THE FAMILY COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
Petitioner	)	
	)	
vs.	)	**ID NO.: 1801007669**
	)	
C--- B----- M---,	)	
Respondent	)	

ORDER ON AMENDED MOTION TO SUPPRESS

This is the Court's decision regarding the Amended Motion to Suppress filed on July 27, 2018 by Monika Germono, Esquire, APD on behalf of C--- B----- M--- (hereinafter "Respondent") a minor born October --, 2000. Respondent, in his July Amended Motion, seeks suppression of all evidence discovered by the State during a search of his home on January 16, 2018 and of all statements made by him to Delaware State Police (hereinafter "DSP") Detective Harris later that day on the basis that "the State illegally searched Respondent's car and used that information to obtain a search warrant of his residence" and that Respondent's "waiver of his Miranda rights and the subsequent statement were not a product of free will." Frank Mieczkowski, Esquire, DAG on behalf of the State of Delaware filed a Response on August 17, 2018 opposing all bases for suppression.

As there is no substantive disagreement as to the facts, the Court did not hold a fact finding hearing prior to ruling on the Amended Motion.[1] The differences in characterization of the facts do not rise to the level of factual dispute warranting an evidentiary hearing. As a result, in issuing this decision, the Court relied solely on the Defense and State's recitation of facts and any attached exhibits.

[1] *See* G.M. v. State, 2017 WL 1292352, at *3-4 (Del. Fam. 2017) (holding that Commissioner erred in not holding fact finding hearing before ruling on Motion to Suppress because there were "factual discrepancies" in filings that "needed to be resolved").

FACTS

On January 15, 2018, Detective Harris applied for and obtained a warrant to search Respondent's home. The application contains twenty-seven paragraphs of factual allegations and history in support of the search warrant.[2] Among those paragraphs, paragraph 18 details an incident on November 16, 2017 when three pellet guns were discovered in Respondent's vehicle while it was parked at Respondent's high school.[3] The State concedes in its Response to the Amended Motion that this search of Respondent's vehicle without a search warrant was unlawful.

The affidavit also describes the history and facts collected from each of the five reported robberies at three different locations all along Concord Pike in Wilmington, DE within a half-mile of each other: the McDonalds at 2507 Concord Pike on January 23, 2017 and July 28, 2017; the Walgreens at 2119 Concord Pike on January 30, 2017 and January 1, 2018; and the Subway at 2614 Concord Pike on October 6, 2017. All five times the suspect's face was disguised, he provided the store clerk with a demand note and he fled on foot after the robbery east from Concord Pike into the Blue Rock Manor/Fairfax South subdivision. Additionally, on February 11, 2017, as described in paragraphs 5 through 10 of the affidavit, a Walgreens clerk noticed that the "physical appearance" of a "suspicious" teenage male, standing in the check-out line with an older adult, "was reminiscent" of the person who robbed her two weeks prior who was wearing a "black face wrap" and "dark colored hat" during the robbery. The police then tracked the Walgreens reward card of the adult accompanying the teenage age male to D---- M---, Respondent's step-father, to conclude that the appearance of the teenage male standing in the check-out line on February 11, 2017, as caught on store video surveillance, was "consistent" with Respondent's state-issued ID. Furthermore, Respondent was involved in a domestic violence incident on November 22, 2017 wherein he threatened to kill Mr. M---. Finally, the affidavit notes that Respondent's physical appearance and home address are consistent with the physical appearance of the suspect and the direction the suspect fled after each robbery, and that during surveillance of Respondent over several days in January 2018 he was found to be wearing clothing similar to that worn by the suspect.

Following the search of Respondent's home on January 16, 2018, Respondent was arrested

[2] Ms. Germono attached the application and affidavit as Exhibit A to her initial Motion to Suppress filed on May 31, 2018 but did not reattach it to the July Amended Motion. It is nevertheless begin considered as part of the Amended Motion.

[3] Paragraph 26 also makes reference to the recovered pellet gun.

while he was at school and transported to DSP's Troop 2, where his mother, V---- B------ (hereinafter "Mother"), met him. Shortly thereafter, Detective Harris began his interrogation of Respondent, at around 11:30 AM, with Mother present, by describing the evidence that DSP had against Respondent. Then Detective Harris and Respondent had the following exchange:[4]

> Detective Harris: So, as I was telling your mother, it's important to you to be honest, and not be deceptive. Your mom is in your corner, that this is the right step for you to be forthcoming. I'll send the case to the prosecutor to handle this case and they are going to see this conversation, see how cooperative you are. I'm not here to cut you a deal but what I can do is to go to bat for you guys. If you cooperate with me, I'm going to relay that to the prosecutor. So if you are not cooperative, I totally get it. I have nothing against you. This isn't me versus you. But if you don't, like I was explaining to mom, if we go to the prosecutor and say we have all of this to support what we are bringing to you but the person we are speaking with says I'm not going to cooperate with you. I just want you to think about it if you were in their shoes how you would perceive that. But if you say, ok, we have all of this and the person we are talking to was cooperating with us and told us the reasons why these things occurred, then we would say that's a remorseful person, that they felt bad, they are not totally evil person. Are you an evil person?
>
> Respondent: No.
>
> Detective Harris: I don't think you are, from talking to you. So we are either dealing with a real evil person or with someone who made some mistakes. We are all human beings. We all make mistakes. But in order to do that we need to go past that and talk. You get what I'm saying?

Following these introductory statements, Detective Harris read the *Miranda* warnings to Respondent in about twenty seconds. There is no evidence of the specific text that Detective Harris read from or that he read the warnings rapidly or that he presented them in a confusing way. Thereafter, Respondent signed the *Miranda* warnings form and began, "almost immediately,"[5] to confess to the robberies and identify himself in surveillance photographs. The entire interrogation lasted less than one hour and Mother was present with Respondent the entire time. According to the State, Respondent "remain[ed] calm throughout the entire confession and show[ed] little emotion" and "he answered each question calmly and coherently."[6]

According to the Defense, this was Respondent's first time being interrogated by police,

[4] The script of this dialogue is based on Ms. Germono's transcription, in paragraph 32 of the Amended Motion, of what she heard on the interrogation video, as no official transcript of the interrogation was provided to the Court.
[5] State's Response Para. 19.
[6] State's Response Para. 18 and 36.

and his first time being read *Miranda* warnings.

Following the interrogation, Respondent was placed in a holding cell from about 1:30 PM until 4:00 PM before being removed for a bail hearing. During this initial period after his interrogation, Respondent did not show any signs of emotional distress, according to the State. However, after he returned from the bail hearing, at around 4:30 PM, the State admits that he became "increasingly upset."[7] The Defense adds that Respondent was "distraught, he was sobbing hysterically, and he tied his own t-shirt around his neck in an attempt to strangle himself."[8] Thereafter, Respondent and a uniformed DSP officer had a physical altercation in Respondent's cell.

LEGAL ANALYSIS

1. Validity of January 16, 2018 Search and Seizure

Under the United States and Delaware Constitutions, a search warrant may be issued only upon the showing of probable cause.[9] "An affidavit in support of a search warrant must, within the four-corners of the affidavit, set forth facts adequate for a judicial officer to form a reasonable belief that an offense has been committed and the property to be seized will be found in a particular place."[10] In determining whether probable cause exists to obtain a search warrant, our courts apply a "totality of the circumstances" test.[11] Additionally, our courts continue "to require exclusion of evidence obtained in violation of the Delaware Constitution's protection against illegal searches and seizures."[12] Therefore, as the State concedes that the evidence of three pellet guns found in Respondent's car on November 16, 2017 was obtained unlawfully, that evidence must be excluded.

However, tainted allegations in an affidavit "do not vitiate a warrant which is otherwise validly issued upon probable cause reflected in the affidavit."[13] Instead, the Court must ""excise the tainted evidence and determine whether the remaining, untainted evidence would provide a neutral magistrate with probable cause to issue [the] warrant."[14] Thus, the Court must examine

[7] State's Response Footnote 25.
[8] Respondent's Motion Para. 35.
[9] U.S. Const. amend. IV; Del. Const. art. I, § 6
[10] *Sisson v. State,* 903 A.2d 288, 296 (Del.2006).
[11] *See Id.*
[12] *Jones v State,* 28 A.3d 1046, 1057-58 (Del. 2011).
[13] *Id*. (quoting *United States v. Johnson,* 690 F.2d 60, 63 (3d Cir.1982)).
[14] *Id*. (quoting *United States v. Herrold,* 962 F.2d 1131, 1138 (3d Cir.1992)).

whether there was sufficient evidence within the application and affidavit for a search warrant to support probable cause using the "totality of the circumstances" even without the evidence of the three pellet guns contained in paragraph 18 of the application's recitation of the facts and history. After thoroughly examining the twenty-seven paragraph recitation of facts and history, the Court finds that there is still enough evidence for probable cause to issue a search warrant even after excising paragraph 18. In reaching this conclusion, the Court finds that the fact that an alert by a Walgreens clerk on February 13, 2017 that a shopper's physical appearance "was reminiscent" of the suspect who robbed her two weeks prior is especially compelling as this eye witness account led the DSP first to Respondent's step-father and then to Respondent as the appearance of the teenage male standing in the check-out line with Mr. M--- was "consistent" with Respondent's state-issued ID photo.

Although this eyewitness identification alone might not be enough to get a search warrant because the suspect's face was partially covered at the time of the January 2017 robbery of the Walgreens, this fact when combined with the other facts detailed in the application for a search warrant establish probable cause and show that the police had more than a "generalized suspicion"[15] that Respondent was responsible for the Walgreens robbery. For example, Respondent lives in the sub-division where the suspect fled on foot following each robbery, his physical appearance is similar to that described by the witnesses, and he was surveilled, on several occasions, wearing clothes similar to those worn by the suspect. Furthermore, the similarities between the facts of the robberies are sufficient to link Respondent to each robbery due to the geographic proximity of the stores to each other, the suspect's use of demand notes and disguises, the suspect's physical appearance, and his fleeing on foot in the same general direction after each robbery.

2. Validity of Miranda Waiver and Confession

The Fifth Amendment to the United States Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself."[16] "This privilege against self-incrimination governs state as well as federal criminal proceedings through the Due Process Clause

[15] The defense cites to *Buckham v. State*, 185 A.3d 1, 17 (Del. 2018) (where the Court found that the generalized suspicions of his criminality did not support a probable cause finding).
[16] U.S. Const. Amend. V.

of the Fourteenth Amendment to the United States Constitution."[17] The United States Supreme Court extended this privilege against self-incrimination to custodial interrogations of persons accused or suspected of a crime in *Miranda v. Arizona*.[18] Thus, an individual may not be subject to a custodial interrogation by law enforcement officials unless he is advised of his *Miranda* rights.[19] The State concedes that Respondent was subject to custodial interrogation after he was read his *Miranda* rights.

An accused may waive his *Miranda* rights if the waiver is made voluntarily, knowingly, and intelligently.[20] The State retains the burden of proof to demonstrate by a preponderance of evidence that a confession has been voluntarily made.[21] "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* warnings have been waived."[22] With regard to a juvenile, the Court evaluates the "age, experience, education, background, intelligence, and whether he has the capacity to understand the warnings given to him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights."[23] Courts agree that "a youth's age and experience are relevant factors for consideration under the 'totality of the circumstances' test and that the confessions and admissions of a juvenile require a special scrutiny."[24] Additionally, as to confessions, the Courts consider such factors at the time of day and length of the interrogation, the mental capacity and education of the juvenile, whether there was any incommunicado detention, physical abuse or punishment, and the age and experience of the juvenile.[25]

Several Delaware Supreme Court decisions are especially instructive in the Court's examination of the totality of circumstances in Respondent's case as to both the waiver of his *Miranda* rights and his subsequent confession. In *Smith v. State*, the Court found that there was no knowing waiver of *Miranda* by a 14-year-old in the "mild mental retardation range" who did not

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[17] *DeJesus v. State*, 655 A.2d 1180, 1189 (Del. 1995) (citing *Malloy v. Hogan*, 378 U.S. 1, 8 (1964)).
[18] 384 U.S. 436 (1966).
[19] *See, e.g.*, *DeJesus*, 655 A.2d at 1190 (1995) (citing *Miranda*, 384 U.S. at 466).
[20] *See DeJesus*, 655 A.2d at 1192 (1995) (citing *Miranda*, 384 U.S. at 444).
[21] *See Dickerson v. State*, 325 A.2d 367, 368 (Del. 1974).
[22] *DeJesus*, 655 A.2d at 1192 (quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)).
[23] *Torres v. State*, 1992 WL 53406, at *3 (quoting *Fare v. Michael C.*, 442 U.S. 707, 725 (1979)).
[24] *State v. Haug*, 406 A.2d 38, 43 (Del. 1979).
[25] *See Blankenship v. State*, 447 A.2d 428, 431-32 (Del. 1982); *see also Baynard v. State*, 518 A.2d 682, 690-91 (Del. 1986).

have a parent/adult present during his waiver, could not read or sign his own name, and where the officer's *Miranda* explanation was not always clear or understandable.[26] In *Marine v. State*, the Court found a knowing and voluntary *Miranda* waiver by a 14-year-old of "average intelligence" who was in "special classes for the socially and emotionally maladjusted" and an uncoerced subsequent confession where the child, in the presence of his parents, was repeatedly advised by police to tell the truth.[27] In *Blankenship v. State*, the Court found that there was a voluntary confession by a 22-year-old married father with an eighth-grade education who was emotionally upset but coherently answered all the police questions.[28] Finally, in *Baynard v. State*, the Court found that there was a voluntary confession by a 30-year-old man with an eleventh grade education and considerable experience with the legal system who was not threatened or physically coerced but who was lied to by police.[29]

Based on binding Delaware case precedent, the Court finds that Respondent's *Miranda* waiver was knowing and intelligent. Although Respondent was a 17-year-old high school student at the time of his interrogation who had never been read his *Miranda* rights before the date in question, there is no evidence that he suffered any diminished capacity or possessed below average intelligence such that he could not understand what was being read to him or the form that he signed. Therefore, this case is unlike *Smith v. State* where the juvenile could not read or write. Furthermore, unlike *Smith*, although the Defense presents that it only took the police officer twenty seconds to read the rights to Respondent, there is no evidence that the officer read them in a way that would confuse Respondent. Respondent was also with his Mother when he was read his rights.

Furthermore, based on the above-named Delaware Supreme Court cases, the Court finds that Respondent's confession was not coerced. First, like *Marine v. State*, Detective Harris's instructions prior to reading the Miranda rights were essentially an invocation to cooperate and tell the truth, and his specific reference to "evil person[s]" was not enough to overcome Respondent's will based on his age, intelligence and experience. Although Detective Harris appears to have misstated Respondent's rights by suggesting that it is evil to exercise a right to silence, he did not engage in trickery or lying. Even if he did lie, lying alone was not enough in *Baynard v. State* for the Court to find coercion. Second, the mid-day time of the interrogation and less than one-hour

[26] 918 A.2d 1144, 1149-50 (Del. 2007).
[27] 607 A.2d 1185, 1198-99 (Del. 1992).
[28] 447 A.2d 428, 431-32 (Del. 1982).
[29] 518 A.2d 682, 690-91 (Del. 1986).

length of the interrogation prior to Respondent's confession do not suggest coercion. Third, there is no evidence of physical coercion or threats leading up to Respondent's confession. Finally, like in *Blankenship v. State,* Respondent remained calm and provided coherent answers throughout the interrogation. It was only until four hours later that he became visibly distraught, and the Court cannot infer that because he was visibly distraught in his holding cell that he must have also been sufficiently distraught internally throughout the interrogation to render his *Miranda* waiver and subsequent confession invalid. The Court also cannot infer that because Respondent had an altercation with a DSP officer in his holding cell, four hours after his interrogation, after he tried to strangle himself that Respondent would have been subject to intimidation or physical coercion had he not cooperated with Detective Harris during the interrogation.

Furthermore, the Court finds support in reaching a conclusion in this case from this Judge's own decision in *State v. C.W.* from 2003 where the juvenile's statements were found to not be voluntary or knowing, in part because the 14-year-old's guardian was not present, he had low IQ, and he was not provided a form listing his rights that he could sign.[30] Unlike in *C.W.,* Respondent in this case is 17 years old, there is no evidence of his having a low IQ, and he was provided a *Miranda* waiver form which he signed after having his rights read to him.

Therefore, having examined the "totality of the circumstances" surrounding Respondent's waiver and subsequent confession, the Court finds that Respondent voluntarily, knowingly and intelligently waived his *Miranda* rights and confessed. He was of almost majority age, accompanied throughout by his mother, provided with a *Miranda* form to sign, and only had to sit through a mid-day hour-long interrogation. When considered along with these facts, Detective Harris' mention of "evil" people is an insufficient basis to show police coercion without more. Additionally, there is no evidence that Detective Harris read the rights too quickly or that Respondent was of below-average intelligence or that Respondent was emotionally distraught during the interrogation.

ACCORDINGLY, IT IS HEREBY ORDERED

1. Respondent's request to suppress the evidence seized as a result of the search of Respondent's home on January 16, 2018 is ***DENIED***.

[30] 2003 WL 23269458 (Del. Fam. 2003).

2. Respondent's request to suppress the evidence of the statements made after he waived his *Miranda* rights on January 16, 2018 is ***DENIED***.

IT IS SO ORDERED.

September 25, 2018
Date

/s/ **ROBERT B. COONIN, JUDGE**

RBC/plr

cc: Parties, File