

SUPREME COURT NO. 88577-0  
NO. 67158-8-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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REC'D  
MAR 13 2013  
King County Prosecutor  
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

CESAR TROCHEZ-JIMENEZ,

Petitioner.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Catherine Shaffer, Judge

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PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER/DECISION BELOW

Cesar Trochez-Jimenez requests this Court grant review pursuant to RAP 13.4 of the Court of Appeals' published decision in State v. Trochez-Jimenez, No. 67158-8-I, filed February 11, 2013. A copy of the opinion is attached as Appendix A.

B. ISSUE PRESENTED FOR REVIEW

Appellant was arrested in Canada for violating Canadian Immigration law. He was advised of his right to counsel under the Canadian Charter and requested an attorney. Later that evening, King County detectives questioned him about a homicide. Should appellant's statements to detectives have been suppressed because appellant had already unequivocally invoked his right to counsel?

C. STATEMENT OF THE CASE

1. Procedural Facts

The King County prosecutor charged appellant Cesar Trochez-Jimenez with one count of first-degree murder while armed with a firearm and one count of being an alien in possession of a firearm without a license. CP 21-22. The jury acquitted Trochez of premeditated first-degree murder, but convicted him of second-degree murder and found he was armed with a firearm. CP 133-34. Trochez waived jury trial on the alien in possession

charge, and the court found him guilty. CP 124, 136. The court imposed a standard range sentence of 234 months plus the 60-month firearm sentencing enhancement for second-degree murder. CP 143. A 12-month sentence for the firearm possession charge was imposed to run concurrently. CP 143. The court also imposed 24-36 months of community custody. CP 144. Notice of appeal was timely filed. CP 148.

On appeal, Trochez argued his statements to King County detectives should have been suppressed because he was questioned after requesting counsel. The Court of Appeals held Trochez' invocation of his right to counsel under the Canadian Charter of Rights and Freedoms was not an invocation of his right to counsel under the Fifth Amendment and thus did not invalidate his subsequent waiver of the privilege against self-incrimination.

## 2. Substantive Facts

In July 2008, Trochez lived in south Seattle with his girlfriend Lesli Batiz, their three-year-old daughter, and Lesli's<sup>1</sup> brother Carlos. 8RP<sup>2</sup> 20-21. The couple had been living together for three years. 8RP 20-21.

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<sup>1</sup> Several members of the Batiz family are involved in this case. First names are used to avoid confusion.

<sup>2</sup> There are 19 volumes of Verbatim Report of Proceedings referenced as follows: 1RP – Aug. 10, 2010; 2RP – Aug. 11-13, 16, 2010, Oct. 1, 2010; 3RP – Aug. 30, 2010; 4RP – Oct. 18, 2010; 5RP – Oct. 19, 2010; 6RP – Jan. 3, 2011; 7RP – Jan. 4, 2011; 8RP – Jan. 5, 2011; 9RP – Jan. 6, 2011; 10RP – Jan. 10, 2011; 11RP – Jan. 11, 2011; 12RP – Jan. 12, 2011; 13RP – Jan. 13, 2011; 14RP – Jan. 18, 2011; 15RP – Jan. 19, 2011; 16RP – Jan. 20, 2011; 17RP – Jan. 24, 2011; 18RP – Jan. 25, 2011; 19RP – Apr. 29, 2011.

Unfortunately, unbeknownst to Trochez, Lesli had become involved with someone else. 8RP 24.

a. January-June 2008

In January 2008, Trochez began to receive harassing phone calls nearly every day. 14RP 32-33. At first the calls were merely insulting, but later turned to threats that if Trochez did not deport himself, he would be killed. 14RP 32, 34. The caller said it would be easy to get rid of an immigrant because they have no value. 14RP 34. Trochez took these threats seriously; growing up in rural Honduras, he learned threats of murder usually become reality. 14RP 34.

Beginning in May 2008, Lesli had been phoning daily and meeting weekly with Mario Batiz-Castillo, the son of her first cousin. 8RP 21-22, 24-25. Lesli tried to hide her affair, but Trochez suspected something was amiss. 8RP 24, 44. The couple argued because Lesli's calls were running up the phone bill Trochez worked hard to pay. 8RP 25; 14RP 25, 69; 15RP 39-40. In April or May, he checked the phone bill and called the number the threatening calls originated from. 14RP 26. Mario answered. 14RP 26, 35.

Believing Mario was pressuring and threatening his wife as well, Trochez called Mario and warned him to stop bothering his wife. 14RP 70-71. Trochez testified he asked why Mario was threatening him, but never

threatened Mario in return. 14RP 36-37. He denied ever leaving a message on Mario's answering machine.<sup>3</sup> 14RP 37.

Trochez inadvertently came face to face with Mario one day near Lesli's workplace. 14RP 45. Trochez explained that when he told police he confronted Mario, he meant the two came face-to-face, not that he initiated the confrontation. 14RP 72; 15RP 17. He testified Mario was simply there when he walked out of the store and it was Mario who spoke first, hurling threats and insults. 15RP 17-18. Mario told Trochez if he wanted to, he could kill him right there and put his hand in his pocket as if handling a weapon. 14RP 45. Trochez refrained from hitting Mario because Mario was handling something that could have been a knife, while Trochez was unarmed. 14RP 73, 75. Instead he told Mario next time he would be prepared. 14RP 76. The confrontation ended when Lesli arrived. 15RP 18.

b. July 7, 2008

In the wee hours of the morning on July 7, 2008, Trochez and his family returned from a trip. 8RP 27. That evening, he noticed Lesli appeared desperate. 14RP 81. Since this was often her reaction when Mario called, he assumed the calls she received that evening were from him. 14RP 81. Lesli confirmed Mario called her that night around 7 p.m. 8RP 27-28.

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<sup>3</sup> Mario's father testified he heard a message from Trochez on his son's answering machine threatening to kill Mario for messing with his woman. 12RP 13.

Around 9 p.m., Mario called again, and this time he was in the parking lot, right outside the family's apartment. 8RP 28-29.

Lesli went outside nervously, trying not to let Trochez know Mario was there. 8RP 30. As Mario was parking, she went back inside to retrieve her car keys. 8RP 32. After Trochez found them, Lesli told him she needed to get something from the car and went back outside. 8RP 32. Mario wanted to talk; Lesli just wanted him to leave so her affair would not be revealed. 8RP 33. Mario approached the front door of the apartment threatening to go inside, tell Trochez everything, and beat him up. 8RP 33-34, 46, 49. Lesli told him not to do that, got in her car, and drove away, hoping and believing he would follow her so they could talk elsewhere. 8RP 48, 50.

Trochez saw Lesli's angry confrontation with Mario from the bedroom window as he put his daughter to bed. 14RP 44. Afraid Mario would make good on his threat, Trochez wanted to leave so that if there were a confrontation, no one else would be hurt. 14RP 44, 46, 48; 15RP 34. Trochez did not believe it would be safe to remain in the apartment with its flimsy doors. 15RP 4-5, 34. He told police he was "furious" because this was the person who had been insulting and threatening him. 14RP 95.

He grabbed the only pair of pants that were handy and headed outside. 14RP 47, 97. As he put them on, he noticed his gun was in the

pocket and figured it could come in handy if he needed to protect himself. 14RP 48; 15RP 43. Because he was in the United States illegally, he could not call the police without risking deportation and separation from Lesli and their daughter. 15RP 34-35. He got in his van and began to drive away. 14RP 48.

He could not say why he stopped directly behind Mario's car. 14RP 106-07; 15RP 44. He noticed Mario getting in the car and decided to confront and perhaps scare him so he would leave the family alone. 14RP 49. Trochez knew Mario was armed. 14RP 44. He knew Mario had threatened to kill him. 14RP 44. He knew his daughter was asleep right upstairs. 14RP 43. He could see Mario through the car window, could see that Mario had seen him. 15RP 45-46. He saw Mario moving very quickly as if to reach for something in the back of the car. 15RP 44. In great fear for his life and family and with no time to think, Trochez yelled, "No, no, no," and fired into the car three or four times. 14RP 50. By the last shot, he was already turning around to run. 14RP 51. It was all over in a matter of seconds. 14RP 49, 55; Ex. 10. Trochez fled to Canada because he did not know what else to do. 15RP 5-6.

c. July 8, 2008

The next day in Canada, Vancouver police constable John Jeffrey arrested Trochez for crossing into Canada illegally. 2RP 56. At 5:50 p.m.,

he informed Trochez that, under the Canadian Charter of Rights and Freedoms, he had a right to an attorney “without charge” and “without delay.” 2RP 56.<sup>4</sup> Trochez requested an attorney. 2RP 58. No attorney was provided at that time. 2RP 71. Constable Jeffrey could not say whether Trochez was ever able to consult with an attorney. 2RP 72-73.

Upon verifying Trochez’ identity, Constable Jeffrey learned he was wanted for murder in King County, and the King County Sheriff’s Office was alerted. 2RP 58; 9RP 109. Later that evening, Detectives Crenshaw and Do arrived in Vancouver to interview Trochez. 1RP 89-90. They were told they would have to wait because Canadian immigration authorities were interviewing Trochez. 1RP 90. It was after midnight when they were finally able to speak with Trochez. 1RP 127. Trochez had been in custody for at least six hours. 9RP 109.

Canadian authorities warned the detectives Trochez’ English was limited, so they asked Constable Luis Ramirez to accompany them. 1RP 90;

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<sup>4</sup> Constable Jeffrey testified he informed Trochez of his Canadian Charter right to an attorney as follows:

I am arresting you in this case with respect to your immigration status. It is my duty to inform you you have the right to retain and instruct counsel in private without delay. You may call any lawyer you want. There’s a 24-hour telephone service available which provides a legal aid duty lawyer who can give you legal advice in private. This advice is given without charge, and a legal aid lawyer can explain the legal aid plan to you. If you wish to contact a legal aid duty lawyer, I can provide you with the telephone number.

2RP 57.

11RP 26. Ramirez is a native speaker of Spanish and often assists other officers by translating. 11RP 24-25. However, he is not certified or formally trained as an interpreter. 2RP 20; 11RP 34.

Ramirez read Trochez his Miranda<sup>5</sup> rights in Spanish from a pre-printed King County form. 2RP 15-16. He testified Trochez appeared to understand, and never invoked his rights to counsel or to remain silent. 2RP 16-17. Detectives Do and Crenshaw also testified Trochez appeared to understand, there were no threats or promises made to him, and he never exercised his right to silence or to an attorney. 1RP 102-03; 2RP 37-38.

Trochez testified he was unable to read well, even in Spanish, and his simple peasant vocabulary was insufficient to understand the legal terminology in the Miranda warnings. 2RP 84-85. He did not read the rights form and waiver before signing because he was too nervous and it was too difficult. 2RP 86-87. He believed the right to silence meant that, like his father used to tell him, he must remain silent except to answer the questions put to him. 2RP 89, 103. When informed of his right to an attorney, he said, "Okay," to indicate that he accepted and agreed to have an attorney. 2RP 90. He assumed he would have an attorney because he had already asked the Canadian authorities. 2RP 102, 105.

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<sup>5</sup> Miranda v. Arizona, 384 U.S. 436, 458, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Trochez moved to suppress his statements because the State failed to scrupulously honor his request for an attorney, both to Constable Jeffrey upon his arrest and to Detectives Crenshaw and Do when he answered “Okay,” upon being read his Miranda rights. 5RP 78, 80. The court denied his motion to suppress and specifically concluded he did not invoke his right to counsel by answering, “Yes” when Constable Jeffrey asked if he wanted an attorney. CP 83; 5RP 98. The court reasoned that Constable Jeffrey arrested Trochez only for immigration violations, that an assertion of the right to counsel under the Canadian Charter is not an assertion of the right to counsel under the United States Constitution, and that none of the officers present at the interview were told he had requested counsel. 5RP 97.

On appeal, Trochez argued his statements should have been suppressed because he unequivocally invoked his right to counsel, and the subsequent waiver was not valid under Edwards v. Arizona, 451 U.S. 477, 484-85, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981). The Court of Appeals rejected this argument, relying instead on military cases holding that an invocation of a right to counsel made to foreign officials under a foreign legal source does not trigger the Edwards rule to invalidate a subsequent waiver of the right to counsel.

D. REASONS WHY REVIEW SHOULD BE ACCEPTED AND ARGUMENT

TROCHEZ' STATEMENTS SHOULD HAVE BEEN SUPPRESSED BECAUSE HIS UNEQUIVOCAL REQUEST FOR COUNSEL WAS NOT HONORED.

Police must scrupulously honor an accused person's request for counsel. Edwards v. Arizona, 451 U.S. 477, 484-85, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981). The Edwards rule invalidates subsequent waivers once the accused has requested an attorney. Id. The burden is on police to learn whether they can legally interrogate the person before them. Arizona v. Roberson, 486 U.S. 675, 685-86, 687, 108 S. Ct. 2093, 100 L. Ed. 2d 704 (1988).

These are, by design, bright line rules that protect the accused person's expressed desire not to interact with the police except through counsel. McNeil v. Wisconsin, 501 U.S. 171, 177-78, 111 S. Ct. 2204, 115 L. Ed. 2d 158 (1991). They are not specific to a given offense but apply to any and all offenses the police might seek to question the person about. Roberson, 486 U.S. at 681-83. They do not depend on the stated legal source of the right; they are triggered once an accused has "expressed his wish for the particular sort of lawyerly assistance that is the

subject of Miranda.”<sup>6</sup> McNeil, 501 U.S. at 178 (citing Edwards, 451 U.S. at 484).

This Court should reject the reasoning of the Court of Appeals and the military courts on which it relied, and hold that Trochez’ unequivocal request for an attorney was sufficient to protect him from further interrogation, even though it was made to Canadian officials. Trochez clearly expressed his wish for lawyerly assistance when he asked the Canadian constable for an attorney. Regardless of the international context, this wish should have been scrupulously honored. Review is warranted because the application of the constitutional rules from Edwards, in this international context is a significant question of constitutional law and an issue of public interest that warrants review by this Court. RAP 13.4(b)(3).

This Court should reject the holding of United States v. Coleman, 25 M.J. 679 (A.C.M.R. 1987), aff’d, 26 M.J. 451 (C.M.A. 1988), because its reasoning is flawed, particularly when applied to this case. The military court in Coleman declared United States constitutional law should apply only to actions taken by United States officials. Coleman, 25 M.J. at 686. Here, it was King County detectives who conducted the custodial interrogation. They are subject to the deterrent effect that is the goal of the

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<sup>6</sup> Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

exclusionary rule. The Coleman court also reasoned that if police were required to honor a request for counsel made to foreign officials, it would encourage police to ensure they remained ignorant of any such request. 25 M.J. at 687. But the court's concern was misplaced because under Roberson, police would be presumed to know of a request for counsel. Roberson, 486 U.S. at 687.

The Coleman court was also concerned if Edwards applied in the foreign context, then the only way to prevent a Miranda violation would be to either not allow foreign governments to interrogate United States military personnel at all or to let the foreign government entirely dispose of any offenses by military personnel on foreign soil. 25 M.J. at 687. But this reasoning is flawed. There is no need to prevent all interrogation by foreign governments or hand over criminal investigations. Under Edwards, the United States officials need only find out, by asking their foreign counterparts or the accused himself, whether a request for an attorney has already been made. If so, interrogation must stop until counsel has been provided. The same rule is already followed during investigations occurring across state lines within the United States. To apply the rule across international lines would place no new burden on police and it would ensure that all accused persons receive the significant protection of the Miranda and Edwards rules.

E. CONCLUSION

Trochez asks this Court to grant review and reverse his conviction because his statements were admitted in violation of his constitutional rights under the Fifth and Fourteenth Amendments to the United States Constitution as well as Article I, Section 9 of the Washington Constitution.

DATED this 13<sup>th</sup> day of March, 2013.

Respectfully submitted,

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Attorney for Appellant

# Appendix

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
 CESAR E. TROCHEZ-JIMENEZ, )  
 )  
 Appellant. )

No. 67158-8-1  
DIVISION ONE  
PUBLISHED OPINION

FILED: February 11, 2013

FILED  
COURT OF APPEALS DIVISION  
STATE OF WASHINGTON  
2013 FEB 11 AM 11:22

APPELWICK, J. — Trochez-Jimenez seeks reversal of his conviction for second degree murder while armed with a firearm. The sole issue on appeal is whether the trial court erred in refusing to suppress his statements to King County detectives in Canada after waiving his Miranda<sup>1</sup> rights, when he had previously invoked his right to counsel under the Canadian Charter of Rights and Freedoms.<sup>2</sup> We affirm.

FACTS

This appeal arises from Cesar Trochez-Jimenez’s conviction for second degree murder of Mario Batiz-Castillo. Batiz-Castillo was involved in a months-long affair with Trochez-Jimenez’s then girlfriend, now wife, Lesli. Trochez-Jimenez does not dispute that he shot Batiz-Castillo. Rather, at trial, Trochez-Jimenez maintained that he shot Batiz-Castillo out of self-defense.

After shooting Batiz-Castillo, Trochez-Jimenez fled to Canada. Soon after, Vancouver Police Constable John Jeffrey arrested Trochez-Jimenez on suspicion of entering Canada illegally. Jeffrey advised Trochez-Jimenez of his right under the

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<sup>1</sup> Miranda v. Arizona, 384 U.S. 436, 479, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).  
<sup>2</sup> Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982, c. 10 (U.K.).

Canadian Charter to an attorney without charge and without delay.<sup>3</sup> Trochez-Jimenez requested an attorney and was transported to the Vancouver jail. Jeffrey did not put Trochez-Jimenez in contact with an attorney at that time. He was unable to say whether Trochez-Jimenez was ever able to consult an attorney. Trochez-Jimenez later testified that he was never provided access to a Canadian attorney.

Upon booking, Jeffrey ran Trochez-Jimenez's name through the police database. He discovered that Trochez-Jimenez was a suspect in a Seattle homicide and called the King County Sheriff's Office. He also notified Canadian immigration that Trochez-Jimenez may have entered Canada illegally. Jeffrey had no further contact with Trochez-Jimenez and never questioned him about the murder. He only spoke with Trochez-Jimenez about his presence in Canada.

After Constable Jeffrey's phone call, King County Detectives Thien Do and Raphael Crenshaw drove to Vancouver to interview Trochez-Jimenez about the murder. They arrived late that evening and were told that Trochez-Jimenez was being interviewed by "Canadian Customs."<sup>4</sup> Not until after midnight were the detectives allowed to interview Trochez-Jimenez, after he had already been in custody for six

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<sup>3</sup> Jeffrey read into the record the document he used to inform Trochez-Jimenez of his right to an attorney under the Canadian Charter:

"I am arresting you in this case with respect to your immigration status. It is my duty to inform you you have the right to retain and instruct counsel in private without delay. You may call any lawyer you want. There's a 24-hour telephone service available which provides a legal aid duty lawyer who can give you legal advice in private. This advice is given without charge, and a lawyer can explain the legal aid plan to you. If you wish to contact a legal aid duty lawyer, I can provide you with the telephone number."

<sup>4</sup> The record refers to "Canadian Customs" but this may be the Canadian Border Service Agency.

hours. Trochez-Jimenez's English is limited, so Constable Luis Ramirez helped translate for the King County detectives. Ramirez is a native Spanish speaker and often assists the Vancouver police with translating, though he is not certified as an interpreter.

Before the detectives interviewed Trochez-Jimenez, Ramirez read him his Miranda rights in Spanish from a standard King County form.<sup>5</sup> Miranda v. Arizona, 384 U.S. 436, 479, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). Trochez-Jimenez also read the Spanish-language form himself. He acknowledged his rights, signed the waiver portion, and agreed to talk with the detectives. Ramirez, Do, and Crenshaw all testified that Trochez-Jimenez appeared to understand his rights. When asked if he understood his right to have an attorney, Trochez-Jimenez responded, "Okay." He never asserted his right to remain silent or requested a lawyer.

Trochez-Jimenez then confessed to shooting Batiz-Castillo. He explained that he never intended to shoot Batiz-Castillo, but wanted to intimidate him so he would leave Lesli alone. But, he admitted he was "furious" when he grabbed his gun in the moments before he confronted Batiz-Castillo. He added that, in the moment, he was "blinded."

Trochez-Jimenez was charged with one count of first degree murder while armed with a firearm.<sup>6</sup> Trochez-Jimenez moved to suppress his incriminating statements, alleging that the King County detectives failed to honor his request for counsel—both to Constable Jeffrey upon arrest and when he answered, "Okay" upon being read his

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<sup>5</sup> The trial court concluded that no one told the detectives or Constable Ramirez that Trochez-Jimenez had previously asserted his Canadian right to counsel.

<sup>6</sup> He was also charged with one count of alien in possession of a firearm without a license. That charge is not the subject of appeal.

Miranda rights. Trochez-Jimenez acknowledged that he was given the Miranda form, but testified that he did not read it, because of his nerves and poor reading skills. He also testified that his response, "Okay" meant he agreed to have an attorney. He said that he assumed he would have an attorney, because he requested one from the Canadian authorities.

The trial court denied his motion to suppress. The court found that Constable Ramirez was a credible witness and that he and Trochez-Jimenez were able to understand each other. Conversely, the court did not find Trochez-Jimenez to be a credible witness. The court explained that Trochez-Jimenez "testified that he did not understand his Miranda rights. This is not credible. The defendant lied during his testimony. Defendant is smart and more sophisticated than he portrays himself. He is also able to read better than he claims. Defendant clearly understood his Miranda rights." The court found that Trochez-Jimenez was informed of his right to counsel more than once and declined to assert that right. At no time did Trochez-Jimenez request counsel in the presence of Detectives Do and Crenshaw, or even Constable Ramirez. The court concluded that Trochez-Jimenez was "fully and completely advised of all of his Miranda rights, that he understood those rights completely and that he made a knowing, intelligent[,] and voluntary waiver of his rights." (Emphasis added.)

The court also concluded that invoking a right to counsel under the Canadian Charter does not amount to assertion of the right under the United States Constitution. The court explained that Trochez-Jimenez was told by Constable Jeffrey that he was under arrest for illegal immigration issues. It was "with regard to those issues that [Trochez-Jimenez] was advised of his Charter rights and asserted his right to counsel."

The court went on to say that “[n]othing about the Miranda decision or its progeny requires suppression, because the defendant asserted a different right under a different document to an officer of a different jurisdiction than the United States.” (Emphasis added.)

The State introduced Trochez-Jimenez’s statement that he was “furious” when he shot Batiz-Castillo to show the requisite mens rea to convict for murder and rebut his claim of self-defense. The jury acquitted Trochez-Jimenez of premeditated first degree murder, but found him guilty of second degree murder while armed with a firearm. Trochez-Jimenez requested a mitigated sentence of 146 months, arguing that the victim was “an initiator and a willing participant in this horrible incident.” Instead, the trial court believed that Trochez-Jimenez lied about being threatened and being in fear of the victim. The court also found that Trochez-Jimenez acted out of rage and jealousy, and showed no regret. As a result, the court sentenced him at the top of the standard range—294 months imprisonment. Trochez-Jimenez timely appealed.

#### DISCUSSION

Trochez-Jimenez argues that the trial court erred by failing to suppress his confession to King County detectives. Specifically, he disputes the trial court’s conclusion of law that his request for counsel from Canadian authorities did not constitute a request for counsel in the Seattle murder investigation. Because he was not provided counsel, Trochez-Jimenez argues, his subsequent waiver was not knowing, intelligent, and voluntary. We review de novo a trial court’s conclusions of law at a suppression hearing. State v. Armenta, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997).

The Fifth Amendment privilege against compelled self-incrimination requires that custodial interrogation be preceded by advice to the accused that he has a right to remain silent and a right to counsel.<sup>7</sup> Miranda, 384 U.S. at 478-79. The accused may waive his Miranda rights, so long as the waiver is knowing and intelligent. Id. at 475. If the accused invokes his right to counsel, interrogation must cease. Id. at 474. Police may not then resume interrogation until an attorney is present or the accused initiates further communication. Edwards v. Arizona, 451 U.S. 477, 484-85, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981). If officers continue interrogation after the accused invokes his right to counsel, all resulting statements must be suppressed. Id. at 486-87.

As a threshold issue, Trochez-Jimenez asks us to presume that Miranda governs the admissibility of his statements, even though he is a non-citizen. The State points out that the United States Supreme Court has not yet definitively ruled on this issue. But, the State does not appear to contest the issue. Rather, the State concedes that some federal courts have held that Miranda procedures apply to United States officials' custodial interrogation of a foreign national in a foreign country. See, e.g., In re Terrorist Bombings of U.S. Embassies in E. Africa, 552 F.3d 177, 201 (2d Cir. 2008); United States v. Bin Laden, 132 F. Supp. 2d 168, 187 (S.D.N.Y. 2001). aff'd, 552 F.3d 177 (2d Cir. 2008). The State also cites federal cases where the parties did not dispute this issue, so the court did not consider it. See, e.g., United States v. Rommy, 506 F.3d 108, 131 (2d Cir. 2007); United States v. Hasan, 747 F. Supp. 2d 642, 657 (E.D. Va.

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<sup>7</sup> Trochez-Jimenez also appeals based on the Washington Constitution's privilege against self-incrimination. CONST. art. I, § 9. Washington courts interpret the Fifth Amendment and the Washington Constitution's self-incrimination provisions equivalently. State v. Easter, 130 Wn.2d 228, 235, 922 P.2d 1285 (1996).

2010), aff'd United States v. Dire, 680 F.3d 446 (4th Cir. 2012). We do not consider this issue to be in dispute. We will therefore treat Miranda procedures as applicable to United States officials' custodial interrogation of a foreign national in a foreign country in relation to a crime alleged to have been committed in the United States.

In Edwards, the defendant invoked his right to counsel after being arrested and read his Miranda rights. 451 U.S. at 478-79. Questioning ceased and Edwards was taken to jail without receiving counsel. Id. at 479. The next morning, two different detectives returned to interview Edwards. Id. Edwards told his detention officer he did not want to talk to anyone, but the officer told Edwards he had to talk to the detectives. Id. The detectives again informed Edwards of his Miranda rights. Id. Edwards then implicated himself in the crime. Id. The Court held that Edwards's confession did not amount to a valid waiver and was inadmissible at trial. Id. at 487. The Court explained that once an accused invokes his Miranda right to counsel, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation, even if he is again advised of his rights. Id. at 484. Therefore, Edwards was not subject to further interrogation until counsel was made available to him or he initiated communication. Id. at 484-85.

In Arizona v. Roberson, the United States Supreme Court extended the Edwards rule to custodial interrogation in a separate investigation. 486 U.S. 675, 677, 108 S. Ct. 2093, 100 L. Ed. 2d 704 (1988). In Roberson, the defendant was arrested at the scene of a burglary. Id. at 678. Roberson immediately requested an attorney, which the officer recorded in his written report. Id. Three days later, while Roberson was still in custody, a different officer interrogated him about a different burglary. Id. The officer

was not aware that Roberson had already requested counsel. Id. After advising Roberson of his Miranda rights, the officer obtained an incriminating statement from Roberson about the other burglary. Id.

The Court held that once Roberson invoked his right to counsel, he could not be reinterrogated about an unrelated offense without first being provided counsel. Id. at 677-78. The Court refused to excuse the officer's ignorance of Roberson's previous request for counsel, explaining, "Whether a contemplated reinterrogation concerns the same or different offense, or whether the same or different law enforcement authorities are involved in the second investigation, the same need to determine whether the suspect has requested counsel exists." Id. at 687-88. This is because the Edwards rule focuses on the state of mind of the suspect, not the police. Id. at 687. Therefore, Roberson makes clear that the Fifth Amendment right to counsel is not offense-specific. McNeil v. Wisconsin, 501 U.S. 171, 177, 111 S. Ct. 2204, 115 L. Ed. 2d 158 (1991).

Trochez-Jimenez urges this court to set aside the international context of his case and apply the Edwards-Roberson rule here. However, there is no legal precedent to compel us to extend the rule so broadly that it encompasses a foreign investigation by foreign officials with rights stemming from a foreign document. Indeed, courts considering the issue have refused to do so.

Military courts have consistently held that invocation of the right to counsel under a foreign document does not trigger the right to counsel under the United States Constitution. In United States v. Vidal, German police arrested a United States soldier for raping a young German woman. 23 M.J. 319, 320-21 (C.M.A. 1987). He was informed of his right to counsel under German law, and invoked that right. Id. at 321.

United States military authorities subsequently arrived to question him. Id. They read him his Miranda rights, which he waived and then confessed to the rape. Id. at 321-22. The court acknowledged that if Vidal was first informed of his right to counsel by an American investigator, his request for counsel would have precluded subsequent American interrogation. Id. at 323. But, Vidal was interrogated by German police conducting an investigation initiated by German authorities in response to acts that violated German law. Id. The court concluded that the requirements of Edwards were not triggered by a request for counsel made to a foreign official. Id.

In United States v. Coleman, the United States Army Court of Military Review considered facts similar to Vidal. 25 M.J. 679 (A.C.M.R. 1987), aff'd, 26 M.J. 451 (C.M.A. 1988). German and United States Army officials both investigated a child's death in civilian housing. Id. at 682. The prime suspect was the child's American father. Id. During the investigation, he made an incriminating statement to German officials then invoked his rights under German law to remain silent and have an attorney. Id. With full knowledge of this invocation, United States Army officials interviewed the suspect, who waived his Miranda rights and confessed. Id. The court found that United States officials did not conduct, instigate, or participate in the German interrogation of the suspect. Id. at 686.<sup>8</sup> Nor did United States officials take any action that could be considered subterfuge in obtaining a statement. Id. The court held that, because United States "law did not apply to the German action, the rule of Edwards had

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<sup>8</sup> The Coleman court recognized that the Vidal court's conclusion was dicta, but treated it as persuasive and reached the same conclusion. 25 M.J. at 682 n.1.

no trigger and could not attach to appellant's request for counsel made to the German police." Id. at 687.

Coleman appealed. United States v. Coleman, 26 M.J. 451 (C.M.A. 1988). The United States Supreme Court decided Roberson in the interim. Id. at 453. The United States Court of Military Appeals upheld the lower court's holding in light of Roberson. Military courts have subsequently affirmed the rule that informing suspects of their Miranda rights at the outset of the American interview is sufficient. See, e.g., United States v. Dock, 40 M.J. 112, 116 (C.M.A. 1994); United States v. Hinojosa, 33 M.J. 353, 355 (C.M.A. 1991).

A Florida appellate court considered similar facts. Holland v. State, 813 So. 2d 1007, 1008-09 (Fla. Dist. Ct. App. 2002). In Holland, the defendant was arrested in Canada for using a stolen credit card that belonged to a recent homicide victim. Id. at 1008. Holland was read his rights under the Canadian Charter, including his right to an attorney. Id. at 1008-09. Holland spoke briefly with an attorney and told Canadian officers that he was advised not to speak with them. Id. at 1009. The officers did not interrogate Holland at any point. Id. The next day, Florida detectives arrived in Canada to question Holland about the murder. Id. They were told Holland was advised of his Canadian rights and had spoken with an attorney. Id. The officers read Holland his Miranda rights, which he waived. Id. He then confessed to the murder. Id. The Florida court held that Miranda only applies when custodial interrogation is imminent, so Holland could not invoke his Miranda rights before the United States officers arrived to interrogate him. Id. at 1010.

Trochez-Jimenez argues that the Holland case is inapplicable, because unlike Holland, he was subjected to custodial interrogation by Canadian officers.<sup>9</sup> However, the Florida court also rejected Holland's argument that his Fifth Amendment right to counsel was invoked by asserting his right to counsel under the Canadian Charter. Id. at 1010 n.2. It did so because the Canadian Charter and Fifth Amendment rights to counsel are distinct. See id. Invocation of the right to counsel under one document does not trigger the right to counsel under the other.

The Edwards-Roberson rule is undoubtedly a strong prophylactic rule intended to protect suspects from coercion inherent in custodial interrogation. Under Edwards and Roberson, if Trochez-Jimenez was first informed of his United States constitutional right to counsel by a United States official, his request for counsel would have precluded the King County detectives' subsequent interrogation. But, like Vidal and Coleman, Trochez-Jimenez was arrested by a foreign authority for violation of a foreign law. He was informed of his right to counsel under the Canadian Charter and interrogated by Canadian officials only about the Canadian immigration offense. Constable Jeffrey testified that he never questioned Trochez-Jimenez about the United States murder. Canada was not acting as a United States agent. King County detectives did not conduct, instigate, or participate in the Canadian interrogation of Trochez-Jimenez. There was no action by United States officials until they interviewed Trochez-Jimenez

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<sup>9</sup> Trochez-Jimenez is correct that this distinguishes his case from Holland's. But, the fact that Holland agreed to be interrogated after consulting counsel goes to his right to remain silent, not his right to counsel. We are concerned here only with the invocation of the right to counsel affecting a subsequent communication with different officers on a different offense.

about the murder. As a result, there was no forum for Trochez-Jimenez to invoke his Fifth Amendment right to counsel until he was interrogated by United States officials.

On these facts, we find Vidal and Coleman persuasive. We hold that invocation of a right to counsel before foreign officials in a foreign investigation under a foreign rights document does not trigger the Fifth Amendment right to counsel. There was no error when the trial court denied Trochez-Jimenez's motion to suppress.

We affirm.

Appelwick, J.

WE CONCUR:

Schirder, J.

Cox, J.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON )

Respondent, )

v. )

CESAR TROCHEZ-JIMENEZ, )

Petitioner. )

SUPREME COURT NO. \_\_\_\_\_  
COA NO. 67158-8-I

**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 13<sup>TH</sup> DAY OF MARCH 2012, I CAUSED A TRUE AND CORRECT COPY OF THE **PETITION FOR REVIEW** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] CESAR TROCHEZ-JIMENEZ  
DOC NO. 349921  
COYOTE RIDGE CORRECTIONS CENTER  
P.O. BOX 769  
CONNELL, WA 99326

SIGNED IN SEATTLE WASHINGTON, THIS 13<sup>TH</sup> DAY OF MARCH 2012.

X Patrick Mayovsky

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COURT OF APPEALS  
STATE OF WASHINGTON  
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