

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA  
Division No. 3

STATE OF WEST VIRGINIA

Vs.

FELONY NO: 20-F-63

CESAR FELIX,  
Defendant.

**ORDER GRANTING DEFENDANT'S MOTION TO SUPPRESS DNA AND  
DEFENDANT'S STATEMENT**

On the 13th day of July, 2020 the State appeared by Assistant Prosecuting Attorney Stephen S. Fitz and the defendant appeared in person and through counsel, Matthew Brock, before the Honorable Judge Philip Gaujot, for the purpose of addressing a pre-trial motion to suppress the Defendant's Statement and DNA results.

The Defendant moved to suppress the Defendant's statement based on the Defendant never being advised of his Miranda rights prior to participating in an interview. The Defendant also asserted that the interpreter, a friend and family member of the Defendant's, acted beyond her scope as an interpreter.

The State filed a response indicating that the Defendant voluntarily came to the police station with his friend and family to give a statement, knowing that the police were investigating a sexual assault, that he was never in custody, and voluntarily provided a DNA sample both orally and in writing and therefore Miranda warnings were not applicable. The Defendant came in with his baby and his own translator and left after the interview. The State asserted that Miranda was not applicable as it was a voluntary non-custodial statement.

After due consideration of the written motion and response by the State and the testimony of the officer and the Defendant's translator, the Court makes the following findings:

1. The Defendant did not understand his constitutional rights and was not advised prior to the interview that he was a suspect in sexual assault, but only that he was advised that a sexual assault was being investigated by the detective prior to coming in for an interview.

2. The translator, a family friend brought in by the Defendant, exceeded her duty as the Defendant's translator by asking questions of the Defendant during the interview.

3. The Defendant was not fully disclosed prior to the interview the full nature of the investigation and that he was a possible suspect only that the Detective was investigating a sexual assault. The Defendant was not told he could leave at any time or end the interview at any time.

4. Although the defendant signed a voluntary permission form to provide his DNA, and although the Defendant and his translator went over the permission form together, the Court finds Defendant did not fully understand his constitutional rights as he was not advised of them by the Detective.

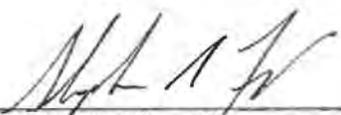
5. The Defendant did not voluntarily, knowingly or intelligently waive his right to refuse a search of his person for the DNA because he was not told he could refuse.

WHEREFORE, the Court does hereby grant the motion to suppress by the Defendant and ORDERS that the results of the DNA test and the Defendant's Statement be suppressed.

All until further Order of the Court.

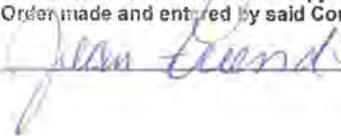
ENTER: 7/16/2020

  
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JUDGE PHILLIP GAUJOT

  
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Stephen S. Fitz, APA  
Bar No: 6584

  
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Mathew Brock, Defense Counsel  
Bar No: 11766

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WEST VIRGINIA, SS:  
I, Jean Friend, Clerk of the Circuit/Family Court of  
Monongalia County State aforesaid do hereby certify  
the attached ORDER is a true copy of the original  
Order made and entered by said Court.  
  
\_\_\_\_\_  
Circuit Clerk