STATE OF NEW HAMPSHIRE
SUPERIOR COURT

Rockingham, ss.

STATE OF NEW HAMPSHIRE

v.

GREGORY BRUNO

218-2015-CR-586
218-2016-CR-602
218-2016-CR-971
218-2016-CR-1462

ORDER

The matters before the court are three suppression motions filed by defendant Gregory Bruno (Docket Documents 70, 71 (as supplement by 79) and 72). For the reasons set forth below, all three motions are DENIED.

II. Motion To Suppress No. 2
(Jail Investigation)

A. Overview

Mr. Bruno was a pretrial detainee at the Rockingham County House of Corrections in August, 2015 when he was interviewed by a Department of Corrections Lieutenant regarding a missing cell phone. Mr. Bruno moves to suppress his statements during this interview on the grounds that:

A. He was never warned of his Miranda rights; and

B. His statements were compelled because he might have been punished had he chosen to assert his right to remain silent.

The court finds that:

A. Mr. Bruno was not entitled to Miranda warnings under either the State or Federal Constitution because his interview was not custodial as that term is used in Miranda jurisprudence. See, State v. Ford, 144 N.H. 57, 63–64 (1999) ("[W]hen an individual is incarcerated for an offense unrelated to the subject of his interrogation, custody for Miranda purposes occurs when there is some act or circumstance that places additional limitations on the prisoner."); State v. Dorval, 144 N.H. 455, 456–57 (1999); and

B. Mr. Bruno's statements were not compelled because he did not assert his constitutional right to silence during the interview. See Rogers v. United States, 340 U.S. 367, 370–71 (1951) ("If petitioner desired the protection of the privilege against self-incrimination, she was required to claim it. . . . The privilege 'is deemed waived unless invoked.'"); McBayne v. Pugh, 85 Fed. Appx. 109, 111 (10th Cir. 2003)

(unpublished) (denying prisoner's claim that he was disciplined for remaining silent during a prison investigation because "[the prisoner] did not invoke his Fifth Amendment rights at the time of his initial questioning and he may not resurrect them now.").

B. Facts

The police investigation described above culminated with Mr. Bruno's arrest in May 2015. Mr. Bruno had been a pretrial detainee at the Rockingham County House of Correction since his arrest. He had been detained for close to four months when he was interviewed by a County Department of Corrections lieutenant on August 30, 2015.

The lieutenant served as the Chief of Safety and Security for the house of correction. His job responsibilities included conducting internal investigations related to both staff and inmate conduct.

The lieutenant was informed that a corrections officer lost his cell phone while he was on duty on one of the housing blocks. Although the phone had been recovered, it was used to place a 911 call. The State alleges in its Objection, and the defense has not contested, that the 911 caller falsely claimed that there was a fire at Mr. Bruno's home in Raymond.

The fact that a corrections officer's phone was lost on a housing unit was a matter of great concern to the lieutenant. Corrections officers are not allowed to bring their phones to areas of the facility where inmates are found. They are required to secure their phones in lockers.

Accordingly, the lieutenant initiated an investigation into both (a) the corrections officer's conduct and (b) the apparent misuse of the officer's phone by an inmate. He did so independent of any police investigation into the 911 call.

The corrections officer told the lieutenant that he brought his phone to the pretrial unit where Mr. Bruno lived. Mr. Bruno was granted the privilege of serving as one of two “tier runners” for the unit. As such, he had access to the laundry room on the unit.

The lieutenant then looked at video from the unit for the relevant time period. He observed Mr. Bruno go to the laundry room where the corrections officer left a small bag. The lieutenant described the bag as a “gym bag” with the word “corrections” on the side. Corrections officers use these bags to transport personal items such as their lunches. The officer involved in this case left his cell phone in his bag.

The lieutenant then observed Mr. Bruno leave the laundry room with his hands in his waistband. It appeared from the video that Mr. Bruno was concealing an object in his waistband. Bruno then climbed up the stairs to his cell.

A short time later, Mr. Bruno emerged from his cell carrying a towel that was wrapped up into a ball. The lieutenant observed that Mr. Bruno had a black item swaddled in the white towel. The lieutenant was able to zoom in on the item when he replayed the video. The item in the towel was generically consistent with a cell phone. Mr. Bruno went to the laundry room with the wrapped up towel.

A few moments later, Mr. Bruno emerged from the laundry room. He still had the towel with him but it was no longer wrapped up. Mr. Bruno was spinning the towel. The item that he earlier had the in the towel must have been left in the laundry room.

After viewing the video the lieutenant called an officer on the unit and asked for Mr. Bruno to be escorted to his office. The lieutenant did not explain the reason for his request. However, this lieutenant routinely asks for inmates to be escorted to his office and there was nothing out of the ordinary about his request to meet with Mr. Bruno.

Per standard operating procedure, Mr. Bruno was accompanied to the lieutenant's office by a corrections officer. He was not handcuffed or restrained in any way during the walk to the lieutenant's office. Mr. Bruno sat in a visitor's chair across a desk from the lieutenant. He was not handcuffed or restrained while he met with the lieutenant. The lieutenant was dressed, as usual, in his jail uniform.

The lieutenant's office door was closed. The lieutenant always closes his office door when he meets with inmates so that other inmates cannot see inside. He does this to protect inmate safety. An inmate who is observed inside the lieutenant's office may be branded by his peers as an informant. Inmate informants are often treated harshly by other inmates. The closed door protects confidentiality and prevents rumors that particular inmates are informants.

The lieutenant's office had a window to the hallway. However, that window was covered with a shade.

The lieutenant did not advise Mr. Bruno that he had the right to remain silent, the right to counsel during the interview or the right to terminate the interview and return to his cell. The lieutenant opined that Mr. Bruno was required to answer his questions and had no right to counsel. The lieutenant believed that if Mr. Bruno did not answer his question he could face a disciplinary charge for "failure to comply."

The State has provided the court with the House of Corrections' Inmate Handbook. See, Exhibit to State's Objection to Defendant's Supplement to Motion to Suppress #2 (Docket Document 115). The disciplinary offense cited by the lieutenant is likely "disobeying to a direct order." This is a generically worded offense that is not specifically directed towards participation in internal investigations. Indeed, no

disciplinary offenses make specific reference to internal investigations. According to the Inmate Handbook, the disciplinary offense of "disobeying a direct order" may result in the loss of good time, punitive segregation or lesser sanctions.

The lieutenant was not asked, and did not testify, whether any inmate has ever been disciplined for remaining silent when asked to participate in an internal investigation. The lieutenant also was not asked whether he perceived a distinction between a simple refusal to answer questions (which could be grounded on the so-called "prison code" against cooperation, or a desire to protect another inmate or pure stubbornness), and a specific invocation of the constitutional privilege against self-incrimination with respect to possible criminal charges.

Nothing in the record suggests that the lieutenant informed Mr. Bruno that he could be disciplined for remaining silent. There is no doubt that Mr. Bruno knew that—in general—he had to comply with direct orders from correctional staff. But the question of whether had to participate as a witness in the investigation never came up.

Mr. Bruno did not raise the issue during the interview. He never suggested that he did not want to answer questions. He never asked to terminate the interview. He never asked to go back to his cell. He never refused to answer any questions. He never once referred to (a) his right to remain silent, (b) his privilege against self-incrimination, (c) "taking the Fifth," or (d) the fact that what he said could result in criminal charges.

Mr. Bruno had no prior dealings with the lieutenant. Therefore, the lieutenant began the interview by introducing himself. The lieutenant then explained his institutional role. He then then told Mr. Bruno that he was investigating a cell phone that

went meant missing. The lieutenant did not let on that he knew the phone had been used to make a call.

Mr. Bruno responded that he heard that an officer lost a cell phone. The lieutenant asked him point blank whether he took the phone. Bruno denied any involvement with the phone.

The lieutenant then confronted Mr. Bruno about what he observed on the video. Mr. Bruno responded by saying that he found the cell phone on his desk in his cell. He insisted that he did not take the phone but rather found it. This caused the lieutenant to chuckle and to say in a pointed but jocular way that the “cell phone fairy” must have left the phone there for Mr. Bruno. The lieutenant kept a calm and professional demeanor but clearly communicated that he did not believe Mr. Bruno’s statement about “finding” the cell phone.

Mr. Bruno then said, “I didn’t make any calls. It was password protected, so I couldn’t make calls.” However, the lieutenant had not asked about calls. The lieutenant asked Mr. Bruno again whether he took the phone. Mr. Bruno again said that he found the phone in his cell on his table. The lieutenant again said that phones don’t just appear.

At this point, Mr. Bruno became somewhat nervous. He stuttered a little and he did not maintain normal eye contact with the lieutenant. He then made a comment about a 911 call being made on the phone. The lieutenant had not introduced the issue of the 911 call into the conversation before this point. However, he followed up on Mr. Bruno’s comment by asking him to elaborate.

Mr. Bruno then said something about his house and a 911 call and a fire. The lieutenant asked Mr. Bruno if he made the call. Mr. Bruno responded that he could not have made the call because the phone was password protected.

Mr. Bruno told the lieutenant that he tried to flush the cell phone down the toilet because he did not want to get caught with it. The cell phone was actually found in the laundry room toilet.

The record does not reflect how long the interview lasted. However, based on the lieutenant's testimony the court infers that the interview could not have been very long. There was no evidence that the lieutenant ever raised his voice or threatened Mr. Bruno with any consequence.

Following the interview, Mr. Bruno was placed in disciplinary lock-up pending a disciplinary hearing. The lieutenant opined that even if Mr. Bruno chose to remain silent, he would have faced disciplinary charges based on what the lieutenant observed on the video tape.

The lieutenant then reached out to the Raymond police department and told them about the interview. However, there is no evidence suggesting that anybody associated with the Raymond Police, the County Attorneys' office or any other law enforcement agency asked anybody at the Department of Corrections to interview Mr. Bruno. The lieutenant conducted an independent internal investigation for institutional reasons.

C. Miranda

I. The Miranda Framework

Under our State and Federal Constitutions, criminal defendants cannot be compelled to testify against themselves. See New Hampshire Constitution, Part 1, Article 15 ("No subject shall be . . . compelled to accuse or furnish evidence against himself."); U.S. Constitution, Amendment V ("No person shall be . . . compelled in any criminal case to be a witness against himself."). This constitutional privilege against self-incrimination spares defendants from "the cruel trilemma of self-accusation, perjury or contempt" and reflects "our preference for an accusatorial rather than an inquisitorial system of criminal justice." Murphy v. Waterfront Commission of New York Harbor, 378 U.S. 52, 55 (1964). It stands as "an exception to the general principle that the Government has the right to everyone's testimony." Garner v. United States, 424 U.S. 648, 658 (1976).

The privilege against self-incrimination applies not only during the defendant's trial, but also prior to trial during custodial interrogation. Miranda v. Arizona, 384 U.S. 436 (1966); Dickerson v. United States, 530 U.S. 428 (2000); State v. Benoit, 126 N.H. 6 (1985); In Re B.C., 167 N.H. 338 (2015). Custodial interrogation can be inherently coercive. Therefore the New Hampshire and Federal Constitutions require, as a prerequisite to every custodial interrogation, that the police first advise the suspect of his or her rights to silence and counsel and then obtain a knowing, voluntary and intelligent waiver of those rights. See Miranda, 384 U.S. at 467:

> . . . [W]ithout 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. In order

> to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored.

See also In Re B.C., 167 N.H. at 692-693.

Although there may be some variance in wording, the warning required by Miranda and its New Hampshire constitutional progeny must explain that (a) the suspect has the right to remain silent, (b) if the suspect chooses to speak then what he says may be used against him court, (c) the suspect may choose to answer questions only with the assistance of counsel, and (d) if the suspect cannot afford counsel for this purpose, counsel will be appointed before questioning takes place.

In the absence of Miranda warnings and a subsequent waiver of Miranda rights, the State may not introduce in its case-in-chief any statements that the defendant made during custodial interrogation. Berkemer, 468 U.S. 420, 429 (1984). In Re B.C., 167 N.H. at 693. Under the New Hampshire Constitution, "the State has the burden of proving beyond a reasonable doubt that the defendant was apprised of his or her constitutional rights and that the subsequent waiver was voluntary, knowing and intelligent." State v. Pyles, 166 N.H. 166, 168 (2014). See also State v. Bushey, 122 N.H. 995 (1982); State v. Duffy, 146 N.H. 648 (2001).[3]

2. Custody—In General

"Custody entitling a defendant to Miranda protections requires formal arrest or restraint on freedom of movement to the degree associated with formal arrest." In re B.C., 167 N.H. at 342. See also McKenna, 166 N.H. 671, 676 (2014); State v.

[3]The Federal Constitution requires proof by a preponderance of the evidence. Colorado v. Connelly, 479 U.S. 157, 168 (1986).

Jennings, 155 N.H. 768, 772 (2007); J.D.B. v. N. Carolina, 564 U.S. 261, 270 (2011); Stansbury v. California, 511 U.S. 318, 323 (1994); Berkemer, 468 U.S. at 428. In the absence of a formal arrest, the court must "determine whether a suspect's freedom of movement was sufficiently curtailed by considering how a reasonable person in the suspect's position would have understood the situation." Jennings, 155 N.H. at 772. See also In Re B.C., 167 N.H. at 693-694. This is an objective test that does not depend on either the suspect's subjective belief or the officer's hidden intentions. See e.g., State v. Steimel, 155 N.H. 141, 146, (2007); Stansbury, 511 U.S. at 323 (1994).

To determine whether a defendant was in custody for Miranda purposes, the court considers the totality of the circumstances including "the suspect's familiarity with [his] surroundings, the number of officers present, the degree to which the suspect was physically restrained, and the interview's duration and character." In Re B.C., 167 N.H. at 693-694.

3. Custody When The Suspect Is Already Incarcerated

In State v. Ford, 144 N.H. 57, 63–64 (1999), the New Hampshire Supreme Court held that a suspect who is already incarcerated when he is interrogated is not in custody for Miranda purposes unless there are additional restraints on his freedom of movement associated with the interrogation itself:

> When a defendant is already incarcerated at the time of interrogation, the traditional custody analysis is inappropriate because, by its very nature, a prison setting restrains the freedom of movement of its inmates. [citation omitted]. Applying the traditional analysis to prisoner interrogation would lead inexorably to a per se rule that all interrogations of prison inmates are custodial. [citation omitted]. We decline to establish such a rule. Instead, we hold that when an individual is incarcerated for an offense unrelated to the subject of his interrogation, custody for Miranda purposes occurs when there is some act or circumstance that places additional limitations on the prisoner. [citation omitted]. There must be some further restriction on the

> prisoner's freedom of movement in anticipation of or associated with the interrogation itself.

see also, State v. Dorval, 144 N.H. 455, 456–57 (1999):

> [W]hen an individual is incarcerated for an offense unrelated to the subject of his interrogation, custody for Miranda purposes occurs when there is some act or circumstance that places additional limitations on the prisoner.

and U.S. v. Ellison, 632 F.3d 727, 731 (1st Cir. 2010) (pretrial detainee was not in custody for Miranda purposes when interviewed by police officers in a jail library); United States v. Chamberlain, 163 F.3d 499, 502–03 (8th Cir.1998); Garcia v. Singletary, 13 F.3d 1487, 1491 (11th Cir. 1994); United States v. Turner, 28 F.3d 981, 983 (9th Cir.1994); United States v. Conley, 779 F.2d 970, 973 (4th Cir.1985).

4. Application Of The Foregoing Principles To This Case

The New Hampshire Supreme Court's decisions in Ford and Dorval compel the court to find that Mr. Bruno was not in custody for Miranda purposes when he was interviewed in the lieutenant's office.

First, Mr. Bruno was not questioned about the crimes for which he was detained. He was instead questioned about purloining and using a cell phone while in pretrial detention.

Second, Mr. Bruno did not experience any constraints on his freedom of movement beyond those that were inherent with his pretrial detention. He was escorted to the lieutenant's office. But he does not suggest that other inmates were allowed to wander over to that area of the facility unescorted. He was not handcuffed or shackled during the walk to the lieutenant's office or at any point during the interview.

Mr. Bruno was interviewed in an office setting. Although the door was closed, that was done to protect Mr. Bruno from being labelled as an informant or cooperator. The lieutenant spoke in a calm and professional manner. He never raised his voice. He never threatened Mr. Bruno. The only show of emotion on the lieutenant's part occurred when he chuckled and suggested that Mr. Bruno's account of "finding" a phone in his cell was unbelievable. To be sure, the lieutenant confronted Mr. Bruno. But this was done in a professional manner and certainly was not suggestive any sort of increased restriction on Mr. Bruno's freedom of movement.

Although the lieutenant testified that he believed Mr. Bruno could be disciplined if he refused to answer his questions, he did not make any reference to possible discipline during the interview. Mr. Bruno was not threatened with transfer to increased custody, administrative segregation, punitive segregation or loss of privileges.

Mr. Bruno never suggested that he wanted to terminate the interview or stop answering questions. Thus, this is not a situation in which a suspect is made to understand that an interrogation will continue, and the he will not be allowed to leave the room, until the interrogator has secured an admission.

For all of these reasons, the court finds that Mr. Bruno was not subjected to custodial interrogation and, therefore, was not entitled to Miranda warnings.

D. Voluntariness

Mr. Bruno claims that his statements during his interview with the lieutenant were compelled and involuntary because he might have been disciplined if he asserted his constitutional privilege against self-incrimination. As the saying goes: "Coulda, woulda,

shoulda—he didn't." Mr. Bruno's claim fails because he never asserted his constitutional privilege.

The privilege against self-incrimination may be asserted whenever the government demands testimonial information from an individual. See, Baxter v. Palmigiano, 425 U.S. 308, 316 (1976):

> [T]he Fifth Amendment not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him not to answer official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings.

(internal quotation marks and citations omitted). Thus, the privilege may be claimed by civil litigants in response to interrogatories, deposition questions or questioning in court, DeMauro v. DeMauro, 142 N.H. 879, 880 (1998), by taxpayers confronted with tax forms, Garner v. United States, 424 U.S. 648, 656 (1976), by bankruptcy debtors, In re McCormick, 49 F.3d 1524, 1526 (11th Cir. 1995), by witnesses summoned before Congressional committees, United States v. North, 920 F.2d 940, 94 (D.C. Cir. 1990), and, as pertinent to this case, by jail and prison inmates during internal investigations and institutional disciplinary hearings. Baxter, 425 U.S. 316 (1976).

In criminal cases, no inference may be drawn from a defendant's decision not to testify. Griffin v. California, 85 S.Ct. 1229 (1965); State v. Ellsworth, 151 N.H. 152 (2004). In civil and administrative cases, however, there is no constitutional prohibition on inferring a reasonable adverse inference from a party's invocation of the privilege. Baxter v. Palmigiano, 96 S.Ct. 1551 (1976); Fisher v. Hooper, 143 N.H. 585, 593, 594 (1999). The purpose of such an adverse inference is not to penalize or sanction the party for the exercise of a fundamental, personal constitutional right, but rather to

protect the rights of the opposing party (or the government in civil regulatory and enforcement proceedings).

Thus, in this case, if—contrary to what actually occurred—Mr. Bruno had asserted his constitutional privilege and remained silent, the lieutenant could have taken a reasonable inference from his silence when he decided to bring disciplinary charges. Furthermore, had Mr. Bruno then requested a disciplinary hearing, the hearing board could have taken a reasonable, factually-grounded inference from Mr. Bruno's silence at the hearing itself. In Baxter the U.S. Supreme Court upheld a prison disciplinary board's use of an inmate's failure to testify where "his silence was given no more evidentiary value than was warranted by the facts surrounding his case." Baxter, 96 S.Ct. at 1558.

What the correctional authorities could not do—and did not do—was to punish Mr. Bruno by punitive segregation or loss of good time for the mere act of asserting his constitutional privilege. See, Lefkowitz v. Turley, 94 S.Ct. 316 (1973) (automatic disqualification from public bidding held to be an unconstitutional penalty for the exercise of Fifth Amendment rights); Garrity v. New Jersey, 87 S.Ct. 616 (1967) (same for automatic removal from office); Spevack v. Klein, 87 S.Ct. 625 (1967) (same for disbarment); Castillo v. Johnson, 592 Fed. Appx. 499, 501 (7th Cir. 2014) (unpublished) ("[P]rison staff may violate the Fifth Amendment if they punish an inmate's silence in and of itself without some other evidence of guilt and the punishment is severe, such as the loss of an earned release date" (internal citation and quotation marks omitted)).

However, not every undesirable consequence that might flow from the assertion of the privilege against self-incrimination amounts to an unconstitutional penalty. In

particular, in McKune v. Lile, 536 U.S. 24 (2002) the U.S. Supreme Court held that prison authorities could decline to provide certain incentives to inmates who refused to abide by a sex offender program rule requiring admission to past offenses. The inmate plaintiff in McKune argued that if he complied with the rule his statements might be used in a future criminal case against him. The incentives that he lost were a personal television set, greater gym access, expanded visiting opportunities, expanded canteen expenditures and the ability to send money to family. At the time of his refusal, the inmate was enjoying those privileges. After his refusal, he was reclassified to a higher custody status and those privileges were revoked.

In McKune the Supreme Court emphasized that the prison authorities had to make classification, programming and rehabilitation decisions. In making such decisions, the prison authorities could legitimately prod sex offenders into treatment and reward them for their efforts at rehabilitation. Thus, the inmate in McKune had the opportunity to participate in the sex offender program and reap the classification benefits of that choice. But he was also free to refuse the programming and forgo the concomitant privileges. The Supreme Court distinguished the use of such privileges as both carrot and stick from the imposition of outright penalties such as the loss of good time or the elimination of parole eligibility. Thus, McKune stands for the proposition that correctional authorities may respond to an inmate's assertion of his privilege against self-incrimination by making rational regulatory decisions relating to the inmate's classification, privileges and programming, but may not punish the inmate through the use of more severe sanctions.

All of this, however, is a completely academic discussion because Mr. Bruno never asserted his constitutional privilege against self-incrimination. The state and federal constitutional privileges are only self-executing during a defendant's criminal trial (at which the State cannot even ask the defendant to testify) and during custodial interrogation (during which the police must advise the suspect of his right to remain silent). In all other contexts, the privilege must be affirmatively claimed or it is waived. Thus, for example, if a witness answers questions in court under subpoena and does not first interpose an objection grounded on his privilege against self-incrimination, the privilege will be deemed waived. This is so despite the fact that the subpoena required the witness to appear and testify under pain of contempt. See e.g., Rogers v. United States, 340 U.S. 367, 370–71 (1951):

> If petitioner desired the protection of the privilege against self-incrimination, she was required to claim it. [citation omitted]. The privilege 'is deemed waived unless invoked.

see also Roberts v. United States, 445 U.S. 552, 560 (1980) (Noting that "Miranda's requirement of specific warnings creates a limited exception to the rule that the privilege must be claimed [and] the exception does not apply outside the context of the inherently coercive custodial interrogations for which it was designed."); Garner v. United States, 424 U.S. 648, 654–55 (1976):

> [I]n the ordinary case, if a witness under compulsion to testify makes disclosures instead of claiming the privilege, the government has not 'compelled' him to incriminate himself. The Amendment speaks of compulsion. It does not preclude a witness from testifying voluntarily in matters which may incriminate him. If, therefore, he desires the protection of the privilege, he must claim it or he will not be considered to have been 'compelled' within the meaning of the Amendment. (internal citations, quotation marks and formatting omitted))

and Kirane v. City of Lowell, 622 F. Supp. 262, 264 (D. Mass. 1985):

> [T]he Fifth Amendment is not self-executing, and its privilege against self-incrimination can be waived if not asserted in a timely fashion. [citation omitted]. This privilege may be waived either by explicit act or by inference. Indeed, a witness who fails to invoke the Fifth Amendment in response to questions where he could have claimed it is deemed to have waived his privilege with regard to all questions on the same subject. [citation omitted]. Simply put, where incriminating facts are voluntarily revealed, the Fifth Amendment privilege cannot be invoked to avoid disclosure of the details.

Moreover, a witness who refuses to answer questions has not claimed the privilege unless he specifically invokes it. While the invocation of the privilege need not be done in a formal, lawyerly fashion, it must be clear that the witness has claimed the privilege. Thus in McBayne v. Pugh, 85 Fed. Appx. 109, 111 (10th Cir. 2003) (unpublished), the U.S. Court of Appeals held that an inmate who refused to cooperate with a prison investigation never invoked his privilege against self-incrimination. Instead, the court found that the inmate relied on a generalized "right" not to cooperate with prison authorities. Therefore, the court found that the Bureau of Prisons did not penalize the defendant for the assertion of his constitutional privilege when it transferred him back to the high security U.S. Prison in Florence, Colorado. Upholding the U.S. District's dismissal of the inmate's lawsuit as "frivolous," the Court of Appeals held that because "[the inmate] did not invoke his Fifth Amendment rights at the time of his initial questioning . . .he may not resurrect them now." Id.

Mr. Bruno, like the inmate in McBayne was a prisoner. Like the inmate in McBayne he was asked to provide information in an internal investigation. Like the defendant in McBayne, Mr. Bruno did not assert his privilege against self-incrimination. He said nothing suggestive or even redolent of the constitutional privilege. Therefore, he waived the privilege.

Unlike the inmate in McBayne, Mr. Bruno answered all of the questions that were put to him. His statements were neither compelled nor involuntary within the meaning of the Fifth Amendment and Part 1, Article 15.

E. Conclusion

Defendant's Motion To Suppress No. 2 is DENIED.

March 16, 2017

Andrew R. Schulman,
Presiding Justice