

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

vs.

CHRISTINE PARKS,

Defendant

:  
:  
: NO. 042-2007  
:  
: CRIMINAL ACTION - LAW  
:  
: OMNIBUS PRE-TRIAL MOTION

**DATE: December 14, 2007**

**OPINION and ORDER**

Before the court for determination is the Omnibus Pre-trial Motion of Defendant Christine Parks filed July 11, 2007. This Opinion and Order will address the Motion to Suppress alleged in the Omnibus Pre-trial Motion. The Motion to Suppress will be granted.

**I. BACKGROUND**

On December 19, 2006, a search warrant was executed at the residence of Frank Sechrist, 1901 Liberty Drive, Loyalsock Township pursuant to an investigation of two controlled narcotics buys organized by the Williamsport Bureau of Police Tactical Narcotics Team. Defendant Christine Parks (hereafter “Parks”) was located inside the residence at the time of the search. Upon being discovered at the residence by police, Parks was searched, handcuffed and transported to City Hall where she was interrogated by Officer Kenneth Mains, (hereafter “Officer Mains”) of the Lycoming County Drug Task Force. The interrogation was recorded by video camera. The following facts are derived from that video. Commonwealth’s Exhibit, #1.

**A. Facts**

Parks was interviewed by Officer Mains alone in the interrogation room. The door to the room remained closed throughout the interview but was unlocked. Throughout questioning Officer Mains’ demeanor was calm and his voice quiet. He sat across from Parks at the

interview table. Upon entering the room, Officer Mains sat down and promptly read Parks her *Miranda* rights. The following conversation took place directly after the reading of Parks' rights:

Mains: This right here is saying, just, do you understand what just (sic) read to you. If you do, then initial here.  
*(Parks initials the paper with no hesitation)*

Mains: Below that is saying, with that in mind, do you want to talk to me without an attorney present. If you do, then initial here, and sign that right there.  
*(Parks pauses for 16 seconds. She does not sign. There are no words spoken from either Mains or Parks.)*

Parks: I have a feeling no matter what I say, you are going to put me in jail.

Mains: I told you, you can help yourself out. My goal is not to put you in jail. But this, if you want an attorney present, that's fine. If you want to talk to me, that's fine. But, you know, all deals, all bets are off. You can call your attorney, he can come and talk to you. But that doesn't mean that I am going to continue to talk to you.

Parks: But if I was, if I was to um-

Mains: *(Interrupting Parks)* All I want's the truth Christine, that's it. The truth shall set you free. That's what they say.

Parks: I know what they say.

Mains: You know the stuff that was in your bedroom, about Jesus and stuff? I imagine you believe the same thing.

Parks: I know I do.

Mains: OK. I'm not looking to jam you up, but if that's what it takes, then I'm going to.

Parks: *(3 second pause, then crying)* I want to go home-

Mains: *(Interrupts Parks)* I understand you do.

Parks: That's the only reason I'd be doing... I can't stand Frank Sechrist. I hate Frank Sechrist. Do you understand me? I hate him.

Mains: Well then let's talk about it. Obviously he's the one that got ya in all of the mess you're in.

Parks: Obviously! In all of it! *(She drops pen on table and pushes it aside. Mains picks up pen and points to where she should sign on the paper.)*

Mains: *(Giving pen back to Parks)* If you want to talk to me, sign your name right there and initial right here. *(Parks signs and initials the paper).*

Ex. #1, 2 minutes, 16 seconds after the conclusion of the reading of *Miranda* rights.

Mains: Thank you.

Parks: I want to go home, I want to go home, I swear to God I'll recant everything!

Mains: All I want's the truth.

Parks: I want to go home, I didn't do nothing. I'm a f\*\*\*ing heroin addict that's all I am.

Mains: I understand, I know.

Parks: You know? And I got stuck to detox and was going to do it by Christmas, you know? Cause I'm tired, I'm over it, and I'm tired of it, it's a joke.

Mains: You're right, it's time you grew up. Well this is a good start right here today.

Parks: I want you to promise me that I can go home.

Mains: Let's talk first, I can't promise you something without you talking to me and telling me what's going on. Was there drugs stolen out of Frank's house at 1801 Liberty drive?

The interview which included self incriminating statements then continued.

The Entire interview from end of *Miranda* reading to last question is 20 minutes 30 seconds.

### **B. Parks' Argument**

Parks argues that due to the impermissible conduct of Officer Mains during her interview, she did not waive her *Miranda* rights knowingly and voluntarily. Parks maintains that all

statements made during her custodial interrogation should be suppressed as violating her rights under *Miranda v. Arizona*, 384 U.S. 436 (1966) as well as her rights against self-incrimination under the 5<sup>th</sup> Amendment of the United States Constitution, and Article I, Section 9 of the Pennsylvania Constitution. Specifically Parks argues that her waiver was not made knowingly and voluntarily because Officer Mains' statements constituted "persuasion and trickery thereby denying the Defendant her right to decide whether or not to waive her rights free from intruding frustration of the police." Defendant's Motion to Suppress, Point 20.

## **II. ISSUE**

The following issue is before the court:

Whether Parks' Miranda Warning waiver on December 19, 2006 was a valid voluntary knowing and intelligent waiver?

## **III. DISCUSSION**

### **A. Standard of Review**

When a motion to suppress evidence has been filed, the Commonwealth bears both the burden of production and persuasion to prove that the challenged evidence was not obtained in violation of the defendant's rights. Pa.R.Crim.P. 581(H); *Commonwealth v. West*, 834 A.2d 625, 629 (Pa. Super. 2003), *app. denied*, 889 A.2d 1216 (Pa. 2005). The Commonwealth bears the burden of establishing by a preponderance of the evidence that the challenged evidence is admissible. *Commonwealth v. Lindblom*, 854 A.2d 604, 605 (Pa. Super. 2005), *app. denied*, 868 A.2d 1198 (Pa. 2005); *Commonwealth v. Smith*, 784 A.2d 182, 186 (Pa. Super. 2001).

A defendant may waive his *Miranda* rights and agree to answer questions or make a statement to police. *Commonwealth v. DeJesus*, 787 A.2d 394, 429 (Pa. 2001), *cert. denied*, 537 U.S. 1028 (2002). The Commonwealth bears the burden of establishing that a defendant knowingly and voluntarily waived his Miranda rights. *Commonwealth v. Kuzmanko*, 709 A.2d

392, 397 (Pa. Super. 1998). The law requires the defendant to have been adequately advised of his *Miranda* warnings and to knowingly, intelligently and voluntarily waive them. See *Commonwealth v. Watkins*, 577 Pa. 194, 843 A.2d 1203, 1213 (Pa. 2003)("[T]he defendant may waive his [*Miranda*] rights, so long as the waiver is the result of a free and deliberate choice rather than intimidation, coercion, or deception, and the choice is made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it.").

The determination of whether a defendant has validly waived his *Miranda* rights depends upon a two-prong analysis: (1) whether the waiver was voluntary, in the sense that defendant's choice was not the end result of governmental pressure; and (2) whether the waiver was knowing and intelligent, in the sense that it was made with full comprehension of both the nature of the right being abandoned and the consequence of that choice. *Commonwealth v. Mitchell*, 588 Pa. 19, 902 A.2d 430, 451 (Pa. 2006). A waiver of *Miranda* rights must be clearly and explicitly made. *Commonwealth v. Bussey*, 486 Pa. 221, 404 A.2d 1309, 1314 (Pa. 1979).

In determining the voluntariness of a waiver of *Miranda* rights, we must look to the totality of the circumstances surrounding the waiver. See *Commonwealth v. Dejesus*, 567 Pa. 415, 787 A.2d 394, 403. This determination is made on a case-by-case basis to determine whether the defendant knowingly, intelligently and voluntarily waives his *Miranda* rights. See *Commonwealth v. Mitchell*, 588 Pa. 19, 902 A.2d 430, 451 (Pa. 2006). Some of the factors to be considered include: the duration and means of interrogation; the defendant's physical and psychological state; the conditions attendant to the detention; the attitude exhibited by the police during the interrogation; and any other factors which may serve to drain one's powers of resistance to suggestion and coercion. *Id.*

“[T]he authorities are not permitted to employ inducements which impair in any way a suspect’s right to his own unfettered evaluation of the need for legal counsel.” *Commonwealth v. Gibbs*, 520 Pa. 151, 553 A.2d 409, 411 (1987). If a defendant’s Miranda rights are violated, the subsequent confessions illicit from the defendant are excluded irrespective of their voluntariness. *Commonwealth v. Templin*. 568 Pa. 306, 795 A.2d 959, 965 (2002).

### **B. Application to the Facts**

In this case, the totality of the circumstances support a finding that Officer Mains impermissibly coerced Parks into waiving her Miranda rights. This coercion is evidenced by the following facts: (1) Parks was involuntarily taken to City Hall in handcuffs and the door to the interrogation room remained closed although not locked during questioning; (2) Parks appears to be emotionally upset in the tape and cries; (3) Parks demonstrated equivocation about waiving her right to speak first to an attorney or remain silent when she hesitated for 16 seconds and then remarked, “I have a feeling that no matter what I say you are going to put me in jail.”; (4) Officer Mains told Parks that if she chose to talk to an attorney instead of talking to him during the present interrogation “all bets” and “all deals” would be “off” and that he would no longer speak to her in that event; (5) After being advised of her rights and requested to waive them, Parks made three specific statements that she wanted to “go home”, which in the context the statements were uttered were assertions of an intent to terminate questioning; (6) Parks attempts to terminate questioning were ignored by Officer Mains as after these assertions Officer Mains without interruption pursued obtaining the waiver and/or further questioning; (7) Officer Mains interrupted and ignored Parks when she tried to ask a question regarding her waiver; (8) Officer Mains attempted to gain the confidence of Parks by stating that he understood Frank Sechrist was responsible for most of the “mess” she was in. Under the

totality of the circumstances, Parks' will and decision to sign a waiver of her rights was overcome by the pressure applied by Officer Mains during custodial interrogation. In making this determination we have considered; (1) The detention conditions and emotional condition of Parks; (2) The inducement by Officer Mains to obtain Parks written waiver; (3) Parks equivocation, her request to go home and Officer Mains' reaction; (4) Officer Mains' attempts to gain Parks' confidence.

### 1. Detention Conditions, Emotional Condition of Parks

Parks was lead against her will to the interrogation room, was in handcuffs, and the interview room door was shut. It was therefore clear to Parks that she was in custody and under interrogation. Parks appears emotionally upset on the video during the Mirandizing portion of the interview. Parks starts to cry when she states that she wants to go home and when she described her dislike for Frank Sechrist. The significance of crying and being obviously emotionally upset has been recognized by other courts to adversely affect a Defendant's voluntary and knowing waiver of the rights to counsel and to refuse interrogation. See, *Commonwealth v. Johnson*, 2007 Pa. Dist. & Cnty. Dec. Lexis 190 (C.P. Chester Co. 2007 concluding the upset emotional state of the defendant was a significant factor in finding defendant's Miranda waiver was found invalid.) Unlike *Johnson* where the defendant went voluntarily to the police station, was not in handcuffs, and the interview door was left open, Parks detention conditions contributed to her emotional condition and subsequent waiver. This is demonstrated in her emotional requests to go home. Overall, Parks emotional state was fragile and in the overall context made her waiver ineffective. As in *Johnson*, this court has had the benefit of seeing the video tape interview of the mirandizing process. This has contributed greatly to the court's ability to assess the true emotional state of the Defendant, far beyond what

the mere transcription of the words can present. Similar to *Johnson*, Parks may have understood her rights but that alone does not validate the waiver.

## 2. Inducement by Officer Mains to obtain Parks Written Waiver

The video tape also demonstrates the impact of the pressure, coercion and inducement used by Mains to secure the signing of the waiver by Parks in the face of her multiple equivocations and general reluctance. The court in *Commonwealth v. Morgan*, 414 Pa. Super. 1, 606 A.2d 467, 469 (1992) held that any inducement on the part of police upon a defendant to sign a waiver “cannot be fairly accepted as a knowing and voluntary waiver.” *Id.* at 7-8. Similarly in *Gibbs* supra, the court held that when a police officer promised the defendant he would tell the district attorney that defendant had cooperated in giving his confession on the spot, “there occurred an inescapable inducement which cannot be condoned under our law.” 553 A.2d at 410-411.

In our case, when Parks begins to hesitate, Officer Mains lets 16 seconds go by and states:

**I told you, you can help yourself out. My goal is not to put you in jail. But this, if you want an attorney present, that’s fine. If you want to talk to me, that’s fine. But, you know, all deals, all bets are off. You can call your attorney, he can come and talk to you. But that doesn’t mean that I am going to continue to talk to you.**

This statement by Mains effectively forces Parks to choose between her right to assistance of counsel and a possible “deal” or assistance from police and prosecutors. When Parks again hesitates, Mains states: “I’m not looking to jam you up, but if that’s what it takes, then I’m going to.” This is a coercive statement which again gives Parks the limited choice of asserting her rights and possibly going to jail or waiving them and receiving some sort of benefit or leniency. After Mains makes these statements, Parks cannot be said to have signed her waiver by her own



“unfettered evaluation of the need for legal counsel.” Mains’ statement evidences both inescapable inducement and coercion pursuant to *Gibbs, DeJesus and Morgan*.

### 3. Parks’ Equivocation request to go home and Officer Mains’ reaction

Further showing that Parks’ will was overcome and her waiver of both counsel and consent to being interrogated invalid, is the fact that she equivocated by pausing, making an ambiguous statement and trying to ask a question which was interrupted and ignored by Officer Mains. “[W]hen the defendant has made an ambiguous statement regarding his right, the police should ask questions to clarify what the defendant meant by his statement or why he made it.” *Commonwealth v. Colon*, 2004 Pa. Super. 88, 846 A.2d 747 (Pa. Super. 2004). After Mains tells Parks where she can sign to effectively waive her rights, she pauses for 16 seconds and states, “I have a feeling no matter what I say, you are going to put me in jail.” This hesitation and ambiguous statement demonstrate that Parks was thinking about whether to waive her rights or not. Instead of asking Parks what she meant by her statement, Officer Mains tells her that if she decides to talk to a lawyer “that’s fine” but then “all deals, all bets are off.” After hearing this Parks tries to ask a question by stating: “But if I was, if I was to um-”. Parks is then interrupted mid-sentence by Mains who says, “All I want’s the truth Christine, that’s it. The truth shall set you free. That’s what they say.” These statements are significant because they show Parks equivocating and Mains ignoring her equivocation and question regarding her rights. Instead of answering her, Mains continues to talk which is evidence that Parks was not left to self-determination decide for herself whether she wanted to waive her rights. The *Johnson* court concluded that because the defendant was very upset, the police officer attempted to gain the confidence of the defendant in order to get defendant’s statement, and the defendant demonstrated hesitation and multiple equivocations about signing a waiver, the

defendant was impermissibly pressured into waiving his rights, *Johnson*, supra. In *Johnson* the Defendant's equivocation was found to exist when he asked how long it would take for an attorney to arrive, not wanting to talk without someone else present, and stating that he believed talking would "make matters worse." *Id.*

Mains also choose to continue talking and ignore the statements of Parks that she wanted to go home. Parks by these statements is equivocating and also, seeking, to terminate the interview. While it is obvious that she was not about to go home because of her having been placed under arrest, the overall context taking consideration her emotional state and other hesitations in signing her rights waiver leads this court to conclude that there was no voluntary surrender of her rights by Parks. Again, this is similar to the situation found in *Johnson*, supra. and again our determination that Parks was not acting of her own volition is greatly assisted through watching the video as was the court in *Johnson*.

This court's initial reaction upon seeing the video, without making an independent review of the legal authority involved, was that Parks was not making a valid waiver. This view has been reinforced as this court has had the opportunity to review the video further and consider the entire context of the interview, particularly the mirandizing portion thereof with the applicable legal principles and authority referenced in this opinion in mind.

#### 4. Officer Mains' Attempts to Gain the Confidence of Parks

Finally, when Parks appears reluctant to sign the waiver, Officer Mains attempts to gain the confidence of Parks thereby persuading her to sign. The court in *Johnson*, found the fact that the police officer attempted to gain the confidence of the defendant to get the defendant's waiver significant. In that case, the court found the officer tried to persuade the defendant to trust him by stating "It's just you and I here, so you know what I mean? If you, if you feel

comfortable with just me, we'll just sit here, just you and I. Alright?" 2007 Pa. Dist. Cnty. Dec. 190. This is similar to the situation in our case where Officer Mains tells Parks that he "understands" Parks dislikes Frank Sechrist. Mains then states: "[w]ell then let's talk about it. Obviously he's the one that got ya in all of the mess you're in." This statement is slightly misleading and is an attempt by Officer Mains to establish a sense of understanding and trust on the part of Parks to have her sign the waiver. While this statement in and of itself may not have been improper when viewed under the totality of the circumstances the statement supports a finding that Parks was not left to make her own free and deliberate choice to waive her rights.

#### **IV. CONCLUSION**

Under the totality of the circumstances, this court concludes that Defendant Christine Parks' waiver of her *Miranda* rights was invalidly obtained by Officer Mains during custodial interrogation. Accordingly Defendant's statements made during the interrogation are excludable and shall be suppressed. Defendant's Omnibus Pre-trial Motion is granted.

**ORDER**

It is hereby ordered that the Omnibus Pre-trial Motion of Defendant Christine Parks filed June 11, 2007 is GRANTED.

Defendant's statements made during her interrogation on December 19, 2006 are SUPPRESSED and shall not be used by the Commonwealth during its case in chief.

BY THE COURT,

William S. Kieser, Judge

cc: District Attorney  
Mary Kilgus, Esq.  
Public Defender  
Janan Tallo, Esq.  
Gary Weber, Esquire (Lycoming Reporter)  
Judges  
Rebecca Penn, Esquire (Law Clerk)