

STATE OF MINNESOTA
COUNTY OF LYON

IN DISTRICT COURT
FIFTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

File No. 42-CR-08-220

vs.

OLGA MARNIA FRANCO DEL CID
aka ALIANISS NUNEZ MORALES,

Defendant.

FINDINGS OF FACT,
CONCLUSION OF LAW,
AND ORDER

The above-entitled matter came before this Court on May 15, 2008, for an Omnibus Hearing. Defendant was represented by Manuel Guerrero, Attorney at Law, St. Paul, Minnesota and Tamara Caban-Ramirez, Attorney at Law, Minneapolis, Minnesota. The State appeared through Rick Maes, Lyon County Attorney.

Based upon all the files and records herein, the Court makes the following:

FINDINGS OF FACT

1. The Findings of Fact, Conclusions of Law, and Order dated May 6, 2008, as well as the Memorandum attached thereto, are incorporated into these Findings of Fact.
2. On February 21, 2008, at approximately 1:30 p.m. after being released from the Avera Marshall Hospital, Defendant was placed under arrest.
3. At that time, Defendant was transported to the Lyon County Jail; at the jail Defendant went through the booking procedure.
4. At approximately 4:05 p.m., Defendant was escorted to the library in the Lyon County Jail for the purposes of providing a statement to law enforcement.
5. Present at that time were Minnesota State Trooper Dana Larsen, Department of Homeland Security Immigration Customs Enforcement Special Agent Jeremy Christenson, Special Agent Jarred Drengson, Defendant, and Joe Jensen, interpreting.
6. Defendant only speaks Spanish; Agent Christenson is not fluent in Spanish, but "can do some speaking in Spanish;" he admitted that there were words spoken during this interview that he did not understand and that he had was at points not able to say, in Spanish, things that he wanted to say.
7. Near the outset of the interview, Jensen read Defendant a Miranda warning in Spanish; Jensen thereafter indicates that Defendant understood the Miranda warning.

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Karen J. Bierman
COURT ADMINISTRATOR
Marshall, Lyon County, Minnesota

8. After being read the Miranda warning and indicating that she understood it, Defendant stated, as translated by Jensen, "I'm not prepared to talk to you yet. My aunt told me the attorney be come to see me today or tomorrow. I'm not prepared to talk to you now."
9. Trooper Larsen responded, saying, "Okay."; however, Agent Christenson then spoke directly to Defendant in Spanish; the testimony indicates that Agent Christenson told Defendant he only wanted to talk to her a little bit about the accident, and that she should talk for the children, families, and the community.
10. After this exchange, Jensen requested he be allowed to "repeat it" to Defendant; after conversing with Defendant in Spanish, Defendant said, as translated by Jensen, "All the questions you're gonna ask me? When I sign them, I'm agreeing to answer all the questions you ask me?"
11. Agent Christenson says, "No," and then addressed Defendant directly in Spanish; the testimony indicates that Agent Christenson explained that Defendant would not need to answer every question and that she could refuse to answer certain questions.
12. Jensen then outlined that he was explaining to Defendant the difference between the questioning that law enforcement wanted to do at that time and the questioning that took place during the booking procedure.
13. After a couple more exchanges in Spanish, Defendant states, as translated by Jensen, "Okay. What you ask me, I'm gonna answer."
14. Trooper Larsen and the Special Agents then proceeded to question Defendant.
15. The attached Memorandum is hereby incorporated into these Findings of Fact.

Based upon the above Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

- I. Defendant's statement, after being read the Miranda warning, was a clear, unequivocal invocation of her right to counsel. State v. Hannon, 636 N.W.2d 796 (Minn. 2001); State v. Munson, 594 N.W.2d 128 (Minn. 1999).
- II. Defendant did not initiate further discussions with law enforcement after she invoked her right to counsel, and her statements after she invoked her right to counsel are inadmissible. Id.

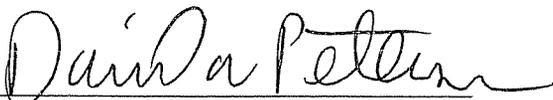
Based upon the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED:

1. Defendant's Motion to Suppress the statement given to law enforcement on February 21, 2008 is GRANTED.

Dated: MAY 15, 2008

BY THE COURT:



David W. Peterson
Judge of District Court

MEMORANDUM

Defendant has been charged in the Amended Complaint with four counts of Criminal Vehicular Homicide, in violation of Minn. Stat. § 609.21, Subd. 1(1), seventeen counts of Criminal Vehicular Injury, in violation of Minn. Stat. § 609.21, Subd. 1(1), one count of False Name and Date of Birth to a Peace Officer, in violation of Minn. Stat. § 609.506, Subd. 2, one count of Stop Sign Violation, in violation of Minn. Stat. § 169.20, Subd. 3(a), and one count of No Minnesota Driver's License, in violation of Minn. Stat. § 171.02, Subd. 1. On February 21, 2008, two days after the vehicle crash, Defendant was arrested, booked at the jail, and subsequently interviewed in the library of the jail.

Defendant has made a Motion to Suppress the statement obtained. Defendant asserts that the February 21, 2008 statement was a custodial interrogation and, after Defendant invoked her Miranda rights, law enforcement improperly continued questioning her. The issues are 1) whether Defendant did invoke her right to counsel and, if so, 2) whether Defendant thereafter voluntarily waived that right.

I. Defendant clearly invoked her right to counsel.

If a defendant makes a clear invocation of the right to counsel, interrogation must cease until an attorney is present. See, e.g. State v. Risk, 598 N.W.2d 642, 647 (Minn. 1999) (citing Miranda v. Arizona, 384 U.S. 436, 474 (1966)). If questioning does not cease, evidence obtained as a result of the interrogation is inadmissible. Id. Police cannot continue or resume interrogation unless the accused initiates further communication. Id. (citing Edwards v. Arizona, 451 U.S. 477, 484-85 (1981)).

As the Minnesota Supreme Court illustrated in Risk, courts have grappled with how to construe “equivocal” or “ambiguous” requests for counsel. Id. However, the initial question is whether the statement made by Defendant was such an equivocal or ambiguous request. In determining whether a statement is sufficient to require the cessation of interrogation, the question is whether the Defendant articulated the “desire to have counsel present sufficiently clearly that a reasonable police officer, in the circumstances, would understand the statement to be a request for an attorney.” State v. Munson, 594 N.W.2d 128, 139 (Minn. 1999) (citing Davis v. United States, 512 U.S. 452, 459 (1994)). This inquiry is objective. Id.

In Munson, the defendant was taken to an interview room at the station, asked some preliminary identification questions, and then read a Miranda warning. Id. at 133. The officers then asked if the defendant wanted to tell them what happened and noted that “a small window of opportunity” was closing quickly. Id. The defendant responded, “I think I’d rather talk to a lawyer.” Id. The Minnesota Supreme Court held that the statement, “coming as it did almost immediately after Munson was read his Miranda rights, was sufficiently clear that a reasonable police officer under the same circumstances would have understood the statement to be a request for an attorney.” Id. at 139.

In State v. Hannon, 636 N.W.2d 796, 805 (Minn. 2001), the Court reversed the trial court’s determination that the defendant had made an equivocal request for counsel. In that case, the defendant was read his Miranda rights and signed a document indicating that he understood those rights. Id. at 800. After discussing the incident with officers for some time, the officers told the defendant that the victim was dead. Id. The defendant

then asked, multiple times, whether the officers thought he had killed the victim. Id. Right after the officers confirmed that they did think that, and they wanted to know why he killed the victim, the defendant said, “Can I have a drink of water and then lock me up—I think we really should have an attorney.” Id. Not only did the Court find that the statement was unequivocal, but it found that “the trial court clearly erred in finding that appellant’s request for counsel was equivocal.” Id. at 805.

These cases shed light on the instant case. Defendant’s statement here was, “I’m not prepared to talk to you yet. My aunt told me the attorney be come to see me today or tomorrow. I’m not prepared to talk to you now.” The Court finds that this statement is a clear, unequivocal request for counsel. Like in Munson, Defendant’s statement here came almost directly after she was read the Miranda warning and indicated that she understood it. Looking at the simple content of the statements themselves, it seems plain that Defendant’s statement here is clearer than either of the requests in Munson (“I think I’d rather [...]”) or Hannon (“I think we really should [...]”).

While the Special Agent Christenson focused in his testimony on the fact that Defendant said she wasn’t prepared to talk “yet,” that has no bearing upon the issue. The fact is that Defendant clearly indicated that she did not want to speak. The fact that her statement also indicates that she might be willing to speak later (“yet”) does not alter the fact that she invoked her right to counsel or that her final statement was I’m not prepared to speak “now.”

Defendant’s statement was a clear invocation of her right to counsel.¹

¹ Even if Defendant’s invocation of the right to counsel was equivocal, Special Agent Christenson’s comments immediately following were not clarifying questions designed to determine Defendant’s true desires regarding counsel. See Risk, 598 N.W.2d at 650. Instead, he

II. Defendant did not initiate further discussion after she invoked her right to counsel.

“Once a suspect unequivocally invokes his [or her] right to counsel, courts may admit responses to further questioning only on finding that [the suspect] (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right invoked.” Hannon, 636 N.W.2d at 805 (internal quotations omitted; emphasis added). These are two separate inquiries. Id.; Munson, 594 N.W.2d at 140 (citing Oregon v. Bradshaw, 462 U.S. 1039, 1045-46 (1983)). It is appropriate to first address whether the officers had impermissibly continued or resumed discussion amounting to interrogation, and then only reach the issue of waiver if it was Defendant that initiated the further discussion. Munson, 594 N.W.2d at 140.

In Hannon, after the defendant invoked the right to counsel, the officer said, “If you want to talk to an attorney, you understand that we have to stop talking to you. OK? And-and then your side of this story will never be known. That’s your choice. That’s a choice you’re making.” Id. at 800. The defendant then responded, “So, that means what?” Id. The trial court had found that the defendant had reinitiated the conversation by asking a question of his own. Id. at 806. However, the Supreme Court indicated that “this question posed by appellant was prompted by the detective’s improper comments to appellant before counsel had been made available.” Id.

was outlining his intentions (only wanting to talk about the accident) or giving reasons for Defendant to talk (appealing to the children, families, and the community). See Hannon, 636 N.W.2d at 805 n. 2 (statement that appellant’s side of the story would never be known “implied that appellant had to make a choice” and did not constitute a clarifying question).

In Munson, the officers “did not stop their conversation once Munson invoked his right to counsel.” 594 N.W.2d at 140. Rather, the officers reminded the defendant about the window of opportunity and discussed what would happen to the defendant. Id. Only after that did the defendant respond, “when will you do that?” Id. The Supreme Court held that the trial court erred in not suppressing the statements, as the state did not demonstrate that the defendant initiated the further discussion. Id. at 143. The Court also explicitly declined to reach the waiver argument, because the issue was disposed by the fact that the defendant did not initiate the discussion. Id.

In the instant case, after Defendant’s clear invocation of the right to counsel, Trooper Larsen says, “Okay.” But Special Agent Christenson continued and spoke directly to Defendant. Specifically, he told Defendant that he only wanted to talk to her a little bit about the accident, and that it was for the children, families, and community. This is not only factually analogous to both Hannon and Munson, but it seems indistinguishable. While Defendant did continue talking, and eventually indicated that she would answer questions, she did not initiate the further discussion after she invoked her right to counsel. Rather, she was responding to the improper comments by Special Agent Christenson, and those comments are remarkably similar to the improper comments in Hannon and Munson.

Defendant did not initiate further discussions with law enforcement after she unequivocally invoked her right to counsel, and, therefore, her statements are inadmissible.

DMW
5-15-08

State of Minnesota
Lyon County

District Court
Fifth Judicial District

Court File Number: 42-CR-08-220

Case Type: Crim/Traf Mandatory

Notice of Filing of Order

ALIANISS NUNEZ MORALES
405 BENS TRAILER PARK
MINNEOTA MN 56264

State of Minnesota vs Alianiss Nunez Morales

You are notified that an order was filed on this date. 05-15-08

Dated: May 15, 2008

Karen J. Bierman
Court Administrator
Lyon County District Court
607 W Main Street
Marshall MN 56258
507-537-6734

A true and correct copy of this notice has been served by U.S. Mail upon the following parties at the last known postal address of each.

Enclosure(s)

cc: RICHARD ROBERT MAES
MANUEL P GUERRERO

