

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY**

STATE OF DELAWARE,	:	
	:	ID NO. 1002011017
_____ v. _____	:	
	:	
JUAN RESTREPO-DUQUE,	:	
	:	
Defendant.	:	

*Submitted: December 18, 2012
Decided: February 19, 2013*

Upon Defendant's Motion to Suppress
DENIED

ORDER

Jason C. Cohee, Esq., and Nicole S. Hartman, Esq., Deputy Attorneys General,
Department of Justice, Dover, Delaware for the State of Delaware.

Alexander W. Funk, Esq., Curley, Rodriguez & Benton, LLC, Dover, Delaware, and
James M. Stiller, Jr., Esq., Schwartz & Schwartz, Dover, Delaware for Defendant.

Young, J.

SUMMARY

Juan Restrepo-Duque (“Defendant”) is charged with several serious crimes, including Murder in the First Degree. These charges relate to the death of Kenton Wesley Wolf, which occurred on February 14, 2010. The State is seeking the death penalty. Defense counsel has filed this Motion to Suppress on Defendant’s behalf. The Motion contends that the Defendant’s statements to police, and all evidence obtained as a result, should be suppressed on the basis of various constitutional violations. Because the police conducted a proper interrogation, including a valid waiver of the Defendant’s *Miranda* rights, Defendant’s Motion to Suppress is **DENIED**.

FACTS

Juan Restrepo-Duque is charged with Murder in the First Degree, Possession of a Deadly Weapon During the Commission of a Felony, Theft of a Motor Vehicle, Forgery in the Second Degree, and Carrying a Concealed Deadly Weapon. These charges all stem from the death of Kenton Wesley Wolf, occurring on or about February 14, 2010. The State is seeking the death penalty. At the time of the alleged crime, the Defendant was 18 years old.

The Defendant was born in Medellin, Columbia on March 6, 1991. He and his family came to the United States in May 2003 under a grant of political asylum. They became permanent residents in May 2007.

Restrepo became a suspect as a result of information obtained from the victim’s computer. On February 23rd, 2010, Restrepo’s home was searched. The Delaware

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State Police brought him in for an interview. Detectives David Chorlton and William Porter of the Homicide Unit conducted that interview. The Defendant was read his *Miranda* rights, after which the following exchange occurred:

Detective Porter: Okay. Having these rights in mind, do you wish to talk to me about this case? Tell me your side of the story.

Juan Restrepo: I don't know. What would be better? If I talk to a lawyer...

Detective Porter: I mean it's up to you I mean, it's perfectly up to you I mean. It be nice to get your ahh side of the story out because if you don't get your side of the story out we got to go with...you know what I'm saying?

Juan Restrepo: Yeah I understand.

Detective Porter: Okay. So you wish to tell me your side of the story?

Juan Restrepo: Yeah why not.

Counsel for the Defendant has filed a Motion to Suppress, alleging violations of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and the Delaware Constitution, and for Violations of Article 36 of the Vienna Convention on Consular Relations and Delaware State Police Policy and

Procedure. The Motion asks the Court to suppress all statements made by the Defendant after the foregoing exchange, and all evidence obtained as a result.

STANDARD OF REVIEW

Under the United States Constitution, “no person...shall be compelled in any criminal case to be a witness against himself...”¹ Before undergoing custodial interrogation, a suspect must be advised of certain constitutional rights.² “Among those rights of which such a person must be advised are the right to remain silent, that anything said can and will be used against the person in court, and that the person undergoing interrogation has a right to counsel during the interrogation.”³ There is a presumption that a suspect did not waive his rights, but he may do so.⁴ However, such a waiver must be knowing, intelligent and voluntary.⁵ Courts have adopted a two part test to determine whether a defendant has validly waived his *Miranda* rights:

First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice

¹ U.S. Const. amend V.

² *Norcross v. State*, 816 A.2d 757,762 (Del. 2003); *Miranda v. Arizona*, 384 U.S. 436 (1966).

³ *State v. Cabrera*, 2000 WL 33113956, at *8 (Del. Super. Dec. 19, 2000).

⁴ *Garvey v. State*, 873 A.2d 291, 296 (Del. 2005).

⁵ *Hubbard v. State*, 16 A.3d 912, 917 (Del. 2011).

rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the “totality of the circumstances surrounding the interrogation” reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.⁶

The burden is on the State to show, by a preponderance of the evidence, that a valid waiver of *Miranda* has occurred.⁷ If this burden is not met, the prosecution may not use statements stemming from custodial interrogation of the defendant.⁸

DISCUSSION

Restrepo contends that his statements must be suppressed, because he did not make a voluntary, knowing and intelligent waiver of his *Miranda* rights as required by the Fifth Amendment to the United States Constitution. Defendant’s Motion raises two arguments in support of this basis for suppression. First, Defendant contends that his response to the *Miranda* warning was not a valid waiver of his rights, as it constituted an ambiguous invocation. As a result of the allegedly ambiguous

⁶ *Hubbard v. State*, 16 A.3d 912, 917 (Del. 2011)(quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)).

⁷ *Bennett v. State*, 992 A.2d 1236 (Del. 2010) (TABLE)).

⁸ *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

invocation, Defendant argues that the police were required to ask clarifying questions, but failed to do so. Second, Defendant claims that the officer's failure to advise him of his consular rights under the Vienna Convention would be additional and independent grounds for the suppression of his statement.

In response, the State argues that Defendant's waiver satisfied both parts of the test described above. The State asserts that the Defendant made his waiver free from any intimidation, coercion or deception, satisfying the first prong of the test. The recording and transcript of the interview are offered in support of that contention. The second prong of the test is concerned with a defendant's ability to waive his *Miranda* rights knowingly and intelligently. To meet this test a defendant must have been made fully aware of "both the nature of the right being abandoned and the consequences of the decision to abandon it."⁹

Both parties also discuss a sort of third element to this test, perhaps more accurately described as an overarching picture, demonstrated by the existence of both elements, that must exist before a court may conclude that a defendant's *Miranda* rights have been waived. This overarching picture is the "totality of the circumstances surrounding the interrogation," which must "reveal both an uncoerced choice and the requisite level of comprehension."¹⁰ Restrepo argues that under the totality of the circumstances test, he could not possibly have made a valid waiver of *Miranda*.

As to the Defendant's claim that he made an ambiguous invocation of his

⁹ *Hubbard v. State*, 16 A.3d 912, 917 (Del. 2011)(quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)).

¹⁰ *Id.*

Miranda rights, the State contends that the “quietly mentioned...sentence fragment,” which included the word “lawyer,” qualifies, at best, as an ambiguous invocation. The State bases its argument on the tone of conversation, the rest of the exchange, and Defendant’s failure to complete the sentence.

Assuming the Court does find the words of the Defendant to be an ambiguous invocation, the State maintains that the questions and comments of Detective Porter were intended to, and did in fact, clarify the Defendant’s intentions. The State specifically points to the Detective’s asking the Defendant if he wanted to tell his side of the story (evoking an affirmative response by the Defendant) as the moment of clarification.

The State’s Response also addresses the Defendant’s argument that his rights under the Vienna Convention were violated by the Detective’s failure to inform him of his right of consular assistance. The State’s argument on this point is two-fold. First, it is claimed that, during the interrogation at issue, the officers were not aware that the Defendant was a citizen of Colombia, nor was there any reason for the police to know that. Second, the State contends that, even if the police are found to have violated the Vienna Convention by failing to notify the Defendant of his consular rights, exclusion of the statements would not be the proper remedy.

MIRANDA PROPRIETY

The United States Supreme Court has held that “the United States Constitution imposes no duty on police to cease questioning” when a suspect makes an ambiguous

or equivocal request for counsel.¹¹ Instead, a suspect must unambiguously request counsel in order to trigger cessation of questioning.¹² However, the Delaware Supreme Court has held that the State Constitution provides additional constitutional protection, requiring police to clarify such ambiguous statements before continuing the interrogation.¹³ More specifically, the Court has held that an interrogating officer must “immediately narrow his questioning to the single subject of clarifying whether the suspect does, in fact, desire the presence of counsel.”¹⁴ Any inquiries made in this context “may not be used to coerce or intimidate the suspect or otherwise discourage his effort to secure counsel, if that is his intention.”¹⁵ The police must clarify the ambiguous statement before continuing with the interrogation.¹⁶ The Delaware Supreme Court’s decision in *Crawford* was announced four years before the *Davis* decision opinion was issued by the United States Supreme Court. However, the Delaware Supreme Court has since reaffirmed “that clarification, as described in

¹¹ *State v. Siple*, 1996 WL 528405, at *7 (Del. Super. July 19, 1996)(citing *Davis v. U.S.*, 512, U.S. 452, 460, 114 S.Ct. 2350, 2356 (1994)).

¹² *Davis v. U.S.*, 512 U.S. 452, 459 (1994).

¹³ *State v. Siple*, 1996 WL 528405, at *9 (Del. Super. July 19, 1996)(citing *Crawford v. State*, 580 A.2d 571, 577 (Del. 1990)).

¹⁴ *State v. Demby*, 1995 WL 717619, at *10 (Del Super. Nov. 28, 1995)(discussing the analysis by the *Crawford* court of the three approaches taken by other courts, settling on the third approach)).

¹⁵ *Draper v. State*, 49 A.3d 807, 810 (Del.2002)(quoting *Crawford v. State*, 580 A.2d 571, 577 (Del. 1990)).

¹⁶ *Draper*, 49 A.3d at 810.

Crawford, is required pursuant to Article 1, §7 of the Delaware Constitution.”¹⁷

In order to reach a determination as to the first issue presented by the Defendant’s Motion, the Court, then, must first decide whether the statement made by Restrepo qualifies as an ambiguous invocation of his right to counsel. A finding of ambiguity in this context “rests on the totality of the circumstances.”¹⁸ As a result, “an inquiry into whether a defendant has waived his or her rights must proceed on a case-by-case basis.”¹⁹ Instructive examples exist from other jurisdictions. “I might want to speak to a lawyer,” and “Maybe I should talk to a lawyer,” have been held to be ambiguous invocations of *Miranda* elsewhere.²⁰ “A defendant who gives contradictory answers to identical questions has been found to fall short of an unequivocal waiver of the constitutional right.”²¹

Under the circumstances presented in this case, the Court finds that the statement of the Defendant was an ambiguous invocation of his *Miranda* rights. Defendant’s question is very similar to the phrases found by other courts to be ambiguous. When deciding what the intention of a defendant is, in a situation such as this, the court will look at whether the statement was accompanied by “other

¹⁷ *Steckel v. State*, 711 A.3d 5, 10-11 (Del. 1998).

¹⁸ *Garvey v. State*, 873 A.2d 291, 297 (Del. 2005).

¹⁹ *Garvey*, 873 A.2d at 297.

²⁰ *Id.*

²¹ *Id.*

factors that demonstrate indecision on the part of the accused.”²² Here, the statement itself along with Defendant’s tone are perhaps indicative of some indecision. In addition, the mere fact that the Detective accidentally talked over the Defendant, not allowing him to finish speaking, could manifest the statement as ambiguous. It should be noted that Restrepo is extremely soft spoken, quite possibly leading the Detective to believe that Restrepo had finished speaking. Certainly, there appears to be nothing to imply that such conduct was purposeful. However, having an incomplete statement of this nature, in the context of the preceding words spoken by Defendant, can be considered to create an ambiguity as to Restrepo’s intentions.

Given an ambiguous invocation of *Miranda* rights, the Court must consider whether the Detective’s subsequent conduct complied with the Clarification Approach required by the Delaware Supreme Court. This approach demands that the officer immediately cease interrogation, limiting the scope of his questions “to one subject and one only.”²³ That is, further immediate questioning after the ambiguous invocation must be limited to clarifying a defendant’s intent.²⁴ If the officer decides to use the method of asking clarifying questions of the accused, “the clarifying questions may not coerce or intimidate the suspect or otherwise discourage his effort to secure counsel.”²⁵ When employing the clarification approach, the police are not

²² *Id.* at 298.

²³ *Crawford v. State*, 580 A.2d 571, 575-76 (Del. 1990)(quoting *Thompson v. Wainwright*, 601 F.2d 768, 771 (5th Cir. 1979)).

²⁴ *Crawford*, 580 A.2d at 575.

²⁵ *Id.* at 577.

to “tender any legal advice or attempt to dissuade the suspect from pursuing an intended course.”²⁶ Another method of clarification commonly used, and strongly endorsed by the courts, is repetition of the *Miranda* warning.²⁷ Interrogation may continue if the clarifying questioning or repetition of *Miranda* warnings results in an indication that the suspect does not wish to have the assistance of counsel.²⁸

Hence, when faced with the suspect’s ambiguous statement, the Detective responded as follows: “I mean it’s up to you I mean, it’s perfectly up to you I mean. It be nice to get your ahh side of the story out because if you don’t get your side of the story out we got to go with...you know what I’m saying?” After a response by the Defendant the Detective continued: “Okay. So you wish to tell me your side of the story?”

The Delaware Supreme Court as held that clarifying questions or repeating the *Miranda* warnings are both appropriate methods for clarifying a suspect’s intent after an ambiguous invocation of *Miranda*.²⁹ The Court has specifically endorsed the repetition of *Miranda* warnings as a preferred way of accomplishing clarification, serving “the purpose of emphasizing the suspect’s options and placing the responsibility on the suspect to either continue the questioning or remain silent until

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Crawford v. State*, 580 A.2d 571, 577 (Del. 1990).

counsel is available.”³⁰ However, case law also demonstrates that a court may accept the use of clarifying questions, so long as they are limited only to the subject of clarifying the suspect’s intentions regarding invocation.³¹ While the response from the Detective in the case at hand was probably not ideal, the Court finds that it satisfies the clarification approach.

Delaware case law is rife with situations in which the courts have determined that an officer’s questions or conduct exceeded the scope allowed by the clarification approach. In each of those cases, the police conduct or questioning was far more coercive than the conduct in the instant case.³² For example, in *State v. Sumner*, the court found the detective’s conduct to go far beyond an attempt at clarification.³³ The Court stated that “while it is true that the police may clarify by again reading the suspect the *Miranda* warnings, the police may not obfuscate clarification through an abundance of interruptions and feigned ignorance of the suspect’s intentions.”³⁴ Particularly of note was one comment made by the detective that he was

³⁰ *Id.*

³¹ *Id.*

³² See e.g., *State v. Sumner*, 2003 WL 21963008 (Del. Super. Aug. 18, 2003); *State v. Gray*, 2001 WL 1628306 (Del. Super. March 13, 2001); *State v. Phillips*, 2004 WL 2521816 (Del. Super. Oct. 22, 2004); *State v. Cabrera*, 2000 WL 33113956 (Del. Super. Dec. 19, 2000).

³³ *State v. Sumner*, 2003 WL 21963008, at *21 (Del. Super. Aug. 18, 2003)(“The entirety of this interlude smacks of a calculated marathon designed to secure a confession at all costs and the totality of the circumstances surrounding Det. Donovan’s quest for a confession culminated in a violation for the Fourteenth Amendment Due Process Clause.”)).

³⁴ *Id.* at *14.

“flabbergasted right now as to why you would want a lawyer...”³⁵ The court found the police conduct to be “a coercive and systematic attempt to negotiate away Sumner’s constitutional rights leading to an admission of guilt.”³⁶

In another case, after an equivocal statement by a suspect, the detective repeatedly prodded the defendant by talking to him about the benefits of not lying.³⁷ The detective also made “numerous negative comments and constant reminders that the truth would help him out,” which amounted to the “functional equivalent of interrogation.”³⁸ The court held that the detective had “undermined the defendant’s desire to have counsel present before talking further” by misleading the defendant, and implying that the police could help the defendant, if he were willing to talk.³⁹

The comment made by Detective Porter to Juan Restrepo does not approach reaching the level of coercion present in the various cases. This is particularly true when the context in which the statement was made is considered.

In determining whether statement was voluntarily, knowingly and intelligently given, Delaware courts have often focused on the interviewing detective’s overall demeanor and the tone of the interview, as part of the broader totality of the

³⁵ *Id.*

³⁶ *Id.* at 20.

³⁷ *State v. Gray*, 2001 WL 1628306 (Del. Super. March 13, 2001).

³⁸ *Id.* at *6.

³⁹ *Id.*

circumstances.⁴⁰ Reviews of the transcript and recording here do not indicate coercion or intimidation. Detective Porter takes a very gentle approach. The overall tone is entirely conversational and relaxed.

Finally, we look to the totality of the circumstances. Proper examination of the totality of the circumstances, as indicated, involves examining a number of factors, including “the behavior of the interrogators, the defendant’s conduct, his age, his experience, his intelligence and all other pertinent factors.”⁴¹ Another way of describing what courts are concerned with in this context is evidence that the suspect’s “will was overborne and his capacity for self-determination critically impaired because of coercive police conduct.”⁴² After Detective Porter’s statement, and subsequent inquiry as to whether Defendant wished to continue talking, the Defendant responded “Yeah why not.” Defendant’s response certainly is not the kind of answer a suspect would be expected to give if he felt in any way overborne. As previously discussed, the Court does not find anything about the interview to be demonstrative of coercion, or to suggest an attempt to dominate the will of the defendant.

The behavior of the detectives has been thoroughly discussed. As for the Defendant’s conduct, Restrepo was nothing but calm and soft-spoken throughout the interview. Though he does not speak English as his first language, he clearly has a

⁴⁰ See e.g., *State v. Demby*, 1995 WL 717619, at *10 (Del. Super. Nov. 28, 1995).

⁴¹ *State v. Cabrera*, 2000 WL 33113956, at *9 (Del. Super. Dec. 19, 2000).

⁴² *DeJesus v. State*, 655 A.2d 1180, 1993 (Del. 1995), *rev’d on other grounds*, 953 A.2d 188 (Del. 2008) (quoting *Colorado v. Spring*, 479 U.S. 564, 574 (1987)).

firm grasp of the language; and he demonstrated that he understood what was taking place. The Defendant is reasonably articulate, an ability demonstrated by his ability to speak on his own behalf before this Court on several occasions. In terms of experience, the State points out that this was not the Defendant's first encounter with the police, nor the first time he had been given his *Miranda* warnings. On the other hand, the Court gives little weight to the Defendant's previous experience with the justice system, as his prior encounter was for a relatively minor crime involving very little formal experience with the criminal justice process.

Though the Detective may not have used the Court's concept of ideal phraseology in responding to the ambiguous statement of the Defendant, the foregoing reasoning and analysis of the totality of the circumstances supports the State's position that a valid waiver of *Miranda* occurred.

CONSULAR OBLIGATIONS

The Court now turns to Defendant's second argument in support of his Motion for Suppression, that the Detective's failure to advise him of his consular rights under Article 36 of The Vienna Convention on Consular Relations precludes use of the statement or its fruit. The Vienna Convention is a treaty regulating the consular rights and obligations for about 170 nations, including both the United States and Colombia. Under Article 36(1)(b), detaining authorities are required to advise a foreign national, without delay, of his or her right to confer with the respective country's consulate. The Delaware State Police have adopted policies and procedures consistent with the standards set forth in The Commission on Accreditation for Law Enforcement

Agencies' *Standards for Law Enforcement Agencies*, including those for consular notification and access.⁴³ According to the International Court of Justice, "without delay" means that a detained foreign national must be advised of his or her Article 36 rights as soon as law enforcement realizes the person is a foreign national, or "once there are grounds to think that the person is probably a foreign national."⁴⁴

Defendant argues that any purported waiver of *Miranda* was not made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it, because he was not advised of his right to consular advice and assistance. According to the Defendant, had he been made aware of his right to consular advice and assistance, he would have invoked that right, asking that the interrogation terminate until he had been able to consult with the Colombian consulate. The obligation of the police to advise Restrepo of his right to consular advice and assistance is triggered by (1) knowledge of probable foreign nationality, coupled with (2) detention, arrest or police custody of the foreign national.⁴⁵ The Defendant argues that the Delaware State Police had to have known that he was a foreign national prior to taking him in for questioning. Their awareness of his status is allegedly based upon police knowledge that his "screen name" was "Pure Columbia Blood," as well as the fact that they asked him how long he had been in the United States. As a result, Defendant argues that, even if this Court finds waiver in the

⁴³ See Exhibit A-to Defendant's Motion to Suppress.

⁴⁴ See *Matter of Avena and Other Mexican Nationals*, 2004 I.C.J. 128 (31 March 2004).

⁴⁵ *Id.*

context of the ambiguous invocation argument, the failure to advise the Defendant of his Article 36 rights should be taken into consideration when assessing whether the statement was voluntary, knowing and intelligent under the totality of the circumstances test.

In response, the State argues that the Officers were not aware that Restrepo was a foreign national, nor had they any reason to know that. According to Detective Porter's testimony, he knew that Restrepo had attended both middle school and high school in the United States. Therefore, he did not consider him to be a foreign national. The State also contends that even if a violation of Article 36 is found to have occurred, according to the United States Supreme Court suppression would be an improper remedy. Finally, the State questions the credibility of Defendant's contention that he would have sought help from the Columbia consulate, the very same country from which his family fled to escape persecution.

The United States Supreme Court addressed the propriety of suppression as a remedy for violations of the Vienna Convention.⁴⁶ According to the Court, "[s]uppression would be a vastly disproportionate remedy for an Article 36 violation."⁴⁷ The Court finds there to be, at best, only a remote connection between the violation of the right to consular notification and the gathering of evidence.⁴⁸ The opinion goes on to state that "Article 36 has nothing whatsoever to do with searches

⁴⁶ *Sanchez-Llamas v. Oregon*, 548 U.S. 331 (2006).

⁴⁷ *Sanchez-Llamas*, 548 U.S. at 349.

⁴⁸ *Id.*

or interrogation.”⁴⁹ In fact, Article 36 “secures only a right of foreign nationals to have their consulate informed of their arrest or detention-not to have their consulate intervene, or to have law enforcement authorities cease their investigation.”⁵⁰

In addition, the Court finds the situation where officers fail to inform a defendant of his Article 36 rights to be quite different from Fourth and Fifth Amendment violations, the context in which a court would normally require suppression.⁵¹ Coerced confessions must be excluded not just because the Constitution does not allow for such coercion, but also because such confessions tend to be unreliable.⁵² The fruits of an improper search are excluded to ensure law enforcement does not too easily disregard the constraints of the Fourth Amendment.⁵³ Failing to inform a defendant of his Article 36 rights is not only unlikely to produce an unreliable confession, it is also not the type of scenario that would offer the police any sort of practical advantage, such that a deterrent would be necessary.⁵⁴

Like anyone else in our country, foreign nationals who are detained as suspects in a crime, enjoy the protections of the Due Process Clause.⁵⁵ For that reason, the

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 349 (2006).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 350.

Supreme Court described that “it would be unnecessary to apply the exclusionary rule where other constitutional and statutory protections-many of them already enforced by the exclusionary rule-safeguard the same interests Sanchez-Llamas claims are advanced by Article 36.”⁵⁶

Not only is the issue addressed by controlling United States Supreme Court precedent, Delaware case law has held similarly. While there are not many prior Delaware cases which deal with this issue, there are several pre-Llamas decisions that consider it. Initially, a Superior Court decision held that statements should be suppressed when police failed to notify a suspect of his consular rights.⁵⁷ However, that view was later rejected in *State v. Tlaseca*.⁵⁸ While unreported, the relevant decision in *Tlaseca* was cited with approval in *State v. Vasquez*. The latter cases discuss the holding in *Reyes*, stating “[i]t is very likely this Court would decide the matter differently now based on the current state of the law regarding consular notification.”⁵⁹

Defendant has argued that while, for exclusionary rule purposes, suppression may not be the appropriate remedy, it would still be appropriate to consider excluding a suspect’s statements and evidence obtained as a result under the totality of the circumstances test. In *Llamas*, the Supreme Court mentioned that “a defendant can

⁵⁶ *Id.*

⁵⁷ *State v. Reyes*, 740 A.2d 7 (Del. Super. 1999).

⁵⁸ *State v. Tlaseca*, Del. Super., Def. I.D. 9912010951, Barron, J. (Feb. 21, 2001)(TRANSCRIPT).

⁵⁹ *State v. Vasquez*, 2001 WL 755930, at *1 (Del. Super. May 23, 2001).

raise an Article 36 claim as part of a broader challenge to the voluntariness of his statements to the police.”⁶⁰ However, not only does the Court not recommend suppression as a remedy, the Court suggests two other acceptable methods of vindicating a defendant's Vienna Convention rights.⁶¹ If a defendant raises an Article 36 violation at trial, the Court suggests that the appropriate remedy would be for the trial court “to ensure that the defendant secures, to the extent possible, the benefits of consular assistance.”⁶² The second option would be the “diplomatic avenues—the primary means of enforcing the Convention,” which also remain open,⁶³

This Court has already engaged in a totality of the circumstances analysis based on the Defendant's first argument in support of suppression. There is nothing about this alternative argument that would weigh in favor of a different outcome. This Court is more than willing to make “appropriate accommodations” to allow the Defendant the benefits of consular assistance. Yet, while Defendant has filed an affidavit which claims he would have invoked his Article 36 rights if informed, now that he has been aware of these rights for some length of time, he has still to request his Consulate be contacted or even to ask for their assistance. Furthermore, case law demonstrates that “Article 36 does not guarantee defendants any assistance at all.”⁶⁴ As stated

⁶⁰ *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 350 (2006).

⁶¹ *Sanchez-Llamas v. Oregon*, 548 U.S. at 350.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 349.

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previously, it merely “secures...a right of foreign nationals to have their consulate informed...”⁶⁵ Therefore, there is nothing to indicate that the Defendant has suffered any prejudice as a result of the Detective’s failure to notify him of his consular rights, or that the interrogation would have been any different. Even had Restrepo been informed of his rights under Article 36, invoking them would initiate a phone call to the Consulate, not an ending to the interrogation.

CONCLUSION

For the foregoing reasons, Defendant’s Motion to Suppress is **DENIED**.
IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBV/lmc
oc: Prothonotary
cc: Opinion Distribution
File

⁶⁵ *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 349 (2006).