

INTRODUCTION

Troy Stremming (“Defendant”) was indicted on one count of Assault First degree in violation of 11 *Del. C.* § 613 relating to an alleged altercation that occurred between him and a victim on February 22, 2015. Defendant moves to suppress statements made to New Castle County Police Officers following a post-*Miranda* interview that took place on February 23, 2015. Defendant argues that the State violated his Fifth Amendment when questioning continued after he invoked his right to counsel. For the reasons that follow, Defendant’s Motion to Suppress is **DENIED**.

FACTUAL AND PROCEDURAL HISTORY

On February 22, 2015, New Castle County Police Officers (NCCPD) responded to a 9-1-1 call for assistance when the alleged victim was found lying on the floor of his Wilmington residence with blood coming from his ear.

The following day, NCCPD conducted a post-*Miranda* interview of Defendant at the Maryland State Police North East Barracks that was both audio and visually recorded.¹ Defendant is a forty-five year old man who had spoken to an NCCPD representative the day before and appeared voluntarily for an interview with NCCPD Officers. Defendant signed a written *Miranda* waiver form.² During the interview, the officers advised Defendant of his *Miranda* rights, including that

¹ See State’s Response to Defendant’s Motion to Suppress at ¶4.

² *Id.*

he had a right to have an attorney present. The video of the interview shows the interaction between Detective Smiley (“DS”), Defendant, and another detective in the room (“UM”) as follows:

UM: ...When you say the word “lawyer,” we have to clarify what you mean. That’s why there’s [unintelligible] on there that says you may discontinue your statement. If we were to start talking, you were – you are allowed to stop at any time. But before we even got to starting to talk about it, you mentioned a lawyer. So we can’t even

UM: [W]e have to stop entirely and we have to wait until you’ve had the chance to meet with your lawyer. And that’s what we’ll do. And then if you and your lawyer would like to come back, that could happen then. But we have to stop now....

Defendant wanted to be “brief[ed]” on what was going on.³ Defendant continued to seek answers from the officers as follows:

DS: What I’m telling you right now because you expressed that you would like to have your lawyer present, we are not even going to discuss any further about the incident. So what we’re saying is if you can just sign the paper, we’ll go about our way to continue our investigation.

DEFENDANT : Okay, let me read this one more time.

...

DEFENDANT: Okay. Make sure I got this right. I got a right to have a lawyer present while I’m being questioned. However, since number five says what it says, I can talk to you. And then when I want to stop, then I can stop and request my lawyer. Correct.

DS: Correct.

DEFENDANT: Ok, can we try again?

...

³ *Id.* at 4.

DS: Okay. So having these rights in mind, do you wish to talk to us today?

DEFENDANT: Yeah....

...

DS: So with that said, do you wish to talk to us today about something that occurred yesterday without your lawyer present?

DEFENDANT: Yeah....

...

DS: ...I'm just going to ask you again so just so there's no misunderstanding. Do you understand the rights that I just explained to you?

DEFENDANT: Yes, I understand my rights.⁴

Defendant and the State agreed that the suppression hearing scheduled for December 4, 2015, was not necessary because this Court could rule on the written submissions after it had an opportunity to review the February 23rd video interview. The Court has reviewed the video interview as well as Defendant's Memorandum in Support of Motion to Prohibit the Introduction of Defendant's Post-Miranda Statement and the State's Response to Defendant's Motion to Suppress. For the following reasons, Defendant's Motion to Suppress is denied.

STANDARD OF REVIEW

Superior Court Criminal Rule 41(f) provides that a motion to suppress "shall state the grounds upon which it is made with sufficient specificity to give the State

⁴ *Id.*; On at least six occasions during this interview, NCCPD Officers informed Defendant that they could not speak with him until he had a lawyer present. The aforementioned dialogue merely illustrates one instance where the officers explained to Defendant that they could not speak to him and Defendant continued to request clarification.

reasonable notice of issues and to enable the court to determine what proceedings are appropriate to address them.”⁵ As a general rule, “the defendant bears the burden of establishing that the challenged search or seizure violated his rights under the United States Constitution, the Delaware Constitution, or the Delaware Code.”⁶ “However, once the defendant has established a basis for his motion, *i.e.*, the search or seizure was conducted without a warrant, the burden shifts to the government to show that the search or seizure was reasonable.”⁷ The State must then prove, “by a preponderance of the evidence that the actions of its agents were in accordance with constitutional protections.”⁸ This Court finds that the State has met its burden.

DISCUSSION

It is well settled law that an accused may waive the rights protected by *Miranda* warnings “provided the waiver is made voluntarily, knowingly, and intelligently.”⁹ In determining whether a statement is made voluntarily, knowingly, and intelligently, the court will look to the totality of the circumstances

⁵ Super. Ct. Crim. R. 41(f).

⁶ *State v. Nyala*, 2014 WL 3565989, at *5 (Del. Super. 2014) (citing *State v. Babb*, 2012 WL 2152080, at *2 (Del. Super. 2012)).

⁷ *United States v. Johnson*, 63 F.3d 242, 245 (3d Cir. 1995); *see also Babb*, 2012 WL 2152080, at *2.

⁸ *Nyala*, 2014 WL 3565989, at *5 (citing *Babb*, 2012 WL 2152080, at *2).

⁹ *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

surrounding the interrogation.¹⁰ “The determination of whether a suspect clearly asserted his right to counsel calls for an objective inquiry....”¹¹

Here, Defendant acknowledges that he was read his *Miranda* rights and that he signed the written waiver indicating that he understood his rights. Defendant does not allege that his waiver was the result of overbearing intimidation or coercion by the police. He does not claim a lack of awareness of both the nature of the right being abandoned and the consequences of his decision to abandon it. Instead, Defendant argues that, after stating he would “like to have a lawyer with [him] when [he] talk[ed],”¹² he closed the proverbial door to further conversation. He claims that officers, by continuing the conversation, subtly “cracked open the door” to reiterate that which needed no reiteration, and was impermissibly influenced to change his mind. Therefore, the sole issue is whether police officers impermissibly continued the conversation with Defendant.

In Delaware, “unlike its federal counterpart, ‘if a suspect attempts to invoke [his or her] *Miranda* rights during an interrogation, but does not do so unequivocally, the police must clarify the suspect’s intention before continuing with the interrogation.’”¹³ A defendant’s statement may be poorly phrased sometimes; with the defendant being unsure whether he desires counsel or whether

¹⁰ *DeJesus v. State*, 655 A.2d 1180, 1192 (Del. 1995).

¹¹ *State v. Jamison*, 2000 WL 1610752, at *8 (Del. Super. 2000) (citing *Davis v. United States*, 512 U.S. 452, 459 (1994)).

¹² State’s Exhibit B, Tr. Of Def. 02/23/15 Interview, p. 2.

¹³ *Garvey v. State*, 873 A.2d 291, 296 (Del. 2005).

he merely desires clarification of the possibilities and charges that he faces.¹⁴ If, after clarification, the defendant wishes to speak without the presence of counsel, the interrogation may continue.¹⁵

Defendant cites to *Oregon v. Bradshaw* as instructive to this Court.¹⁶ There, the United States Supreme Court found that Defendant initiated further conversation and the statements made to the polygraph examiner were deemed admissible.¹⁷ “His statement evinced willingness and a desire for a generalized discussion about the investigation and was not merely a necessary inquiry arising out of the incidents of the custodial relationship.”¹⁸ This Court finds the same occurred here, especially where Defendant remained ambiguous regarding his invocation, continued to re-engage the officers, and they continued to clarify.

Specifically, NCCPD Officers asked Defendant if he wished to speak to them without an attorney present. After Defendant’s initial response, the officers informed him that they could not speak to him and the questions stopped.¹⁹ However, Defendant continued to ask for clarification and the officers responded accordingly. Even if it can be said that he originally invoked his right to counsel, Defendant re-engaged or “initiated” further conversation with the officers. It was

¹⁴ *Id.*

¹⁵ *State v. Crawford*, 580 A.2d 571, 577 (Del. 1990).

¹⁶ *Oregon v. Bradshaw*, 462 U.S. 1039, 1040 (1983).

¹⁷ Defendant’s reliance on the holding, which was favorable to Defendant, was of the Oregon Court of Appeals. However, this decision was subsequently reversed by the United States Supreme Court in *Oregon v. Bradshaw*, which held that the statements were admissible.

¹⁸ *Bradshaw*, 462 U.S. at 1040.

¹⁹ State’s Exhibit B, Tr. Of Def. 02/23/15 Interview, p. 2.

not until after Defendant indicated a clear and unequivocal desire to have the conversation with the officers that he was asked substantive questions.

For the foregoing reasons, Defendant's Motion to Suppress is **DENIED**.

IT IS SO ORDERED.

Judge Vivian L. Medinilla

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