

COMMONWEALTH OF PENNSYLVANIA
v. MELANIE BILGER, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action Nos. 1156, 1168, 1178, 1179-2008

Validity of Miranda Waiver; Psychological Defects

1. The Commonwealth must prove by a preponderance of the evidence that a waiver of Miranda rights is voluntary, knowing, and intelligent.
2. Factors in analyzing the voluntariness of a waiver are the duration and methods of interrogation, the conditions of detention, the manifest attitude of the police toward the accused, and the accused's physical and psychological state.
3. A waiver is knowing and intelligent if it is made with a full comprehension of both the nature of the right being abandoned and the consequences of that choice, and the defendant must also be aware of the general nature of the transaction giving rise to the investigation.
4. A Miranda waiver is evaluated under the totality of the circumstances, and defendants with proven psychological defects are capable of waiving their constitutional rights.
5. The Court found that Bilger's waiver was voluntary, knowing, and intelligent, since she waived her rights without undue government pressure and she understood the nature of the right that she surrendered and the consequences of her choice. Although Defendant is bipolar and suffers from poly-substance dependency, she competently waived her right to remain silent on both occasions during which she gave incriminating statements.

Appearances:

Angela R. Krom, Esq., *Assistant District Attorney*

Stephen D. Kulla, Esq., *Counsel for Defendant*

OPINION

Walsh, J., August 28, 2009

Facts

The Court must decide Melanie Bilger's Omnibus Motion in which she seeks to have statements she made suppressed because she was assertedly not competent to waive her right to remain silent. Bilger contends that, since she is poly-substance dependent and bi-polar and, allegedly, had been unable to take the medicine she was prescribed, the statements she gave to police on November 6 and November 8, 2006 should be suppressed. On August 7, 2009, a hearing was conducted exploring the circumstances under which Bilger gave the statements. Troopers Michael Dick and David Rush testified for the prosecution, and Dr. Chakrabarti, a psychiatrist, testified for the defense. The case is ready for decision.

The Court decides this motion in conformity with Pa. R. Crim. P. 581. The Commonwealth must prove by a preponderance of the evidence that the statements were not obtained in violation of Bilger's rights. Pa. R. Crim. P. 581

Comment. The Court must also make findings of fact and conclusions of law as to “whether the evidence was obtained in violation of the defendant’s rights.” Pa. R. Crim. P. 581(I).

Factual Findings

1. Defendant is charged with a series of burglaries of church properties within Franklin County.
2. On November 6, 2006, at Cumberland County Prison, Troopers Michael Dick and David Rush interviewed Defendant about her role in a series of burglaries for which she was eventually charged.
3. The interview began at 11:43 a.m. in a holding cell at the prison and lasted approximately 45 minutes.
4. Initially, Defendant was crying, because she had just learned that she was not going to be released that day, as she had thought she would be.
5. Defendant told the officers that she was being held in jail on a Franklin County detainer for selling pills to an undercover police officer.
6. Defendant calmed down, agreed to talk to the officers, and signed a waiver of her Miranda rights^[1] after she was read those rights. See Commonwealth’s Exhibit 1.
7. The interview took place in a 10’x14’ room with a bench running around the wall of the room at which Defendant and the two officers sat.
8. Throughout the interview, Defendant demonstrated an appropriate demeanor, remained interested and focused, gave coherent responses, and understood that the officers were interviewing her concerning the church burglaries.
9. Although initially Defendant denied any involvement with the burglaries, she subsequently admitted she had a co-conspirator who was a past boyfriend.
10. The Defendant’s statement implicated her in as many as thirty church burglaries.
11. When Defendant was unable to recall many of the specific churches she had helped burglarize, Defendant agreed to ride around with the police and see if she could identify any churches from memory.
12. On November 8, 2006, Troopers Dick and Peters picked up the defendant at the Prison, and she seemed to be in good spirits, laughing and joking with the officers.
13. After Trooper Dick read Defendant her Miranda rights, she signed another Miranda waiver, and she seemed clear-headed and focused. See Commonwealth’s Exhibit 2.
14. The troopers drove from Greencastle, PA up to Path Valley, and Defendant pointed out various churches she had burglarized.
15. The whole trip took approximately 1.5 to 2 hours to complete.
16. Both troopers indicated that, on both occasions, they observed no indications that Defendant was anything but competent to be interviewed and to waive her right to remain silent.
17. Dr. Chakrabarti was a psychiatrist who evaluates the decision making capacity of geriatric patients; he was not a forensic psychiatrist.
18. Defendant’s self-reporting to various health care professionals constituted the only evidence that she was not on her medications at the time of the interviews with the state troopers. This evidence was incredible.
19. The doctor testified that any time Defendant was off her medications, there was a chance her decision-making could be impaired.
20. Lastly, the doctor stated that there was a possibility that she could have made an informed decision to do so.
21. The Court has accorded little weight to Dr. Chakrabarti’s testimony since it was based largely on Defendant’s incredible self-reporting and because he is not a forensic psychiatrist.

Discussion

Bilger asks the Court to suppress the statements she made to police because she lacked the competency to waive her right to remain silent. The Commonwealth must prove by a preponderance of the evidence that a waiver is voluntary, knowing, and intelligent. *Commonwealth v. Scarborough*, 421 A.2d 147, 153 (Pa. 1980). A waiver is voluntary if "it was an intentional choice made without any undue governmental pressure." *Commonwealth v. Logan*, 549 A.2d 531, 537 (Pa. 1988). Factors in analyzing the voluntariness of a waiver are "the duration and methods of interrogation, the conditions of detention, the manifest attitude of the police toward the accused, the accused's physical and psychological state." *Commonwealth v. D'Amato*, 526 A.2d 300, 305 (Pa. 1987). A waiver is knowing and intelligent if it is "made with a full comprehension of both the nature of the right being abandoned and the consequences of that choice." *Logan* at 537. The defendant must also be aware "of the general nature of the transaction giving rise to the investigation." *Commonwealth v. Harris*, 519 A.2d 505, 506 (Pa. Super. 1986). A Miranda waiver is evaluated under the totality of the circumstances. *D'Amato* at 305. However, "defendants with proven psychological defects are capable...of waiving their constitutional rights and giving voluntary confessions." *Logan* at 537.

Here, although Defendant has proven that she is bipolar and suffers from poly-substance dependence, she still competently waived her right to remain silent. To begin, her waiver was voluntary because she was read her rights before waiving them, the two interviews lasted only 45 minutes and around two hours respectively, the officers remained calm and non-threatening throughout, and the interviews were conducted in a 10'x14' holding cell with a bench around the outside at which all three participants sat and in a police car during a tour of potential burglary sites. Although Defendant was initially crying before the first waiver and interview, she calmed down before she was read her rights and executed her waiver. Indeed, there is simply no credible evidence that defendant's waiver was unintentional; even Dr. Chakrabarti conceded that her choice to waive could have been totally unaffected by her mental illness.

Additionally, her waiver was knowing and intelligent since she understood that the officers were investigating her role in the church burglaries. Also, she only waived the right after she had been given her Miranda warnings. Moreover, Defendant initially denied her involvement in the burglaries, further substantiating the inference that she comprehended the nature of the right being abandoned and the consequences of that choice. And, finally, she remained lucid and focused and gave appropriate responses throughout the interviews, further evidence that her mental state was conducive to a knowing and intelligent waiver of her Miranda rights. Thus, the Commonwealth has proven by a preponderance of the evidence that the statements were not obtained in violation of her rights, and the motion to suppress will be denied.

Conclusion

In conclusion, Defendant is bipolar and suffers from poly-substance dependency, but she competently waived her right to remain silent on both occasions on which she gave incriminating statements. Defendant's confessions were the result of intentional waivers without undue government pressure, and she understood the nature of the right that she surrendered and the consequences of her choice. Thus, the Court finds that Bilger's waiver was voluntary, knowing, and intelligent, and the Court denies her motion to suppress evidence.

ORDER OF COURT

August 28, 2009 this matter having come before the Court on Defendant's Omnibus Motion, and the Court having reviewed the record, the motion, the Commonwealth's and the Defendant's arguments, and the law, it is hereby ordered that Defendant's request for relief is denied. This determination shall be final, conclusive, and binding at trial except upon a showing of evidence that was heretofore unavailable, and the Defendant shall not be prevented from opposing this evidence at trial upon any ground except its suppressibility.

[1] Defendant signed two separate and identical Miranda waivers in this case. The content of the waivers reads as follows: "You have an absolute right to remain silent and anything you say can and will be used against you in a court of law. You also have the right to talk to an attorney and have an attorney present with you during questioning. If you cannot afford to hire an attorney, one will be appointed to represent you without charge before any questioning if you so desire. If you do decide to answer questions, you may stop any time you wish and you cannot be forced to continue. -WAIVER- I fully understand the statement warning me of my rights and I am willing to answer questions. I do not want an attorney and I understand that I may stop answering questions anytime during the questioning. No promises have been made to me, nor have I been threatened in any manner." See Commonwealth's Exhibits 1 and 2.

