



Defendant Alejandro Cruz has been indicted for Murder First Degree, Possession of a Deadly Weapon during the Commission of a Felony and Theft of a Motor Vehicle. The indictment stems from the February 4, 2008 stabbing of Aurora Reyes-Arranda. Defendant has moved to suppress a statement about the murder that he made to a New Castle County Police Department (“NCCPD”) Detective and NCCPD Officer on February 7, 2008.<sup>1</sup>

The portions of the statement in question were made after defendant invoked his right to remain silent. NCCPD officers continued discussion with defendant after the invocation and did not re-administer the *Miranda*<sup>2</sup> warnings. The Court concludes that Cruz’s Fifth Amendment right against self-incrimination was violated under the circumstances and the portions of his statement made after his invocation must be suppressed.

### **THE INTERVIEW**

NCCPD officials interviewed defendant on February 7, 2008, in Austin, Texas. Local police had detained defendant after a traffic stop. Defendant was driving a reportedly stolen car owned by the murder victim.

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<sup>1</sup> The State represented to the Court that the interview took place on February 7, 2008, and that many of the records erroneously were dated February 8, 2008.

<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

The NCCPD advised defendant of his *Miranda* rights in Spanish, his native language. Defendant does not dispute that his initial waiver was valid. The detective then began questions about the murder. A NCCPD officer translated between the defendant's Spanish and the detective's English. Defendant voluntarily spoke regarding the murder until he stated: "Look, put the handcuffs on me and take me to the back, I don't want to talk anymore."

The detective immediately changed the subject of the conversation by inquiring whether defendant would resist extradition to Delaware. Some confusion resulted. The officer translating did not know the Spanish equivalent of the legal term for "waiving extradition."

It appears to the Court that the detective acted in good faith by attempting to shift the conversation to extradition. However, considering defendant's demeanor during the videotaped interview, it is clear that defendant was agitated, did not understand that the subject had shifted to extradition, and continued to speak about the murder. The last topic discussed in the interview prior to the invocation was the location of the knife. Apparently not understanding that the questions were about extradition, defendant began repeating: "I don't know." In context, the

Court finds defendant's statement to be referring to the location of the knife used in the murder.

The detective then stated that "the only thing we worry about is that a little kid could find [the knife], we prefer we find it." The officer relayed this statement in Spanish, adding "We don't want anyone to get cut or hurt."

At this point, the detective again addressed defendant's waiver:

Det. Smith: Well, he's told us he is done talking to, either he is still wants to talk or whatever?

Off. Martin: Do you want me to ask him if he wants to continue to talk?

Det. Smith: Yeah

Off Martin: Do you want to keep talking with us?

Mr. Cruz: That, no, no, no . . .

Off. Martin: No, no, no, what?

Mr. Cruz: I don't know, I don't know where I threw them.

Off. Martin: Look, look, look

Mr. Cruz: I already told you, that yes, I did it, and where did I throw the things . . .

Off Martin: We understand . . .

Mr. Cruz: I don't know, I don't know

Off. Martin: Alejandro, Alejandro

Mr. Cruz: Please, I don't remember where I threw them . . .

Off. Martin: Alejandro, we understand that you don't remember, the question that I am making: Do you want to keep talking with us?

Mr. Cruz: I don't know with what else, I don't know where I stopped.

Off. Martin: There is a lot that we can talk . . .

Det. Smith: If he wants to be done, we could be done.

Off. Martin: If you want to finish we can finish.

Mr. Cruz: I don't know where I threw the knife, because I don't remember . . .

Off. Martin: I don't remember where I threw the knife. He is just repeating, I don't remember where I threw the knife . . .

Det. Smith: Okay.

Mr. Cruz: . . . I don't remember where I threw it.

Off. Martin: That's fine, that's fine, okay. The question that if you want to keep talking with us is because maybe it can make remember what route you took, but . . .

Det. Smith: Does he . . . ?

Off. Martin: . . . we want to know if you want to keep talking with us?

Mr. Cruz: I took a lot of routes, a lot of routes . . .

Off. Martin: I understand . . .

Mr. Cruz: . . . I don't remember which one from all of them.

Off. Martin: Alejandro, Alejandro, look at me, look at me . . .

Mr. Cruz: Yes

Off. Martin: Answer to my question. Do you want to keep talking with us?

Mr. Cruz: But, I don't know where the knife is.

Off. Martin: Alejandro, that is not.

Mr. Cruz: . . . we will keep talking, but I don't, but I don't know . . .

Off. Martin: Okay, okay. Do you want . . . wait, do you want to keep talking, yes or no?

Mr. Cruz: Yes.<sup>3</sup>

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<sup>3</sup> Interview Transcript 2/7/08, 65-67.

The interrogation continued and the detective asked defendant about details of the murder.

### **PARTIES' CONTENTIONS**

Defendant moves to suppress all statements made after he invoked his right to remain silent. Defendant argues that the NCCPD should have scrupulously honored the invocation and ceased questioning. Their failure to do so violates *Miranda* and defendant's Fifth Amendment right to remain silent. Therefore, all statements made after the invocation should be suppressed.

The State contends the statements are admissible. The State does not dispute that defendant clearly invoked his right to remain silent when he said: "I don't want to talk anymore." However, the State argues that defendant then initiated further conversation about the murder, making a portion of the interview admissible. The State further argues that defendant waived his *Miranda* rights again when he said he would continue talking. Therefore, his entire statement is admissible.

## ANALYSIS

*Miranda* and its progeny guide this Court in determining the admissibility of a defendant's statements to police. Defendants must "voluntarily, knowingly and intelligently" waive the right to remain silent after being informed of their rights.<sup>4</sup> Neither party disputes that defendant waived his right to remain silent. His statements before he said: "Look, put the handcuffs on me and take me to the back, I don't want to talk anymore," are admissible.

In considering the post-invocation statements, *Miranda* is instructive:

if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries.<sup>5</sup>

Once the defendant invokes, the interrogation must cease. Subsequent statements are inadmissible as "the product of compulsion, subtle or otherwise."<sup>6</sup>

The interrogation at issue can be divided into two parts: (1) the statements made after defendant's invocation, but before the affirmative response to the question asking defendant if he wants to continue talking

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<sup>4</sup> *Miranda*, 384 U.S. at 444.

<sup>5</sup> *Id.* at 445.

<sup>6</sup> *Id.* at 474.

(“Middle Section”) and (2) the statements made after the affirmative response (“Final Section”).

### *The Middle Section*

The United States Supreme Court considered the admissibility of a post-invocation statement in *Michigan v. Mosley*.<sup>7</sup> The Supreme Court held that a defendant’s right to cut off questioning must be scrupulously honored.<sup>8</sup> Once a defendant invokes the right to remain silent, “the police may not initiate continued interrogation on the crimes at issue.”<sup>9</sup>

Delaware recognizes an exception to permit further questioning of the defendant. The questions must pertain to “booking-type information,” be “reasonably related to police administrative concerns attendant to arrest and custody,” and not be “reasonably likely to elicit an incriminating response.”<sup>10</sup>

It appears to the Court that the detective attempted in good faith to move the questioning away from the murder to the topic of extradition. The translator could not translate the word extradition. In the context of the interview, it seems that it was not clear to defendant that questioning

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<sup>7</sup> 423 U.S. 96 (1975).

<sup>8</sup> *Id.* at 104 (quoting *Miranda*, 384 U.S. at 474).

<sup>9</sup> *Dodson v. State*, 513 A.2d 761, 763 (Del. 1986) (*see also Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981)).

<sup>10</sup> *Herring v. State*, 2006 WL 3062899, at \*2 (Del.) (quoting *Rhode Island v. Innis*, 446 U.S. 291, 302 (1980) (citing *Laury v. State*, 260 A.2d 907, 908 (Del. 1969) (*see also Pennsylvania v. Muniz*, 496 U.S. 582, 601 (1990))).

regarding the murder had ceased. There was no break after invocation. Defendant appeared to interpret the discussion about returning to Delaware as the NCCPD attempting to get him to help them locate the knife. From defendant's perspective, the interrogation did not cease.

However unintended by the NCCPD, defendant's subsequent statements were a "product of compulsion."<sup>11</sup> Moreover, there was a significant and unacceptable nexus between the officer's continued questioning and defendant's statements during the Middle Section.<sup>12</sup> Defendant's wish to remain silent was not scrupulously honored. Therefore, the Middle Section of the interrogation must be suppressed.

### ***The Final Section***

The issue for the Final Section is whether defendant again waived his right to remain silent when we responded "yes" to the question: "Do you want to keep talking?"

The State must establish waiver by a preponderance of the evidence.<sup>13</sup> Waivers must be considered under the totality of the circumstances including the interrogator's behavior, and defendant's conduct, age, intellect,

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<sup>11</sup> *Miranda*, 384 U.S. at 474.

<sup>12</sup> See *State v. Sumner*, 2003 WL 21963008, at \*15 (Del. Super.) (quoting *Dodson*, 513 A.2d at 764; *Tucker v. State*, 411 A.2d 603, 605 (Del. 1980)).

<sup>13</sup> *Colorado v. Connelly*, 479 U.S. 157, 168 (1986); *Howard v. State*, 458 A.2d 1180, 1183 (Del. 1983).

and experience.<sup>14</sup> A defendant's waiver of his *Miranda* rights must be knowing, intelligent and voluntary. The waiver must have been a product of free choice and not intimidation, coercion, or deception. Additionally, the waiver must have been made with full awareness of the nature of the right abandoned and the consequences.<sup>15</sup>

Defendant has a 9<sup>th</sup> grade Mexican education. Although the State asserted the defendant's 13 years of service as a Mexican police officer provided him with experience regarding the right to remain silent, there is no evidence in the record describing his training or education as a police officer. In fact, when asked if he knew his *Miranda* rights, defendant replied, "No."

In *State v. Jamison*,<sup>16</sup> police *Mirandized* defendant at the beginning of the interview. Jamison indicated that he wished to make a statement.<sup>17</sup> Jamison made his initial statement to Philadelphia police and subsequently invoked his right to remain silent with Wilmington police ("WPD"). Later Jamison changed his mind and indicated he wished to speak with the WPD after being transported to Delaware.<sup>18</sup> The WPD read Jamison his *Miranda* rights a second time. This Court found that only after being advised of his

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<sup>14</sup> *Whalen v. State*, 434 A.2d 1346, 1351 (Del. 1981).

<sup>15</sup> *Moran v. Burbine*, 475 U.S. 412, 421 (1986); *Bryan v. State*, 571 A.2d 170, 176 (Del. 1990).

<sup>16</sup> 2000 WL 1610752 (Del. Super.).

<sup>17</sup> *Jamison*, 2000 WL 161075,2 at \*2.

<sup>18</sup> *Id.* at \*3.

rights again was defendant's waiver of his prior invocation "knowingly and intelligently" made.<sup>19</sup>

In the present case, defendant was not re-read his *Miranda* rights. The detective's reference to a child finding the knife is a frequently-used police tactic designed to elicit incriminating evidence.<sup>20</sup> The utterance was made after defendant's invocation and led defendant to further self-incrimination. His affirmative response to the detective's question must be considered in this context. When faced with the idea that a little girl could find the knife, defendant did not freely choose to keep talking. His statement was the product of subtle compulsion.<sup>21</sup>

Defendant did not waive his right to remain silent with the full knowledge of the right abandoned. The NCCPD did not remind defendant of his rights or re-*Mirandize* him. The State failed to meet its burden of demonstrating knowing, voluntary and intelligent waiver of the rights he abandoned. Therefore the Final Section of the interview must be suppressed.

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<sup>19</sup> *Id.*

<sup>20</sup> See *Rhode Island v. Innis*, 446 U.S. 291, 306 (1980) (Marshall, J., dissenting) ("One can scarcely imagine a stronger appeal to the conscience of a suspect").

<sup>21</sup> *Miranda*, 384 U.S. 474.

## **CONCLUSION**

Defendant's Motion to Suppress all statements after his invocation of the right to remain silent are **GRANTED**.

**IT IS SO ORDERED.**

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The Honorable Mary M. Johnston