IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE,	:	
	:	**ID NO. 1002011017**
_____v._____	:	
	:	
JUAN RESTREPO-DUQUE,	:	
	:	
Defendant.	:	

Submitted: April 7, 2014
Decided: April 15, 2014

Upon Consideration of Defendant's
Motion for New Trial
DENIED

ORDER

Jason C. Cohee, Esquire, and Dennis Kelleher, Esquire, Deputy Attorneys General, Department of Justice, Dover, Delaware for the State of Delaware.

Robert B. Mozenter, Esquire, Attorney at Law, Philadelphia, Pennsylvania, and Jayce R. Lesniewski, Esquire, The Eaby Firm, LLC, Dover, Delaware for Defendant.

Young, J.

SUMMARY

This decision is upon Defendant's Motion for a New Trial in the interests of justice pursuant to Rule 33 on three bases: (a) the Probable Cause Affidavit was deficient, (b) the State made improper statements during closing, which affected the jury, and (c) the Miranda warnings given Defendant were insufficient in the context of the event.

On February 19, 2013, the Court issued an Order relative to argument (a). The Summary of the circumstances, the Facts stated and the Standard of Review therein are incorporated here by reference.

DISCUSSION

PROBABLE CAUSE AFFIDAVIT

As to the Probable Cause Affidavit issues, this is in large measure the so-called *Franks* requirements regarding justification for a search. This matter was originally raised well before trial. Hence, the ability to raise it now is preserved. Facts have developed with heightened clarity by this point. Therefore, the matter will be re-addressed.

Defendant commences this argument with a claim that the warrant was unjustifiably for a nighttime search.

As to the legitimacy of a nighttime search in and of itself, the authority to whom the request is submitted must be satisfied that a search of a dwelling after 10:00 p.m. (which this was) "is necessary in order to prevent the escape or removal of the person or thing" sought, 11 *Del. Code* § 2308.

As the February 22, 2010 search warrant application states, the Affiant,

Detective Porter, a veteran homicide officer, was investigating what he considered to be an "apparent homicide," based upon his investigation of the incident scene. Further, he averred that the individual identified through the investigation to that point was to be apprehended the night of the application, from his home, wherein also lived other family members. Concern was expressed in the application that evidence, including the suspect's clothing and weapons, which could be kept in the suspect's residence, could be destroyed by the remaining family members, at least one of whom had been uncooperative with the police in an unrelated, but very recent encounter.

That description of the concerns calling for an immediate – which happened to be in the nighttime – search satisfies the requirements to justify a nighttime search as set forth in *Caldwell v. State*, 780 A.2d 1037, 1052 et seq (Del. Supr. 2001).

Next, we turn to the request for a so-called *Franks* hearing to justify the search at all. This matter was originally raised well before trial. Hence, the ability to raise it now is preserved. Since facts have emerged, which were unclear earlier, this will be re-addressed. In reference to that request, the Court may find – as was earlier found – that the warrant was properly applied for and granted; that it was not; or that a separate hearing (the *Franks* hearing) should take place.

The issues raised by Defendant regard assertions both that materially false statements were placed in the Affidavit and that significant items were omitted from the evidence, which – if reversed – alone or in concert would have prevented the executing authority from issuing the warrant.

In the Affidavit, Detective Porter stated that the victim, on his computer, was communicating with Defendant on February 14, 2010 (the suspected date of the killing), agreeing to drive to Newark to pick up Defendant and then take Defendant back to the victim's residence, noting that EZ Pass records indicated that the victim did, in fact, drive into New Castle County and then back. Defendant describes that the evidence ultimately revealed that the victim's computer showed that the victim had been communicating with a number of others, as well Defendant, but that Detective Porter, though aware of that fact at the time, failed to mention that in his Affidavit.

Additionally, Detective Porter's Affidavit stated that Detective Ryde had reviewed a video from R&J Traders grocery store, where the victim's credit card had been used on February 15, 2010, the day after the suspected killing. He went on to say:

> "Detective Mark Ryde [in viewing the video] identified suspect Juan Restrepo-Duque exiting the victim's 1994 Volkswagen Jetta in the parking lot. The suspect entered the above location and used the victim's credit card...The suspect signed the victims [sic] name to the credit card receipt."

That statement, in fact, was not accurate. Detective Ryde, upon reviewing the surveillance video, observed a 1994 Jetta very similar in appearance to the victim's vehicle, but was unable to determine the license plate number for positive identification. Additionally, and of more significance, Detective Ryde could not actually identify Defendant as the individual exiting the Jetta. The individual

exiting it, while similar in physique to Defendant, was hooded. Moreover, when Detective Ryde interviewed the clerk involved in the described transaction involving the victim's credit card, he was given a photo array of six people. Not only did the clerk fail to select Defendant's image as the card user, he selected another person, about whose identity he was 75% certain as the individual involved. That constitutes a not insignificant misstatement.

That does not, though, end the consideration. It is appropriate at this particular point to note that Detective Porter's Affidavit, forming the basis for the issuance of the warrant, specifically notes that: "[Y]our Affidavit has not included each and every fact known...[but he] does not believe he has excluded any fact or circumstance that would tend to *defeat* [emphasis added] the establishment of probable cause." Indeed, that is the crucial matter. Hence, if the Affidavit were re-drafted to include the omissions and correct the misstatement, would it be sufficient to satisfy the issuance of the warrant? Were that done, in the context of the whole, the apposite language would be (additions in all caps inside brackets; deletions in parentheses):

> 4. Investigation revealed the victims [sic] 1994 Volkswagen Jetta with Delaware Registration 533333 is missing from his residence.
> 5. [T]he victim was communicating with [A NUMBER OF INDIVIDUALS, INCLUDING "PURECOLOMBIAN BLOOD" WHICH A GOOGLE SEARCH LINKED TO] suspect Juan Restrepo-Duque on his computer on Sunday 02-14-2010 in which the victim agreed to drive to Newark, De and pick up the

> suspect and take him back to the victim's residence...
> 6. Further investigation revealed that on Monday 02-15-2010 the victims [sic] Visa credit card was used at R&J Traders grocery store...Detective Mark Ryde...responded...and reviewed video surveillance and identified [AN UNIDENTIFIED INDIVIDUAL MATCHING THE GENERIC DESCRIPTION OF] suspect Juan Restrepo-Duque exiting (the victim's) [A] 1994 Volkswagen Jetta [GENERALLY MEETING THE DESCRIPTION OF THE VICTIM'S VEHICLE] in the parking lot. (The suspect) [THAT INDIVIDUAL] entered the above location and used the victim's credit card...[AND] (The suspect) signed the victims [sic] name to the credit card receipt.

Specifically, then, the question is whether or not the Affidavit, if "properly" stated, as above, would have led the issuing authority to have executed the search warrant; or whether, after the amendments noted, the application would have been rejected. That is, even assuming for these purposes only that the cited omissions and incorrect statements were deliberate falsehoods or reckless disregardings of the total relevant picture, were the deviations essential to probable cause? *Franks v. Delaware*, 438 U.S. 154 (1978) *Sisson v. State*, 903 A.2d 288 (Del. 2006) (applying *Franks* to omissions).

So, first, assessing the "corrected" Affidavit, would a reasonable person believe that an offense had been committed? Given the description contained in the Affidavit that the deceased victim was observed to have "suffered multiple stab wounds" from a knife and to have been "shot numerous with a BB gun," it is beyond cavil that probable cause to believe that an offense had been committed

existed.

Second, does the "corrected" Affidavit indicate that a search of Defendant's residence reasonably could yield property which is indicative of evidence linking the suspect to that crime? Defendant's Motion on this issue is directed to the propriety of the aim of the Affidavit towards Defendant. To begin with, the failure to mention the possibility of other potential suspects is a matter that provides a topic for cross-examination and jury argument, both of which were pressed at trial. It has little to do with whether or not the named suspect is a legitimate suspect to pursue. Therefore, the absence of "a number of individuals including" is barely relevant to the validity of the pursuit of Defendant. It's addition cannot be said to create a piece of information that, in itself or in the context of the entire Affidavit, would.

PROSECUTORIAL STATEMENT

The next issue presented at argument concerned the statement made by the State during closing argument to the effect that: "The reason no fingerprints of Defendant were found may have been because Defendant may have put gloves, which he himself referred to, on at some point."

The defense points out that there was no evidence to support that, since Defendant mentioned glove in respect to a later use. The defense then added that a request was made by the jury for a transcript of the State's closing argument, suggesting that the jury was giving undue weight to the States close, and in particular to that "glove issue," creating an unreasonable inference not supported by any evidence.

The Defendant, in his closing, rhetorically asked where any fingerprint evidence in that bloody scene. The State was merely responding with a possible answer: *Maybe* he had those gloves on. Especially in the absence of any objection to that response; and given the relative understatement of it; and certainly in the context of the Defendant's posing the hypothetical circumstance; it cannot be said that any impropriety existed in the making of that statement, even if – which is exquisitely speculative – the jury were by any chance homing in on that matter raised by Defendant.

MIRANDA

The Court essentially restates the pertinent parts of its Order of February 19, 2013, as follows:

Juan Restrepo-Duque is charged with Murder in the First Degree, Possession of a Deadly Weapon During the Commission of a Felony, Theft of a Motor Vehicle, Forgery in the Second Degree, and Carrying a Concealed Dangerous Instrument. These charges all stem from the death of Kenton Wesley Wolf, occurring on or about February 14, 2010. The State is seeking the death penalty. At the time of the alleged crime, the Defendant was 18 years old.

The Defendant was born in Medellin, Columbia on March 6, 1991. He and his family came to the United States in May 2003 under a grant of political asylum. They became permanent residents in May 2007.

Restrepo became a suspect as a result of information obtained from the victim's computer. On February 23, 2010, Restrepo's home was searched. The Delaware State Police brought him in for an interview. Detectives David Chorlton

and William Porter of the Homicide Unit conducted that interview. The Defendant was read his *Miranda* rights, after which the following exchange occurred:

> Detective Porter: Okay. Having these rights in mind, do you wish to talk to me about this case? Tell me your side of the story.
>
> Juan Restrepo: I don't know. What would be better? If I talk to a lawyer...
>
> Detective Porter: I mean it's up to you I mean, it's perfectly up to you I mean. It be nice to get your ahh side of the story out because if you don't get your side of the story out we got to go with...you know what I'm saying?
>
> Juan Restrepo: Yeah I understand.
>
> Detective Porter: Okay. So you wish to tell me your side of the story?
>
> Juan Restrepo: Yeah why not.

Counsel for the Defendant has filed a Motion to Suppress, alleging violations of the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and the Delaware Constitution, and for Violations of Article 36 of the Vienna Convention on Consular Relations and Delaware State Police Policy and Procedure. The Motion asks the Court to suppress all statements made by the Defendant after the foregoing exchange, and all evidence obtained as a result.

STANDARD OF REVIEW

Under the United States Constitution, "no person...shall be compelled in any criminal case to be a witness against himself..."[1] Before undergoing custodial

[1] U.S. Const. amend V.

interrogation, a suspect must be advised of certain constitutional rights.[2] "Among those rights of which such a person must be advised are the right to remain silent, that anything said can and will be used against the person in court, and that the person undergoing interrogation has a right to counsel during the interrogation."[3] There is a presumption that a suspect did not waive his rights, but he may do so.[4] However, such a waiver must be knowing, intelligent and voluntary.[5] Courts have adopted a two part test to determine whether a defendant has validly waived his *Miranda* rights:

> First, the relinquishment of the right must have been voluntary in the sense that it was 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" reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.[6]

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[2] *Norcross v. State,* 816 A.2d 757,762 (Del. 2003); *Miranda v. Arizona*, 384 U.S. 436 (1966).

[3] *State v. Cabrera*, 2000 WL 33113956, at *8 (Del. Super. Dec. 19, 2000).

[4] *Garvey v. State,* 873 A.2d 291, 296 (Del. 2005).

[5] *Hubbard v. State*, 16 A.3d 912, 917 (Del. 2011).

[6] *Hubbard v. State*, 16 A.3d 912, 917 (Del. 2011)(quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)).

The burden is on the State to show, by a preponderance of the evidence, that a valid waiver of *Miranda* has occurred.[7] If this burden is not met, the prosecution may not use statements stemming from custodial interrogation of the defendant.[8]

DISCUSSION

Restrepo contends that his statements must be suppressed, because he did not make a voluntary, knowing and intelligent waiver of his *Miranda* rights as required by the Fifth Amendment to the United States Constitution. Defendant's Motion raises two arguments in support of this basis for suppression. First, Defendant contends that his response to the *Miranda* warning was not a valid waiver of his rights, as it constituted an ambiguous invocation. As a result of the allegedly ambiguous invocation, Defendant argues that the police were required to ask clarifying questions, but failed to do so. Second, Defendant claims that the officer's failure to advise him of his consular rights under the Vienna Convention would be additional and independent grounds for the suppression of his statement.

In response, the State argues that Defendant's waiver satisfied both parts of the test described above. The State asserts that the Defendant made his waiver free from any intimidation, coercion or deception, satisfying the first prong of the test. The recording and transcript of the interview are offered in support of that contention. The second prong of the test is concerned with a defendant's ability to waive his *Miranda* rights knowingly and intelligently. To meet this test a defendant must have been made fully aware of "both the nature of the right being

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[7] *Bennett v. State*, 992 A.2d 1236 (Del. 2010) (TABLE)).

[8] *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

abandoned and the consequences of the decision to abandon it."[9]

Both parties also discuss a sort of third element to this test, perhaps more accurately described as an overarching picture, demonstrated by the existence of both elements, that must exist before a court may conclude that a defendant's *Miranda* rights have been waived. This overarching picture is the "totality of the circumstances surrounding the interrogation," which must "reveal both an uncoerced choice and the requisite level of comprehension."[10] Restrepo argues that under the totality of the circumstances test, he could not possibly have made a valid waiver of *Miranda*.

As to the Defendant's claim that he made an ambiguous invocation of his *Miranda* rights, the State contends that the "quietly mentioned...sentence fragment," which included the word "lawyer," qualifies, at best, as an ambiguous invocation. The State bases its argument on the tone of conversation, the rest of the exchange, and Defendant's failure to complete the sentence.

Assuming the Court does find the words of the Defendant to be an ambiguous invocation, the State maintains that the questions and comments of Detective Porter were intended to, and did in fact, clarify the Defendant's intentions. The State specifically points to the Detective's asking the Defendant if he wanted to tell his side of the story (evoking an affirmative response by the Defendant) as the moment of clarification.

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[9] *Hubbard v. State*, 16 A.3d 912, 917 (Del. 2011)(quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)).

[10] *Id.*

The United States Supreme Court has held that "the United States Constitution imposes no duty on police to cease questioning" when a suspect makes an ambiguous or equivocal request for counsel.[11] Instead, a suspect must unambiguously request counsel in order to trigger cessation of questioning.[12] However, the Delaware Supreme Court has held that the State Constitution provides additional constitutional protection, requiring police to clarify such ambiguous statements before continuing the interrogation.[13] More specifically, the Court has held that an interrogating officer must "immediately narrow his questioning to the single subject of clarifying whether the suspect does, in fact, desire the presence of counsel."[14] Any inquiries made in this context "may not be used to coerce or intimidate the suspect or otherwise discourage his effort to secure counsel, if that is his intention."[15] The police must clarify the ambiguous statement before continuing with the interrogation.[16] The Delaware Supreme Court's decision in *Crawford* was announced four years before the *Davis* opinion

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[11] *State v. Siple*, 1996 WL 528405, at *7 (Del. Super. July 19, 1996)(citing *Davis v. U.S.,* 512, U.S. 452, 460, 114 S.Ct. 2350, 2356 (1994)).

[12] *Davis v. U.S.,* 512 U.S. 452, 459 (1994).

[13] *State v. Siple*, 1996 WL 528405, at *9 (Del. Super. July 19, 1996)(citing *Crawford v. State*, 580 A.2d 571, 577 (Del. 1990)).

[14] *State v. Demby*, 1995 WL 717619, at *10 (Del Super. Nov. 28, 1995)(discussing the analysis by the *Crawford* court of the three approaches taken by other courts, settling on the third approach)).

[15] *Draper v. State*, 49 A.3d 807, 810 (Del.2002)(quoting *Crawford v. State*, 580 A.2d 571, 577 (Del. 1990)).

[16] *Draper*, 49 A.3d at 810.

was issued by the United States Supreme Court. However, the Delaware Supreme Court has since reaffirmed "that clarification, as described in *Crawford*, is required pursuant to Article 1, § 7 of the Delaware Constitution."[17]

In order to reach a determination as to the first issue presented by the Defendant's Motion, the Court, then, must first decide whether the statement made by Restrepo qualifies as an ambiguous invocation of his right to counsel. A finding of ambiguity in this context "rests on the totality of the circumstances."[18] As a result, "an inquiry into whether a defendant has waived his or her rights must proceed on a case-by-case basis."[19] Instructive examples exist from other jurisdictions. "I might want to speak to a lawyer," and "Maybe I should talk to a lawyer," have been held to be ambiguous invocations of *Miranda* elsewhere.[20] " A defendant who gives contradictory answers to identical questions has been found to fall short of an unequivocal waiver of the constitutional right."[21]

Under the circumstances presented in this case, the Court finds that the statement of the Defendant was an ambiguous invocation of his *Miranda* rights. Defendant's question is very similar to the phrases found by other courts to be ambiguous. When deciding what the intention of a defendant is, in a situation such as this, the court will look at whether the statement was accompanied by "other

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[17] *Steckel v. State*, 711 A.3d 5, 10-11 (Del. 1998).

[18] *Garvey v. State*, 873 A.2d 291, 297 (Del. 2005).

[19] Garvey, 873 A.2d at 297.

[20] *Id.*

[21] *Id.*

factors that demonstrate indecision on the part of the accused."[22] Here, the statement itself along with Defendant's tone are perhaps indicative of some indecision. In addition, the mere fact that the Detective accidentally talked over the Defendant, not allowing him to finish speaking, could manifest the statement as ambiguous. It should be noted that Restrepo is extremely soft spoken, quite possibly leading the Detective to believe that Restrepo had finished speaking. Certainly, there appears to be nothing to imply that such conduct was purposeful. However, having an incomplete statement of this nature, in the context of the preceding words spoken by Defendant, can be considered to create an ambiguity as to Restrepo's intentions.

Given an ambiguous invocation of *Miranda* rights, the Court must consider whether the Detective's subsequent conduct complied with the Clarification Approach required by the Delaware Supreme Court. This approach demands that the officer immediately cease interrogation, limiting the scope of his questions "to one subject and one only."[23] That is, further immediate questioning after the ambiguous invocation must be limited to clarifying a defendant's intent.[24] If the officer decides to use the method of asking clarifying questions of the accused, "the clarifying questions may not coerce or intimidate the suspect or otherwise

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[22] *Id.* at 298.

[23] *Crawford v. State*, 580 A.2d 571, 575-76 (Del. 1990)(quoting *Thompson v. Wainwright*, 601 F.2d 768, 771 (5th Cir. 1979)).

[24] *Crawford,* 580 A.2d at 575.

discourage his effort to secure counsel."[25] When employing the clarification approach, the police are not to "tender any legal advice or attempt to dissuade the suspect from pursuing an intended course."[26] Another method of clarification commonly used, and strongly endorsed by the courts, is repetition of the *Miranda* warning.[27] Interrogation may continue if the clarifying questioning or repetition of *Miranda* warnings results in an indication that the suspect does not wish to have the assistance of counsel.[28]

Hence, when faced with the suspect's ambiguous statement, the Detective responded as follows: "I mean it's up to you I mean, it's perfectly up to you I mean. It be nice to get your ahh side of the story out because if you don't get your side of the story out we got to go with...you know what I'm saying?" After a response by the Defendant the Detective continued: "Okay. So you wish to tell me your side of the story?"

The Delaware Supreme Court as held that clarifying questions or repeating the *Miranda* warnings are both appropriate methods for clarifying a suspect's intent after an ambiguous invocation of *Miranda*.[29] The Court has specifically endorsed the repetition of *Miranda* warnings as a preferred way of accomplishing clarification, serving "the purpose of emphasizing the suspect's options and

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[25] *Id.* at 577.

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Crawford v. State*, 580 A.2d 571, 577 (Del. 1990).

placing the responsibility on the suspect to either continue the questioning or remain silent until counsel is available."[30] However, case law also demonstrates that a court may accept the use of clarifying questions, so long as they are limited only to the subject of clarifying the suspect's intentions regarding invocation.[31] While the response from the Detective in the case at hand was probably not ideal, the Court finds that it satisfies the clarification approach.

Delaware case law is rife with situations in which the courts have determined that an officer's questions or conduct exceeded the scope allowed by the clarification approach. In each of those cases, the police conduct or questioning was far more coercive than the conduct in the instant case.[32] For example, in *State v. Sumner*, the court found the detective's conduct to go far beyond an attempt at clarification.[33] The Court stated that "while it is true that the police may clarify by again reading the suspect the *Miranda* warnings, the police may not obfuscate clarification through an abundance of interruptions and feigned ignorance of the suspect's intentions."[34] Particularly of note was one comment

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[30] *Id.*

[31] *Id.*

[32] *See e.g., State v. Sumner,* 2003 WL 21963008 (Del. Super. Aug. 18, 2003); *State v. Gray,* 2001 WL 1628306 (Del. Super. March 13, 2001); *State v. Phillips,* 2004 WL 2521816 (Del. Super. Oct. 22, 2004); *State v. Cabrera,* 2000 WL 33113956 (Del. Super. Dec. 19, 2000).

[33] *State v. Sumner*, 2003 WL 21963008, at *21 (Del. Super. Aug. 18, 2003)("The entirety of this interlude smacks of a calculated marathon designed to secure a confession at all costs and the totality of the circumstances surrounding Det. Donovan's quest for a confession culminated in a violation for the Fourteenth Amendment Due Process Clause.")).

[34] *Id.* at *14.

made by the detective that he was "flabbergasted right now as to why you would want a lawyer..."[35] The court found the police conduct to be "a coercive and systematic attempt to negotiate away Sumner's constitutional rights leading to an admission of guilt."[36]

In another case, after an equivocal statement by a suspect, the detective repeatedly prodded the defendant by talking to him about the benefits of not lying.[37] The detective also made "numerous negative comments and constant reminders that the truth would help him out," which amounted to the "functional equivalent of interrogation."[38] The court held that the detective had "undermined the defendant's desire to have counsel present before talking further" by misleading the defendant, and implying that the police could help the defendant, if he were willing to talk.[39]

The comment made by Detective Porter to Juan Restrepo does not approach reaching the level of coercion present in the various cases. This is particularly true when the context in which the statement was made is considered.

In determining whether statement was voluntarily, knowingly and intelligently given, Delaware courts have often focused on the interviewing detective's overall demeanor and the tone of the interview, as part of the broader

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[35] *Id.*

[36] *Id.* at 20.

[37] *State v. Gray*, 2001 WL 1628306 (Del. Super. March 13, 2001).

[38] *Id.* at *6.

[39] *Id.*

totality of the circumstances.[40] Reviews of the transcript and recording here do not indicate coercion or intimidation. Detective Porter takes a very gentle approach. The overall tone is entirely conversational and relaxed.

Thus, we look to the totality of the circumstances. Proper examination of the totality of the circumstances, as indicated, involves examining a number of factors, including "the behavior of the interrogators, the defendant's conduct, his age, his experience, his intelligence and all other pertinent factors."[41] Another way of describing what courts are concerned with in this context is evidence that the suspect's "will was overborne and his capacity for self-determination critically impaired because of coercive police conduct."[42] After Detective Porter's statement, and subsequent inquiry as to whether Defendant wished to continue talking, the Defendant responded "Yeah why not." Defendant's response certainly is not the kind of answer a suspect would be expected to give if he felt in any way overborne. As previously discussed, the Court does not find anything about the interview to be demonstrative of coercion, or to suggest an attempt to dominate the will of the defendant.

The behavior of the detectives has been thoroughly discussed. As for the Defendant's conduct, Restrepo was nothing but calm and soft-spoken throughout the interview. Though he does not speak English as his first language, he clearly

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[40] *See e.g., State v. Demby*, 1995 WL 717619, at *10 (Del. Super. Nov. 28, 1995).

[41] *State v. Cabrera*, 2000 WL 33113956, at *9 (Del. Super. Dec. 19, 2000).

[42] *DeJesus v. State*, 655 A.2d 1180, 1993 (Del. 1995), *rev'd on other grounds*, 953 A.2d 188 (Del. 2008) (quoting *Colorado v. Spring*, 479 U.S. 564, 574 (1987)).

has a firm grasp of the language; and he demonstrated that he understood what was taking place. The Defendant is reasonably articulate, an ability demonstrated by his ability to speak on his own behalf before this Court on several occasions. In terms of experience, the State points out that this was not the Defendant's first encounter with the police, nor the first time he had been given his *Miranda* warnings. On the other hand, the Court gives little weight to the Defendant's previous experience with the justice system, as his prior encounter was for a relatively minor crime involving very little formal experience with the criminal justice process.

Finally, at argument, Defendant points out that the statement given by Defendant was made by an 18 year old, who was tired and under the influence of marijuana. The interviewing detectives knew Defendant's age. They should, Defendant argues, have specifically asked Defendant whether or not, at this one o'clock A.M. point, whether he felt too tired or (knowing Defendant's possession of marijuana) too influenced by the drug to proceed. The State responds that the evidence presented at trial by the interviewing detectives was that neither was the case. The Defendant suggest that such "police observations" are not the point. At that hour, with that aged individual, with the known availability of marijuana, Defendant should have been asked specifically about his ability and willingness to go forward.

Looking again at the totality of the circumstances of the interview, the Court cannot find any basis to support improper coercion or "legal advice" or undue suggestion vitiating the post-Miranda interview of Defendant.

Though the Detectives may not have used the Court's concept of ideal phraseology in responding to the ambiguous statement of the Defendant, the foregoing reasoning and analysis of the totality of the circumstances supports the State's position that a valid waiver of *Miranda* occurred.

CONCLUSION

For the foregoing reasons, Defendant's Motion for a New Trial is **DENIED**.

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBY/lmc
oc: Prothonotary
cc: Counsel
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