

State v. Irina Malinovskaya

ID. No. 0412021844

January 11, 2006

ORDER

Upon consideration of the defendant's motion to suppress her statement, it appears that:

1. The defendant, Irina Malinovskaya, has been indicted on charges of Murder in the First Degree and Possession of a Deadly Weapon During the Commission of a Felony. It is alleged that she murdered Irina Zlotnikov on December 23, 2004.

2. Detective Joseph Szczerba of the New Castle County Police Department first contacted the defendant concerning the death of Ms. Zlotnikov on Christmas day 2004. On December 30, he called her by telephone and informed her that he would like to talk to her about Robert, a person known to both the defendant and the victim. The defendant informed the detective that she did not have a ride to the police station. He then offered to have a police officer pick her up and drive her there. She accepted.

3. The defendant is a Russian national who speaks English as a second language. At the beginning of his interview with the defendant, in the lead-up to giving the *Miranda* warnings, the detective explained that "there are some things . . . I have to do . . . I've got to read." She responded, "[i]ts like a procedure, right," to which he responded yes. After explaining that the police would be notifying the Russian consulate that the defendant had been arrested or detained, he moved on to the *Miranda* warnings, and said, in connection therewith, "I want to read you that one. OK? Then we'll get by all that and then you will sit and I'll have my coffee and you can have some more water." The defendant then asked, "You like read this for everybody, not the foreigners only?" The detective responded, "This is when we're

State v. Irina Malinovskaya

ID. No. 0412021844

January 11, 2006

sitting and talking, anybody." The defendant then asked whether Robert signed the same form. The detective responded, yes, and also Sasha and Alex, who were two other potential witnesses in the case. She then asked, "OK, so they do the same thing?" The detective responded yes. He then proceeded to give the warnings. He completed with "[h]aving these rights in mind, do you wish to talk to us now?" The defendant responded "Right. Of course." She then added, "[h]ow can you be silent if you brought me in to talk?" She then signed the *Miranda* form. The detective then continued with his interview of the defendant, which lasted approximately five hours.

4. The defendant contends that she lacked the necessary comprehension of her rights under *Miranda* to provide a knowing and intelligent waiver of such rights. She contends that her lack of comprehension stems from linguistic and cultural issues in connection with Russian culture and with English being only a second language for her. She contends that the *Miranda* warnings should have been given her in Russian. She contends that her inability to comprehend the *Miranda* warnings and provide a knowing and intelligent waiver were aggravated by the conduct of Detective Szczerba in misleading her by presenting the *Miranda* warnings as a mere formality for all witnesses that he was required to follow.

5. In support of her contentions, the defendant presented testimony of Dr. Aneta Pavlenko, Associate Professor of Teaching English to Speakers of Other Languages at the College of Education, Temple University. Dr. Pavlenko expressed the opinion to a reasonable degree of certainty that the defendant did not make the decision to waive her rights under *Miranda* voluntarily, knowingly, and intelligently.

State v. Irina Malinovskaya

ID. No. 0412021844

January 11, 2006

The defendant also presented testimony from her father, Alexander Malinovskaya, who spoke of her difficulty with the English language, and Peter Steiner, her professor in slavic literature at the University of Pennsylvania.

6. The State contends that the defendant was not in custody during her interview and that the *Miranda* warnings were not applicable. It also contends that, if she was in custody, she knowingly, voluntarily and intelligently waived her *Miranda* rights. The State presented extensive evidence concerning the defendant's education in the United States, including her high school records from Clarke County High School, a public school in Virginia, where she graduated first in her high school class, and records from the Wharton School of Business at the University of Pennsylvania, where she was a student in good standing at the time of Ms. Zlotnikov's death. It also presented other evidence, including an audio-video tape of her entire interview.

7. For a statement made during a custodial interrogation to be admissible, any waiver of constitutional rights must be voluntary, knowing and intelligent.¹ A valid waiver depends on the totality of the circumstances, including the background, experience, and conduct of the defendant.² To be knowing and intelligent, “the waiver must have been made with a full awareness of both the nature of the right

¹*Miranda v. Arizona*, 384 U.S. 436 (1966).

²*North Carolina v. Butler*, 441 U.S. 369, 374-75 (1979).

State v. Irina Malinovskaya

ID. No. 0412021844

January 11, 2006

being abandoned and the consequences of the decision to abandon it.”³ The State bears the burden of proving, by a preponderance of the evidence, that the defendant duly waived her *Miranda* rights.⁴

8. After considering the evidence presented at the suppression hearing, I conclude that the State has met its burden of proving that the defendant fully comprehended her *Miranda* rights and that she knowingly, intelligently and voluntarily waived those rights. In reaching this conclusion, I have viewed the entire interview and have been able to observe first hand the defendant's fluency with the English language. I find that she is fluent in English. While the detective did have to clarify questions in some instances, the five hour session proceeded without significant linguistic difficulty. Her answers and comments were lucid, coherent and responsive. I find that an interpreter was not necessary in order for her to fully comprehend the *Miranda* warnings and to knowingly, intelligently and voluntarily waive them. I find that her comment "[h]ow can you be silent if you brought me in to talk," after acknowledging that she understood the *Miranda* warnings, was simply a choice of words on her part indicating that she wished to answer questions. She was eager to cooperate with the detective and showed no signs of being coerced or intimidated. I find that the evidence of the defendant's English language comprehension and proficiency contained on the audio-video tape and in the record

³ *Moran v. Burbine*, 475 U.S. 412, 421 (1986).

⁴ *Garvey v. State*, 873 A.2d 291 (Del. 2005).

State v. Irina Malinovskaya

ID. No. 0412021844

January 11, 2006

of the defendant's success in American educational institutions, where she was competing with students who spoke English as their first language, together with the attendant facts and circumstances contained in the State's evidence, outweigh and have greater persuasive force than the opposing evidence presented by the defendant. I specifically reject as not credible, Dr. Pavlenko's testimony that the defendant's achievement at Clarke County High School was, or may have been, social promotion for an exchange student.⁵

9. On page 85 of a transcript of the interview, the defendant stated that she was tired and, in substance, that she wanted to end the interview for the rest of the day. The detective continues to talk to her and shortly thereafter the detective informs her that she is being charged with murder and that she would not be going home. The conversation continues, with the defendant again waiving her *Miranda* rights, and, as the conversation continues, with her alternately asking to go home, to make phone calls, to come back another day, complaining of heart pain, asking to use the bathroom, and ultimately, on page 104, asking for a lawyer. The State agrees that by this last point on the transcript, the interview should have stopped. I conclude, however, that the defendant invoked her right to discontinue the statement on page 85, and that what follows after her answer "[t]he rest of the day," approximately in the middle of the transcript page will be suppressed.

⁵ Since I am persuaded that the defendant knowingly, intelligently and voluntarily waived her *Miranda* rights, I find it unnecessary to address the State's first contention, that she was not in custody.

State v. Irina Malinovskaya

ID. No. 0412021844

January 11, 2006

10. Therefore, the defendant's motion is *granted in part* and *denied in part*.

IT IS SO ORDERED.

/s/ James T. Vaughn, Jr.

President Judge

oc: Prothonotary (NCC)

cc: Order Distribution

File