

IN THE CIRCUIT COURT IN AND
FOR ORANGE COUNTY, FLORIDA.

CASE NO. 48-2007-CF-1796-O

STATE OF FLORIDA,

Plaintiff,

-vs-

LISA MARIE NOWAK,

Defendant.

FILED IN OPEN COURT
THIS 29 DAY OF June, 2007
Lydia Gardner, Clerk
BY [Signature] D.C.

MOTION TO SUPPRESS ADMISSIONS ILLEGALLY OBTAINED

COMES NOW the Defendant, LISA MARIE NOWAK, by and through the undersigned, pursuant to Fla.R.Crim.P. 3.190(i), and moves this Honorable Court to suppress statements or admissions illegally obtained. In furtherance thereof, Defendant would show the Court as follows:

1. On February 5, 2007, LISA MARIE NOWAK was arrested by officers of the Orlando Police Department at approximately 4:00 A.M. The location of the arrest was in the vicinity of Orlando International Airport in Orlando, FL. Ms. NOWAK was transported to the Orlando Police Department OIA offices and held in custody for at least three (3) hours until interrogation commenced by Det. William "Chris" Becton. The interview covered the next approximate five (5) hours.

2. Defendant had been deprived of sleep and was not permitted a phone call. Det. Becton commenced custodial interrogation without first properly advising Ms. NOWAK

of her fundamental constitutional rights. He did not sufficiently provide *Miranda* advice nor did he obtain from the accused an acknowledgment that she understood her constitutional rights to remain silent or to counsel. Det. Becton did not obtain a waiver of constitutional rights before interview.

3. Quite surprisingly, Det. Becton did not read verbatim from a standard rights card nor did he use a written acknowledgment and waiver form. A pocket Dictaphone/ tape recorder was utilized to record the interview. Det. Becton has created a transcript of the recording which tape recording has first received the benefit of expert enhancement and augmentation. Even so, it is fraught with dozens of inaudibles, interruptions and incomplete sentences. Nonetheless, this is the tape and transcript prepared by Becton and upon which Becton relies. Upon review we also must rely upon it. It does not reflect acknowledgment of rights, waiver of rights or a proper recitation of *Miranda* warning. These are a fundamental predicate before custodial interview.

4. For example, rather than obtain from the accused a waiver of her rights the transcript reflects, that without stopping for acknowledgment or acquiescence from NOWAK, the detective continues in a monologue with her arguing why it is necessary for her to speak with him immediately, "If you are not gonna tell me why you're here tonight then you are kind of on your own." What then follows are promises and threats without any effort to ascertain that the accused understands the rights and will in fact waive them.

5. The inadequate pretense of *Miranda* is minimized by the detective as "formalities" which he has to "get out of the way before proceeding." He interrupts the

“formalities” with distractions and declines to answer her legitimate questions like, “should I have a lawyer?” In words to this effect this question is posed by Ms. NOWAK three (3) times.

6. Defendant’s statements and admissions are not voluntary.

7. Following the police station interview for which we have a transcript, Det. Becton took LISA NOWAK to the location of her parked car, 7160 N. Frontage Road, Orlando. Thereafter followed an illegal search and seizure from the vehicle. Det. Becton confronted Defendant with the items seized from the search of the automobile which search is the subject of a separate motion to suppress.

8. Defendant was subjected to custodial questioning at the location of her vehicle search. She was handcuffed and seated in the back of a police car. Det. Becton elicited responses from her allegedly relevant to the items illegally seized. There had been no further effort to Mirandize the accused. There was no recorder this time. These statements are also inadmissible by reason of all argument contained in the foregoing paragraphs and the further problem that these statements were elicited after confrontation with the illegally seized evidence. As such these admissions constitute fruit of the poisoned tree.

8. Pursuant to *Fla.R.Crim.P. 3.190(i)(3)* Defendant prays this Court review the 72-page transcript and provide the parties with an evidentiary hearing and argument on the issues.

I HEREBY CERTIFY that a copy hereof has been furnished by hand/mail delivery

to PAM DAVIS, ESQ., Assistant State Attorney, 415 N. Orange Ave., Orlando, FL, 32801;

on June 29, 2007.

A handwritten signature in black ink, appearing to read 'Donald A. Lykkebak', written over a horizontal line.

DONALD A. LYKKEBAK, ESQ.
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