

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI**

STATE OF IDAHO, Plaintiff, vs. KELLY A. NAKAJI, Defendant.	CASE NO. CR-F-02-16548 DECISION RE: MOTION TO SUPPRESS
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Kelly Ann Nakaji is charged with murdering her infant son, Dallon Yoshio Furtwangler, sometime between August 30 and August 31, 2002. She is currently scheduled to stand trial before a jury on April 21, 2003. The defendant has filed a motion seeking to suppress certain statements made in the presence of law enforcement officers during the course of the investigation immediately following her contact and subsequent arrest by police. A lengthy hearing was conducted presenting evidence to the court and extensive briefing has been submitted. A hearing was held on April 1, 2003 for the consideration of oral argument and the court entered a partial decision covering certain issues. The remaining questions were taken under advisement.

STATEMENT OF FACTS

The record before the court includes the testimony presented at the suppression hearing as well as the transcript from the preliminary hearing conducted on October 4, 2002, along with a stipulation of facts regarding certain police dispatch times.

On August 31, 2002, Tammy Meyer was working as the assistant manager at the Women's Center Shelter in Kootenai County. The shelter is a house that is operated to provide women and children that are victims of domestic violence a safe place to stay. Kelly Nakaji and her four-month old son, "Yosh," were living in one of the rooms. At approximately ten o'clock in the morning, Ms. Meyers observed Kelly Nakaji walk into the kitchen and noticed that her arms were covered with blood. Since another client and three children were present in the room, Ms. Meyer escorted Ms. Nakaji to the office. At 10:17 a.m., Ms. Meyer called 911 and reported a suicide attempt. Ms. Meyer asked Ms. Nakaji where the baby was and she responded, "he was dead." She also told Ms. Meyer that she put a pillow over his head, that she couldn't let "him" have the baby, and that her older boys did not want to be with her.

At this time, Ms. Meyer described Ms. Nakaji's demeanor as "hollow", stating that she wasn't there, her eyes were glazed over, and there wasn't any spirit at all. Ms. Nakaji told Ms. Meyer over and over that her boys did not want to be with her and that she couldn't let "him" have the baby. Ms. Nakaji seemed to be responsive to Ms. Meyer's

questions, but she was blunt and to the point and did not elaborate on anything. Ms. Meyer noted that Ms. Nakaji would cry periodically.

At 10:22 a.m., Officers Buhl, Martin and Greensides arrived at the shelter along with ambulance personnel. As Officer Buhl entered the house, he was contacted at the door by the manager, who told him that there might be something wrong with the baby. He was led into a back room where Ms. Nakaji was seated on a couch. He noted that she was crying and that she had dried blood on her clothing, hands, and wrists. Buhl first inquired of Nakaji whether there was a baby in the house, to which she replied that “the baby is dead” and that the baby was located in her bedroom. Buhl inquired what she meant by telling him that the baby was dead and she responded, “I killed the baby.” He asked her how and she said that she had suffocated the baby. When he asked her why, she responded that her two older children were supposed to arrive in town and they never showed up. Buhl continued to ask Nakaji how she killed the baby and she responded that she asphyxiated the baby with a pillow at about 3:30 in the morning.

Buhl’s entire contact with Nakaji at the house lasted about ten minutes. During this contact, Greensides entered the room and advised Buhl that the baby was dead. At 10:32 a.m., a call was made by police to Lt. Jiran asking him to respond regarding an infant homicide on scene.

While Buhl was in the office with Nakaji, medical personnel arrived and treated her injuries. According to Buhl, he heard Nakaji tell medical personnel several times “I killed my baby.” One of the EMTs attending to Nakaji testified that he did not hear her make that statement; he did, however, hear her say “the baby is dead” in the form of a question. He heard her make that statement again in the ambulance on her way to the hospital.

Buhl was directed by Greensides to follow Nakaji to the hospital. He followed the ambulance and was present when she was unloaded and transported to the emergency room. He sat in the room and watched and listened as medical personnel were working on her. When she was asked how she cut her wrist, she told the nurse that she attempted to kill herself because she killed her baby. After the medical people left the room, Buhl testified that Nakaji started talking to him without any questions presented to her. She talked about her two older boys in California and said that their father had called her and told her that they were not coming to see her. She said that made her upset and she killed the baby. Later when Nakaji was being treated by a psychiatric technician, Buhl heard Nakaji state that she killed her baby with a pillow. The two nurses that treated the defendant as well as the on-call psychiatrist and the technician testified that they never heard Nakaji make any incriminating statements about killing her baby.

When Nakaji started discussing more detailed circumstances about the baby's death, Buhl decided he wanted to ask further questions and decided to administer *Miranda* warnings. The warnings were administered from a card that Buhl kept in his pocket¹. After administering the warning he asked her if she understood, to which she shook her head "yes" and verbally said "yes". He then asked if she was willing to talk to him, to which she responded "yes".²

At the suppression hearing, Buhl indicated that he asked Nakaji the same general questions that he asked earlier. The preliminary hearing transcript, however, sets things forth in more detail.

Once Mirandized, Nakaji told Buhl that she was involved with a gentleman from Sandpoint and, because of the abusive nature of that relationship, she was in the women's shelter. She said that they had been separated for three months and she had been in hiding. She said that his name was Devin Furtwangler and that he did not deserve to have the baby. When asked by Buhl why she killed the baby, she indicated that she did not want the baby growing up and having a life as an abuser so she needed to take the baby's life. She told Buhl that Devin has only seen the baby during the first two weeks of his life and ever since there has been a custody battle. She said she could not allow

¹ A copy of the *Miranda* card used by Buhl was admitted as Exhibit #2 at the preliminary hearing.

² Officer Buhl did not tape record the interview with the defendant nor did he secure a written acknowledgement of *Miranda* from Nakaji. Buhl testified that he had a tape recorder with him, however, he discovered he did not have a tape. He testified that he made efforts at the hospital to find a tape, however, this is disputed by testimony from hospital staff.

Devin to have custody because she was afraid the child would grow up to be like him.

She told Buhl that she planned to kill her child and then use the knife to cut her wrist and kill herself. Nakaji said that she was in the bedroom and the baby was sleeping on the bed. She lay with the upper half of her body over the top of the baby and used her hand to cover the baby's nose and mouth. She took a pillow and placed it over the top of her hand and the baby died. According to Buhl, she did not say how long she laid on top of the baby. She said that when she felt the baby was dead she got off the bed. She also described to Buhl how the day before she made about twenty-five phone calls to her attorney, Ken Adler, because she wanted advice regarding what she was thinking about doing to the baby.

At the preliminary hearing, Buhl described Nakaji's demeanor as vacillating. She would talk about one thing and then, all of a sudden, she was bouncing around on the subject. She would cry for a few minutes and seem really upset, then she would stop and seem normal, and then start crying again. At the suppression hearing, he indicated that she was crying, but that she also appeared calm. Buhl said Nakaji told him that she had taken 15 Xanax pills the night before.³

Patrick Stanford, a nurse who treated her in the emergency room described the defendant as appearing awake and alert and seeming to

³ The empty prescription bottle was submitted as an exhibit at the suppression hearing. The bottle indicated .5-milligram doses.

know what was going on. When asked about her injuries and medical history, she made appropriate responses. Tony Allison Wilson-Bly was the psychiatric technician assigned to do an evaluation on Nakaji in the emergency room. He described the defendant as one of the most distraught people he has ever seen. She appeared upset and tearful, possessed a high degree of anxiety, and seemed depressed and sad.

Dr. Mark Mays, a psychologist, met with Nakaji the day after her arrest and performed an evaluation. According to his testimony, Nakaji had been suffering from anxiety and depression prior to the events of August 30 and 31. This psychological condition was exacerbated by the apparent overdose of Xanax⁴, which he believed caused her to experience a psychotic episode. Dr. Mays noted that Nakaji was still significantly impaired and suffering a high degree of cognitive impairment at the time of the interview with the police. According to Dr. Mays, it was his opinion that, at the time of her arrest, the defendant did not have the capacity to make a knowing decision about her legal rights and could not make an intelligent waiver of her Miranda rights.⁵

Dr. Gummow, a psychologist with a specialty in neuropsychology, testified that she examined Nakaji for several hours during October of 2002. She diagnosed the defendant as suffering from major depression, posttraumatic shock, anorexia-bulimia, sleepwalking, and a personality

⁴ Dr. Mays was unsure whether Nakaji had consumed 15 or 50 pills.

⁵ In addition to his credentials as a psychologist, Dr. Mays has a law degree and is licensed to practice law in the state of Washington.

disorder. Additionally, from her examination of the investigative reports provided to her and a review of the testimony presented in court at the suppression hearing, she also concluded that Nakaji was suffering from anxiolytic intoxication at the time of her contact with police. She stated that the defendant had a prescription for two pills per day and apparently consumed a handful consisting of anywhere from ten to sixty pills the night before her arrest.

Dr. Gummow indicated that anxiolytic intoxication would impair Nakaji's cognitive understanding and render her incapable of understanding and responding to questions. She further testified that the effects of such intoxication could not be determined simply by looking at someone. She noted that a mental status evaluation would be the best means to determine the impairment and that Dr. Wait would have been in the best position to render such an opinion.⁶

Finally testimony was presented from Dr. Julien, a drug pharmacologist, on the effects of Xanax.⁷ Dr. Julien testified that, if the defendant had consumed 4 milligrams of Xanax between midnight and noon, that amount would be sufficient to constitute an amnesic level.

⁶ Dr. Wait was the on-call psychiatrist at the hospital. He received information that a patient had been admitted as a possible suicide attempt and that it involved a dead baby. His job was to see patients for evaluations to admit for psychiatric indications. The police advised Tony Bly earlier that Nakaji was being admitted only for medical treatment. Nakaji was arrested and transported to jail prior to Dr. Wait being provided an opportunity to examine her.

⁷ Xanax is the trade name for alprazolam, which is in the class of drugs known as benzodiazepine.

Based upon the information indicating the overdose by the defendant, Dr. Julien concluded that she would be unable to understand the Miranda waiver. He noted that medical patients on a substantially lower dose would not be capable of signing a consent form for purposes of performing a surgical procedure. He agreed with Dr. Gummow that the best way to determine the Nakaji's level of impairment at the time would be a full mental status evaluation.

DISCUSSION

I. The defendant was in custody for the purpose of *Miranda* after Officer Buhl made his initial inquiry of Ms. Nakaji at the women's' shelter and was told by her that the baby was dead and that she killed the baby.

This court has the task in this case of evaluating the fundamental Fifth Amendment right against self incrimination, which has been protected by our courts in the landmark decision of ***Miranda v. Arizona***, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). It is well settled that, before a suspect may be properly subjected to custodial interrogation, he must be advised of his constitutional rights. *Miranda* is operative whenever the person being interrogated actually is in custody or is subjected to a restraint on his liberty of a degree associated with an arrest. ***New York v. Quarles***, 467 U.S. 649, 104 S.Ct. 2626, 81 L.Ed.2d 550 (1984); ***California v. Beheler***, 463 U.S. 1121, 103 S.Ct. 3517, 77 L.Ed.2d 1275 (1983). In making such a determination, the relevant

inquiry by the court is how a reasonable man in the suspect's position would have understood his situation. **United States v. Mahan**, 190 F.3d 416 (6th Cir. 1999); **State v. Kuzmichev**, 132 Idaho 536, 976 P.2d 462 (Ct.App. 1999). The court is required to examine the totality of the circumstances and the court's determination of whether a person is in custody for *Miranda* purposes is a mixed question of law and fact. **Thomson v. Keohane**, 516 U.S. 99, 116 S.Ct. 457, 133 L.Ed.2d 383 (1995); **State v. Frank** 133 Idaho 364, 986 P.2d. 1030 (Ct.App. 1999).

When applying the foregoing analysis, the court first recognizes that Nakaji was not subjected to a formal arrest until she had been fully questioned by law enforcement and had completed her medical treatment for her injuries at the hospital. The actual arrest, of course, does not trigger the requirement of *Miranda*, but rather it is triggered by a determination of when the surrounding circumstances have created the custodial setting.

Nakaji was in her home when first contacted by police. Her residence at the women's shelter was subject to certain rules of the house and was supervised by the employees at the shelter. Just prior to the arrival of the police she had confessed to the assistant manager that she had killed her baby. She was then escorted to the office where a call was made to 911 regarding her suicide attempt. She remained on the couch until paramedics and police arrived.

When Officer Buhl made his initial contact with the defendant, he possessed information that something might be wrong with the baby. He also observed Ms. Nakaji's physical condition and was aware that paramedics were responding. After Buhl asked Nakaji about the baby, he quickly became aware that the subject of the suicide attempt dispatch was admitting to having killed her baby. Paramedics arrived and began treating Nakaji. Sgt. Greensides entered the room and confirmed that the baby was dead and Lt. Jiran was summoned to respond to a homicide. These events all occurred within a very brief time frame.

Clearly, a reasonable person in a similar situation, who had admitted to a homicide to an employee at the shelter, subsequently confessed to police, and was being administered emergency medical treatment in the presence of the police, would not feel free to leave. Officer Buhl testified that he was not going to allow Ms. Nakaji to leave. Further, police conduct supported this fact when Buhl was directed to follow Nakaji to the hospital and when he remained with her in the hospital room. The police presence and control continued to be demonstrated at the hospital until she was finally arrested and transported to jail.

If Nakaji had simply been a patient of a suicide attempt being responded to by police and EMTs, questioning by police under such circumstances would not be custodial. However, when the police obtained information that made it apparent that she was a suspect in a

homicide investigation, her restraint of freedom rose to a degree associated with a formal arrest. This point was achieved after Buhl had received responses from Nakaji to his initial questions about the baby.

The State should be permitted to offer the statements made by Nakaji to Buhl when she first told him the baby was dead, that she killed the baby, and her explanation as to why and how she killed the baby. After this point, any further questions by police would be considered to be in a custodial setting invoking the protection of *Miranda*.

The defendant argues that even the initial questions presented to her by Buhl at the shelter were custodial interrogations based upon the information the police had about something being wrong with the baby. The court finds, however, that the circumstances establish the custodial setting only after Nakaji provided her responses. General on-scene questioning by police as to facts surrounding a crime or routine background information does not trigger the constitutional protections under *Miranda*. ***United States v. Klein***, 13 F.3d 1182 (8th Cir. 1994).⁸

II. Statements made by Nakaji to medical personnel or spontaneously volunteered statements overheard by police are admissible without *Miranda*.

Any statement made by the defendant that was given freely and voluntarily without any compelling influence is clearly admissible.

⁸ *Miranda* warnings held not to be required before roadside questioning pursuant to a routine traffic stop because such questioning does not constitute custodial interrogation.

Miranda only applies in those situations where the defendant is both in custody and subjected to either express police questioning or its functional equivalent. ***United States v. Davis***, 40 F.3d 1069 (10th Cir. 1994).

Officer Buhl testified that Ms. Nakaji made several statements about killing her baby that were not in response to any questions that he presented to her. Some statements were directed to medical providers while Buhl was in the room and some statements were simply made spontaneously at times when others were in the room or Nakaji was alone in the room with Buhl.

Officer Buhl's credibility has been challenged by the defense regarding these statements. The medical personnel that testified did not recall any incriminating statement made by Ms. Nakaji to them during their treatment of her wounds. The preliminary question concerning the admissibility of evidence shall be determined by the court pursuant to ***Rule 104, Idaho Rules of Evidence***. The admissibility of statements by the defendant is dependant upon the court making a preliminary determination of the factual circumstances surrounding the statements.

The defendant would argue that the court should find that Buhl lacks credibility and, therefore, there is no factual showing that Nakaji made any voluntary or spontaneous statements so such statements should not be admitted. The court is not persuaded. Buhl has set forth the foundation upon which certain statements were offered by Nakaji free

from any police interrogation. Those statements shall be admitted, although the reliability of those statements may certainly be challenged before the finder of fact at the time of trial.

III. Nakaji's subsequent warned statements at KMC are not tainted by virtue of the unwarned statements made at the shelter.

The defendant has urged the court to reject as involuntary the statements made by Nakaji at the hospital subsequent to *Miranda* warnings based upon the holding in ***Oregon v. Elstad***, 470 U.S. 298, 105 S.Ct. 1285, 84 L.Ed.2d 222 (1985), as applied in ***State v. McLean***, 123 Idaho 108, 844 P.2d 1358 (Ct.App. 1992). In ***Elstad***, the Supreme Court held that a confession made after proper *Miranda* warnings should not be suppressed solely because police obtained an earlier unwarned admission from the subject. In ***McLean***, the Idaho Court of Appeals held that ***Elstad*** was inapplicable where the facts showed that the warned statement was not a second statement but merely the same unwarned statement given earlier.

This court finds that such an analysis as that in ***McLean*** does not serve as a basis to suppress the Mirandized statements made at the hospital in this case. As noted above, this court has concluded that the initial routine questioning by Buhl of Nakaji should be admissible as well as certain spontaneous or voluntary statements. There may be some statements made by Nakaji to Buhl in response to questions after the custodial situation was established; however, it is the untainted

statements that form the basis of Buhl's questioning after *Miranda* was given.

Even if the court was inclined to agree that all of the unwarned earlier statements should be suppressed, the natures of the two sets of statements are sufficiently distinguishable. In the dissenting opinion in ***Elstad***, the court explained the problem in considering confessions obtained after earlier confessions were illegally secured:

Subsequent confessions in these circumstances are not *per se* inadmissible, but the prosecution must demonstrate facts 'sufficient to insulate the [subsequent] statement from the effect of all that went before,' if the accused's subsequent confession was merely the culmination of 'one continuous process,' or if the first confession was merely 'filled in and perfected by additional statements given in rapid succession,' the subsequent confession is inadmissible even though it was not obtained through the same illegal means as the first. The question in each case is whether the accused's will was 'overborne at the time he confessed,' and the prosecution must demonstrate that the second confession 'was an act independent of the [earlier] confession.' (Citations omitted.)

Oregon v. Elstad, 470 U.S. at 325, 105 S.Ct. at 1301, ___ L.Ed.2d at ___.

In ***McLean***, the court concluded that the State was unable to meet its burden. The first unwarned written statement was obtained by the defendant's probation officer and directly handed over to the detective without an intervening pause to administer *Miranda* to *McLean*. The only "consent" that preceded the delivery of the statement was part of the unwarned statement given to the probation officer. In the present case, there are no facts indicating any deliberate coercive or improper tactics

in obtaining Nakaji's first statement. Admissions were provided to shelter staff, articulated spontaneously without questioning, and made in response to questions during her medical treatment as well as in response to Buhl's initial inquiry about the baby. These facts are more in line with those supporting the holding in ***State v. Noble***, 122 Idaho 509, 835 P.2d 1320 (Ct. App. 1991), where the court concluded that the exclusionary rule is inapplicable to a second confession where the defendant gives an uncoerced statement without receiving his *Miranda* warnings and thereafter gives a voluntary confession following proper warnings.

IV. Ms. Nakaji's statements made to Officer Buhl at KMC after being Mirandized must be suppressed because she lacked the capacity to make a knowing and intelligent waiver of her *Miranda* rights.

A distinction should be made between voluntary statements that are purely the product of the defendant's free will and those that are made subsequent to the requirement of *Miranda* but under circumstances where the defendant lacks the ability to understand and waive the constitutional rights. The former are admissible but subject to a determination by the trier of fact of the reliability of the statements, whereas the latter are inadmissible.

Miranda provides that a defendant may waive his or her rights provided the waiver is made voluntarily, knowingly and intelligently. The

inquiry has two distinct dimensions. First, the relinquishment of the right must be made as the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the totality of the circumstances surrounding the interrogation reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived. ***Moran v. Burbine***, 475 U.S. 412, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986).

In considering whether the defendant has made a voluntary, knowing, and intelligent waiver, there is a presumption against waiver. The burden is upon the state to show the waiver by a preponderance of the evidence and that such waiver may be clearly inferred from the actions and words of the person interrogated. ***Colorado v. Connelly***, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986); ***North Carolina v. Butler***, 441 U.S. 369, 99 S.Ct. 1755, 60 L.Ed.2d 286 (1979). The government's burden to make a showing "is great" and the court will "indulge every reasonable presumption against waiver of fundamental constitutional rights". ***United States v. Heldt***, 745 F.2d 1275 (9th Cir. 1984).

The first prong of the state's burden is easily met in this case. As previously discussed, the evidence does not support a finding that

Nakaji's statements to police were not made voluntarily. There is no indication of any duress, deception, coercion, or intimidation placed upon Nakaji by police to separate her statements from her free will.

The more difficult question is whether Nakaji knowingly and intelligently waived her *Miranda* rights. When the court examines the totality of the circumstances, the facts are clearly conflicting on this issue. Nakaji appeared to understand and respond appropriately to specific questions presented to her by police and paramedics about the facts concerning her baby as well as her medical situation. Her statements about the events remained mostly consistent while in the presence of the police; however, while she stated to Buhl that she killed the baby, she subsequently repeated the statement that "the baby is dead" in the form of a question. Her emotional state was described with great disparity by the witnesses who observed her. Buhl described her at one point as crying but calm, but he also reflected how Nakaji was bouncing around on the subjects. Ms. Meyers noted her glazed over eyes, "hollow" appearance, and blunt responses. The psychiatric technician opined that she was the most distraught individual that he had ever observed.

The evidence shows that Nakaji had consumed anywhere from fifteen (15) to fifty (50) .5 milligram pills of Xanax during the morning prior to the police arriving at the women's shelter. The testimonies of Dr. Mays, Dr. Gummow, and Dr. Julien were in agreement that Nakaji was

clearly suffering from anxiolytic intoxication as a result of her overdose of Xanax and that she would not have been able to knowingly and intelligently waive her *Miranda* rights under such condition. The state did not offer any expert testimony on this issue.

In ***United States v. Cristobal***, 293 F.3d 134 (4th Cir. 2002), the federal court examined the question of a knowing and intelligent waiver where the defendant asserted a deficient mental state caused by pain killing narcotics. The court recognized that, unlike the issue of voluntariness, police overreaching or coercion is not a prerequisite for finding that a *Miranda* waiver was not knowing and intelligently made. The court further recognized that there were situations where, after receiving certain painkillers and other narcotics, a person might be incapable of making a reasoned decision to abandon his or her rights. The court in ***Cristobal*** declined to invalidate the waiver because there was no evidence that the drugs had an adverse effect on the defendant's ability to think rationally. The medical evidence supported the fact that narcotics were given without any supporting evidence as to the effect of those narcotics and the court refused to speculate further.

In the case at hand, the medical evidence clearly establishes that the drugs consumed by Nakaji had a specific adverse effect upon her ability to render a waiver of her *Miranda* rights knowingly and intelligently. The expert testimony showed that, despite the fact that her

level of intoxication might not be readily apparent to those that came in contact with her, her cognitive abilities were significantly impaired.

In ***United States v. Garibay***, 143 F.3d 534 (9th Cir. 1998), the federal court examined the impact of the defendant's mental capacity and concluded that the totality of the circumstances revealed that the defendant was not aware of the nature of the constitutional rights he was waiving. In that case, the court focused upon the defendant's limited ability to speak English and the fact that he was borderline retarded. The decision was based in part on the fact that the customs agents took no steps to insure that Garibay's waiver was knowing and intelligent. For example, the court pointed to the fact the agents failed to utilize a Spanish interpreter when one was available and declined to secure a written *Miranda* waiver.

It should be noted that, in the present case, the police also failed to take certain steps to insure a proper waiver. Buhl testified that he read *Miranda* warnings to Nakaji from a card and her response to understanding these rights was a simple "yes." He made no effort to secure a written acknowledgment from the defendant of her constitutional rights. Additionally the interview with Nakaji was not recorded and therefore the ability for the court to fully examine both the content of her responses and her general demeanor is limited. While neither of these procedures are required under the law, both would have

possibly assisted the state in meeting its burden under the circumstances of this case.

Finally, the most compelling factor on this issue is the failure of the police to allow Nakaji to be given a mental status exam as part of the standard emergency room procedures. The evidence established that as soon as Nakaji's physical injuries were treated the police took her to jail without permitting the on-call hospital psychiatrist to conduct an examination. There has been no showing by the state of any compelling reason for this decision.

It should be apparent in this case that Nakaji had certain problems. First, she was injured as a result of the suicide attempt. Second, she was under investigation for the unlawful homicide of her infant child. Finally she was suffering emotional or mental distress. Consideration of these factors clearly should cause a reasonable person to conclude that medical treatment should include not just a physical but also a mental examination. In fact, this is the conclusion reached by Dr. Wait, which was communicated to the police. The request was rejected and Nakaji was transported to jail. This is unfortunate because the timeliness of such a mental status evaluation by Dr. Wait could shed critical light upon the question of Nakaji's ability to waive *Miranda*. This is especially noted where the state questioned the credibility of experts retained by the defense and yet passed on an opportunity to obtain relevant objective expert information.

Based upon the foregoing and in consideration of the totality of the circumstances before the court, the court finds that Nakaji's waiver of her *Miranda* warnings was not knowingly and intelligently made and therefore statements in response to further custodial interrogation shall be suppressed.

CONCLUSION

Based on the foregoing discussion, it is hereby concluded that the Motion to Suppress of the Defendant, Kelly A. Nakaji, should be granted in part and denied in part as set forth herein. Defense counsel shall prepare an Order consistent with the foregoing.

DATED this 16th day of April, 2003.

John Patrick Luster
District Judge