IN THE SUPREME COURT OF THE STATE OF DELAWARE

ALFONSO QUINTERO,	)	
	)	No. 603, 2006
Defendant Below,	)	
Appellant,	)	Court Below: Superior Court
	)	of the State of Delaware in
v.	)	and for New Castle County
	)	
STATE OF DELAWARE,	)	Cr. ID. No. 0411017521
	)	
Plaintiff Below,	)	
Appellee.	)	

Submitted: September 5, 2007
Decided: October 1, 2007

Before **STEELE**, Chief Justice, **HOLLAND, BERGER, JACOBS** and **RIDGELY**, Justices constituting the court *en banc*.

O R D E R

This 1st day of October 2007, it appears to the Court that:

(1) Defendant-appellant Alfonso Quintero appeals his Superior Court conviction of Rape Third Degree.[1] Quintero makes two arguments on appeal. First, he contends that the trial judge erred by allowing the arresting officer to testify about Quintero's pedigree information because the office acquired that

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[1] 11 *Del. C.* § 771(a)(1). A person is guilty of rape in the third degree when the person intentionally engages in sexual intercourse with another person, and the victim has not reached his or her sixteenth birthday and the person is at least 10 years older than the victim.

information illegally. Second, he contends that the trial judge abused his discretion by allowing trial counsel to withdraw after the verdict, but before sentencing.

After consideration, we hold that the trial judge did not err by allowing the arresting officer to testify about Quintero's pedigree information, because the officer already knew the critical information – Quintero's date of birth. Thus, repeating that information during routine booking questions did not implicate *Miranda*.[2] Furthermore, the trial judge did not abuse his discretion by allowing trial counsel to withdraw, because the decision was not unreasonable or capricious, nor did it violate Delaware Supreme Court Rule 26. Accordingly, we affirm.

(2) In early 2004, Quintero and Elizabeth Cazales began dating shortly after Cazales came to the United States from Mexico. At that time, Quintero was 28 years old and Cazales was only 15 years old.[3] In March or April 2004, Quintero and Cazales had sexual relations in Quintero's car, which resulted in Cazales' pregnancy. At trial, both Quintero and Cazales testified that they were in love and planned on officially getting married. When Cazales became pregnant, Quintero began living with Cazales and her parents. On January 1, 2005, Cazales gave birth to the couple's son, Brian Quintero.

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[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[3] Cazales was born on August 25, 1988.

(3) According to the affidavit of probable cause accompanying the arrest warrant, on May 13, 2004, Cazales's mother complained to the Wilmington Police that an older male had impregnated her daughter. Cazales told the responding police officer that she was six weeks pregnant and identified Quintero as the father. On October 27, 2004, Detective Debra Holden of the Wilmington Police Department spoke with Cazales, who stated that she was then six months pregnant with Quintero's child. Holden investigated the incident, and on November 22, 2004, obtained an arrest warrant for Quintero. The affidavit of probable cause lists Quintero's date of birth as October 31, 1975.

(4) On December 13, 2004, a grand jury indicted Quintero on one count of Rape Third Degree, charging him with intentionally engaging in sexual intercourse with Cazales when she had not yet reached her sixteenth birthday and he was at least ten years older than she.

(5) At trial, Holden testified that after arresting Quintero, she obtained pedigree information during the booking process, including his date of birth. When the prosecutor asked Holden for Quintero's response to the date of birth question, defense counsel promptly objected on the basis that Quintero had not been given *Miranda* warnings when the officer obtained his date of birth. The trial judge noted that "the case law seems to indicate that pedigree information does not

need *Miranda*," and overruled Quintero's objection. On October 19, 2005, the jury returned a guilty verdict.

(6) After Quintero's conviction, his attorney moved to withdraw as counsel. The trial judge granted the motion on September 11, 2006, and appointed a public defender. On October 20, 2006, the trial judge then sentenced Quintero to two mandatory years in prison.

(7) Quintero first argues that the trial judge erred when he allowed the arresting officer to testify to Quintero's responses to booking questions. Specifically, Quintero contends that the officer should not have been able to testify about Quintero's date of birth because the office obtained that information before giving Quintero *Miranda* warnings and that Quintero's age is a necessary element of the charged offense. We review a claim that the trial judge erred in applying the law *de novo*.[4]

(8) Both this Court and the United States Supreme Court have recognized an exception to *Miranda* for booking-type information.[5] The routine booking exception "exempts from *Miranda*'s coverage questions to secure the 'biographical

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[4] *Caldwell v. State*, 780 A.2d 1037, 1045 (Del. 2001).

[5] *Laury v. State*, 260 A.2d 907, 908 (Del. 1969); *Pennsylvania v. Muniz*, 496 U.S. 582, 601 (1990).

data necessary to complete booking or pretrial services.'"[6] In *Herring v. State*, we held, "Pedigree information . . . falls within the ambit of booking-type information (words normally and reasonably related to police administrative concerns attendant to arrest and custody) contemplated by the Supreme Court of Delaware and the Supreme Court of the United States."[7] The routine booking exception, however, is not without limits. The exception does not apply when the officer "seeks to elicit information that may incriminate."[8]

(9) In this case, we find that Holden asking Quintero his date of birth at booking falls squarely within the booking exception to *Miranda*. The affidavit of probable cause attached to the arrest warrant lists Quintero's date of birth, which clearly indicates that Holden had the incriminating information before she arrested and booked him. Therefore, asking Quintero for his date of birth is the type of booking question reasonably designed to ensure that the officer had arrested the correct individual listed in the arrest warrant. There is no reason to believe on these facts that the police officer asked the question about pedigree information during the booking process as a subterfuge to acquire incriminating information necessary to establish an element of the offense charged. The police officer

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6 *Muniz*, 496 U.S. at 601.

7 2006 WL 3062899, at*2 (Del.).

8 *Muniz*, 496 U.S. at 601.

already had the information. The only rational conclusion on these facts is that the police officer asked the question as a matter of routine. Quintero's response in no way furthered the investigation.

(10) Quintero next argues, relying on Supreme Court Rule 26(d), that the trial judge abused his discretion by allowing his counsel to withdraw after the jury returned a verdict, but before Quintero was sentenced. We review the trial judge's decision for abuse of discretion.[9]

(11) Supreme Court Rule 26(d) provides:

> An attorney for a defendant in a criminal appeal . . . may withdraw only upon written motion and order of the Court, entered in the following circumstances:
> (i) Consent. An attorney may be permitted to withdraw, after complying with paragraph (a) of this rule, at any time after other counsel has entered an appearance for the client.
> (ii) Non-consent. Without the consent of the client, a privately retained attorney may be permitted to withdraw, after complying with paragraph (a) of this rule, on motion served upon the client with notice of a stated time for presentation thereof to the Court.[10]

Rule 26(a) provides, in pertinent part:

> (1) every trial attorney . . . shall in every case in which the client has been convicted or adjudged delinquent . . .

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[9] *Bultron v. State*, 897 A.2d 758, 762 (Del. 2006).

[10] Del. Supreme Ct. R. 26(a).

> (i) Advise client. Advise the client of any right to appeal, the possible grounds for appeal and counsel's opinion of the probable outcome of an appeal;
> (ii) Docket appeal. Docket an appeal whenever the client desires to appeal, whether or not the appeal appears meritorious; and
> (iii) Prepare documents. Prepare and file all documents relating to the appeal, including those relating to the transcript as required by Rule 9.[11]

Subsection (a) makes clear that subsection (d) applies only upon conviction. A conviction is not final until sentencing.[12] Therefore, reliance on Supreme Court Rule 26 is misplaced.

(12) We find that the trial judge did not abuse his discretion when he allowed private counsel to withdraw and appointed new counsel for Quintero. "An abuse of discretion occurs if the trial court's decision is based on 'clearly unreasonable or capricious grounds.'"[13] Before trial, Quintero's original counsel arranged a plea carrying no minimum period of incarceration and a recommendation of probation. Quintero rejected the plea. After the jury found him guilty, Quintero wrote to defense counsel, accusing counsel of being

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[11] Del. Supreme Ct. R. 26(d).

[12] *Eller v. State*, 531 A.2d 948, 950 (Del. 1987) ("The final judgment in a criminal proceeding is the date upon which "a sentence of specific severity has been pronounced.").

[13] *Bultron*, 897 A.2d at 762.

ineffective.[14] Therefore, allowing defense counsel to withdraw was neither unreasonable nor capricious. In addition, Quintero's requested relief, remand the case for re-sentencing, is a futile exercise. Quintero was sentenced to the statutory minimum of two years.[15] Accordingly, we affirm.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED.**

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

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[14] Quintero told his counsel that he "did not have [Quintero's] best interest in mind." In addition, Quintero suggested that defense counsel was ineffective and denied him of a fair trial. In the end, Quintero requested his file in order to obtain a "second opinion."

[15] 11 *Del. C.* § 771 is a class B felony. Class B felonies are punishable "not less than 2 years up to 25 years to be served at Level V." 11 *Del. C.* § 4205(b)(2).