

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
September 25, 2012

v

JOSE ALBERTO VEGA,

Defendant-Appellant.

No. 298749
Kent Circuit Court
LC No. 08-012557-FC

Before: HOEKSTRA, P.J., and MARKEY and BORRELLO, JJ.

HOEKSTRA, J., (*concurring in part and dissenting in part.*)

I respectfully dissent from the majority’s holding that the trial court erred by admitting statements made by defendant to the police after defendant stated: “I don’t talk no more. That’s it. I gotta go to jail or I gotta go to prison – fine.”

“[A] suspect is free at any time to exercise his right to remain silent, and all interrogation must cease if such right is asserted.” *People v Catey*, 135 Mich App 714, 722; 356 NW2d 241 (1984), citing *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966). In order to invoke the right, a suspect must unequivocally and unambiguously communicate a desire to remain silent. *Id.* at 722-726. See also *Berghuis v Thompkins*, __ US __; 130 S Ct 2250, 2260; 176 L Ed 2d 1098 (2010). When a suspect does not unequivocally and unambiguously invoke his right to remain silent, police officers are permitted to continue the interrogation. *People v Adams*, 245 Mich App 226, 234-235; 627 NW2d 623 (2001).

In this case, I agree with the trial court’s determination that defendant’s statement to police did not constitute an unambiguous and unequivocal invocation of his right to remain silent. Rather, as the trial court observed, defendant’s statement was more akin to an expression of frustration regarding how to respond to the victims’ allegations. In *Adams*, this Court considered whether the defendant invoked his right to remain silent during a custodial interrogation, and after examining the defendant’s statements in context, concluded that the defendant did not unambiguously invoke his right to remain silent. *Id.* at 231-235. This Court’s opinion in *Adams* makes clear that a defendant’s statements must be considered in context of the entire police interrogation. See *Id.* at 231-239. In this case, when defendant’s statement is properly considered in context, it is evident that defendant was not invoking his right to remain silent. Accordingly, I would conclude that the trial court did not err when it denied defendant’s motion to suppress his statements.

I agree with the majority in all other respects.

/s/ Joel P. Hoekstra