

STATE OF MAINE
KENNEBEC, ss.

RECEIVED AND FILED
KENNEBEC COUNTY CLERK OF COURT
2009 APR 15 A 11:27
MICHAEL J. HENNING
CLERK OF COURTS

SUPERIOR COURT
Docket No.: 08-CR-043

Je. 12-16-2009

State of Maine,

DECISION AND ORDER

v.

Abraham Zorrilla,

Defendant

This matter was heard on April 6, 2009, on Defendant's Motion to Suppress Evidence. Assistant Attorney General William Savage represented the State. Attorney James Billings represented the Defendant.¹ Through his motion, Defendant seeks to suppress evidence that Defendant maintains was obtained after Defendant invoked his right to counsel, which evidence includes statements made by the Defendant.

Factual Background

The hearing revealed that on January 15, 2008, law enforcement officials conducted a search of property in which Melissa Massie was residing. After law enforcement entered the residence, before proceeding with the search, they placed Ms. Massie and the Defendant, who was present at the time, in handcuffs and directed them to sit in a specific location.

While the search was being conducted, Defendant and Peter Struck of the Maine Drug Enforcement Agency engaged in a brief conversation. As the result of that conversation, Agent Struck arranged to speak with Defendant in Agent Struck's vehicle. Defendant contends that while he was in the residence, he communicated in Spanish to

¹ Upon Defendant's request, a Spanish-speaking interpreter was provided, and assisted Defendant in preparation for and during the hearing.

Ms. Massie that he wanted to consult with a lawyer before speaking with Agent Struck. According to Defendant, Ms. Massie communicated that to Agent Struck, or at least in Agent Struck's presence. Agent Struck refuted Defendant's contention, and further testified that he did not hear Defendant speak in Spanish during the search.

Subsequently, Agent Struck met with the Defendant in Agent Struck's vehicle. Before questioning the Defendant, Agent Struck informed the Defendant of his *Miranda* rights. Defendant told Agent Struck that he understood the rights as explained. Defendant did not ask to speak with an attorney. Thereafter, Defendant answered Agent Struck's questions.

Discussion

Defendant asserts that he invoked his right to counsel when he was in the residence during the search. In particular, he contends that he expressed his desire to speak with an attorney in Spanish, and that Ms. Massie expressed it in English.

The Maine Law Court recently had an opportunity to reiterate the scope of a person's right to counsel when that person is subject to a custodial interrogation.² In *State v. Neilsen*, 2008 ME 77, 946 A.2d 382, the Law Court wrote,

“The United States Supreme Court established in *Miranda v. Arizona* that, pursuant to the *Fifth Amendment*, a suspect subject to custodial interrogation has the right to consult with an attorney and to have an attorney present during questioning. 384 U.S. 436, 469-70, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). If a defendant invokes his right to counsel at any time during an interview with police, ‘he is not subject to further questioning until a lawyer has been made available or the suspect himself reinitiates conversation.’ *Davis v. United States*, 512 U.S. 452, 458, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994); see also *State v. King*, 1998 ME 60, P9, 708 A.2d 1014, 1017 (providing that Maine courts apply the *Davis* rule in assessing invocations of the right to counsel).”

2008 ME 77, ¶ 15.

² The State agrees that Agent Struck conducted a custodial interrogation of Defendant while Defendant was in Agent Struck's vehicle.

As the Law Court confirmed in *Neilsen*, a defendant must invoke the right to counsel in order for a defendant's right to counsel to be implicated during a custodial interrogation. In this case, the parties dispute whether the Defendant asked to speak with an attorney.

Based on the evidence presented at the hearing, the Court concludes that Defendant did not invoke his right to counsel. Simply stated, the Court finds the Defendant's testimony regarding his request for an attorney to be less than credible. During the interrogation, Defendant demonstrated a familiarity with and a clear understanding of the English language. He plainly understood Agent Struck's questions, and answered them in English without difficulty. Given the Defendant's ability to speak English, his suggestion that he used the Spanish language to invoke his right to counsel is illogical. Furthermore, consistent with Agent Struck's testimony that the Defendant did not speak in a language other than English when the Defendant was in the residence, Defendant's testimony is uncorroborated by any other person who was present during the search. Finally, had the Defendant invoked his right to counsel in the residence, he presumably would have reminded Agent Struck of his request when he had a conversation in English with Agent Struck while they were in Agent Struck's vehicle.³

In sum, based on the evidence presented, the Court concludes that Defendant did not request to speak with an attorney prior to or during the custodial interrogation on January 15, 2008.

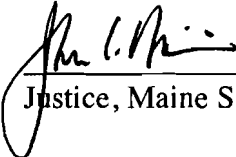
Conclusion

Based on the foregoing analysis, the Court denies Defendant's Motion to Suppress.

³ The Court does not suggest that Defendant had to invoke the right to counsel a second time if he had requested counsel while he was in the residence. Rather, the Court cites Defendant's failure to reiterate the request as further evidence of Defendant's lack of credibility on the central issue -- whether Defendant requested counsel in the residence as he asserts.

The Clerk shall incorporate this Decision and Order into the docket by reference.

Dated: 4/10/09



Justice, Maine Superior Court

STATE OF MAINE
vs
ABRAHAM ZORRILLA
7 TEMPLE STREET
LAWRENCE MA

SUPERIOR COURT
KENNEBEC, ss.
Docket No AUGSC-CR-2008-00043

DOCKET RECORD

DOB: 09/10/1986

Attorney: JAMES BILLINGS
LIPMAN & KATZ & MCKEE, PA
227 WATER STREET
PO BOX 1051
AUGUSTA ME 04332-1051
APPOINTED 05/19/2008

State's Attorney: WILLIAM SAVAGE

Filing Document: CRIMINAL COMPLAINT
Filing Date: 01/16/2008

Major Case Type: FELONY (CLASS A,B,C)

Charge(s)

1 AGGRAVATED TRAFFICKING OF SCHEDULE W DRUG 01/15/2008 AUGUSTA
Seq 11072 17-A 1105-A(1) (E) (1) Class A

2 CRIMINAL FORFEITURE OF PROPERTY 01/15/2008 AUGUSTA
Seq 7049 15 5826 Class U Charged with INDICTMENT on Supplem

Docket Events:

01/16/2008 FILING DOCUMENT - CRIMINAL COMPLAINT FILED ON 01/16/2008

01/16/2008 Charge(s): 1
HEARING - INITIAL APPEARANCE SCHEDULED FOR 01/16/2008 @ 1:00

NOTICE TO PARTIES/COUNSEL

01/17/2008 Charge(s): 1
HEARING - INITIAL APPEARANCE HELD ON 01/16/2008
JOHN NIVISON , JUSTICE

01/17/2008 Charge(s): 1
PLEA - NO ANSWER ENTERED BY DEFENDANT ON 01/16/2008

01/17/2008 Charge(s): 1
HEARING - STATUS CONFERENCE SCHEDULED FOR 03/11/2008 @ 10:00

01/17/2008 BAIL BOND - \$10,000.00 CASH BAIL BOND SET BY COURT ON 01/16/2008
JOHN NIVISON , JUSTICE

01/17/2008 Charge(s): 1
MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 01/16/2008

01/22/2008 Charge(s): 1
MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 01/18/2008
JOHN NIVISON , JUSTICE
COPY TO PARTIES/COUNSEL

01/22/2008 Party(s): ABRAHAM ZORRILLA
ATTORNEY - APPOINTED ORDERED ON 01/18/2008

Attorney: KEVIN SULLIVAN

01/22/2008 Charge(s): 1
HEARING - STATUS CONFERENCE NOTICE SENT ON 01/30/2008

01/28/2008 Charge(s): 1
MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY COUNSEL ON 01/25/2008

01/30/2008 Charge(s): 1
MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 01/28/2008
JOHN NIVISON , JUSTICE
COPY TO PARTIES/COUNSEL

01/30/2008 Party(s): ABRAHAM ZORRILLA
ATTORNEY - WITHDRAWN ORDERED ON 01/28/2008

Attorney: KEVIN SULLIVAN

01/30/2008 Party(s): ABRAHAM ZORRILLA
ATTORNEY - APPOINTED ORDERED ON 01/28/2008

Attorney: JAMES FLICK

01/31/2008 Charge(s): 1,2
SUPPLEMENTAL FILING - INDICTMENT FILED ON 01/30/2008

01/31/2008 Charge(s): 1
HEARING - STATUS CONFERENCE NOT HELD ON 01/31/2008

01/31/2008 Charge(s): 1,2
HEARING - ARRAIGNMENT SCHEDULED FOR 02/20/2008 @ 8:30

01/31/2008 Charge(s): 1,2
HEARING - ARRAIGNMENT NOTICE SENT ON 01/31/2008

02/20/2008 Charge(s): 1,2
HEARING - ARRAIGNMENT HELD ON 02/20/2008
JOSEPH M JABAR , JUSTICE
Attorney: JAMES FLICK
DA: JAMES MITCHELL Reporter: KATHLEEN CASEY
Defendant Present in Court

READING WAIVED. DEFENDANT INFORMED OF CHARGES. COPY OF INDICTMENT/INFORMATION GIVEN TO
DEFENDANT. 21 DAYS TO FILE MOTIONS

02/20/2008 Charge(s): 1,2
PLEA - NOT GUILTY ENTERED BY DEFENDANT ON 02/20/2008

02/28/2008 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 02/28/2008

02/28/2008 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 04/07/2008 @ 8:30

NOTICE TO PARTIES/COUNSEL

04/07/2008 HEARING - MOTION TO SUPPRESS NOT HELD ON 04/07/2008

DEFENDANT WANTS HIS ATTORNEY TO WITHDRAW

04/07/2008 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 05/06/2008 @ 8:30

NOTICE TO PARTIES/COUNSEL

04/07/2008 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 04/07/2008

04/15/2008 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 04/07/2008
M MICHAELA MURPHY , JUSTICE
COPY TO PARTIES/COUNSEL

04/15/2008 Party(s): ABRAHAM ZORRILLA
ATTORNEY - WITHDRAWN ORDERED ON 04/07/2008

Attorney: JAMES FLICK

04/15/2008 Party(s): ABRAHAM ZORRILLA
ATTORNEY - APPOINTED ORDERED ON 04/07/2008

Attorney: JOSHUA KLEIN-GOLDEN

04/16/2008 NOTE - OTHER CASE NOTE ENTERED ON 04/15/2008

REQUEST FOR SPANISH INTERPRETER FAXED.

04/18/2008 MOTION - MOTION TO CONTINUE FILED BY STATE ON 04/18/2008

04/23/2008 NOTE - OTHER CASE NOTE ENTERED ON 04/23/2008

CONFIRMATION OF SPANISH INTREPRETER. NOTIFIED THIS DATE VIA EMAIL THAT MOTION HEARING
WILL BE RESCHEDULED AND THEY WILL BE NOTIFIED OF THE NEW DATE.

04/25/2008 MOTION - MOTION TO CONTINUE GRANTED ON 04/22/2008

COPY TO PARTIES/COUNSEL

04/25/2008 HEARING - MOTION TO SUPPRESS CONTINUED ON 04/22/2008

04/25/2008 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 05/14/2008 @ 1:00

NOTICE TO PARTIES/COUNSEL

04/25/2008 HEARING - MOTION TO SUPPRESS NOTICE SENT ON 04/25/2008

04/25/2008 NOTE - OTHER CASE NOTE ENTERED ON 04/25/2008

REQUEST FOR SPANISH INTREPRETER FAXED ON THIS DATE.

05/13/2008 Charge(s): 1,2

TRIAL - DOCKET CALL SCHEDULED FOR 06/02/2008 @ 11:15

05/15/2008 MOTION - MOTION FOR WITHDRAWAL OF CNSL FILED BY COUNSEL ON 05/15/2008

Attorney: JOSHUA KLEIN-GOLDEN

05/15/2008 MOTION - MOTION FOR APPOINTMENT OF CNSL FILED BY DEFENDANT ON 05/15/2008

05/19/2008 NOTE - OTHER CASE NOTE ENTERED ON 05/19/2008

REQUEST FOR SPANISH INTERPRETER FAXED THIS DATE.

05/20/2008 MOTION - MOTION FOR WITHDRAWAL OF CNSL GRANTED ON 05/19/2008

JOSEPH M JABAR , JUSTICE

COPY TO PARTIES/COUNSEL

05/20/2008 MOTION - MOTION FOR APPOINTMENT OF CNSL GRANTED ON 05/19/2008

JOSEPH M JABAR , JUSTICE

COPY TO PARTIES/COUNSEL

05/20/2008 Party(s): ABRAHAM ZORRILLA
ATTORNEY - WITHDRAWN ORDERED ON 05/19/2008

Attorney: JOSHUA KLEIN-GOLDEN

05/20/2008 Party(s): ABRAHAM ZORRILLA
ATTORNEY - APPOINTED ORDERED ON 05/19/2008

Attorney: JAMES BILLINGS

05/23/2008 HEARING - MOTION TO SUPPRESS NOT HELD ON 05/14/2008

DEFENDANT REQUESTED NEW LAWYER

05/23/2008 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 08/14/2008 @ 8:30

NOTICE TO PARTIES/COUNSEL

05/28/2008 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 05/28/2008

05/29/2008 MOTION - MOTION TO CONTINUE GRANTED ON 05/29/2008

JOSEPH M JABAR , JUSTICE

COPY TO PARTIES/COUNSEL

05/29/2008 Charge(s): 1,2
TRIAL - DOCKET CALL CONTINUED ON 05/29/2008

05/30/2008 NOTE - OTHER CASE NOTE ENTERED ON 05/30/2008

INTERPRETER RESCHEDULED FOR 8/14/08 @ 8:30AM.

06/24/2008 MOTION - MOTION FOR EXTENSION OF TIME FILED BY DEFENDANT ON 06/24/2008

06/24/2008 MOTION - MOTION TO SUPPRESS FILED BY DEFENDANT ON 06/24/2008

06/24/2008 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 08/14/2008 @ 8:30

NOTICE TO PARTIES/COUNSEL

06/25/2008 HEARING - MOTION FOR EXTENSION OF TIME SCHEDULED FOR 07/08/2008 @ 8:30

NOTICE TO PARTIES/COUNSEL

06/25/2008 HEARING - MOTION FOR EXTENSION OF TIME NOTICE SENT ON 06/25/2008

07/07/2008 MOTION - MOTION FOR MENTAL EXAMINATION FILED BY DEFENDANT ON 07/03/2008

07/09/2008 HEARING - MOTION FOR MENTAL EXAMINATION SCHEDULED FOR 07/10/2008 @ 8:00

NANCY MILLS , JUSTICE

ATTYS NOTIFIED BY TELEPHONE. SPANISH INTERPRETER SCHEDULED.

07/10/2008 HEARING - MOTION FOR MENTAL EXAMINATION HELD ON 07/10/2008

NANCY MILLS , JUSTICE

Attorney: JAMES BILLINGS

DA: WILLIAM SAVAGE

TAPE 1004, INDEX 1338-2140

RAYMOND BEAUCAGE

INTERPRETER

07/10/2008 PSYCHIATRIC EXAM - STAGE ONE EXAM ORDERED ON 07/10/2008

NANCY MILLS , JUSTICE

COPY TO STATE FORENSIC SERVICE WITH COPY OF INDICTMENT AND DOCKET RECORD

07/10/2008 HEARING - MOTION FOR EXTENSION OF TIME HELD ON 07/10/2008

NANCY MILLS , JUSTICE
Attorney: JAMES BILLINGS
DA: WILLIAM SAVAGE
TAPE 1004, INDEX 1338 - 2140

07/10/2008 MOTION - MOTION FOR EXTENSION OF TIME GRANTED ON 07/10/2008
NANCY MILLS , JUSTICE
COPY TO PARTIES/COUNSEL

07/10/2008 MOTION - MOTION FOR MENTAL EXAMINATION GRANTED ON 07/10/2008
COPY SENT TO STATE FORENSIC SERVICE

08/15/2008 PSYCHIATRIC EXAM - STAGE ONE REPORT FILED ON 08/14/2008

COPY TO DA'S OFFICE AND ATTY ON 8/15/08.

08/27/2008 HEARING - MOTION TO SUPPRESS NOT HELD ON 08/14/2008

08/27/2008 HEARING - MOTION TO SUPPRESS NOT HELD ON 08/14/2008

08/27/2008 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 09/04/2008 @ 8:30

NOTICE TO PARTIES/COUNSEL

08/27/2008 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 09/04/2008 @ 8:30

NOTICE TO PARTIES/COUNSEL

09/04/2008 PSYCHIATRIC EXAM - STAGE TWO EXAM ORDERED ON 09/04/2008

JOHN NIVISON , JUSTICE

EXAM SCHEDULED FOR SEPTEMBER 25, 2008 AT 9:00

EXAM

RESCHEDULED FOR OCTOBER 22, 2008 AT 10:00

09/04/2008 HEARING - MOTION TO SUPPRESS CONTINUED ON 09/04/2008

09/04/2008 HEARING - MOTION TO SUPPRESS CONTINUED ON 09/04/2008

09/04/2008 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 12/05/2008 @ 8:30

NOTICE TO PARTIES/COUNSEL

09/10/2008 OTHER FILING - OTHER DOCUMENT FILED ON 09/10/2008

REQUEST FOR INTERPRETER

09/29/2008 PSYCHIATRIC EXAM - STAGE TWO REPORT FILED ON 09/29/2008

10/02/2008 OTHER FILING - OTHER DOCUMENT FILED ON 10/02/2008

LETTER FROM JAMES BILLINGS REQUESTING STAGE III EXAM

10/07/2008 HEARING - CONFERENCE SCHEDULED FOR 10/09/2008 @ 8:30 in Room No. 3

NOTICE TO PARTIES/COUNSEL

PHONE

CONFERENCE WITH JUDGE NIVISON/BILL SAVAGE AND JAMES BILLINS TO INITIATE THE CALL.

10/29/2008 PSYCHIATRIC EXAM - STAGE TWO REPORT FILED ON 10/29/2008

PSYCHIATRIC PORTION OF STAGE II EVALUATION

11/12/2008 HEARING - CONFERENCE SCHEDULED FOR 11/14/2008 @ 8:00

JOHN NIVISON , JUSTICE

NOTICE TO PARTIES/COUNSEL

11/14/2008 PSYCHIATRIC EXAM - STAGE THREE EXAM ORDERED ON 11/14/2008

11/20/2008 MOTION - MOTION TO CONTINUE FILED BY DEFENDANT ON 11/20/2008

11/20/2008 MOTION - MOTION FOR FUNDS FILED BY DEFENDANT ON 11/20/2008

11/21/2008 MOTION - MOTION FOR FUNDS GRANTED ON 11/21/2008

M MICHAELA MURPHY , JUSTICE

COPY TO PARTIES/COUNSEL

11/21/2008 MOTION - MOTION TO CONTINUE GRANTED ON 11/21/2008

M MICHAELA MURPHY , JUSTICE

COPY TO PARTIES/COUNSEL

11/21/2008 HEARING - CONFERENCE HELD ON 11/14/2008

JOHN NIVISON , JUSTICE

Attorney: JAMES BILLINGS

DA: WILLIAM SAVAGE

11/21/2008 HEARING - CONFERENCE HELD ON 10/09/2008

JOHN NIVISON , JUSTICE

Attorney: JAMES BILLINGS

DA: WILLIAM SAVAGE

11/21/2008 HEARING - MOTION TO SUPPRESS CONTINUED ON 11/21/2008

12/06/2008 OTHER FILING - OTHER DOCUMENT FILED ON 12/04/2008

LETTER FROM ANN LEBLANC TO RIVERVIEW PSYCHIATRIC CENTER ADMITING MR. ZORRILLA

12/06/2008 OTHER FILING - OTHER DOCUMENT FILED ON 12/04/2008

LETTER FROM ANN LEBLANC TO INTERESTED PARTIES, DATE OF DECEMBER 16TH AT 1:00 FOR STAGE III
EVAL

12/18/2008 OTHER FILING - OTHER DOCUMENT FILED ON 12/18/2008

PER THE ORDER OF THE NONORABLE JOHN NIVISON, PRESIDING JUSTICE, KENNEBEC SUPERIOR COURT,
DATED 11/14 (ADMITTED (11/25), YOU ARE HEREBY AUTHORIZED TO SICHARGE THE DEFENDANT FROM THE
RIVERVIEW PSYCHIATRIC CENTER AND THE CUSTODY OF THE COMMISSIONER OF THE DHS

01/12/2009 OTHER FILING - FORENSIC REPORT FILED ON 01/09/2009

COPIES TO PARTIES/COUNSEL

ON 1/12/09.

01/21/2009 MOTION - MOTION FOR FUNDS FILED BY DEFENDANT ON 01/21/2009

01/21/2009 MOTION - MOTION FOR FUNDS GRANTED ON 01/21/2009

JOHN NIVISON , JUSTICE

COPY TO PARTIES/COUNSEL

02/19/2009 HEARING - MOTION TO SUPPRESS STATEMENT SCHEDULED FOR 03/23/2009 @ 8:15

JOSEPH M JABAR , JUSTICE

NOTICE TO PARTIES/COUNSEL

02/19/2009 Charge(s): 1,2

HEARING - MOTION TO SUPPRESS SCHEDULED FOR 03/23/2009 @ 8:15

JOSEPH M JABAR , JUSTICE

NOTICE TO PARTIES/COUNSEL

02/19/2009 Charge(s): 1,2

HEARING - MOTION TO SUPPRESS NOTICE SENT ON 02/19/2009

02/19/2009 HEARING - MOTION TO SUPPRESS STATEMENT NOTICE SENT ON 02/19/2009

03/13/2009 Charge(s): 1,2
HEARING - MOTION TO SUPPRESS NOT HELD ON 03/13/2009

03/19/2009 HEARING - MOTION TO SUPPRESS STATEMENT NOT HELD ON 03/19/2009

03/27/2009 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 04/06/2009 @ 11:30
JOHN NIVISON , JUSTICE
NOTICE TO PARTIES/COUNSEL

03/27/2009 HEARING - MOTION TO SUPPRESS SCHEDULED FOR 04/06/2009 @ 11:30

NOTICE TO PARTIES/COUNSEL

04/08/2009 HEARING - MOTION TO SUPPRESS HELD ON 04/06/2009
JOHN NIVISON , JUSTICE
Reporter: TAMMY DROUIN
Defendant Present in Court

04/08/2009 HEARING - MOTION TO SUPPRESS HELD ON 04/06/2009
JOHN NIVISON , JUSTICE
Reporter: TAMMY DROUIN
Defendant Present in Court

04/08/2009 MOTION - MOTION TO SUPPRESS UNDER ADVISEMENT ON 04/06/2009
JOHN NIVISON , JUSTICE

04/08/2009 MOTION - MOTION TO SUPPRESS UNDER ADVISEMENT ON 04/06/2009
JOHN NIVISON , JUSTICE

04/08/2009 MOTION - MOTION FOR DISCOVERY FILED BY DEFENDANT ON 04/07/2009

04/15/2009 MOTION - MOTION TO SUPPRESS DENIED ON 04/14/2009
JOHN NIVISON , JUSTICE
COPY TO PARTIES/COUNSEL

04/15/2009 MOTION - MOTION TO SUPPRESS DENIED ON 04/14/2009
JOHN NIVISON , JUSTICE
COPY TO PARTIES/COUNSEL

04/15/2009 Charge(s): 1,2
TRIAL - DOCKET CALL SCHEDULED FOR 06/02/2009

A TRUE COPY

ATTEST: _____
Clerk