

Superior Court
of the
State of Delaware

Jan R. Jurden
Judge

New Castle County Courthouse
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Date Submitted: September 3, 2008

Date Decided: September 11, 2008

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RE: State of Delaware v. Jose Bezarez

ID# 0703000796

***Upon Defendant's Motion to Suppress His Statement to the
Police: GRANTED***

Dear Counsel:

I have had the opportunity to review the DVD of Mr. Bezarez's statement. There is no question that the defendant was in custody and under interrogation. The DVD depicts him handcuffed in a room in the police station. At 23:40 on the

DVD, the defendant unambiguously invoked his right to counsel.¹ The police then asked the defendant to clarify his decision to have counsel present during question. The defendant affirmed his desire to have counsel present multiple times. Despite the clear, unambiguous invocation of his right to counsel, the police kept talking to the defendant and made comments designed to elicit incriminating information from him.

Under *Miranda*, interrogation includes not only express questions, but “any words or actions on the part of the police, other than those normally attendant upon arrest and custody, that the police should know are reasonably likely to elicit an incriminating response from the suspect.”² Once the defendant invoked his right to counsel, all interrogation should have ceased until counsel was provided, unless the defendant initiated further communication.³ Whether the defendant initiated further communication such that he waived his rights is based on the “totality of the circumstances.”⁴

In this case, the police continued to talk to the defendant in a matter which, objectively, was likely to induce (and was designed to induce) a response by the

¹ “[A] finding of ambiguity rests on the totality of the circumstances, an inquiry into whether a defendant has waived his or her constitutional rights must proceed on a case-by-case basis.” *Garvey v. State*, 873 A.2d 291, 297 (Del. 2005).

² *Rhode Island v. Iness*, 446 U.S. 291, 301 (1980).

³ *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981); *State v. Cabrera*, 2000 WL 33113956 at *12-13 (Del. Super. Ct.) ((Herlihy, J.)

⁴ *Cabrera*, 2000 WL 33113956 at *8-9.

defendant.⁵ The defendant did not initiate further conversation, the police did. After the defendant clarified that he wished to have counsel present, Detective Campos responded “you get the point that I know something.” When Detective Campos, again, prompted the defendant to clarify whether he wanted counsel present, the defendant confirmed his request for counsel. Det. Campos responded by saying, “you didn’t give me anything, so obviously you have something to hide.” This statement was designed to elicit incriminating information.

All statements made after Mr. Bezarez clearly invoked his right to counsel must be suppressed as a violation of the 5th Amendment.⁶

IT IS SO ORDERED.

Very truly yours,

Jan R. Jurden
Judge

JRJ:mls

cc: Original – Prothonotary

⁵ The facts here are distinguishable from those in *Upsher v. State*. In *Upsher*, the Court found that there was no 5th Amendment violation because the defendant, not the police, initiated further communication after the defendant requested counsel. 844 A.2d 991, 2004 WL 542164 at *1 (Del. March 15, 2004) (TABLE) (“After [the defendant] invoked his fifth Amendment right to counsel he reinitiated the interrogation following a non-coercive intervening conversation about the nature of the charges and his custodial status . . . [These statements] were not designed to make [the defendant] second-guess his decision to invoke his right to counsel.”

⁶ *Cabrera*, 2000 WL 33113956.