

New Jersey Supreme Court Rules: “I Want To Talk To Mommy” Is Not The Same As “I Want To Remain Silent”

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Demetrius Diaz-Bridges is accused of killing his friends' mother, Elizabeth O'Brien, in 2008. Although the matter has not proceeded to trial, there has been pre-trial litigation for over 2 years surrounding a taped confession Diaz-Bridges gave to members of the Morris County Prosecutor's Office (my former place of employment).

The Facts

Shortly after the killing, Diaz-Bridges was picked up by law enforcement and interrogated in New Jersey. At first, during a two-hour interrogation, Diaz-Bridges denied any involvement in the homicide. Having little information to suggest involvement by Diaz-Bridges, law enforcement personnel allowed Diaz-Bridges to go on his way—and he did, all the way to North Carolina. And, so, when investigators learned of that move months later, they questioned Diaz-Bridges again, this time in North Carolina.

At the outset, and after being read his Miranda rights, Diaz-Bridges again denied any involvement in O'Brien's death. However, after three-and-a-half hours of questioning, and, after a momentary pause, Diaz-Bridges said, “Can I just call my mom first?” After investigators told Diaz-Bridges that he could

talk to his mom at some point, they continued to press him, and Diaz-Bridges “caved”, confessing to the killing. Hours later, after Diaz-Bridges completely broke down, again asking for his mother, he provided more details of the homicide, and actually demonstrated how the killing occurred.

A trial court judge suppressed the entire North Carolina confession concluding that as soon as defendant first asked to speak with his mother, the questioning should have ceased because that request “could reasonably be viewed as an assertion of his right to remain silent.” The court’s suppression order applied to both the initial request for “mom” and the later request just prior to the demonstration.

The Appellate Division reversed in part, holding that the first part of the confession when Diaz-Bridges asked for his mom could not have been reasonably interpreted by the detectives as an invocation of the right to remain silent. The panel affirmed, however, the suppression of the later, demonstration-portion of the confession. The panel characterized that portion of the statement, both the request to speak to “mom” and the physical actions of Diaz-Bridges, as indicating that he wanted “permission” from his mother before continuing, thus constituting at least an ambiguous invocation of the right to remain silent.

This past week, the Supreme Court of New Jersey, in a rare 3-2 vote, ruled that both portions of the confession—the initial confession and the demonstration—are admissible against Diaz-Bridges. To understand “why”, a little background in this area is needed.

Background of the Fifth Amendment Privilege

Any person that has watched Law & Order, Cops, or any other show involving police officers, knows that there exists a “Fifth Amendment right against self-incrimination” or, as it is sometimes called, the “Miranda rights”; you’ve probably heard those words 1000 times.

But did you know that the right against self-incrimination comes from the United States Constitution and the means through which a law enforcement officer must inform an individual comes from a case called *Miranda v. Arizona* (“Miranda” rights)?

Unlike the United States Constitution, however, the New Jersey Constitution does not explicitly refer to the privilege against self-incrimination. Rather, the Supreme Court in New Jersey has held that the right against self-incrimination is “so deeply rooted” in New Jersey’s common law, that its inclusion in the State Constitution was unnecessary. Bear in mind though that despite the absence of a constitutional “privilege” in New Jersey’s Constitution, Miranda rights must be read in New Jersey (and in the other 49 states).

This distinction is important because under the United States Constitution, as recently confirmed in the United States Supreme Court’s 2010 decision in *Berghuis v. Thompson*, only an “unambiguous” request to remain silent, e.g., “Hey cop, I don’t want to speak to you”, will serve as an invocation of Miranda, or the right to remain silent. In New Jersey, however, an “ambiguous” response to police questioning may shed doubt on the voluntariness of a confession. See *State v. Alston*, 204 N.J.614 (2011).

That is, under the United States Constitution, if a statement is “equivocal or ambiguous,” police officers may forge ahead with an interrogation. In New Jersey, although the interrogation does not have to cease, police must clarify the ambiguous statement.

Some examples of Ambiguous and Unambiguous Requests from New Jersey Caselaw:

- A suspect’s statement that he wanted an opportunity to “lie down and think about it” before responding, although arguably far less ambiguous a reference to the right to remain silent, to be simply a request for some time and not an assertion that police terminate questioning through the invocation of the right to remain silent.
- A defendant’s request to speak with paramour before “lay[ing] out his entire involvement” was not an invocation of right to remain silent
- A suspect’s request to speak with housemate was not, under the circumstances, invocation of right to remain silent
- A suspect who refused eleven separate times to sign a form waiving his rights, which refusal he explained in terms of his desire not to make a statement, has made the desire to invoke the right to silence sufficiently plain that it must be honored.
- A suspect who repeatedly responded to questions by saying “I can’t talk about it” and who engaged in a persistent pattern of refusal to answer was not obligated to state his position more clearly in order to invoke the right to silence.

Back to Mr. Diaz-Bridges.

There have been cases in New Jersey, *State v. Harvey* for example, where the New Jersey Supreme Court has concluded, based on “all of the circumstances,” that a request to speak to a parent created sufficient ambiguity that the police should have clarified whether the suspect wanted to continue the interrogation. Adopting that approach in *State v. Diaz-Bridges*, that is, relying on a “totality of the circumstances,” the New Jersey Supreme Court concluded that the confession may be used at trial against Diaz-Bridges. The Court concluded that unlike the defendant in *Harvey*, Diaz-Bridges willingly agreed to speak with the police, meeting with them on multiple occasions and without any coercion to discuss what he knew about the crime. The Court further added that although when the officer confronted defendant with the inconsistencies in his various stories, his demeanor changed and he looked away and began to weep, “one cannot reasonably equate that response with the invocation of any right. ”

In closing, there are two things to take away from *State v. Diaz-Bridges*:

1. The State’s case against Diaz-Bridges just got a lot stronger; and
2. If you don’t want to respond to police questioning and/or you want a lawyer to assist you, ask for it in plain, unambiguous terms.

As you can see from our summary above and the fact that the New Jersey Supreme Court was split 3-2 (in other words two judges “dissented” or thought the confession should be suppressed), confession-related issues in which ambiguous responses exist will be decided on a case-by-case basis.

So, why risk it? Either ask for an attorney, e.g. “I want an attorney” or invoke your right to silence, e.g. “I don’t want to speak with you.” And, remain firm in your position, even if you are re-approached by law enforcement personnel (or, what is called, a “re-initiation”).