. Essentially, defendant asks this court to recognize (1) that a police station or other law enforcement facility is not a presumptively neutral location and (2) that the inherently coercive nature of that location must play an important part in the totality of the circumstances analysis. This approach dovetails straightforwardly into the totality of the circumstances inquiry required by this court's compelling circumstances case law.

The state asserts that defendant is effectively asking this court to overrule *State v. Roble-Baker*, 340 Or 631, 136 P3d 22 (2006), because, in the state's view, defendant asks this court to hold that interrogation at a law-enforcement facility automatically gives rise to compelling circumstances. Resp Br 18. Again, the state is too ready with this notion of a *per se* rule. Defendant's argument squares with *Roble-Baker* and does not require this court to reject that precedent.

The rule of *Roble-Baker* is that police and courts must examine the totality of the circumstances in an overarching inquiry to determine whether interrogation occurred in a police-dominated atmosphere such that *Miranda* warnings were necessary. 340 at 640-641. The specific holding of *Roble-Baker* is that the police gained the defendant's confession in violation of *Miranda* because such an atmosphere did in fact exist when the police interrogated the

defendant in “a situation in which defendant was required, for all practical purposes, to remain at the police headquarters.” *Id.* at 642.

Defendant does not seek to upend that analysis. She seeks to make it more accurate in application by asking this court to ensure that adequate weight is given to the coercive effect that a law-enforcement-controlled location has during interrogation. *See Miranda v. Arizona*, 384 US 436, 448-457, 86 S Ct 1602, 16 L Ed 2d 694 (1966) (discussing the deliberately coercive effect of stationhouse interrogation).

II. Consideration of defendant-specific personal characteristics in the “reasonable person” component of the compelling circumstances inquiry has not been foreclosed by the United States Supreme Court; consideration of such attributes is appropriate and makes the inquiry more accurate and fair.

In her opening brief, defendant advances an argument that the “reasonable person” standard should take into account defendant-specific attributes that are critical to how the “reasonable person” being questioned by police would understand their circumstances. Pet Br 25-28. As pertinent in this case, defendant asks this court to hold that a defendant’s known status as a probationer must figure into the “reasonable person” standard used to evaluate whether the defendant was in compelling circumstances. Thus, the basic question in assessing whether compelling circumstances existed in this case would be, how would a reasonable person *on probation* understand the circumstances of her encounter with police?

The state counters that “that kind of analysis has no place in the compelling circumstances inquiry because this court has repeatedly emphasized the need for the inquiry to remain purely objective.” Resp Br 21 (citing *State v. Shaff*, 343 Or 639, 645, 175 P3d 454 (2007)). But “objective” does not mean blinkered. The state does not explain how consideration of such characteristics renders the inquiry subjective in a way that defeats the purpose of the “reasonable person” standard. Where a characteristic is common across a group or groups of people; and where common sense, common experience, or common knowledge readily allow common-sense conclusions to be drawn from the existence of the characteristic, there is no reason why the characteristic should be excluded from the inquiry. *See J.D.B. v. North Carolina*, 564 US at 272 (discussing child’s age as a characteristic to be weighed in the “reasonable person” custody analysis).

The state maintains that the Supreme Court has “expressly disavowed” the use of any personal characteristic save the age of a juvenile in the custody analysis, implying that this court should do the same. Resp Br 23 n 3. The state cites *J.D.B.* in support of that contention. *Id.* In that case, the Court held that, for purposes of determining whether a child defendant was in custody at the time of questioning thus necessitating *Miranda* warnings, it was appropriate to consider the child’s age, so long as the age was known to the police at the time of questioning, in evaluating whether a reasonable person in the child’s

circumstances would have felt free to terminate the interrogation and leave. *Id.* at 277. The Court explained that a child's age is a fact that "generates commonsense conclusions about behavior and perception" that "apply broadly to children as a class." *Id.* at 272 (internal citation and quotation marks omitted). A child's age is thus not a particular fact about a particular individual, the consideration of which renders an otherwise objective inquiry subjective.

The Court did *not* state that it was inappropriate to consider any other personal attributes in the analysis. Rather, the Court stated that consideration of a child's age was appropriate because "a child's age differs from other personal characteristics that, even when known to the police, *have no objectively discernible relationship to a reasonable person's understanding of his freedom of action.*" *Id.* at 275 (emphasis added). A person's history of being interrogated by police, for example, "has no role to play in the custody analysis because such experience could just as easily lead a reasonable person to feel free to walk away as to feel compelled to stay[.]" *Id.* (internal citations and quotation marks omitted). And because the effect of that history in any given case would be "contingent on the psychology of the individual suspect," the objective nature of the analysis would be compromised. *Id.*

The state's reliance on *J.D.B.* for the far-reaching proposition that the Supreme Court has expressly disavowed the use of personal characteristics (except for the age of a juvenile defendant) in the reasonable-person custody

analysis is misplaced. That is because the state ignores a key piece of the Court's reasoning: personal characteristics (such as a child's age) that have broad general applicability and that are known to the interrogating police or would be apparent to a reasonable police officer *can* play a role in the analysis if they have an "objectively discernible relationship to a reasonable person's understanding of his freedom of action." *Id.* By contrast, specific characteristics that are pertinent only because of the particularized experience and psychology of the person involved (*e.g.*, a defendant's prior history of law-enforcement interrogation) are not properly part of the inquiry. *Id.*

Accordingly, consideration of more general attributes that objectively bear on how a reasonable person would understand a particular situation is properly part of the calculus. Probation status falls in that category. Probation status unquestionably has an "objectively discernible relationship to a reasonable person's understanding of his freedom of action." *Id.* Indeed, the very purpose of probation is to circumscribe the freedom of action of a large class of people, a fact which objectively gives rise to "commonsense conclusions" concerning what a reasonable probationer is expected to do and how their behavior and perception might be affected by their probation status in a given situation. *Id.*

The state argues further that probation status is not "apparent to an external observer" and therefore that defendant's proposed rule is not workable.

Resp Br 21. Defendant agrees that a characteristic to be considered as part of the “reasonable person” analysis should generally be apparent to the external observer. Defendant agrees that there are times when a person’s probation status is not immediately apparent in that way—depending on the circumstances, a person’s probation status thus might not enter the equation.

However, where, as here, probation status is not only apparent to an external observer but also known to the interrogating officers, no obstacle exists to its consideration as part of the “reasonable person” standard. *See J.D.B.* 564 US at 274 (“So long as the child’s age was known to the officer at the time of the interview, or would have been objectively apparent to any reasonable officer, including as part of the custody analysis requires officers neither to consider circumstances unknowable to them, nor to anticipate the frailties or idiosyncrasies of the particular suspect whom they question.” (internal citations and quotation marks omitted)). Thus, to form part of the “reasonable person” analysis, a personal characteristic must either be known to the interrogating officers (as here and in *J.D.B.*) or must be apparent to a reasonable officer.

CONCLUSION

Because neither the trial court nor the Court of Appeals gave appropriate weight to defendant's probation status or to the coercive nature of the location of her interrogation, defendant respectfully asks this court to reverse the decisions of the Court of Appeals and the trial court and remand her case for further proceedings.

Respectfully submitted,

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Signed

By Morgen E. Daniels at 11:48 am, Nov 08, 2022

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CERTIFICATE OF COMPLIANCE WITH ORAP 5.05

Brief length

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05 and (2) the word-count of this brief is 1,881 words.

Type size

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes.

NOTICE OF FILING AND PROOF OF SERVICE

I certify that I directed the original Petitioner's Reply Brief on the Merits to be filed with the Appellate Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, Oregon 97301, on November 8, 2022.

I further certify that, upon receipt of the confirmation email stating that the document has been accepted by the eFiling system, this Petitioner's Reply Brief on the Merits will be eServed pursuant to ORAP 16.45 on Benjamin Gutman #160599, Solicitor General, attorney for Plaintiff-Respondent.

Respectfully submitted,

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