IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM,	)	Supreme Court Case No. **CRA97-017**
	)	Superior Court Case No. **CF149-95**
Plaintiff-Appellant,	)	
	)	
vs.	)	**OPINION**
	)	
DANIEL F. HUALDE,	)	
EDWARD J. AGUERO,	)	
	)	
Defendants-Appellees.	)	
	)	

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Appeal from the Superior Court of Guam

Argued and Submitted on October 6, 1998

Hagåtña, Guam

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BEFORE: PETER C. SIGUENZA, Chief Justice, JANET HEALY WEEKS and EDUARDO A. CALVO, Associate Justices.

SIGUENZA, C.J.:

[1] The issue raised in this appeal is whether the trial court committed error when it suppressed Appellees' statements to the Guam Police Department (GPD) upon finding that the Appellees did not make a knowing, voluntary and intelligent waiver of their *Miranda* rights despite rendering a decision, in an earlier motion to suppress, that the Appellees did make a knowing, intelligent and voluntary waiver. We find that the trial court abused its discretion by essentially re-litigating an issue it had already decided in the earlier motion to suppress without justification; and that it erred in ruling that the respective confessions and video re-enactments should be suppressed.

FACTUAL AND PROCEDURAL BACKGROUND

[2] On or about September 28, 1990, a Korean male was beaten to death at a local beach. The crime remained unsolved until a break in the case occurred five years later and information had been received of the involvement of Edward Demapan in the homicide. On March 28, 1995, Appellee Hualde was arrested along with Edward Demapan at the construction site of a department store. Drug paraphernalia was found in the vehicle that they were in and they were brought down to the Guam Police Department (GPD) headquarters at Pedro's Plaza for questioning. Demapan subsequently provided a statement to officers of the involvement of Hualde and Appellee Aguero in the 1990 homicide.

A. Hualde's Statements

[3] Hualde was advised of his *Miranda* rights and had executed a Custodial Interrogation Rights

Form indicating that he understood and waived his rights. GPD officers proceeded to interview him. Hualde testified that, although he thought he would be questioned about a drug charge, he was initially told that he was being held as a suspect for a beating. Hualde, at first, denied any involvement in any kind of beating; however, he then gave information of an assault on a Korean male which ultimately concluded at the homicide crime scene. He prepared a written statement. An hour later, Hualde provided a more detailed written statement of the incident. He was thereafter charged with Murder. Finally, Hualde provided a re-enactment of the incident that was video-taped by the GPD.

B. Aguero's Statements

[4] Appellee Aguero was also arrested on March 28, 1995. He was advised of his *Miranda* Rights via the Custodial Interrogation Rights Form and he executed the waiver provision. Aguero initially denied any knowledge or involvement in the 1990 homicide and a written statement reiterating his position was prepared for him by the interviewing officer upon Aguero's request. The next day, an officer allowed Aguero and Hualde to meet with each other for a brief period. Afterwards, Aguero requested to speak with the police and then proceeded to provide the police with a detailed account of the 1990 incident. The interview was tape-recorded at Aguero's request. He later provided a re-enactment which was also video-taped.

[5] On April 6, 1995, an Indictment was returned and the Appellees were charged with Aggravated Murder (As a First Degree Felony), and with Conspiracy to Commit Aggravated Murder (As a First Degree Felony).[1] On May 11, 1995, Hualde sought to suppress the various incriminating

[1]Each of the above-mentioned charges was accompanied by four counts of the Special Allegation of the Possession and Use of a Deadly Weapon in the Commission of the respective felonies.

statements given to officers of the GPD. Hualde's motion to suppress was premised on the theory that his waiver was procured by promises made to him by the police, that the police had instructed him as to the content of his written statement, that he was coached by the officers when he provided the videotaped re-enactment, and that he was under the influence of a controlled substance. Shortly thereafter, Aguero filed a motion to suppress that was premised on the theory that promises were made by the police to secure his confessions. The primary focus of each of the motions was the issue of whether the respective statements of the Appellees were made after a knowing, voluntary and intelligent waiver of their *Miranda* rights.

C. First Suppression Hearing

[6] An evidentiary hearing on Aguero's motion was conducted on July 26, 1995.[2] The court denied Aguero's motion based on his opportunity to hear the testimony and observe the demeanor of the witnesses. The judge indicated a concern as to the credibility of the officers with respect to how the advisement of rights was administered and how the waiver was obtained and that the case may not have gone forward had the testimony of the officers been the only evidence presented to the court[3]. However, the court, after its consideration of his testimony and tape-recorded confession, was convinced that Aguero was able to make a knowing, voluntary and intelligent waiver of his rights.[4]

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[2]A clinical psychologist (Dr. James Kiffer) and officers of the Guam Police Department, specifically, Roy Manibusan (the officer who had conducted the interview of Aguero) and Agnes Blas (who assisted in Aguero's interview and was a witness to a brief exchange between the Appellees), and the Appellee Aguero were called to the stand and were subject to direct and cross examination by the parties and the court below.

[3]Transcript on Appeal, Vol. I of VII at 182-4

[4]*Id.*

[7] The evidentiary hearing on Hualde's motion began on August 1, 1995.[5] At the end of the hearing on August 3, 1995, the court was informed that Hualde would be entering a change of plea. Subsequently, it appeared that he did not want to change his plea and new counsel was appointed to represent him.

[8] Approximately five months later, on January 24, 1996, the evidentiary hearing continued on Hualde's motion to suppress with Hualde represented by new counsel. After the hearing, the court ruled that Hualde's waiver was knowingly, voluntarily, and intelligently made. The court was unconvinced that his ability to make such a waiver was negatively impacted by the use of crystal methamphetamine or by any tricks or lies by the police.[6] The court did not prepare a written decision and order for either of the Appellees' motions and neither Appellee had filed a motion for rehearing or reconsideration of the denials of their respective motions.

D. Second Motion to Suppress

[9] On March 6, 1997, Appellee Hualde filed another motion to suppress on the basis that his due process rights were violated by the government's failure to electronically record his interrogation. On March 31, 1997, Appellee Aguero joined the motion. The court below conducted an evidentiary hearing beginning on July 23, 1997. Officers Santos, Toves, Carbullido, Quinata, Blas, and both Appellees testified at the hearing. Officer Rick Flores, a supervisor of the officers,

[5]GPD officers Joseph Leon Guerrero (involved in the arrest of Appellee Hualde and the discovery of crystal methamphetamine), Agnes Blas (who had monitored the Appellees), Eric Toves (regarding the video re-enactment), Peter Santos (regarding the arrest of Appellee), Frederick Quinene (test results on vehicle), Lawrence Quichocho (on a polygraph test performed upon the informant), Joseph Carbullido and Daniel Quinata (Appellee Hualde's interrogating officers) were called to the stand and subjected to direct and cross examination by the parties and the court below. Hualde also took the stand on his own behalf.

[6]Transcript on Appeal, Vol. IV of VII at 94

was also called. He had not testified previously at either Hualde's or Aguero's earlier suppression hearings.

[10] After the witnesses were subjected to direct and cross examination by the parties and the court, the judge orally ruled on the motion and suppressed the statements and tapes on August 1, 1997, as to both Appellees. The court specifically indicated that its decision was not based on the premise that a Constitutional right was denied by the failure to electronically record the interviews and interrogations[7]. The court stated that it was "gravely, gravely, gravely concerned about the voluntariness of the two confessions and the tapings."[8] As to Hualde, the court seemed concerned with how the line of questioning by the police made the transition from drugs then to assault then to a beating and finally to a murder.[9] As to Aguero, the court seemed to believe that the police engaged in some coercion by allowing Hualde and Aguero to speak with each other.[10]

[11] On October 14, 1997, the court issued its Findings of Fact and Conclusions of Law. It was specifically addressed to Hualde's motion and apparently clarified the basis for the suppression of his confession and re-enactment. The court, although acknowledging that the issue of whether a suspect must be aware of all the crimes about which he will be questioned had been decided by the United States Supreme Court in *Colorado v. Spring*, 479 U.S. 564, 107 S.Ct. 851, (1987), sought to distinguish the instant case from the facts of *Spring*. Upon that distinction, the court then proceeded to advocate the reasoning of the dissent in *Spring* and of the lower Colorado courts and held that Hualde should have been advised that he was being questioned about a homicide, or in the

[7]Transcript on Appeal, Vol. VII of VII at 81

[8]*Id.* at 82

[9]*Id.* at 82-83

[10]*Id.* at 84

alternative, that he should have been re-*Mirandized* before questioning him on an unrelated crime.

ANALYSIS

[12] Appellant, the People of Guam, appeals the trial court's order granting the motion to suppress evidence pursuant to Title 8 of the Guam Code Annotated Section 130.20(a)(6) (1993). This court has jurisdiction over the matter pursuant to 7 GCA § 3017(b) (1994) and 8 GCA § 130.60 (1993).

[13] The effect of the actions of the court below can be viewed in two alternative ways. Firstly, that the court's actions amounted to a reconsideration of its earlier ruling and secondly, that it could be viewed as a change in the law of the case.[11] Whether to reconsider a suppression order at trial is reviewed for abuse of discretion. *United States v. Buffington*, 815 F.2d 1292, 1298 (9th Cir. 1987). Similarly, the district court's denial of a motion to reconsider and to reopen a suppression hearing is reviewed for an abuse of discretion. *United States v. Hobbs*, 31 F.3d 918, 923 (9th Cir. 1994). Under the "law of the case" doctrine, a court is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case. *See United States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997)(citing *Thomas v. Bible*, 983 F.2d 152, 154 (9th Cir. 1993). The doctrine is not a limitation on a tribunal's power, but rather a guide to discretion. *Id.* (citing *Arizona v. California*, 460 U.S. 605, 618, 103 S.Ct. 1382, 1391 (1983)). A court has discretion to depart from the law of the case where: 1) the first decision was clearly erroneous; 2) an intervening change in the law has occurred; 3) the evidence on remand is substantially different;

[11]Procedurally, the instant case involves the denial of a motion to suppress where the issue of the voluntariness of a waiver was dispositive and a later ruling in total contradiction with the earlier one. Appellant argues that because there were no significant differences in the evidence between the two hearings when it came to the issue of the waiver, the court was not justified in reversing its earlier denial of the motions; and that the Appellees have had the opportunity to get a "second bite" and re-litigate the issue of the effectiveness of the waiver.

4) other changed circumstances exist; or 5) a manifest injustice would otherwise result. *Id*. Failure to apply the doctrine of the law of the case absent one of the requisite conditions constitutes an abuse of discretion. *Id*. *See also United States v. Tham*, 960 F.2d 1391, 1397 (9th Cir. 1992), *and United States v. Estrada-Lucas*, 651 F.2d 1261, 1263-5 (9th Cir. 1980).

[14] While the court below felt justified that an evidentiary hearing was needed because of the passage of time, the relative age of the case, and its desire to move it forward to trial, it is clear that the Appellant was prejudiced by the procedure used by the court. This is so, especially considering the trial court's unwillingness to review the tapes of the earlier proceedings to re-acquaint itself with the evidence that had previously been adduced and that the basis of the Appellees' second motion was considerably narrower, ie., whether the due process rights of the Appellee's were violated by the government's failure to record the interrogation. It would seem to us that the very same evidence presented at the first hearings would be presented at the later proceeding and that the interests of judicial economy would have been better served to do such a review rather than duplicate what had already been placed before it. *See Buffington*, 815 F.2d at 1298.[12]

[15] Additionally, Appellees' second motions to suppress were filed more than one year after the court had already denied their first motions. Neither of the Appellees moved for a reconsideration

[12]In *Buffington*, the position of the parties was reversed in that the defendants' motion to suppress was granted then subsequently denied at a later hearing. On appeal, the defendants challenged the trial court's order granting reconsideration of the suppression motion and the order which denied suppression. The defendants argued that it was error to change the ruling since the government had not presented new evidence or additional facts which would justify reversing the prior decision and that reopening it impermissibly gave the prosecution a "second bite" and a chance to do later what it ought to have done earlier. *Buffington*, 815 F.2d. at 1297. The Ninth Circuit Court of Appeals disagreed because it was of the opinion that the earlier hearing did not constitute a plenary suppression hearing. *Id.* Even if the earlier hearing could have been characterized as a suppression hearing, reversal would be unwarranted and noted that it had previously approved the propriety, for reasons of judicial economy, of a district judge's reconsideration of a suppression order. *Id.* at 1298. The court observed that there had been no showing that the procedure followed by the district court prejudiced the defendants or that any witnesses disappeared in the intervening period of time or that there was any indication that the government acted merely to delay the proceedings. *Id.*

of the court's rulings on their respective motions; yet, they were allowed to file the second motion under the guise that the Appellees had suffered a particular violation of their due process right. But the issue that was the basis of the second motion to suppress was explicitly disregarded by the court below. The trial court rested its decision on the effectiveness of the waiver; however, it had never expressed a belief that its earlier decision may have been mistaken. In fact, the court never sought to reconcile its decision that the Appellees' waivers were not knowingly, intelligently and voluntarily made with its earlier ruling that the waivers were effective. **[16]** Moreover, there was no assertion that the first decision was clearly erroneous; nor was there an intervening change in the law which necessitated the reconsideration of its ruling on the issue; nor was the evidence from the second hearing substantially different from the first; nor did some other changed circumstances exist; finally, no manifest injustice would have resulted if the earlier finding was not repudiated. *See Alexander*, 106 F.3d at 876.

[17] For the reasons above, we find that the trial court abused its discretion by essentially reconsidering and re-opening an issue it had already decided and subsequently ruling contrary to the earlier decision without justification.

SUPPRESSION OF STATEMENTS

[18] Additionally, we hold that the trial court erred in finding that Appellees' confessions and video re-enactments should be suppressed because they did not make a knowing, voluntary, and intelligent waiver of their *Miranda* rights.

[19] Generally, motions to suppress are reviewed *de novo*. *United States v. Noushfar*, 78 F3d. 1442, 1447 (9th Cir. 1996); *United States v. Manning*, 56 F3d 1188, 1196 (9th Cir. 1995); *United States v. Becker*, 23 F3d 1537, 1539 (9th Cir. 1994); *United States v. Khan*, 993 F.2d 1368, 1375 (9th Cir. 1993). The trial court's factual findings are reviewed for clear error. *Noushfar*, 78 F.3d at 1447. The voluntariness of a waiver of *Miranda* rights is reviewed *de novo*. *United States v. Huynh*, 60 F.3d 1386, 1387-88 (9th Cir. 1995); *United States v. Doe*, 60 F.3d 544,546 (9th Cir. 1995); Whether the decision was knowing and intelligent is reviewed for clear error. *Doe*, 60 F.3d at 546.

[20] The Fifth Amendment of the United States Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself." This privilege "is fully applicable during a period of custodial interrogation" *Miranda v. Arizona*, 384 U.S. 436, 460-461, 86 S.Ct. 1602, 1620-1621 (1966). In *Miranda*, the Court concluded that "without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." *Id*. at 467, 86 S.Ct. at 1624. Accordingly, the Court formulated the now-familiar "procedural safeguards effective to secure the privilege against self-incrimination." *Id*. at 444, 86 S.Ct. at 1612. Consistent with this purpose, a suspect may waive his Fifth Amendment privilege, "provided the waiver is made voluntarily, knowingly and intelligently." *Id.*

Hualde

[21] After the evidentiary hearing, the court below granted Hualde's motion to suppress, not on the premise that a constitutional right was denied, but rather on the basis that it was concerned with

the voluntariness of the waiver of Hualde's constitutional rights.[13]

[22] The court below acknowledged the United States Supreme Court case of *Colorado v. Spring*, 479 U.S. 564, 107 S.Ct. 851 (1987), as having dealt with the issue of whether a suspect must be made aware of all of the crimes for which he will be questioned. But to escape the holding of that case, the court below sought to distinguish the facts of *Spring* with the facts of the instant case; however, a review of the essential facts of both cases indicates that they are indistinguishable.

[23] In *Spring*, the victim, Daniel Walker, was shot and killed in February 1979 during a hunting trip in Colorado. Shortly thereafter, an informant told agents of the Bureau of Alcohol, Tobacco, and Firearms (ATF) that the defendant, Spring, was engaged in the interstate transportation of stolen firearms and that the defendant had discussed his participation in the Colorado killing. Based on the information received, ATF agents set up an undercover operation to purchase firearms from the defendant. On March 30, 1979, they arrested the defendant during an undercover purchase in Kansas City, Missouri. An ATF agent advised defendant of his *Miranda* rights at the scene of the arrest and he was re-advised a second time after he was transported to the ATF office in Kansas City. Defendant signed a written form stating that he understood and waived his rights and that he was willing to make a statement and answer questions. The agents first questioned defendant about the firearms transactions that led to his arrest. They then asked defendant if he had a criminal record. The defendant admitted that he had a juvenile record for shooting his aunt when he was ten years old.

[13]The trial court's articulation, on August 1, 1997, of the reasons for finding that the confessions were not voluntary was difficult to follow. In one respect, the court was stating that the testimony of the police witnesses was so contradictory that he could not believe anything that they had said. On the other hand, had the interrogations been recorded the court could have resolved the issue in favor of the prosecution. The written Findings of Fact and Conclusions of Law, however, sheds light on the justification behind the court's decision to suppress the confessions and video re-enactments. The court held that a defendant should be entitled to know of the specific crimes for which he will be questioned before he could effectively waive his *Miranda* rights or alternatively, that the police should re-*Mirandize* a suspect before questioning him on an unrelated crime.

The agents then asked the defendant if he had ever shot anyone else and defendant admitted that he had. The agents then began questioning defendant about the Colorado killing which he denied and the interrogation ceased. He was subsequently questioned by Colorado authorities and confessed to the murder. The defendant sought to have the later confession suppressed on the basis that it was the illegal "fruit" of his March 30, 1979, statement wherein he made an invalid waiver of his *Miranda* rights. The Colorado Court of Appeals agreed with the defendant and reversed his conviction which the Colorado Supreme Court affirmed.

[24] The U.S. Supreme Court held that a suspect's awareness of all the possible subjects of questioning in advance of interrogation is not relevant to determining whether the suspect voluntarily, knowingly, and intelligently waived his Fifth Amendment privilege. *Spring*, 479 U.S. at 577, 107 S.Ct. at 859. It found that the defendant's decision to waive his Fifth Amendment privilege was voluntary; that there was no coercion of a confession by physical violence or other deliberate means calculated to break his will. *Id*. at 573-574, 107 S.Ct. at 857. The Court also found that there was no doubt that the defendant's waiver was knowingly and intelligently made, that is, that he understood that he had the right to remain silent and that anything he said could be used as evidence against him. *Id.* at 574, 107 S.Ct. at 857. It observed that the Constitution does not require that a criminal suspect know and understand every possible consequence of a waiver of the Fifth Amendment privilege. *Id*. The Court stated that the Fifth Amendment's guarantee is both simpler and more fundamental: a defendant may not be compelled to be a witness against himself in any respect. *Id.*

[25] Like the defendant in *Spring*, who was initially arrested for an illegal firearms purchase and not a homicide, Hualde was initially brought in, not on a homicide but on a possible drug charge. Similarly, Hualde was not informed that the subject of interrogation was a homicide before

advisement of the *Miranda* rights was made and like the defendant in *Spring*, Hualde executed a written form stating that he understood his rights and agreed to waive them.[14]

[26] The only factual distinction that the Superior Court below drew between *Spring* and the instant case was that the law enforcement personnel in *Spring* did not know of his possible involvement in a murder; and with no other factual distinction, the court proceeded to embrace the reasoning of the dissent and lower Colorado courts. This distinction is a mis-statement of the facts of *Spring*. In *Spring*, the ATF agents were aware of his involvement in a homicide in Colorado from an informant. *See Spring*, 479 U.S. at 566, 107 S.Ct. 853. This mis-statement of the facts of *Spring* cannot justify the lower court's disregard for the holding of a case directly on point to the issue before it.

[27] In its analysis, the trial court below agreed with the reasoning of both the *Spring* dissent and that of the lower Colorado courts that the failure to inform the Appellees that they would be questioned about the murder constituted trickery and deceit by the police. The court offered this argument as the justification for its ruling to suppress the confessions and re-enactments. This very same argument was rejected by the court in *Spring* when it stated that "[T]his Court has never held that mere silence by law enforcement officials as to the subject matter of an interrogation is "trickery" sufficient to invalidate a suspect's waiver of *Miranda* rights, and we expressly decline to so hold today." *Spring*, at 576, 107 S.Ct. 858.

[28] By disregarding controlling precedent, the lower court erred by finding that Hualde's waiver of his *Miranda* rights was not made knowingly, voluntarily and intelligently because the police failed to inform him of the subject of the interrogation.

[14]There is no dispute that Appellee Hualde's statement at issue was obtained during a "custodial interrogation" within the meaning of *Miranda*.

Aguero

[29] We also assign error to the trial court's ruling that Aguero's confession and video re-enactment should be suppressed because the police engaged in coercion by allowing him to speak with Hualde and, therefore, he could not have made a knowing, voluntary, and intelligent waiver of his *Miranda* rights.

[30] A statement is not "compelled" within the meaning of the Fifth Amendment if an individual "voluntarily, knowingly and intelligently" waives his constitutional privilege. *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612 (1966). The inquiry whether a waiver is coerced has two distinct dimensions:

> First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the 'totality of the circumstances surrounding the interrogation' reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.

Moran v. Burbine, 475 U.S. 412, 421, 106 S.Ct. 1135, 1141 (1986)(quoting *Fare v. Michael C.*, 442 U.S. 707, 725, 99 S.Ct. 2560, 2572 (1979)). Coercive police activity is a necessary predicate to the finding that a confession is not "voluntary" within the meaning of the Due Process Clause of the Fourteenth Amendment. *Colorado v. Connelly*, 479 U.S. 157, 167, 107 S.Ct. 515, 522 (1986). Absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law. *Id*. at 164, 107 S.Ct. at 519. Indeed, the most outrageous behaviour by a private party seeking to secure evidence against a defendant does not make that evidence inadmissible under the Due Process Clause. *Id.* at 166, 107 S.Ct. at 521.

[31] In the instant case, the record is devoid of any evidence of coercion of a confession by physical violence. However, the court below characterized the police's act of allowing Hualde to speak with Aguero as the coercion which militates against finding that Aguero effectively waived his privilege not to incriminate himself.[15] Aguero had not provided any sort of confession until he had spoken to Hualde. Thus, in order to attribute Hualde's acts to police conduct, the inquiry becomes whether Hualde can be fairly said to have been an agent of the police.

[32] In *United States v. Pace*, 833 F.2d 1307 (9th Cir. 1988), Pace had been charged with robbery and a warrant issued for his arrest. A month later, he had been arrested for an unrelated traffic violation in Reno, Nevada, and was placed in a cell that he shared with another individual named Axtell. That same day, Pace confessed the robbery to Axtell who relayed this information to the FBI The confession was admitted and he was convicted. On appeal, he argued to the Ninth Circuit that his rights under the Fifth Amendment were violated when Axtell elicited his confession without first giving him *Miranda* warnings because Axtell was acting as a government agent. *Id.* at 1312. The court rejected his contention by observing that there had been no pre-existing agreement between Axtell and the police or FBI. *Id.* at 1313. The court held Axtell had acted on his own initiative in obtaining Pace's confession and that there was no *quid pro quo* underlying Axtell's relation with the government. *Id.*

[33] Likewise, our review of the record in the instant case shows that it was Hualde who had asked the supervising police officer if he could talk to Aguero.[16] It does not reveal that there had been an agreement by Hualde and the police to act as an agent for the police nor that he would

[15]Transcript on Appeal, Vol. VII of VII at 84

[16]Transcript on Appeal, Vol. VII of VII, at 38-39

receive some benefit from getting Aguero to confess.

[34] In conclusion, because there is nothing in the record to suggest acts of coercion attributable to the police, the court below committed error in finding that Aguero had been subjected to coercion by the police which rendered his waiver of *Miranda* involuntary.

CONCLUSION

[35] Based on the foregoing, the trial court's order suppressing the confessions and video re-enactments of the Appellees is REVERSED and the matter is REMANDED for further proceedings not inconsistent with this opinion.

Nunc pro tunc to October 6, 1998.

JANET HEALY WEEKS
Associate Justice

EDUARDO A. CALVO
Associate Justice

PETER C. SIGUENZA
Chief Justice