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IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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STATE OF HAWAI'I,
Respondent/Plaintiff-Appellee,

vs.

MARIANO GARCES, JR.,
Petitioner/Defendant-Appellant.

SCWC-24-0000706

CERTIORARI TO THE INTERMEDIATE COURT OF APPEALS
(CAAP-24-0000706; CASE NO. 2CPC-22-0000790)

August 24, 2026

DEVENS, C.J., McKENNA, EDDINS, AND GINOZA, JJ.,
AND CIRCUIT JUDGE KAWAMURA, ASSIGNED BY REASON OF VACANCY

OPINION OF THE COURT BY McKENNA, J.

I. Introduction & Summary

This is an appeal of a conviction for the murder of the defendant's girlfriend. The defendant asserts that his statements should have been suppressed due to a violation of his Miranda rights.

Specifically, Mariano Garces Jr. ("Garces") challenges the admissibility of statements made during custodial interrogation on the grounds the advisements provided to him pursuant to the Maui Police Department's ("MPD") Miranda waiver form ("MPD Form 103") were constitutionally insufficient. Garces asserts that his statements should have been suppressed because the MPD failed to provide a fifth advisement, that he had the right to terminate police questioning at any time ("the fifth Miranda right").

In Miranda v. Arizona, 384 U.S. 436 (1966), the United States Supreme Court set out four warnings that police officers must provide to custodial suspects before interrogation may begin, namely, that (1) a suspect has the right to remain silent; (2) anything they say can and may be used against them in a court of law; (3) they have the right to the presence of an attorney; and (4) they have the right, if they cannot afford the services of an attorney, to have one appointed for them, free of charge. 384 U.S. at 479.

This court has held that these four Miranda rights have an independent source in the Hawai'i Constitution's privilege against self-incrimination. State v. Santiago, 53 Haw. 254, 266, 492 P.2d 657, 664 (1971).

But in Miranda, the Court also indicated that the four warnings imply a fifth right: to cease questioning at any time.

See 384 U.S. at 474 ("Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked."). And although federal and state courts have recognized that the fifth Miranda right is implied in the existing four Miranda warnings, no court has required that the fifth warning also be given. But many police departments, including the Honolulu Police Department ("HPD") and, more recently, the MPD, already advise suspects of their right to cease questioning at any time, demonstrating a clear and growing consensus that suspects should be informed of the fifth Miranda right.

Yet, in the sixty years since Miranda was decided, the Court has retreated from constitutional protections it once provided regarding custodial interrogations. Consistent with the modern Court's retrenchment from previously recognized constitutional rights, see Granillo v. State, No. SCWC-22-0000740, 2026 WL 2085397, at *27-30 (Haw. July 15, 2026), in 2022, the Court held that receiving Miranda advisements was never even a constitutional right under the Fifth Amendment right against self-incrimination. See Vega v. Tekoh, 597 U.S. 134, 141-42 (2022). So a confession obtained in violation of Miranda is not enforceable through a lawsuit for damages

pursuant to 42 U.S.C. § 1983 as a violation of a federal constitutional right. Id.

But the people of Hawai'i are also protected by the Hawai'i Constitution. "We interpret the Hawai'i Constitution on its own terms." Granillo, 2026 WL 2085397, at *26. The United States Supreme Court's interpretation of the federal right against self-incrimination does not limit protections that can and should be provided by the Hawai'i Constitution's right against self-incrimination.

We therefore now hold that the Hawai'i Constitution's Article I, Section 10 privilege against self-incrimination requires that law enforcement provide the fifth Miranda warning. In addition to the traditional four Miranda advisements, law enforcement must expressly inform custodial suspects that they may cease answering questions at any time. And they must also inform suspects that they have a right to request an attorney at any time after questioning has begun.

We recognize that this is a new constitutional rule not previously required by our precedent. In State v. Wallace, 105 Hawai'i 131, 142-43, 94 P.3d 1275, 1286-87 (2004), this court held that a defendant knowingly, intelligently, and voluntarily waived his Miranda rights based on the previous MPD Form 103, which did not contain the fifth Miranda warning. Also, other

opinions of this court have only required the traditional four Miranda warnings.

But our Constitution's right against self-incrimination requires that an inculpatory statement flow from the defendant's free and voluntary choice. State v. Tolentino, 158 Hawai'i 321, 335, 592 P.3d 209, 223 (2026). Individual autonomy and human dignity lie at the heart of that right. 158 Hawai'i at 344, 592 P.3d at 232. The exclusionary rule for a Hawai'i Miranda violation is one such safeguard protecting those interests. Yet, as this is a new rule, our holding today will have purely prospective effect. And in order to provide Hawai'i law enforcement organizations time to amend their forms and appropriately instruct their officers, this new rule will not take effect until sixty days from the date of this opinion, or on October 23, 2026.

Therefore, the new rule does not apply to Garces's interrogation. And reviewing the totality of the circumstances surrounding his custodial interrogation, we hold that Garces knowingly, intelligently, and voluntarily waived his then-existing Miranda rights, despite his mental distress. Therefore, we affirm the Circuit Court of the Second Circuit ("circuit court")'s September 26, 2024 judgment of conviction and sentence, as well as the Intermediate Court of Appeals ("ICA")'s November 26, 2025 judgment on appeal.

II. Background

A. Factual background

As of November 19, 2022, Garces and Amie Kaholoa'a ("Kaholoa'a") had been in a relationship for a little over a year. A week before her death, Kaholoa'a had moved back in with Garces.

On that day, Garces and Kaholoa'a were about to take a shower together when they began arguing in the bathroom. Garces became enraged and began hitting Kaholoa'a with a twenty-inch-long vacuum metal extension pipe. He hit her for more than fifteen minutes, bruising her liver and causing deep bleeding in the area between her brain and skull. He also punched her face and head with his fist. He then suffocated her by pressing a shirt onto her mouth, fracturing her vertebrae and distorting her face. He only stopped when he realized she was no longer breathing.

Hours later, Garces called 911 to say "I think I went kill [Kaholoa'a]" and "I going up to the mountain to kill my — I going up the mountain now. I going kill myself now." The police arrived at Garces's home, responding to what they believed was a possible suicide in progress and found Kaholoa'a's body.

After a night in the mountains, Garces returned to his house and was detained. He told the arresting officer, among

other things, that "I gonna a run away. I gonna run away, brah. Shoot me, brah. Shoot me, brah. Shoot me." Despite asking repeatedly to be shot, he did not attempt to flee or otherwise take any further action.

At around 7:00 AM, the police took Garces to the police station, where he waited for almost four hours before Detectives Kyle Bishaw-Juario ("the Detective") and Taylor Kamakawiwo'ole began their custodial interrogation at 10:47 AM. While being processed at the police station, Garces asked to speak to the police.

The Detective reviewed MPD Form 103 with Garces before beginning the custodial interrogation. MPD Form 103 did not include an advisement that Garces could cease questioning and ask for an attorney at any time.

During the custodial interrogation, Garces confessed to murdering Kaholoa'a and described how it happened. Throughout the interrogation, Garces answered all of the detectives' questions and never requested an attorney, expressed suicidal statements, or showed any inclination that he wanted the interview to stop.

B. Court proceedings

1. Circuit court

On November 25, 2022, Garces was indicted for second degree murder in violation of Hawai'i Revised Statutes ("HRS") §§ 707-

701.5 (Supp. 2019) and 706-656 (2014).¹ The criminal proceedings were initially delayed to determine Garces's fitness and penal responsibility. After determining Garces was fit to proceed, the circuit court resumed the proceedings.

Garces then filed a motion requesting a voluntariness hearing (tantamount to a motion to suppress) on any of his statements that the State intended to use at trial. The circuit court held the hearing on June 13, 2024.

The State called the Detective as their only witness. He testified that he advised Garces of his Miranda rights and that Garces freely and voluntarily gave his statement without the use of any threats, force, or other coercion.

Garces established through the Detective that MPD Form 103, unlike the current MPD Form 103A, did not state "that if he decides to answer questions without a lawyer present that he still has the right to stop answering questions at any time[.]" Garces also argued that because his 911 call and later statements to the arresting officer indicated suicidal ideation and severe mental distress, his statements at the scene and during custodial interrogation were involuntary and should be suppressed.

¹ Pursuant to HRS § 707-701.5, "a person commits the offense of murder in the second degree if the person intentionally or knowingly causes the death of another person[.]" "[P]ersons convicted of second degree murder and attempted second degree murder shall be sentenced to life imprisonment with possibility of parole." HRS § 706-656.

But the circuit court found credible the Detective's testimony that Garces (1) requested to speak to the police; (2) was calm, coherent, cooperative, and understood English; (3) did not appear to be under the influence of substances; and (4) acknowledged and waived his Miranda rights.

On June 18, 2024, the circuit court filed its findings of fact, conclusions of law, and order denying suppression of Garces's statements.

At trial, along with other evidence, the State introduced the 911 call and Garces's statements made both at the crime scene and during the custodial interrogation.

The jury found Garces guilty of second-degree murder. The circuit court sentenced Garces to life imprisonment with the possibility of parole.

2. Appellate proceedings

On appeal to the ICA, Garces argued that (1) the totality of the circumstances demonstrated that he did not knowingly, intelligently, and voluntarily waive his Miranda rights before making his statements to the police; and (2) the Miranda waiver was constitutionally deficient, because the detectives did not explicitly advise him that he could stop answering questions at any time or that he did not have to answer questions at all.

Garces maintained that he was unable to effectively waive his Miranda rights because he was in a severely distressed

mental state before and during the police interrogation. He also argued that the interrogation was coercive because he was held in police custody for four hours while severely mentally distressed.

Garces also contended that the Miranda waiver was constitutionally deficient. He pointed out that the HPD has for many years advised suspects of their right to terminate questioning at any time and stop answering questions and that the MPD had changed its form after his questioning to also include that advisement. He argued that the fifth Miranda warning was necessary for him to make an informed decision as to whether continuing with the custodial interrogation was in his immediate and/or long-term interest. Garces argued that his conviction should therefore be vacated and that he should get a new trial.

The ICA affirmed the conviction, holding the State properly demonstrated that Garces's statements were voluntary and that his Miranda waiver was valid. State v. Garces, No. CAAP-24-0000706, 2025 WL 3002926, at *3 (Haw. App. Oct. 27, 2025) (SDO). The ICA held that despite Garces's alleged suicidal ideation, there was no evidence in the record that his statements were made under conditions that would overbear his will and render his statements involuntary. Id. at *2. The ICA also held that the MPD's Miranda waiver was constitutionally sufficient and

satisfied the minimal safeguards required, despite the lack of the fifth Miranda warning. Id. at *3.

On certiorari to this court, Garces raises the same arguments.

III. Standards of Review

A. Miranda rights

In discussing the constitutional protections afforded under Miranda, we recently stated:

[T]he protections which the United States Supreme Court enumerated in Miranda have an independent source in the Hawai'i Constitution's privilege against self-incrimination. In determining the admissibility of custodial statements, the prosecutor must show that each accused was warned that he had a right to remain silent, that anything said could be used against him, that he had a right to the presence of an attorney, and that if he could not afford an attorney one would be appointed for him. If these minimal safeguards are not satisfied, then statements made by the accused may not be used either as direct evidence or to impeach the defendant's credibility.

Assuming, however, that the minimal safeguards are observed, the accused may waive the right to counsel, provided that such waiver is voluntarily and intelligently undertaken. Moreover, once warned of his Miranda protections, the suspect is free to exercise his own volition in deciding whether or not to make a statement to the authorities.

In determining whether a valid waiver of the right to counsel and the right to silence occurred, we review whether the purported waiver was knowing and intelligent and found to be so under the totality of the circumstances.

An explicit statement of waiver is not invariably necessary to support a finding that the defendant waived the right to remain silent or the right to counsel guaranteed by the Miranda case.

State v. Spies, 157 Hawai'i 75, 86-87, 575 P.3d 708, 719-20

(2025) (cleaned up).

B. Voluntariness of waiver

We have applied a "clearly erroneous" standard of review to the findings of fact made by the court in connection with a voluntariness hearing to determine whether to admit a confession into evidence at trial. This is based on the rationale that whether the defendant invoked his right to counsel and whether he waived the right are primarily questions of fact.

This court has also recognized that in a technical sense, waiver is a question that requires application of constitutional principles to the facts as found. Accomplishing this task requires us to examine the entire record and make an independent determination of the ultimate issue of voluntariness based upon that review and the totality of circumstances surrounding the defendant's statement. Thus, we apply a de novo standard of appellate review to the ultimate issue of the voluntariness of a confession.

State v. Baker, 147 Hawai'i 413, 422, 465 P.3d 860, 869 (2020)

(cleaned up).

IV. Discussion

A. We adopt a new constitutional rule requiring the fifth Miranda warning

1. The fifth Miranda right

In 1966, Chief Justice Warren's watershed opinion in Miranda sought to safeguard the Fifth Amendment right against self-incrimination during custodial interrogation.

The four consolidated cases the Court considered in Miranda "share[d] salient features," such as "incommunicado interrogation of individuals in a police-dominated atmosphere, resulting in self-incriminating statements without full warnings of constitutional rights." 384 U.S. at 445. Before Miranda, the police commonly "resorted to physical brutality – beatings,

hanging, whipping – and to sustained and protracted questioning incommunicado in order to extort confessions.” 384 U.S. at 446. The Miranda court held that “[u]nless a proper limitation upon custodial interrogation is achieved[,]” “there can be no assurance that practices of this nature will be eradicated in the foreseeable future.” 384 U.S. at 447.

The Court therefore adopted the four Miranda warnings well-recognized today to safeguard this constitutional right. 384 U.S. at 479. But Miranda also implied the existence of a fifth right: to cease answering questions. In discussing the right against self-incrimination, the Court said that “[w]ithout the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked.” 384 U.S. at 474.

The fifth Miranda right “encompasses four possible trajectories: (1) reasserting a waiver, (2) reasserting an invocation, (3) switching from waiver to invocation, and (4) switching from invocation to waiver.” Suraiya Shammi, The Forgotten Fifth Prong: A Critical Review of Dynamic Miranda Decision-Making during Interrogation, 41 J. of Police & Crim. Psych. 255, 256 (2026) (citation omitted). It assures custodial suspects that their right to remain silent and to counsel is a continuing constitutional privilege. But the fifth Miranda

right has long been interpreted to be embedded within the four Miranda warnings and not requiring its own separate advisement.

Federal courts have opined that a fifth Miranda right exists but have been reluctant to adopt a fifth Miranda warning requirement on constitutional grounds.² State courts have similarly not required a fifth Miranda warning even under their respective state constitutions.³

Although other courts, including the United States Supreme Court, have indicated that the right to cease questioning at any

² See, e.g., Engle v. Lumpkin, 33 F.4th 783, 793 n.24 (5th Cir. 2022) (concluding that "[w]hile we have never expressly recognized that Miranda does not require the authorities to warn suspects of the right to cut off questioning, Miranda itself arguably makes this clear . . . and other courts have uniformly (and, in our view, rightly) read Miranda as requiring no such warning."); United States v. Crumpton, 824 F.3d 593, 611 (6th Cir. 2016) ("Subsequent Supreme Court decisions have echoed these four — and only four — required warnings We and the other circuits have made clear that 'a defendant need not be informed of a right to stop questioning after it has begun.'"); United States v. Lares-Valdez, 939 F.2d 688, 690 (9th Cir. 1991) ("The Court thus contemplated the right to cease questioning and declined to include it among the warnings it deemed necessary to effect an accused's fifth and sixth amendment rights.").

³ See, e.g., Com. v. Silanskas, 746 N.E.2d 445, 457 n.11 (Mass. 2001) ("We do not require that the defendant be informed of his right to terminate questioning, a so-called 'fifth' Miranda warning."); State v. Mitchell, 482 N.W.2d 364, 371 (Wisc. 1992) (holding Miranda does not mandate that a defendant be warned of the right to cease questioning); State v. Nicholas S., 444 A.2d 373, 378 (Me. 1982) ("There may be no express requirement that the police, prior to the commencement of interrogation, give the 'fifth' Miranda warning, that is, inform the accused of his right to terminate questioning at any time."); Gray v. State, 441 A.2d 209, 217 (Del. 1981) (holding "that the required Miranda warnings do not include express advice to the accused that he has the right to discontinue his statement if he chooses to do so."); State v. McGhee, 280 N.W.2d 436, 441 (Iowa 1979) ("We did not list the right to have interrogation cease as a required warning, nor do we find any indication in our case law to mandate such an inclusion."); State v. Cobbs, 324 A.2d 234, 244 (Conn. 1973) (ruling "a statement taken under circumstances which show that the required Miranda warnings were given may not be held inadmissible simply because the accused was not told that he could stop answering questions at any time.").

time is implicit in the right to remain silent, they also have praised police departments that inform suspects of such a right. See Berghuis v. Thompkins, 560 U.S. 370, 385-86, 388 (2010) ("When the suspect knows that Miranda rights can be invoked at any time, [they have] the opportunity to reassess [their] long-term interests."); United States v. DiGiacomo, 579 F.2d 1211, 1214 (10th Cir. 1978) ("Although there may be no express requirement to warn suspects of the right to terminate questioning, the government's failure to so warn is certainly an important factor to be considered in determining the voluntariness of any statements made.").

But the lack of a constitutionally-required fifth Miranda warning has led police departments to unevenly inform custodial suspects of their constitutional rights.⁴ For example, the HPD included the fifth Miranda warning since at least 1969, but the MPD only recently followed suit. See State v. Maluia, 56 Haw. 428, 431 n.5, 539 P.2d 1200, 1205 n.5 (1975). The record does not indicate whether custodial suspects in Kaua'i and Hawai'i counties are advised of this right. Therefore, Miranda rights

⁴ See Richard Rogers, et al., The Language of Miranda Warnings in American Jurisdictions: A Replication and Vocabulary Analysis, 32 L. Hum. Behav. 124, 131 (2008) ("In 35 states (70%), [the fifth Miranda warning] was unquestionably the norm; its inclusion averaged 94.8% [with a range of 80-100%]. In stark contrast, six mostly western states [Arizona, California, North Carolina, Nevada, Oregon, and South Dakota] included the fifth prong less than 50% of the time. Of these, California was an obvious outlier with virtually no use (3.0%) of the fifth prong.").

for custodial suspects are not uniform throughout our counties. Such uneven justice cannot continue.

2. The Hawai'i Constitution requires the fifth Miranda warning

The Fifth Amendment of the United States Constitution states, in relevant part, that no person "shall be compelled in any criminal case to be a witness against himself[.]" Yet, in the decades after Miranda, the Court has steadily narrowed its protection of this right. See, e.g., Harris v. New York, 401 U.S. 222 (1971) (ruling confessions obtained in violation of Miranda could be used to impeach subjects); New York v. Quarles, 467 U.S. 649 (1984) (ruling there was a "public safety" exception to the Miranda warning requirement); Berghuis, 560 U.S. 370 (ruling that a suspect must explicitly invoke their right to remain silent; confessing, even after a prolonged silence, was a valid waiver). As noted, most recently, the Court ruled that Miranda warnings were not constitutional rights but judicially crafted rules. Vega, 597 U.S. at 144.

But in deciding whether to require the fifth Miranda warning, we look to the state constitution first. "Only if the Hawai'i Constitution does not reach the minimum protection provided by a parallel federal constitutional right should this court construe the federal analogue." State v. Wilson, 154 Hawai'i 8, 13, 543 P.3d 440, 445 (2024). And "[w]e have not

hesitated to extend the protections of the Hawai['i Bill of Rights beyond those of textually parallel provisions in the Federal Bill of Rights when logic and sound regard for the purposes of those protections have so warranted." State v. Miyasaki, 62 Haw. 269, 280, 614 P.2d 915, 922 (1980) (cleaned up).

Article I, Section 10 of the Hawai'i Constitution provides that "[n]o person shall . . . be compelled in any criminal case to be a witness against oneself." This right is a reflection of the Preamble of our Constitution, in which "[w]e reserve the right to control our destiny, to nurture the integrity of our people and culture, and to preserve the quality of life that we desire" and "reaffirm our belief in a government of the people, by the people and for the people, and with an understanding and compassionate heart towards all the peoples of the earth[.]" Haw. Const. pmb1. We have held that individual autonomy and human dignity underlie the right against self-incrimination. Tolentino, 158 Hawai'i at 344, 592 P.3d at 232. Safeguards enforcing that right protects those interests. Miranda's exclusionary rule does that work in Hawai'i.

In addition, in Hawai'i, the Aloha Spirit inspires constitutional interpretation. "When this court exercises power on behalf of the people and in fulfillment of our responsibilities, obligations, and service to the people we may

contemplate and reside with the life force and give consideration to the Aloha Spirit.” Wilson, 154 Hawai‘i at 27, 543 P.3d at 459 (cleaned up); see also Tolentino, 158 Hawai‘i at 339, 592 P.3d at 227 (“Honoring our constitution means giving it a reading shaped by Hawai‘i and the people who adopted it – not through federal precedent about a different document.”).

Our Constitution therefore requires robust protection of the dignity and rights of our people, including the right against self-incrimination for those subjected to custodial interrogation. In Hawai‘i, this right has long been an integral part of our jurisprudence. See, e.g., The King v. Paakaula, 3 Haw. 30, 38 (Haw. Kingdom 1867) (“It is said to be improper to dissuade a prisoner from making a confession if he really wishes to do so, . . . equally improper would it be to persuade him to make one.”); Republic of Hawaii v. Parsons, 10 Haw. 601, 605 (Haw. Terr. 1896) (discussing a person’s privilege of refusing to give testimony that would tend to incriminate her).

Our jurisprudence reflects these principles. From the outset, this court has not only recognized “that the protections which the United States Supreme Court enumerated in Miranda have an independent source in the Hawai[‘]i Constitution’s privilege against self-incrimination[,]” but has also afforded greater protections than the federal constitution. Santiago, 53 Haw. at 265-66, 492 P.2d at 664.

In fact, this court in Santiago deviated from the United States Supreme Court's decision in Harris, 401 U.S. 222, by ruling that the Hawai'i Constitution does not permit statements obtained in violation of Miranda to be used to impeach a defendant who takes the stand. 53 Haw. at 266-67, 492 P.2d at 664-65. This court emphasized that "the privilege against self-incrimination bestows on every accused the right to choose whether or not to confess to the commission of a crime. In order to protect that freedom of choice, we believe that every accused, must be informed of the fact that he has certain rights under the Hawai[']i Constitution." 53 Haw. at 266, 492 P.2d at 664.

In so ruling, we affirmed that "this court is the final arbiter of the meaning of the provisions of the Hawai[']i Constitution. Nothing prevents our constitutional drafters from fashioning greater protections for criminal defendants than those given by the United States Constitution." 53 Haw. at 265, 492 P.2d at 664 (citation omitted).

We have continued to reaffirm Santiago's ruling that the Hawai'i Constitution is only guided by rights set out in Miranda and provides greater protections than the United States Constitution. See State v. Russo, 67 Haw. 126, 133, 681 P.2d 553, 559 (1984) ("We reasoned that the rights fashioned by our constitutional drafters were not necessarily circumscribed by

the dictates of federal law . . . Consequently, when claims of Miranda violations are advanced, we are constrained to seek primary guidance from precepts enunciated in the seminal decision . . . and our own cases[.]").

Although the United States Supreme Court has increasingly cabined Miranda, we have continued to articulate the right against self-incrimination under the Hawai'i Constitution. See, e.g., Miyasaki, 62 Haw. at 282, 614 P.2d at 923 (holding "transactional immunity" was part of the Hawai'i Constitution's right against self-incrimination notwithstanding contrary decisions under the United States Constitution); State v. Bowe, 77 Hawai'i 51, 57, 881 P.2d 538, 544 (1994) (declining to adopt the United States Supreme Court's decision in Colorado v. Connelly, 479 U.S. 157 (1986), and ruling that the coercive conduct of a private person may be sufficient to render a defendant's confession involuntary); State v. Hewitt, 153 Hawai'i 33, 44, 526 P.3d 558, 569 (2023) (reinstating case law requiring Miranda warnings when probable cause to arrest has developed).

And, most recently, we adopted a new constitutional rule in State v. Zuffante, 157 Hawai'i 194, 198, 576 P.3d 243, 247 (2025), requiring law enforcement officers to record all in-station custodial interrogations. Both Miranda and Zuffante address concerns about the inherent coercive power of custodial interrogations by police. Zuffante, 157 Hawai'i at 202-04, 576

P.3d at 251-53. In fact, recording custodial interrogations has been advocated by some legal scholars as a way to enhance Miranda's underlying purpose. See, e.g., Saul M. Kassin, et al., Police-Induced Confessions, 2.0: Risk Factors and Recommendations, 49 L. Hum. Behav. 7, 32-33 (2025).

We therefore now hold that all Miranda rights, including the fifth right originally implied in the Miranda opinion, must be explained so that custodial suspects can fully understand their constitutional rights when facing custodial interrogation. Without the separate fifth Miranda warning, it is possible that many custodial suspects may not fully understand and apply their rights at all stages of interrogation; they may not know that they have a right to stop answering questions at any time. See Saul M. Kassin, et al., Police Interviewing and Interrogation: A Self-Report Survey of Police Practices and Beliefs, 31 L. Hum. Behav. 381, 389 (2007) (law officers estimate only 13% of suspects who initially waived their rights later change their mind and invoke them).

Therefore, consistent with the principles underlying Miranda and the greater protections we provide under the Hawai'i Constitution, we hold that custodial suspects must explicitly be informed that their right against self-incrimination is continuous and can be reinvoked even if initially waived and

that they can request an attorney even after that right was initially waived.

3. Our new rule has purely prospective effect

But we recognize that we announce a new constitutional rule in this case. In Wallace, this court held that the defendant “knowingly, intelligently, and voluntarily waived the privilege against self-incrimination and the right to counsel” based on MPD Form 103 without the fifth Miranda warning. 105 Hawai‘i at 142-43, 94 P.3d at 1286-87. Other opinions have also only required the four traditional Miranda warnings. See Spies, 157 Hawai‘i at 86-87, 575 P.3d at 719-20.

When we announce a new rule, we consider whether it should have retroactive effect or whether it should be given prospective effect only. We decide whether the new rule will have:

(1) purely prospective effect, which means that the rule is applied neither to the parties in the law-making decision nor to those others against or by whom it might be applied to conduct or events occurring before that decision; (2) limited or pipeline retroactive effect, under which the rule applies to the parties in the decision and all cases that are on direct review or not yet final as of the date of the decision; or (3) full retroactive effect, under which the rule applies both to the parties before the court and to all others by and against whom claims may be pressed.

State v. Jess, 117 Hawai‘i 381, 401, 184 P.3d 133, 153 (2008)

(cleaned up). The “paradigm case” warranting a prospective-only application of a new rule arises “when a court expressly overrules a precedent upon which the contest would otherwise be

decided differently and by which the parties may previously have regulated their conduct.” 117 Hawai‘i at 400, 184 P.3d at 152 (citation omitted).

Here, we are overruling “precedent upon which the contest would otherwise be decided differently, which counsels in favor of a prospective-only application.” State v. Auld, 136 Hawai‘i 244, 256, 361 P.3d 471, 483 (2015) (cleaned up). And although the HPD incorporated the fifth Miranda warning decades ago and the MPD recently followed suit, law enforcement departments in Hawai‘i have not previously been constitutionally required to provide such a warning. It is unclear whether other departments have been giving the fifth Miranda warning. Therefore, before this, the “parties may previously have regulated their conduct” consistent with the rules set forth in Wallace and other cases that did not require the fifth Miranda warning. Jess, 117 Hawai‘i at 400, 184 P.3d at 152 (citation omitted).

Hence, we hold that the new constitutional rule requiring a fifth Miranda warning has purely prospective effect. And in order to give time to law enforcement to update their forms and provide appropriate instruction to officers, the new rule will take effect sixty days from the date of this opinion, or on October 23, 2026.

Furthermore, we decline to lay down a specific formula or wording for the fifth Miranda warning. See California v.

Prysock, 453 U.S. 355, 359-60 (1981) (per curiam) (holding that no talismanic incantation or verbatim recital is required to satisfy Miranda). The fifth Miranda warning given must substantively and adequately inform custodial suspects of their right to cease answering questions and ask for an attorney at any time. Under our case law, the crucial test is whether the words in the context used, considering the age, background and intelligence of the individual being interrogated, impart a clear, understandable warning of all of their rights. Maluia, 56 Haw. at 432, 539 P.2d at 1205.

B. Here, under the totality of the circumstances, Garces voluntarily waived his Miranda rights

As our new rule is prospective, we evaluate Garces's Miranda waiver under our currently existing law. We hold that as Garces was informed of his four rights under Miranda and he voluntarily, intelligently, and knowingly waived them, his Miranda waiver was not invalid. Garces also argues he did not voluntarily waive his Miranda rights under the totality of the circumstances because of his suicidal ideation and severely distressed mental state. After reviewing the record, we uphold the circuit court's conclusion that the custodial statements were voluntary.

As a general rule, "[o]ur law requires us to examine the entire record and make an independent determination of the

voluntariness of [defendant's] custodial statement to the police." Baker, 147 Hawai'i at 424, 465 P.3d at 871 (citation omitted). We apply a de novo standard of appellate review to the ultimate issue of the voluntariness of a confession. 147 Hawai'i at 422, 465 P.3d at 869 (citation omitted).

"A defendant's mental and physical condition can be part of the 'totality of the circumstances' relevant to the issue of voluntariness of his or her custodial statements." State v. Kelekolio, 74 Haw. 479, 503, 849 P.2d 58, 69 (1993) (citation omitted). However, we have ruled that mental instability does not, by itself, render a confession involuntary, holding "in the absence of insanity or mental depletion, neither the voluntary character nor the admissibility of a confession is affected by the mental instability of the person making it." 74 Haw. at 503, 849 P.2d at 70 (citation omitted).

Our ruling in State v. Edwards, 96 Hawai'i 224, 30 P.3d 238, (2001), is instructive. There, this court ruled that the defendant's emotional state, being "so fragile as to warrant suicide watch," was insufficient to hold her statements involuntary. 96 Hawai'i at 243, 30 P.3d at 257. In addition to being emotionally fragile, the defendant was also incarcerated for nearly eighteen hours and broke down in tears more than once during the interrogation. Id. This court held that the defendant's fragile state was insufficient to prove that "such

circumstances specifically affected the voluntariness of her statements." Id. Therefore, this court concluded that the totality of circumstances demonstrated that the defendant's statements were voluntary. Id.

Here, the circuit court did not err in finding that Garces's custodial statements were voluntary despite his mental state. Garces requested to speak with the detectives. There is also no evidence to suggest that the three to four hours between arriving at the police station and being interrogated overcame his will. Both before and during the custodial interrogation, his demeanor was clear and coherent. He did not appear under the influence of any substances. Moreover, the detectives did not use any threats, coercion, force, or promises to get him to make the statement.

We do hold that the circuit court clearly erred in its conclusion of law that "Defendant's statements of a suicidal nature, absent evidence of action upon those statements, were not credible." Suicidal ideation does not require action.

Regardless, this error was harmless. Although it appears Garces was suicidal, being suicidal in and of itself does not mean that a person cannot knowingly, voluntarily, and intelligently waive Miranda rights. Examining the totality of the circumstances, the circuit court did not err in determining

that Garces knowingly, intelligently, and voluntarily waived his rights.

V. Conclusion

For these reasons, we affirm the circuit court's September 26, 2024 judgment of conviction and sentence as well as the ICA's November 26, 2025 judgment on appeal. This opinion's new rule requiring a fifth Miranda warning becomes effective sixty days after the issuance of this opinion.

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/s/ Sabrina S. McKenna

/s/ Todd W. Eddins

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