

COURT OF APPEALS OF VIRGINIA

Present: Judges Baker, Bray and Overton
Argued by Teleconference

COMMONWEALTH OF VIRGINIA

v. Record No. 0730-97-1

MEMORANDUM OPINION* BY
JUDGE NELSON T. OVERTON
AUGUST 5, 1997

JOHN EDWARD McBRIEN

FROM THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH
Benjamin A. Williams, Jr., Judge Designate

Marla Graff Decker, Assistant Attorney
General (James S. Gilmore, III, Attorney
General; Margaret Ann B. Walker, Assistant
Attorney General, on brief), for appellant.

Douglas Early Ballard for appellee.

In this appeal pursuant to Code § 19.2-398, the Commonwealth contends that the trial judge erred in suppressing statements made by John Edward McBrien to police in connection with an offense with which he is currently charged. For the reasons that follow, we reverse the decision of the trial court and remand the case for trial.

The parties are fully conversant with the record in the cause, and because this memorandum opinion carries no precedential value, we recite only those facts necessary to the disposition of this appeal.

On appeal from a trial court's decision to suppress evidence, we view the evidence in the light most favorable to the

*Pursuant to Code § 17-116.010 this opinion is not designated for publication.

defendant, the prevailing party below. See O'Toole v. Commonwealth, 20 Va. App. 540, 541, 458 S.E.2d 595, 596 (1995).

Upon request by a Virginia Beach Police detective, McBrien went to the police station where he was questioned about an alleged offense. McBrien gave a detailed statement to the detective at that time. After the statement, the detective placed McBrien under arrest. At this point the detective also read McBrien his Miranda rights from a standardized form and had McBrien initial that he understood each right. McBrien further initialed the line marked "Yes" that he understood all of the rights and initialed another line marked "Yes" that, having these rights in mind, he wished to talk to the police. After that, according to the detective's testimony at the hearing, he and McBrien "went back over his statement again in the same detail that I've already testified and [McBrien] gave [the detective] all the facts again that happened."

The trial judge found that McBrien was in custody for purposes of Miranda during his questioning at the station and thus should have been given his Miranda warnings before he made any statements. He granted McBrien's motion to suppress all statements, but did not make a specific ruling as to the statements made after the Miranda warnings were given.

We will assume without deciding that McBrien was in custody for the pre-Miranda questioning, and that his statements during that period of time should be suppressed. After McBrien

knowingly and intelligently, and voluntarily waived his right to remain silent, however, any statements made to the police may be used against him in court. See Roberts v. Commonwealth, 18 Va. App. 554, 557, 445 S.E.2d 709, 711 (1994). The detective testified that after McBrien waived his right to remain silent, he gave the detective "in the same detail . . . all the facts again." Nothing at the hearing, including McBrien's own testimony, contradicts this. Any statements made by McBrien after his waiver are admissible against him and should not have been suppressed.

The trial court's order is reversed and the case remanded for further proceedings consistent with this opinion.
Reversed and
remanded.