

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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KA 06-00116

PRESENT: SCUDDER, P.J., HURLBUTT, PERADOTTO, GREEN, AND GORSKI, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

PATRICK J. BUNGO, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (DAVID M. ABBATOY, JR., OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (NANCY A. GILLIGAN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (Elma A. Bellini, J.), rendered November 15, 2005. The judgment convicted defendant, upon a jury verdict, of criminal contempt in the first degree.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law, those parts of the motion seeking to suppress statements made by defendant to his parole officer are granted and a new trial is granted.

Memorandum: Defendant appeals from a judgment convicting him after a jury trial of criminal contempt in the first degree (Penal Law § 215.51 [c]), for making contact with his ex-wife in violation of an order of protection. We agree with defendant that his *Miranda* rights were violated, and thus that County Court erred in refusing to suppress two statements made by defendant to his parole officer. The first statement was made by defendant after he had been arrested and was in custody but before he had received his *Miranda* warnings, and the statement was made in response to questions that were " 'likely to elicit an incriminating response' " (*People v Wearen*, 19 AD3d 1133, 1134, *lv denied* 5 NY3d 834; *see People v Evans*, 294 AD2d 918, 919, *lv dismissed* 98 NY2d 768; *People v Rifkin*, 289 AD2d 262, *lv denied* 97 NY2d 759). The second statement was made at the Monroe County jail, before any *Miranda* warnings had been administered. The record establishes that it also was the result of custodial interrogation inasmuch as it "involve[d] the kind of inherently coercive atmosphere with which *Miranda* was most concerned" (*People v Alls*, 83 NY2d 94, 99, *cert denied* 511 US 1090; *see People v Vila*, 208 AD2d 781, *lv denied* 85 NY2d 867; *People v Connor*, 157 AD2d 739, *lv denied* 76 NY2d 732).

In light of our determination, we do not review defendant's remaining contention.

Entered: March 27, 2009

JoAnn M. Wahl
Clerk of the Court