

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

STATE OF NEBRASKA,

CASE I.D. CR18-1581

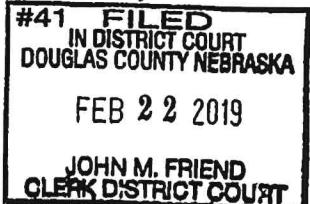
Plaintiff,

vs.

AUGUSTINE CAVITTE,

Defendant.

ORDER ON DEFENDANT'S MOTION  
TO SUPPRESS



This matter came on for hearing on January 4, 2019 on Defendant's Motion to Suppress all evidence gained by the State from an interview with the Defendant administered on April 30, 2018 in an Omaha police cruiser and later at Omaha Police Headquarters. Defendant is charged in Amended Information on January 7, 2019 in Count 1 with Domestic Assault Second Degree, IIIA Felony. Attorney appearances: Jay Klimes, Deputy Douglas County Attorney, for State and Bethany Stensrud, Assistant Public Defender for Augustine Cavitte, Defendant. Exhibits 1,2, 3 offered, received and reviewed. The Court being fully advised in the premises finds and orders as follows:

**FACTS**

On Monday April 30, 2018, at approximately 11:35 P.M. the victim, Michael Cavitte ("Michael"), was assaulted with a knife. Michael and his wife Augustine Cavitte ("Cavitte") were in his residence at the time that he shares with others. The victim and Cavitte had been drinking when they began to argue about marital problems. Cavitte stated Michael was sitting in a chair in the bedroom when Cavitte "got in his face" (2:11:05 Interview) and spoke to him angrily. Cavitte stated she left the bedroom and entered the kitchen where she retrieved a knife from the community utensil drawer. After re-entering the bedroom, where Michael was still sitting in the chair, she "glaze[d] him" (2:14:05 Interview) in the

Appendix D



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head from behind. Michael then reacted by confronting Cavitte in an attempt to stop the attack. Cavitte stated she, "only hit him one time with the knife and the knife went on the bed". (2:21:51 Interview)

After dropping the knife, Cavitte and Michael continued to fight until Lisa Douglas ("Douglas"), a cohabitor, entered the room to see what was going on after hearing the argument. Lisa stated to responding Sergeants that after entering the room, Cavitte handed her a small kitchen knife with a white handle. Douglas stated that she did not want her fingerprints on the knife and subsequently dropped it into the communal kitchen sink. Sergeants later retrieved a knife matching the description from the kitchen. Sergeants identified a suspect in the room that matched the description from the emergency caller. Responding Sergeant handcuffed Cavitte and placed her in the back of the cruiser.

Responding officer, Sergeant Baines (hereinafter "Sergeant Baines") was both respectful and courteous to Cavitte, asking her if she would like the windows down to make her more comfortable. He first asked Cavitte routine questions such as her name, date of birth, address, and phone number. At 12:11 A.M., Sergeant Baines asked Cavitte, "What was going on tonight?" Sergeant Baines inquired whether Cavitte was injured at any point during the night and stated that he was, "trying to figure out what happened". At 12:13:55 A.M., Sergeant Baines issued Cavitte her Miranda warnings. Cavitte completed her rights advisory form at 12:14 A.M. on May 1, 2018. Sergeant Baines transported Cavitte to an interview room at OPD headquarters at 12:27:45 A.M.

Detective Kreikemeier ("Kreikemeier") entered the interview room at 1:22 A.M. to ask Cavitte more routine questions as well as assessed any injuries that she may have.

Kreikemeier asks Cavitte if she needs anything and tells her to let him know if she needs anything throughout the interview. Kreikemeier then informs Cavitte that they are going to take some photos of her injuries after observing blood on her pajamas. After the forensic photographers finish, Kreikemeier allows Cavitte to use the restroom as requested. At 1:57 A.M., Kreikemeier sat down with Cavitte to start their discussion. Cavitte began the conversation by stating that she was, "really emotional" because she was trying to make her marriage work. At 1:57:51, Kreikemeier asked Cavitte if she recalled the rights advisory form that the Sergeants went over with her at the scene. Cavitte stated, "yes" and Kreikemeier stated, "okay, that still applies, okay? So, do I need to go over it with you again, or do you recall?" Cavitte then inquired if she was going to jail. Kreikemeier politely explained what his role was in the investigation and was very clear with Cavitte that he wanted to get her side of the story because he believed it was only fair to her. At this point Kreikemeier again asked Cavitte if she recalled the Sergeants on the scene going over her rights advisory form and states that if she doesn't, he would go through it again with her. Cavitte stated, "No, I remember" to which Kreikemeier confirmed by asking once again, "okay, so you do recall?" and Cavitte stated, "Yeah."

After confirming that Cavitte recalled the rights advisory form, Kreikemeier began questioning Cavitte about what happened earlier in the night. Cavitte stated that she had been staying at the Michael's house for the past few days despite an active protection order she had against him. Cavitte stated that they had been drinking when she discovered that Michael had an affair. Cavitte admitted that she became very angry and then got, "up in his face". After going to the kitchen and retrieving a knife, Cavitte stated she went back to the bedroom and she "glazed" him on the head. Kreikemeier asked her

what happened after that and Cavitte stated that Michael intervened, and they ended up wrestling on the floor. Several times in the interview Cavitte stated, "I only hit him one time with the knife".

Kreikemeier was polite and empathetic throughout the entire interview. Kreikemeier had responding Sergeants return to the scene to retrieve Cavitte's purse when she expressed concerns for it being left at the residence. He also clearly explained to Cavitte that she was going to be booked into Douglas County Corrections and what charges she is faced with.

#### **I. WHETHER SUFFICIENT PROBABLE CAUSE TO ARREST CAVITTE**

A peace officer may arrest without a warrant for a felony, especially for the circumstance where he is relying on eye-witness. Nebraska Revised Statutes 29-215 (2)(a); and 29-404.03

When a law enforcement officer has knowledge, based on information reasonably trustworthy under the circumstances, which justifies a prudent belief that a suspect is committing or has committed a crime, the officer has probable cause to arrest without a warrant. *State v. Blakely*, 227 Neb. 816, 420 N.W.2d 300 (1988).

Probable cause merely requires that the facts available to the officer would cause a reasonably cautious person to believe that the suspect has committed an offense; it does not demand any showing that this belief be correct or more likely true than false. *State v. Eberly*, 271 Neb. 893 (2006).

In the present case, there were two eyewitnesses, Katrina Bradley and Lisa Douglas, who provided statements to law enforcement. Katrina Bradley told law enforcement she was in the apartment when the incident had occurred. Further, she had

heard Cavitte say, "I stabbed him" and had observed Michael bleeding from the head. Katrina then stated that she was concerned for Michael's safety and called 911 for assistance. Law enforcement also spoke with Lisa Douglas ("Douglas"), another resident of the apartment, who stated she heard Cavitte yell her name and when she entered the bedroom, Cavitte stated, "I stabbed him" and proceeded to hand Douglas a small knife with a white handle. Officers later recovered the knife from a kitchen utensil drawer.

Responding officers located Michael in the bedroom and transported him to the hospital by ambulance to have his injuries assessed. Law enforcement also located Cavitte, who matched the description from the 911 calls in the bedroom with Michael. The witness statements made by Katrina Bradley and Douglas, the description of the suspect made in the 911 call matching Cavitte, the presence of a weapon and the injuries Michael sustained is sufficient to constitute probable cause pursuant to the descriptions of Blakely and Eberly.

## **II. WHETHER CAVITTE WAS PROPERLY ADVISED OF HER MIRANDA WARNINGS AND HER STATEMENTS ARE ADMISSIBLE**

To safeguard an uncounseled individual's Fifth Amendment privilege against self-incrimination, suspects interrogated while in police custody must be told that they have a right to remain silent, that anything they say may be used against them in court, and that they are entitled to the presence of an attorney, either retained or appointed, at the interrogation. *State v. Williams*, 269 Neb. 917, 922, 697 N.W.2d 273, 278 (2005) (citing *State v. Thomas*, 267 Neb. 339, 673 N.W.2d 897 (2004)). The 5th Amendment to the U.S. Constitution—applicable to state governments by incorporation through the 14th Amendment—protects against compelled self-incrimination by providing that "[n]o person

shall be ... compelled in any criminal case to be a witness against himself ...." *State v. Hernandez*, 299 Neb. 896, 912, 911 N.W.2d 524, 539–40 (2018) (citing U.S. Const. amend. V; *Malloy v. Hogan*, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed. 2d 653 (1964)).

The *Miranda* decision is designed to prevent the use of incriminating statements obtained during a custodial interrogation. In order to overcome this prohibition, the State must adduce evidence that a defendant was aware of his rights, understood those rights and waives those rights in order for a statement to be admissible. See *State v. Dallmann*, 260 Neb. 937 (2000). The statement must be made during a custodial interrogation and the individual is subjected to questioning. See *State v. Buckman*, 259 Neb. 924 (2000). In addition, the Nebraska Supreme Court has determined that an individual is in custody "for purposes of *Miranda* when there is a formal arrest or a restraint on one's freedom of movement to the degree associated with such an arrest." *State v. Brouillette*, 265 Neb. 214 (2003).

Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his or her free choice. *State v. Juranek*, 287 Neb. 846, 858, 859 N.W.2d 791 (2014) (citing *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)).

The court in *Missouri v. Siebert* addressed the U.S Supreme Court's opinion of the two-step interrogation technique of (1) giving *Miranda* warnings only after interrogation has produced a confession and then (2) questioning the suspect so as to "cover the same ground a second time, but this time with the *Miranda* warnings." The court found it to be particularly significant in the court's conclusion that Siebert's pre-*Miranda* confession

made the later Miranda warnings ineffective was the fact that questions before the Miranda warnings was "systematic, exhaustive, and managed with psychological skill" to such an extent that after the unwarned interrogation, "there was little, if anything, of incriminating potential left unsaid" *State v. Juranek*, 287 Neb. 846, 858, 844 N.W.2d 791, 802–03 (2014) (citing *Missouri v. Siebert*, 542 U.S. at 616, 124 S.Ct. 2601 (2004)). The court in *Juranek* found the case to be distinguishable from *Siebert*, finding the circumstances of pre- and post- Miranda interrogations of *Juranek* did not rise to the level of making the Miranda warnings ineffective. *Id* at 860. The court in *Juranek* found that because, "the detective asked one question before Juranek made his confession and Juranek was given his Miranda warnings approximately 2 minutes into the interrogation, we cannot say that the pre- Miranda interrogation left little to be said." *Id*. The court found Juranek's statements to be admissible because they were not a product of systematic, exhaustive questioning or managed with psychological skill. *Id*. Additionally, the court stated that Juranek's statements did not touch on key points in the investigation and Miranda warnings were administered within two minutes, therefore the facts are sufficiently distinguishable from those in *Siebert* and the statements were admissible. *Id*.

Cavitte was handcuffed and placed in the back of a police cruiser and logically was in custody based on the standard set out in *Brouillette*. Therefore, the questions asked by Sergeant Baines would be considered custodial interrogation for purposes of Miranda. Miranda warnings were required and adequately given subsequent to Cavitte being placed in custody.

The case at bar is analogous to *Juranek* with respect to the Miranda warnings administered. Sergeant Baines asked Cavitte, "What was going on tonight?" at 12:11 A.M.

and inquired whether Cavitte was injured at all. Sergeant Baines administered Miranda warnings at 12:13 A.M., approximately two minutes after asking the question about what had occurred. Additionally, the question, "What was going on tonight?" and questions regarding the extent of injuries Cavitte sustained herself were certainly not systematic, exhaustive nor managed with psychological skill. Cavitte's statements did not touch on key points of the investigation and certainly did not leave little left to be said.

Just as in Juranek, Cavitte's pre- Miranda statements did not render the Miranda warnings ineffective when they were given approximately two minutes later. Also, in light of Cavitte's Miranda waiver, the statements she made before given the Miranda warnings are admissible and Cavitte's Fifth Amendment rights were not violated.

Additionally, if a defendant seeks suppression due to an alleged Miranda violation, the State must prove that the defendant validly waived his or her Miranda rights by a preponderance of the evidence. *State v. Burries*, 297 Neb. 367, 900 N.W.2d 483 (2017) (see, e.g., *Berguis*, supra note 22, 560 U.S. at 386-87, 130 S.Ct. 2250). However, law enforcement officers "are not required to re-warn suspects from time to time. ... The Miranda rule and its requirements are met if a suspect receives adequate Miranda warnings, understands them, and has an opportunity to invoke the rights before giving any answers or admissions." *Id.*

Detective Kreikemeier did not violate Cavitte's Fifth Amendment rights because Miranda was not violated. Kreikemeier asked Cavitte several times in the beginning of the interview whether she remembered the Miranda rights advisory form that Sergeant Baines administered in the police cruiser. Kreikemeier diligently ensured that Cavitte remembered and understood her rights advisory form as well as safeguarding that if she

did not, he would go through it again with her. Kreikemeier was confident that she remembered and understood her rights, therefore, he was not required to re-administer Miranda warnings.

### **III. UNDER THE TOTALITY OF THE CIRCUMSTANCES THE DEFENDANT KNOWINGLY AND VOLUNTARILY WAIVED HER MIRANDA RIGHTS**

A confession may not be used in a criminal prosecution if it was obtained through police coercion rather than voluntarily made. *State v. Hernandez*, 299 Neb. 896, 898, 911 N.W.2d 524, 529–32 (2018). [The Fifth Amendment], along with the Due Process Clause of the 14th Amendment, prevents the use of involuntary confessions in criminal prosecutions. *State v. Hernandez*, 299 Neb. at 912, 911 N.W.2d at 540 (citing *Dickerson v. United States*, 530 U.S. 428, 120 S.Ct. 2326, 147 L.Ed. 2d 405 (2000); *Jackson v. Denno*, 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed. 2d 908 (1964); *State v. Turner*, 288 Neb. 249, 847 N.W.2d 69 (2014)). In determining whether a statement is voluntary, we apply a totality of the circumstances test. *State v. Williams*, 269 Neb. 917, 923, 697 N.W.2d 273, 278 (2005). Like the United States Constitution, the Nebraska Constitution bars the use of involuntary confessions. Neb. Const. art. I, §§ 3 and 12. These Constitutional protections are rooted not only in the risk of false confessions flowing from the use of coercion, but also in the right of citizens to be free from oppressive overreaching at the hands of government officials. *State v. Hernandez*, 299 Neb. at 913, 911 N.W.2d at 540 (See, *Colorado v. Connelly*, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed. 2d 473 (1986); *Jackson v. Denno*, *supra*).

In *Hernandez*, the Nebraska Supreme Court affirmed the district court's overruling of the Defendant's motion to suppress, reasoning that the Defendant validly waived his

Miranda rights, the Defendant voluntarily spoke with investigators, there was no police coercion and the Defendant did not subsequently invoke his right to remain silent until the end of the interview. Additionally, the Nebraska Supreme Court held that the Defendant understood his rights yet still agreed to speak with law enforcement.

Regarding the issue of voluntariness, the court in *Hernandez* reviewed the video of the interview and held that the video revealed no overreaching or coercive conduct by law enforcement. The court reasoned that the demeanor of each investigator was calm and relaxed. Throughout the interview, the investigator focused on building rapport with the Defendant and appealing to his better instincts, such as a belief in the importance of telling the truth. The investigators never raised their voices, took an aggressive demeanor, or unfairly manipulated or lied to the Defendant. The Defendant was also allowed to speak at length without interruption on a variety of topics well afield of the scope of the interview, with eventual gentle redirection.

Additionally, the court reasoned, the interview was only about 2 hours long, and there was nothing unusual or oppressive about the environment in which it was conducted. There was no evidence in the record that the Defendant was ever kept from sleeping, and the investigator testified that the Defendant appeared reasonably well rested. The court found that the Defendant was coherent and able to intelligently answer questions with specificity and in a reasonably articulate manner when he chose to do so. The court ultimately concluded that the questioning was entirely appropriate for someone in the Defendant's state.

The case at bar is analogous to *Hernandez* because the Cavite's understanding, questioning by the Sergeant constitute a knowing and voluntary waiver of her Miranda

rights. Additionally, neither Sergeant Baines nor Detective Kreikemeier's actions coercively overbore Cavitte's free and unconstrained choice to waive her Miranda rights. First, Kreikemeier asked Cavitte general information which she provided without objection. Kreikemeier then told Cavitte directly, "If you recall them going over your rights advisory, we can just go ahead and continue on and we can speak. Otherwise I have to go over the sheet with you again", yet Cavitte still responded, "No I remember" and continued to answer questions and participated in the interview which lasted nearly two hours. Secondly, as in *Hernandez*, the interview was video recorded and in the video, there is no evidence that Detective Kreikemeier was aggressive or loud in his questioning as to coerce the Defendant into waiving her rights or speaking with Kreikemeier. There is no evidence from the record that Kreikemeier placed the Defendant under duress or coercion, whether express, implied, physical, or psychological. Additionally, Kreikemeier was not in uniform during the course of the interview. Thirdly, in the case at bar, Cavitte gave no signs or indications that she did not understand her rights. Cavitte was responsive, gave appropriate answers to questions, answered affirmatively to Kreikemeier's questioning pertaining to Cavitte's memory of the rights advisory form that the Sergeant Baines read to her before engaging in the interview with Kreikemeier. As in *Hernandez*, the interview was no longer than two hours. In *Hernandez*, the interview lasted two hours: the interview itself in the case at bar lasted less than two hours. Fourth, Cavitte was aware of the implications if she continued to speak with Kreikemeier because she asked several times if she was going to jail for what she did. In light of the totality of the circumstances, the Defendant voluntarily waived her Miranda rights.

**A. CAVITTE'S USE OF ALCOHOL HOURS PRIOR TO THE INTERVIEW WITH LAW ENFORCEMENT AND OFF TOPIC STATEMENTS WERE NOT SUFFICIENT TO OVERCOME THE VOLUNTARINESS OF THE DEFENDANT'S WAIVER OF HER MIRANDA RIGHTS**

While intoxication is relevant to determining whether police conduct amounted to coercion, “[i]ntoxication does ‘not automatically render a confession involuntary ....’ ” *Id.* (citing *U.S. v. Jones*, 842 F.3d 1077, 1083 (8th Cir. 2016)). [N]either exhaustion nor intoxication will necessarily invalidate a Miranda waiver. *U.S. v. Korn*, 138 F.3d 1239 (8th Cir.1998). Thus, we have held that intoxication is not conclusive on the issue of the voluntariness of a statement. *State v. Williams*, 269 Neb. 917, 922–23, 697 N.W.2d 273, 278 (2005) (citing *State v. Lamb*, 213 Neb. 498, 330 N.W.2d 462 (1983)). Concerning intoxication, we have recognized that “ ‘[t]he defendant must be so intoxicated that he is unable to understand the meaning of his statements.... If the trial judge is satisfied that under the totality of the circumstances the defendant was able to reason, comprehend, or resist, the statements are to be admitted.’ ” *State v. Williams*, 269 Neb. 917, 923, 697 N.W.2d 273, 278–79 (2005) (citing *State v. Lamb*, 213 Neb. at 504, 330 N.W.2d at 467, quoting *State v. Laffoon*, 125 Ariz. 484, 610 P.2d 1045 (1980)).

In *Williams*, the Nebraska Supreme Court affirmed the district court’s overruling of the Defendant’s motion to suppress. The Defendant’s confession was admitted into evidence; the Defendant sought suppression of the confession claiming that he did not knowingly and voluntarily waive his Miranda rights because he was tired, sleep deprived, and intoxicated. The Defendant was left in an interview room for about 30 minutes before the interview started and dozed off periodically at this time. The Defendant stated that he

had been drinking “[a] little earlier, yeah[, a] lot earlier” and that he had drunk “a buncha beer and gin.” The court reasoned that although the evidence showed that the Defendant was tired and had consumed alcohol that day, the record reflected he demonstrated his ability to understand and answer questions. In the videotaped interview, the Defendant appeared able to reason and comprehend the questions and he answered them coherently.

As in *Hernandez* and *Williams*, in the case at bar, Cavitte used a mind-altering substance within 24 hours of the interview with law enforcement. In *Hernandez*, the Defendant used methamphetamine the day before the interview; in *Williams*, the Defendant drank alcohol the day of the interview, and according to the Defendant, he consumed “a buncha” alcohol. In the case at bar, Cavitte drank alcohol several hours before the interview. Like *Hernandez* and *Williams*, Cavitte’s consumption of alcohol hours before the interview is insufficient on its own to render her statements involuntary. The court in *Hernandez* and *Williams* both relied on the record in holding that the record reflected that the Defendants demonstrated their ability to understand and answer questions. The record in the case at bar reflects that Cavitte did not give any indication that she did not understand her rights. The court in *Hernandez* held that despite possible residual effects of the Defendant’s methamphetamine use the day before and unstable mental health at the time of the interview, both factors did not render the Defendant’s statements involuntary.

Secondly, in *Hernandez*, the Defendant pointed to the fact that, as the investigators knew, he had used methamphetamine the day before the interview. He also pointed to the many odd statements made during the interview. At many times during the interview,

the Defendant would change the topic or talk about things that were not responsive to the question he was asked. He spoke multiple times at length about his family, wondering whether various family members were actually his family members. Additionally, the Defendant made multiple odd or nonsensical statements, such as statements about people having two stomachs like cows and about defecating being similar to having a child. Despite these odd, off-topic statements, the court in *Hernandez* reasoned that the Defendant undoubtedly made numerous strange statements in the interview and that it was possible he felt some effect from the residual methamphetamine in his body from smoking the day before, was not in a state of full mental health, or both. In light of this reasoning, however, the court concluded that such facts were not dispositive. The court stated, “[a]s we have explained, intoxication and mental illness alone are insufficient to render a confession involuntary.” The court stated that the record belied any notion that the investigators exploited the Defendant’s mental state in order to overbear his will and wring out a confession, and ultimately that the Defendant’s statements were voluntary.

Similarly to *Hernandez*, Cavitte in the case at bar raises the issue that she rambled about matters unrelated to the purpose of the interview such as Michael’s neighbors, marital problems, and concerns over property being left in the presence of the neighbors and had to be redirected by Kreikemeier. Cavitte mumbled at times and trailed off sentences during the interview. Despite the odd, off topic statements made by the Defendant in *Hernandez*, the court relied on the principle that “[a]s we have explained, intoxication and mental illness alone are insufficient to render a confession involuntary.” Therefore, despite Cavitte’s rambling, discussion of topics unrelated to the interview, this court overrules the Defendant’s motion to suppress.

Thirdly, the court in *Hernandez* and *Williams* relied upon the record in determining that the Defendant was not intoxicated enough nor sufficiently sleep deprived to render the Defendants' statements involuntary. The court in *Hernandez* held that the record belied any notion that the investigators exploited the Defendant's mental state in order to overbear his will and wring out a confession. The court stated that to the contrary, the Defendant was coherent and able to intelligently answer questions with specificity and in a reasonably articulate manner when he chose to do so. The court in *Williams* held that although the evidence showed that the Defendant was tired and had consumed alcohol, the record reflected that he demonstrated his ability to understand and answer questions consistently and with specificity. The court stated that in the videotaped interview, the Defendant appeared able to reason and comprehend the questions and he answered them coherently.

As in *Hernandez* and *Williams*, the audio and video recordings in the case at bar reflect that Cavitte was coherent and able to reasonably articulate answers. The record reflects that Cavitte did not give any indication that she didn't understand her rights and responded appropriately to Detective Kreikemeier's advisement reminder. Cavitte's intoxication does not render her Miranda waiver ineffective because she was coherent, able to understand Kreikemeier's questions, and articulated reasonable answers. Additionally, nothing in the record reflects that Kreikemeier threatened or promised Cavitte anything in order to get her to waive her rights. For the foregoing reasons, the Defendant's motion to suppress on the issue of intoxication is overruled.

## CONCLUSION

Based upon the above and foregoing analysis, Defendant's motion to suppress is overruled because under the totality of the circumstances the Defendant knowingly and voluntarily waived her Miranda rights. Cavitte was lawfully detained with probable cause. Cavitte was coherent and responded appropriately to questions asked by Kreikemeier over the span of an interview that lasted less than two hours. Cavitte was read and understood the rights' advisory form confirming she understood her rights and her subsequent waiver of Miranda rights prior to the interview with Kreikemeier. Cavitte agreed to speak with Kreikemeier, understood Kreikemeier's questions, and was responsive to questions and cooperative with the interview process. Kreikemeier did not make any promises, threats, or coerce Cavitte into making a statement. Kreikemeier did not raise his voice at any point in the questioning of Cavitte and in fact was very polite and respectful through the entire interview.

Cavitte explicitly stated that she remembered the rights that were read to her in the back of the cruiser by Sergeant Baines. Cavitte agreed to speak with Kreikemeier and did not articulate any difficulty understanding any part of the interview with Kreikemeier. Additionally, nothing from the record reflects that Kreikemeier coerced or placed Cavitte under duress to maintain her waiver. In fact, Kreikemeier was empathetic when Cavitte spoke of her marital problems and treated her concerns about her purse being left at the residence with respect and compassion by ensuring that responding Sergeants retrieved the property for her.

Defendant's Motion is overruled.

DATED this 21<sup>st</sup> day of February, 2019.

BY THE COURT:

  
Thomas A. Otepka  
District Court Judge

cc: Jay Klimes  
Bethany Stensrud

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on February 25, 2019 , I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

Bethany R Stensrud

bethany.stensrud@douglascounty-ne.gov

Jay W Klimes

jay.klimes@douglascounty-ne.gov

Date: February 25, 2019 BY THE COURT:

*John M. Friend*  
CLERK

