

NO. 67158-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

CESAR TROCHEZ-JIMENEZ,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CATHERINE SHAFFER

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**BRIEF OF RESPONDENT**

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A. ISSUE

1. The Fifth Amendment right to counsel does not apply to statements given to foreign officials in a foreign jurisdiction in connection with a foreign investigation. Trochez-Jimenez invoked his right to an attorney under the Canadian Charter of Rights and Freedoms, upon his arrest in Canada by Canadian police for a Canadian immigration violation. Did the trial court properly find that this invocation did not trigger the suppression rule of Edwards v. Arizona<sup>1</sup> and Arizona v. Roberson<sup>2</sup>, and properly refuse to suppress a custodial statement that Trochez-Jimenez subsequently gave to American detectives in Canada, following an otherwise valid waiver of his Fifth Amendment right to counsel, in connection with a Seattle murder investigation?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Defendant Cesar Trochez-Jimenez was charged by information and amended information with Murder in the First

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<sup>1</sup> 451 U.S. 477, 101 S. Ct. 1880, 68 L. Ed.2d 378 (1981).

<sup>2</sup> 486 U.S. 675, 108 S. Ct. 2093, 100 L. Ed.2d 704 (1988).

Degree (including a firearm allegation) (Count I) and Alien in Possession of a Firearm Without a License (Count II). The State alleged that, on July 7, 2008, Trochez-Jimenez shot and killed Mario Batiz-Castillo, a man Trochez-Jimenez believed was having an affair with his girlfriend. CP 1-5, 21-22.

A jury found Trochez-Jimenez guilty of the lesser-degree crime of Murder in the Second Degree, while armed with a firearm. CP 133-34. Trochez-Jimenez opted for a stipulated bench trial on Count II (Alien in Possession of a Firearm Without a License). 18RP<sup>3</sup> 2-6; CP 124-26. After reviewing the evidence submitted by the State, the trial court found Trochez-Jimenez guilty of that crime. 18RP 10-13; CP 135-37.

Trochez-Jimenez's standard range for his murder conviction, including the firearm enhancement, was 194-294 months. 19RP 4; CP 141. Trochez-Jimenez requested a mitigated exceptional sentence of 146 months, based on his argument that the victim was "an initiator and a willing participant in this horrible incident." 19RP 16-18. The trial court, however, found that Trochez-Jimenez had lied about being threatened by, and being in fear of, the victim.

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<sup>3</sup> In referring to the Verbatim Report of Proceedings, the State adopts the numbering system set out in the Brief of Appellant at p. 2, fn. 2.

19RP 31. The court found that Trochez-Jimenez had acted out of rage and jealousy in killing Batiz-Castillo, and had exhibited no regret for taking his life. 19RP 31-33. The court accordingly found that Trochez-Jimenez "richly deserve[d] the sentence at the top of the range," and imposed 294 months of confinement. 19RP 33; CP 143.

## 2. SUBSTANTIVE FACTS

Leslie Batiz-Montero's months-long affair with her second cousin, Mario Batiz-Castillo, Jr., was causing problems in her life.<sup>4</sup> 8RP 21-24. Cesar Trochez-Jimenez, Leslie's live-in boyfriend and the father of her 18-month-old daughter, suspected the affair, but when he questioned Leslie about it, she denied it.<sup>5</sup> 8RP 21, 24.

On the evening of July 7, 2008, Leslie got a phone call from Mario; he was in the parking lot of the apartment complex where Leslie shared a third-floor apartment with Trochez-Jimenez, their

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<sup>4</sup> Because of the similarity between last names, Leslie Batiz-Montero and Mario Batiz-Castillo will be referred to in this brief by their first names. No disrespect is intended.

<sup>5</sup> Trochez-Jimenez apparently harbored more than suspicions. He told an acquaintance that Leslie was cheating on him, and he left a message on Mario's phone, threatening to kill Mario for "messing with his woman." 9RP 63-64; 12RP 12-13.

daughter, and Leslie's brother, Carlos. 8RP 20-21, 28-29. All four occupants were home at the time. 8RP 29. At Mario's request, Leslie went down to the parking lot. 8RP 30-33. Leslie did not want to talk with him, but Mario threatened to reveal their affair to Trochez-Jimenez if she would not. 8RP 33-34. Hoping to avoid such a confrontation, and thinking that Mario would follow her, Leslie got in her car and left. 8RP 34, 48. She went to an Albertson's and bought milk.<sup>6</sup> 8RP 34. On the way to the store she tried to call Mario, but he didn't answer -- his phone just rang and rang. 8RP 35.

Vinnie Goulsby, a tenant in the same apartment complex, described what happened after Leslie left. Goulsby was out on his third-floor balcony smoking a cigarette at around 10:30 p.m. on that same evening; from this vantage point, he had a clear view of the parking lot. 8RP 56, 64-65. Goulsby saw a man standing outside a car, talking to a woman who was in the driver's seat. 8RP 65-66. When the car drove away, the man returned to his own car, a Ford Explorer, that was backed into a space in the visitors' parking area. 8RP 67-68.

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<sup>6</sup> The Albertson's receipt was time-stamped at 10:34 p.m. 8RP 35.

Goulsby then saw a second man jogging down the stairs from the third floor of one of the apartment buildings and running to a green minivan. 8RP 68, 110. The man was wearing "damn near nothing": boxer shorts, no shirt, and no shoes.<sup>7</sup> Id. Goulsby believed that the man had a gun in his right hand. 8RP 69-71.

The man got into the minivan and backed out of the parking space "really fast," spinning the tires and almost hitting a sign. 8RP 72. The van accelerated over a speed bump and came to a "screeching halt" in front of the Ford Explorer, blocking it from leaving. 8RP 72-73. The man got out of the van, "pretty much leaped" to the window of the Ford Explorer, and started shooting. 8RP 73-75. The man then "[j]umped back in his mini-van, peeled out and took off," leaving the apartment complex.<sup>8</sup> 8RP 76.

When Leslie returned to the parking lot, Trochez-Jimenez was gone and so was his green minivan. 8RP 26, 36. Responding police officers found the Ford Explorer with the engine still running, the headlights on, the doors locked, and the driver's side window

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<sup>7</sup> Trochez-Jimenez acknowledged that he was wearing neither shirt nor shoes when he ran out of his apartment. 14RP 99-100.

<sup>8</sup> The jury viewed a security videotape of the events in the parking lot. 9RP 7, 13-15, 21, 112-15.

shattered. 9RP 24-26, 43-46. There was a man in the driver's seat slumped over the wheel, with his seatbelt fastened. 9RP 25-26, 45. There was blood visible on the man's left side, and he had no pulse. 9RP 26-27, 46-47. Four nine-millimeter shell casings were on the ground. 9RP 78-79. A woman later identified as Leslie Batiz-Castillo kept screaming the name "Mario." 9RP 28-29, 47, 49.

A search of the Explorer revealed a flip cell phone in the center console in the open position. 9RP 87. The last call on the display was to 911 at 10:22 p.m. 9RP 91. No firearms were found in the car. 9RP 88. When Trochez-Jimenez's green minivan was eventually located, police found an empty gun magazine inside.<sup>9</sup> 10RP 37-38.

Elvin Castillo, Jr. was casually acquainted with Trochez-Jimenez; their families were from the same town in Honduras. 9RP 55-56. Castillo recalled Trochez-Jimenez asking him for a ride to Blaine on a summer night at around midnight or 1:00 a.m. 9RP 57-59. During the drive, Trochez-Jimenez told Castillo that he was

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<sup>9</sup> Trochez-Jimenez said that he had dismantled the gun and thrown it from the van in pieces along the freeway. 15RP 6.

angry at Leslie because she was cheating on him. 9RP 63-64.

Castillo left Trochez-Jimenez at a motel in Blaine. 9RP 70-71.

At about 6:30 p.m. on the following day, July 9, 2008, Vancouver, British Columbia police notified King County detectives that they had Trochez-Jimenez in custody. 9RP 109-10, 137-38. Detectives Do and Crenshaw drove to Vancouver to interview him. 9RP 111, 138.

The interview took place at 12:50 a.m. on July 10, 2008, in an interview room at the Vancouver Jail. 11RP 24-27, 47-48; 12RP 21; Ex. 43<sup>10</sup> at 2. Crenshaw and Do were assisted by Vancouver Police Officer Luis Ramirez, who is fluent in Spanish and served as an interpreter as needed. 11RP 25-26; 12RP 20-21. After being advised of his Miranda<sup>11</sup> rights, Trochez-Jimenez agreed to answer questions. Ex. 43 2-5.

Trochez-Jimenez said that he had known Mario for only a few months. Ex. 43 at 7. After noticing a lot of cell phone calls between Mario and Leslie, Trochez-Jimenez called Mario and

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<sup>10</sup> Ex. 43 is a bilingual transcript of the interview with Trochez-Jimenez in Vancouver, B.C. on July 10, 2008. Jurors were given a copy of this transcript to assist them as they listened to Ex. 42, the audiotape of the recorded interview. 12RP 23-25.

<sup>11</sup> Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed.2d 694 (1966).

asked him to leave Leslie alone. Id. at 8. But the calls didn't stop. Id. at 9. Every time Mario called, Trochez-Jimenez would get mad at Leslie. Id. at 11. He was worried that Leslie would leave him. Id. at 9.

Trochez-Jimenez said that, on the night that he shot Mario, he looked out his apartment window and saw Leslie leave in her car. Id. He could see that Mario had said something to her, but he could not hear what was said. Id. at 13. He got really mad. Id. He left the apartment in just his shorts and a shirt, grabbed his van, and parked it in front of Mario's car. Id. at 14. He took out his gun, a nine-millimeter, and pulled the trigger. Id. at 14-15. Then he left and looked for a way out of Seattle. Id. at 15.

Trochez-Jimenez called a friend for a ride. Id. at 23-24. He asked the friend to take him north. Id. at 25-26. The friend drove him to Blaine, and he crossed the Canadian border on foot. Id. at 28-29.

Asked why he grabbed the gun when he went downstairs to confront Mario, Trochez-Jimenez responded: "I don't know. I was just furious." Id. at 29. He said that he never intended to shoot Mario, but just to intimidate him so he would leave Leslie alone. Id. Trochez-Jimenez added that, at that moment, he was blinded. Id.

at 30. He said that he saw Mario move back in the seat, and wasn't sure if Mario was looking for something. Id. "At that moment I pulled the trigger." Id.

In his testimony at trial, Trochez-Jimenez portrayed his actions in shooting Mario as self-defense. He adamantly denied knowing about the affair, claiming that he was upset about the many phone calls between Leslie and Mario only because of the expense. 14RP 25-27, 65-66, 69. He said that he had been receiving insulting and threatening phone calls from Mario, and he assumed that Mario was harassing Leslie as well. 14RP 27-28, 32-37, 69-71. He denied ever threatening Mario, or leaving a message on Mario's answering machine. 14RP 37. He insisted that, had he known about the affair, he would have harbored no ill feelings toward either Mario or Leslie, but would simply have returned to his prior work in California. 14RP 28, 66-68.

Trochez-Jimenez said that, on the night of the shooting, Leslie came out of her bedroom and started looking for her car keys; she seemed "desperate." 14RP 43, 81. She left the apartment, saying that she needed something from the car. Id. When Trochez-Jimenez went to put his baby daughter to bed, he

looked out the window and saw Mario talking to Leslie; Mario seemed angry. 14RP 44.

Trochez-Jimenez claimed that, because of all the prior threats, he believed that Mario was there to kill him. 14RP 44-46. He saw Leslie leave the complex. 14RP 47. He grabbed the first thing he saw in the closet -- a pair of shorts and a white shirt. Id. The shorts happened to be the pair in which he had hidden his gun. 14RP 47-48, 98. He got into his van and tried to leave, thinking that this would avoid a dangerous shoot-out at his apartment. 14RP 47-48.

As he was on his way out of the parking lot, Trochez-Jimenez saw Mario get into his car. 14RP 49. He decided to try to scare Mario into leaving him and Leslie alone. Id. He blocked Mario's car with his van, but claimed that this was not purposeful.<sup>12</sup> 14RP 106-07. Trochez-Jimenez got out of his van. 14RP 49. He said that Mario was rolling up his window. 14RP 55. He claimed that he also saw Mario move as if "trying to pull something out." Id. He yelled "no, no, no" and started shooting. 14RP 49.

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<sup>12</sup> Trochez-Jimenez initially denied that he stopped his van in front of Mario's car, but was forced to admit this fact when confronted with the security video from the parking lot. 14RP 102, 106.

Trochez-Jimenez said that he fired at Mario out of fear that, if he did not shoot, he himself would end up dead. 14RP 50-51. He fled the scene out of fear as well -- fear that Mario would come after him, or that the police would arrive. 14RP 51.

C. ARGUMENT

1. TROCHEZ-JIMENEZ'S REQUEST FOR A LAWYER UNDER THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS, MADE TO A CANADIAN POLICE OFFICER IN CONNECTION WITH A CANADIAN IMMIGRATION VIOLATION, WAS NOT AN INVOCATION OF HIS FIFTH-AMENDMENT RIGHT TO COUNSEL AS TO THE SEATTLE MURDER.

Trochez-Jimenez contends that, because he invoked his right to counsel under the Canadian Charter of Rights and Freedoms in the context of a Canadian police investigation of a Canadian immigration violation, his subsequent statement to King County detectives concerning a Seattle murder investigation, which followed an otherwise valid waiver of his Fifth Amendment right to counsel, must be suppressed under the rule of Edwards v. Arizona<sup>13</sup> and Arizona v. Roberson<sup>14</sup>. There is no authority to support this extension of the Edwards/Roberson rule.

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<sup>13</sup> 451 U.S. 477, 101 S. Ct. 1880, 68 L. Ed.2d 378 (1981).

<sup>14</sup> 486 U.S. 675, 108 S. Ct. 2093, 100 L. Ed.2d 704 (1988).

a. Relevant Facts.<sup>15</sup>

In the late afternoon of July 9, 2008, Canadian Constable John Jeffrey responded to a report of three Hispanic males drinking alcohol in a Vancouver, B.C. park. 2RP 52-53. One of the three had no identification on his person. 2RP 53. He gave the name "Carlos Roberto Jimenez." 2RP 54.

Finding no record of such a person's entry into Canada, Jeffrey placed this man under arrest, not for any crime, but solely with respect to his immigration status. 2RP 54-55. Jeffrey then read the man his rights under the Canadian Charter of Rights and Freedoms, including "what he's under arrest for and his rights to counsel and then his official warning, which is that he's not required to say anything." 2RP 56; Ex. 5. The man indicated that he understood his rights, and that he wished to contact a lawyer. 2RP 57-58.

Jeffrey transported the man to the Vancouver jail. 2RP 58. Jeffrey eventually was able to identify the man as Cesar Trochez-Jimenez. Id. By running this name through a police database, Jeffrey learned that Trochez-Jimenez was a suspect in a Seattle

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<sup>15</sup> These facts are from the pretrial hearing held pursuant to CrR 3.5.

homicide, and that he may have entered Canada illegally. Id. Jeffrey notified Canadian Immigration of what he had learned. 2RP 58-59.

Constable Jeffrey never asked Trochez-Jimenez any questions about the Seattle homicide. 2RP 59. Jeffrey did not know whether the jail provided Trochez-Jimenez access to a lawyer. 2RP 72.

In response to a telephone call from Vancouver, King County Detectives Crenshaw and Do traveled there to interview Trochez-Jimenez. 1RP 89; 2RP 30. They arrived between 10:00 and 10:30 p.m. 1RP 89-90. Jail staff informed the detectives that Trochez-Jimenez was being interviewed by Canadian Customs. 1RP 90; 2RP 31.

The detectives were able to begin their own interview at about 12:50 a.m. on July 10, 2008. 1RP 127; Ex. 43 at 2. This took place in an interview room at the Vancouver jail. 1RP 89, 91. Trochez-Jimenez was in custody, albeit uncuffed and wearing street clothes. 1RP 93. The interview was tape-recorded. 1RP 93; 2RP 36.

At the outset, Trochez-Jimenez was informed of his Miranda rights. 1RP 94; 2RP 33. This was done with the help of a bilingual

Canadian police officer, Luis Ramirez, who read Trochez-Jimenez his Miranda rights in Spanish from a standard form. 1RP 94-95; 2RP 15, 33-34; Ex. 3; Ex. 43 at 2-4. Trochez-Jimenez also read the Spanish-language rights himself from the preprinted form. 2RP 15, 33-34; Ex. 3.

Trochez-Jimenez appeared to understand his rights. 1RP 97; 2RP 16, 36. He signed the form acknowledging his rights, as well as the waiver portion. 1RP 95-96; 2RP 35-36; Ex. 3; Ex. 43 at 4-5. He never asked for a lawyer, and he never asserted his right to remain silent. 1RP 97; 2RP 17, 36.

Trochez-Jimenez testified at the CrR 3.5 hearing. He acknowledged being given the Miranda form to read, but claimed that he nevertheless did not read it; he blamed poor reading skills and nerves. 2RP 86-87. He said that he had "no idea" why he signed the form. 2RP 87. He acknowledged that he understood the Spanish when his rights were read to him, "but that doesn't mean I understood my rights." 2RP 88. He claimed that he understood the right to remain silent as requiring him to respond to questions when asked. 2RP 89. He said that, by responding "okay" when asked if he understood that he had the right to talk to a

lawyer before answering any questions, he was actually invoking his right to counsel. 2RP 90.

In ruling on the admissibility of Trochez-Jimenez's statements to the King County detectives, the trial court made several credibility determinations. The court found Constable Ramirez to be a "very credible" witness. 5RP 92. Although not a professional interpreter, Ramirez had no trouble speaking and understanding Spanish. 5RP 91-92. The court found that Ramirez and Trochez-Jimenez were able to understand one another. CP 81.

By contrast, the court made no bones about its conclusion that Trochez-Jimenez was *not* credible:

The defendant has a different version of how he was advised of his rights. *But I didn't find the defendant very credible. He's smart. He's a very smart man. But he's far more sophisticated than he portrays himself as being. He lied to the police right up front in Vancouver and I think he felt very comfortable lying to me on the witness stand.*

5RP 93 (emphasis added). The court reiterated this conclusion in its written findings:

Defendant 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 also

is able to read better than he claims. *Defendant clearly understood his Miranda rights.*

CP 82 (emphasis added).

Specifically, the court found that Trochez-Jimenez was told more than once of his right to counsel, and asked if he wanted to assert the right; more than once, he said no. 5RP 97. The court found that, when Trochez-Jimenez said "okay," he was simply acknowledging his understanding of his rights; he was not, as he claimed at the hearing, asking for an attorney. 5RP 97. The court found that "[a]t no time while in the presence of Detectives Crenshaw and Do and Constable Ramirez did defendant request counsel." CP 81.

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 before he spoke to the officers about anything of substance in this homicide case." 5RP 98. The court thus found that the statements were admissible in the State's case-in-chief. CP 83.

The trial court also addressed the fact that Trochez-Jimenez had told Constable Jeffrey that he wished to have a lawyer with

respect to the immigration violation. The court found that Trochez-Jimenez "was specifically told by Constable Jeffrey that he was under arrest for immigration issues." 5RP 96. It was "with regard to those issues that he was advised of his Charter rights and asserted his right to counsel." 5RP 96-97.

The court found that this earlier assertion of the right to counsel was *not* an assertion of Miranda rights: "Nothing 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." 5RP 97. "[D]efendant did not invoke his right to counsel under the United States Constitution when, after being arrested in Canada by a Canadian law enforcement officer for a violation of Canadian immigration laws, and after being advised of his Canadian "Charter Rights," defendant answered yes when asked if he wanted to call a lawyer." CP 83.

b. Trochez-Jimenez Waived His Rights Under The Fifth Amendment.

Trochez-Jimenez does not assign error to the trial court's findings of fact with respect to his motion to suppress his

statements to police; he challenges only the court's conclusion of law that his invocation of his rights under the Canadian Charter as to his immigration violation did not amount to an invocation of his Miranda rights under the United States Constitution as to this murder investigation. Review of this conclusion of law is *de novo*. See State v. Carneh, 153 Wn.2d 274, 281, 103 P.3d 743 (2004) (appellate court will review a trial court's conclusions of law relating to the admissibility of evidence *de novo*).

The right to be free of compelled self-incrimination is protected under both the United States Constitution and the Washington Constitution. U.S. Const. amend. V; Const. art. I, § 9. Prior to any custodial interrogation, an accused must be informed of the right to remain silent and the right to counsel. Miranda v. Arizona, 384 U.S. 436, 478-79, 86 S. Ct. 1602, 16 L. Ed.2d 694 (1966). If the accused indicates that he wishes to remain silent, the interrogation must cease; if he requests counsel, the interrogation must cease until counsel is provided. Id. at 473-74. Unless the prosecution can demonstrate that these rights were safeguarded,

no evidence obtained as a result of custodial interrogation may be used against a defendant in a criminal trial.<sup>16</sup> Id. at 479.

The Supreme Court has further delineated the scope of the Miranda rights in subsequent cases. Once an accused has invoked the right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that the accused responded to further police-initiated custodial interrogation, even if accompanied by repeated advisement of rights. Edwards v. Arizona, 451 U.S. 477, 484, 101 S. Ct. 1880, 68 L. Ed.2d 378 (1981). Once an accused has expressed a desire to deal with the police only through counsel, he is not subject to further police interrogation until counsel has been made available, or until he himself initiates further communication with the police. Id. at 484-85.

The rule announced in Edwards applies even if further interrogation occurs in the context of a separate investigation. Arizona v. Roberson, 486 U.S. 675, 677-78, 683, 108 S. Ct. 2093, 100 L. Ed.2d 704 (1988). Nor does it matter if the second

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<sup>16</sup> There is no dispute that the questioning of Trochez-Jimenez in the Vancouver, B.C. jail by King County Detectives Crenshaw and Do was a custodial interrogation.

interrogation is conducted by a different officer who is unaware of the request for counsel; the rule will still apply. Id. at 687.

Some federal courts have held that statements obtained from foreign nationals during custodial interrogation in another country by United States law enforcement officials must be taken in conformance with the Miranda procedures before those statements may be used at a trial in the United States. United States v. Bin Laden, 132 F. Supp. 2d 168, 187 (S.D.N.Y. 2001); In re Terrorist Bombings of U.S. Embassies in E. Africa, 552 F.3d 177, 201 (2d Cir. 2008). See also United States v. Rommy, 506 F.3d 108, 131 (2d Cir. 2007) (observing that the parties did not dispute that Fifth Amendment protections apply to custodial interrogation of a foreign national outside the United States by agents of this country engaged in a criminal investigation), cert. denied, 552 U.S. 1260 (2008); United States v. Hasan, 747 F. Supp. 2d 642, 657 (E.D. Va. 2010) (same). The United States Supreme Court has not yet ruled definitively on this specific issue. Hasan, 747 F. Supp. 2d at 657.

Even assuming, for the sake of argument, that all the protections of Miranda applied to the interrogation of Trochez-

Jimenez, a foreign national,<sup>17</sup> by King County detectives in Vancouver, B.C., there was no violation here. The King County detectives read the Miranda warnings to Trochez-Jimenez, and he knowingly, voluntarily and intelligently waived his rights and answered the questions posed to him. CP 81, 83.

Trochez-Jimenez does not cite to a single case that supports his argument that his invocation of his right to counsel under the Canadian Charter of Rights and Freedoms (or any other foreign document), to a Canadian police officer (or any other foreign authority), in connection with an immigration violation in Canada (or any other foreign country) amounted to an invocation of his Fifth Amendment right to counsel under the United States Constitution to King County detectives in connection with the investigation of a Seattle murder. In fact, there is authority to the contrary.

In another case involving Canadian Charter rights, a suspect in a Florida homicide was arrested in Canada by a Canadian police officer for possession of a stolen credit card.

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<sup>17</sup> Trochez-Jimenez, who is originally from Honduras, was not a citizen of the United States at the time of this crime. 14RP 16-17; 15RP 34; 18RP 11-12; CP 135-37.

Holland v. Florida, 813 So.2d 1007, 1008 (Fla. Dist. Ct. App.),  
review denied, 835 So.2d 266 (Fla. 2002). Holland was read his  
rights under the Canadian Charter. Id. He spoke briefly with an  
attorney, and subsequently told Canadian police that he had been  
advised not to speak to any law enforcement agents. Id. at 1009.  
The Canadian police accordingly did not interrogate Holland. Id.

The following day, two detectives from Florida arrived in  
Canada to question Holland. Id. Canadian police advised the  
detectives that they had read Holland his rights under the Canadian  
Charter, and that he had spoken with a Canadian attorney. Id. The  
Florida detectives introduced themselves to Holland, and read him  
his Miranda rights. Id. Holland agreed to answer their questions  
without an attorney present. Id. He confessed to the homicide, and  
was subsequently charged with and convicted of first-degree  
murder. Id.

Holland argued that his confession should be suppressed  
because he had previously invoked his right to counsel under the  
Canadian Charter. Id. He contended that by doing so he had  
invoked his Fifth Amendment right to counsel. Id. The court  
disagreed, noting that, when Holland spoke with the Canadian  
attorney, he was being held only on the Canadian charge, and

Canadian law enforcement agents had not interrogated Holland. Id. The court held that Holland could not have invoked Miranda rights prior to meeting with the Florida detectives, because custodial interrogation had not been imminent until that point. Id. at 1010.

The court explicitly rejected the argument that an invocation of rights under the Canadian Charter was the equivalent of an invocation of Fifth Amendment rights:

We note Holland had been apprised of his rights under the Canadian Charter upon his arrest by the Canadian police. We reject Holland's argument that his Fifth Amendment right to counsel under the U.S. Constitution was invoked *qua* Canadian [sic] Charter, *i.e.*, that Holland's request to speak with an attorney after being apprised of his rights under the Canadian Charter constituted an invocation of the Fifth Amendment right to counsel. Canadian Charter warnings are given upon custody, whether or not interrogation is to ensue; whereas *Miranda* warnings are triggered only by the imminence of custodial interrogation.

Id. at 1010 n.2.

Situations analogous to Trochez-Jimenez's arise most commonly in the military courts. In United States v. Coleman, 25 M.J. 679 (A.C.M.R. 1987), aff'd, 26 M.J. 451 (C.M.A. 1988), cert. denied, 488 U.S. 1035 (1989), a child's death in civilian housing in Germany was investigated by both the German police and the

United States Army Criminal Investigation Command ("CID"). Id. at 682. After making an oral admission to German police, Coleman invoked his rights under German law to an attorney and to remain silent. Id. The German interrogation was terminated at that point. Id. at 683. Subsequently, the CID, with full knowledge of the request for an attorney, secured a waiver of rights and obtained a written statement. Id. at 682.

Like Trochez-Jimenez in this case, Coleman argued that the interrogation by the CID was barred by Edwards v. Arizona, supra. Id. The court rejected this claim, holding that "the *Edwards* rule is not triggered by an invocation of the right to counsel before foreign officials in a foreign investigation." Id. at 687.

In United States v. Vidal, 23 M.J. 319 (C.M.A.), cert. denied, 481 U.S. 1052 (1987), German police initiated a rape investigation that focused on two American soldiers. The two were transferred to a German police station, where Vidal was informed of his rights under German law to remain silent and to have the assistance of counsel. Id. at 321. Vidal asserted both rights. Id.

When an American CID agent arrived at the German police station, he was not told that Vidal had asserted his right to counsel. Id. The CID agent advised Vidal of his right to remain silent and his

right to counsel; Vidal waived these rights and made admissions. Id. at 321-22. The appellate court held that the requirements of Edwards v. Arizona, supra, are not triggered by a request for counsel made to a foreign official. Id. at 323.

Another court reached the same result in a case where American CID agents were actually present in the room (although not participating in the investigation) when a murder suspect declined to talk to German police after being advised of his rights under German law, and actually told the German police that he wanted a "stateside lawyer." United States v. Dock, 40 M.J. 112, 117-18 (C.M.A. 1994). When the German police subsequently allowed the CID agents to interview Dock, the CID agents advised Dock of his right to remain silent and his right to an attorney. Id. at 118. Dock waived his rights and confessed to the crime. Id.

Rejecting Dock's argument that his statement was taken in violation of Edwards v. Arizona, supra (Dock, at 115), the appellate court explained:

[A]fter having clearly been turned over by the German authorities to the American authorities; having been apprised of his rights anew under American military law; having been offered the right of counsel, *inter alia*; and having declined counsel and agreeing to talk with the American investigators, appellant cannot now

disavow his waiver of his Fifth Amendment right to the presence of counsel.

Id. at 119.

Other courts have similarly rejected requests to apply Edwards, supra, and Roberson, supra, to interrogations by foreign authorities. See, United States v. Hinojosa, 33 M.J. 353 (C.M.A. 1991); United States v. Henderson, 52 M.J. 14 (C.A.A.F. 1999), cert. denied, 528 U.S. 1159 (2000).<sup>18</sup>

The Second Circuit addressed an analogous argument in the context of the Sixth Amendment right to counsel. In United States v. Yousef, 327 F.3d 56, 139-41 (2d Cir.), cert. denied, 540 U.S. 933 (2003), the defendant contended that any Miranda waiver that he gave to United States officials was invalid because he had previously invoked his right to counsel during an extradition

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<sup>18</sup> Some courts have reasoned that a request for counsel made in connection with a foreign investigation does not trigger the Edwards/Roberson rule because the request may be based on the suspect's unfamiliarity with the foreign legal system; thus, the reasoning goes, a request for counsel to a foreign authority does not necessarily mean that the suspect does not feel able to talk to an American investigator without the assistance of counsel. Vidal, 23 M.J. at 323. We of course do not know the extent of Trochez-Jimenez's familiarity with the American legal system. We know that he had lived in the United States for more than three years. 8RP 21; 14RP 28. Even with no criminal record, he may have obtained knowledge about the American system from various other sources, including television shows, media reports, or acquaintances with more direct experience. He is less likely to have been familiar with the Canadian system. In any event, the applicability of Edwards/Roberson to facts like those presented in this case cannot turn on factors that cannot be determined with any certainty. Such a rule would be unworkable.

proceeding before Pakistani officials, which took place after he was indicted in the United States for the 1993 World Trade Center bombing. Rejecting this argument, the court explained:

Yousef does not allege that he ever asked United States officials for an attorney either before he provided a written waiver of his *Miranda* rights on board the plane that took him to the United States, or at any time during his statement to FBI agents following that waiver.

We conclude that Yousef did not invoke his right to counsel before any United States official and, therefore, that the admission of his post-arrest statements, which were provided after he had been given full *Miranda* warnings and had signed a written waiver of his rights, did not violate his Sixth Amendment right to counsel.

Id. at 142.

What Trochez-Jimenez fails to recognize is that, when he was questioned in Canada by Canadian authorities about a Canadian immigration violation, his Fifth Amendment right to counsel did not apply. See United States v. Covington, 783 F.2d 1052, 1056 (9<sup>th</sup> Cir. 1985), cert. denied, 479 U.S. 831 (1986) (Miranda and Edwards do not apply where statements are obtained by foreign officers in a foreign country). None of the cases that he cites holds that invocation in a foreign investigation to a foreign police officer of the right to counsel under a foreign constitutional

document triggers the Edwards/Roberson rule, such that a subsequent statement made to United States authorities after an otherwise valid waiver of the right to counsel must be suppressed.

This Court should reject the invitation to extend the Edwards/Roberson rule in such an unprecedented manner. The trial court properly concluded that Trochez-Jimenez made a knowing, voluntary and intelligent waiver of his Fifth Amendment right to counsel when he spoke with the King County detectives. His statements were properly admitted.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Trochez-Jimenez's conviction for second-degree murder with a firearm.

DATED this 24<sup>th</sup> day of April, 2012.

Respectfully submitted,

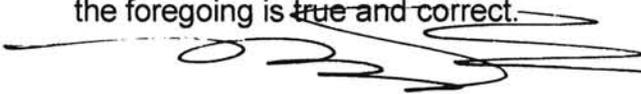
DANIEL T. SATTERBERG  
King County Prosecuting Attorney

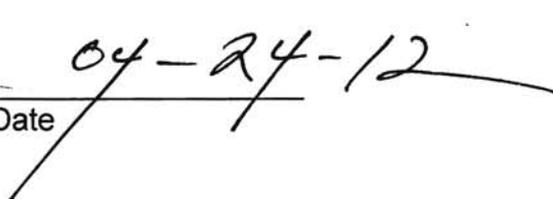
By: Deborah A. Dwyer  
DEBORAH A. DWYER, WSBA #18887  
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Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to **Jennifer J. Sweigert**, the attorney for the appellant, at **Nielsen, Broman & Koch, PLLC**, 1908 East Madison, Seattle, WA 98122, containing a copy of the **Brief of Respondent** in **STATE v. CESAR TROCHEZ-JIMENEZ**, Cause No. **67158-8-I**, in the Court of Appeals for the State of Washington, Division I.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

  
\_\_\_\_\_  
Name  
Done in Seattle, Washington

  
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Date

04-24-12