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NM Supreme Court rules that a defendant validly waived his right to have an attorney present in a police interrogation

SANTA FE – The state Supreme Court ruled today that police did not violate a defendant’s constitutional rights by interviewing him after he agreed to speak to them without the presence of his court-appointed attorney.

In a unanimous decision, the Court concluded that Eddie Mares “validly waived his Sixth Amendment right to counsel through his waiver of *Miranda* rights even though he had requested and obtained counsel at his first appearance.”

In his initial appearance before a judge after being arrested on child sex crimes in San Juan County, Mares invoked his constitutional right to counsel and the court appointed an attorney in accordance with the Sixth Amendment of the U.S. Constitution. The attorney advised Mares not to speak about his case with police or anyone else. The next day investigating officers interviewed Mares in jail after he waived his *Miranda* rights, which get their name from a landmark U.S. Supreme Court case, *Miranda v. Arizona*. Those rights are guaranteed by the Fifth Amendment, and include the right to remain silent and a right to have an attorney present during a police interrogation. The Fifth Amendment protects a person from self-incrimination.

A jury later convicted Mares of two counts of criminal sexual penetration of a minor, and he was sentenced to 30 years in prison. In appealing his convictions, Mares contended that his statements to police while in custody were improperly admitted as evidence in violation of his Fifth and Sixth Amendment rights.

In an opinion by Justice Julie J. Vargas, the Court concluded that Mares statements to police were not in violation of his Sixth Amendment right to counsel because he signed a waiver of his *Miranda* rights.

“As part of the *Miranda* warnings, police informed Defendant that he had the right to counsel and that counsel would be provided for free. Thus, Defendant is deemed to have known that he

had the right to an attorney and is deemed to have intelligently and voluntarily waived that right,” the Court wrote.

Prior to a 2009 decision by the U.S. Supreme Court in the case *Montejo v. Louisiana*, police were generally prohibited from interrogating a defendant once they had invoked their Sixth Amendment right to counsel by asking for an attorney at their initial court appearance.

In Mares’ case, the state Supreme Court made clear that the decision in *Montejo* was the controlling legal precedent in New Mexico and “abolished any presumption that Defendant’s earlier assertion of the right to counsel at this first appearance invalidates the waiver that Defendant made to police.”

“The facts of this case provide even more support for the conclusion that Defendant’s waiver was knowing, intelligent, and voluntary, beyond the simple fact that Defendant was given *Miranda* warnings,” the Court wrote. “In this case, Defendant knew that he had the right to counsel because he had been appointed an attorney and had discussed with that attorney *the very scenario* under which Defendant ultimately provided the waiver of counsel.”

The Court did not address whether the New Mexico Constitution provided greater protections than the Sixth Amendment of the federal constitution. The justices determined that Mares had failed to develop that issue in the trial court proceeding so it could be appealed.

Mares’ case reached the Supreme Court after the Court of Appeals asked the justices – through a process known as certification – to resolve a procedural matter and the legal question concerning the validity of Mares’ waiver of the right to counsel.

In today’s opinion, the justices clarified the framework for certification of legal issues from the Court of Appeals to the Supreme Court. The justices outlined how the Court of Appeals is to determine whether it can decide a legal issue or should certify the matter to the Supreme Court.

“First, we explain that the Court of Appeals is bound by our precedent that directly controls an issue. If our directly controlling precedent is in conflict with later United States Supreme Court precedent, then the Court of Appeals should certify the matter to us under Section 34-5-14(C). However, if our precedent does not directly control an issue, then the Court of Appeals is free to rule on that issue.”

The Court ordered Mares’ case back to the Court of Appeals to resolve other remaining issues.

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To read the decision in *State v. Mares*, No. S-1-SC-38948, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/522269/index.do>