

Discussion

This case is important to forensic psychiatrists for two reasons. First, it serves as a reminder to use sound and reliable methods in conducting forensic evaluations, which may include seeking collateral information, using standardized and validated assessments, and formulating diagnoses in a reliable manner. According to *Daubert*, Federal Rule of Evidence 702 should be used as the standard for admitting expert testimony in federal trials. The judge serves as the gatekeeper and may consider factors including whether a theory has been tested, subject to peer review or published in scientific journals, has a known error rate, has general acceptance in the scientific community, and whether standards that govern its operation exist.

Second, in conducting forensic assessments, forensic experts should consider the individuals they are evaluating in the context of any relevant subcultural belief systems. A prominent subculture often seen in the U.S. legal system is the Sovereign Citizen movement. Adherents to this movement were estimated to number approximately 300,000 in 2014, but the movement has been gaining popularity, especially among African American and prison populations (Parker, GF: Competence to stand trial evaluations of Sovereign Citizens: a case series and primer of odd political and legal beliefs. *J Am Acad Psychiatry Law* 42: 338–49, 2014). Although there is not a singular, well-defined belief structure, there are several common themes adopted by adherents. Individuals who adhere to the movement often claim that the existing court system and state and federal governments are corrupt and are designed to deprive people of their individual property rights. Sovereign Citizens often do not seek licenses, pay taxes, or hold a Social Security number. These actions often result in legal actions against them. In court, Sovereign Citizens commonly raise inappropriate objections and file multiple illegitimate motions. They frequently choose to represent themselves and sometimes do not answer questions posed to them by judges, attorneys, or police. Although courts that are unfamiliar with this movement may order psychiatric evaluations of these individuals, adherents to these beliefs are generally not mentally ill and should be considered as espousing a cultural identity. (Although mental illness and subculture ideology can coexist, it is important to not conflate the two.) A Sovereign Citizen's legal views “[do] not evidence confusion on

the [defendant's] part about the legal proceedings against him, but rather [reflect] firmly held, idiosyncratic political beliefs punctuated with a suspicion of the judiciary” (*United States v. Brown*, 669 F.3d 10 (1st Cir. 2012), p 18).

Competence to Waive *Miranda* Rights

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***Miranda* Rights May Be Voluntarily Waived When the Accused Refuses Verbal Explanation of Rights by Law Enforcement**

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Key words: *Miranda*; understand warning; voluntarily waive right

In *State v. Parker*, 459 P.3d 793 (Kan. 2020), the Kansas Supreme Court heard a direct appeal from the district court regarding admissibility of statements made after the defendant, Willie Parker, read his *Miranda* rights but refused to sign the waiver and refused to have law enforcement read his rights aloud to him. Mr. Parker argued that the district court should have suppressed the statements because the investigators did not take sufficient steps to ensure his understanding of his rights. Although Mr. Parker showed signs of mental illness, the court ruled that there was no reversible error in the district court's decision not to suppress the statements.

Facts of the Case

Mr. Parker was employed by Michel Ziade as a patient transport driver. On July 28, 2015, Mr. Parker and Mr. Ziade had a verbal argument in a parking garage regarding work hours and accountability. They insulted each other, used profanity, and ultimately engaged in a fist fight. Witnesses said that Mr. Parker hit Mr. Ziade. A co-worker broke up the

fight. Within about 60 seconds, Mr. Parker went to his van and got a pistol. Mr. Parker pursued Mr. Ziade on foot and shot Mr. Ziade as he left the parking garage. Mr. Parker then returned to his van, took a bag, and walked down an alley. Mr. Ziade died from his injuries within minutes.

Mr. Parker was charged with premeditated first-degree murder. He was arrested nine days after the offense when he surrendered after police used tear gas to force him out of a church building where he had barricaded himself. During a detective interrogation beginning an hour after arrest, Mr. Parker admitted to killing Mr. Ziade. Mr. Parker's motion to suppress his inculpatory statements was later denied by the district court. Mr. Parker had an inpatient evaluation for competency to stand trial. Despite possible signs of mental illness, Mr. Parker was adjudicated to be competent.

Mr. Parker had a jury trial in June 2017. The jury was instructed to consider charges of premeditated first-degree murder and the lesser charge of second-degree murder. Mr. Parker was found guilty of first-degree murder.

Mr. Parker appealed to the Kansas Supreme Court. He claimed that his statements made during interrogation should have been suppressed because the detectives did not ensure he understood his *Miranda* rights. Additionally, Mr. Parker alleged that the court erred in denying a voluntary manslaughter jury instruction.

Ruling and Reasoning

The Kansas Supreme Court ruled that no reversible error occurred and affirmed the district court's decision that Mr. Parker had made an effective waiver of his *Miranda* rights, and that he was not entitled to a voluntary manslaughter jury instruction.

The Kansas Supreme Court cited several cases to guide their decision. Per *State v. Kirtdoll*, 136 P.3d 417 (Kan. 2006), a voluntary *Miranda* waiver can be deduced based on the totality of circumstances. In *State v. Mattox*, 390 P.3d 514 (Kan. 2017), an appellate court determined whether a defendant's *Miranda* rights were knowingly, voluntarily, and intelligently waived based on the totality of the circumstances. Numerous cases from other jurisdictions have held that *Miranda* rights waivers do not require an accused's *Miranda* rights to be read out loud. Further, the court noted that there is no specific

protocol required to determine if accused persons understand their rights.

In the current case, the detectives provided Mr. Parker with a statement of his *Miranda* rights, which he read. The detectives offered to read the statement aloud, but Mr. Parker declined and said it was condescending. The court examined "the circumstances and the words" used by Mr. Parker and the detectives to determine if Mr. Parker understood his *Miranda* waiver (*Parker*, p 796). Per *State v. Davis*, 394 P.3d 817 (Kan. 2017), the following factors are to be considered when determining if a confession is made voluntarily: mental condition of the accused; circumstances of the interrogation; ability of the accused to communicate with people in the outside world; background, age, and intellect of the accused; officer fairness in interrogation; and the accused's English-language fluency. In the current case, the court found it notable that the district court considered each of these factors and resolved in favor of the state.

Although Mr. Parker claimed that the detectives did not ensure he understood his *Miranda* rights, the Kansas Supreme Court affirmed the district court's findings that Mr. Parker waived his *Miranda* rights voluntarily. Mr. Parker reviewed the *Miranda* rights statement for 62 seconds, refused to sign the form, and then participated in the interview. Later in the interview, when discussing Mr. Parker's earlier refusal to sign his *Miranda* waiver, Mr. Parker said "I understand everything I read" (*Parker*, p 799). Mr. Parker did not claim he did not understand his rights, only that "the police should have done more to ensure that he understood" (*Parker*, p 799). Per *State v. Boyle*, 486 P.2d 849 (Kan. 1971), refusal to sign a waiver of rights is not the same as a desire to not be questioned, and voluntary responses after *Miranda* warning can be an appropriate waiver of rights.

The Kansas Supreme Court cited *United States v. Collins*, 4 F.3d 95 (5th Cir. 1994), a case with similar circumstances to the current case. Mr. Collins appeared to read and understand his *Miranda* rights, but he did not sign the form. That case cited *North Carolina v. Butler*, 441 U.S. 369 (1979), which noted that a *Miranda* waiver can be inferred from the person's actions and statements. In the current case, Mr. Parker's responses showed that he knew the roles of the detectives and the charge against him. He understood the interrogation process, that detectives were attempting to obtain inculpatory evidence,

and that he did not have to give affirmative answers. Mr. Parker was described as playing a “cat-and-mouse game” with detectives (*Parker*, p 799). These facts led the court to rule that Mr. Parker effectively waived his *Miranda* rights and that his statements were admissible.

The Kansas Supreme Court also ruled on the district court’s denial of Mr. Parker’s request for a jury instruction of voluntary manslaughter based on sudden quarrel or heat of passion. The Kansas Supreme Court found no error in the district court’s ruling, as the facts of the case showed “so little evidence of heat of passion” and “so much evidence of calculated decision-making” (*Parker*, p 801).

Discussion

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the U.S. Supreme Court held that an accused deprived of freedom by law enforcement must be informed of the right to counsel and to remain silent, and that statements can be used in court. The purpose is to protect one’s Fifth Amendment right against self-incrimination. The accused must waive *Miranda* rights knowingly, voluntarily, and intelligently. *Miranda* rights evaluations are uncommonly referred to forensic mental health examiners, even when there are notable *Miranda* concerns (Rogers R, Otal T, Drogin EY, *et al.*: Effectiveness of the *Miranda* acquiescence questionnaire for investigating impaired *Miranda* reasoning. *J Am Acad Psychiatry Law* 48:226–36, 2020).

Subsequent case law has expounded on effective *Miranda* rights waivers. In *Colorado v. Connelly*, 479 U.S. 157 (1986), the U.S. Supreme Court ruled that coercive police activity was necessary to conclude that a confession was made involuntarily. In that case, the defendant’s psychosis, which interfered with his ability to make rational choices, did not make his confession involuntary. In *Garner v. Mitchell*, 557 F.3d 257 (6th Cir. 2009), the court said that effective waiver of *Miranda* rights was assessed based on the totality of the circumstances and did not require that the accused understood every potential consequence. In *Berghuis v. Thompkins*, 560 U.S. 370 (2010), the court held that silence during an interrogation did not negate the validity of a *Miranda* waiver. That court cited another case, *Davis v. United States*, 512 U.S. 452 (1994),

which found that *Miranda* rights must be invoked unambiguously.

In the current case of *State v. Parker*, the Kansas Supreme Court essentially addressed the concept of substance versus process of an accused person waiving *Miranda* rights. In this case, the process was disrupted because Mr. Parker refused the offer for his rights to be read aloud and he refused to sign the waiver. The substance, however, was evident based on his actions, namely that Mr. Parker knowingly, voluntarily, and intelligently waived his *Miranda* rights. This case is consistent with case law citing totality of the circumstances as the standard for determining competence to waive *Miranda* rights.

Police Requirements to Perform a Mental Health Seizure

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Police May Not Be Entitled to Governmental Immunity Should They Perform a Mental Health Seizure Without Probable Cause

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In *Rudolph v. Babinec*, 939 F.3d 742 (6th Cir. 2019), the Sixth Circuit Court of Appeals affirmed a district court’s denial of summary judgment to law enforcement officers on the basis of qualified immunity after they were sued by the plaintiff who alleged that her Fourth Amendment rights had been violated during a mental health seizure and that the officers’ use of force was not objectively reasonable. Police brought the plaintiff for mental health evaluation against her will and argued that circumstances led them to believe she was at risk for suicide. The Sixth Circuit noted that a jury might reasonably determine