

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	CRIMINAL ACTION NUMBER
)	
v.)	IN-11-01-1195
)	
MICHAEL WIGGINS)	ID No. 1010013998
)	
Defendant)	

Submitted: October 17, 2011

Decided: February 3, 2012

MEMORANDUM OPINION

*Upon Defendant's Motion to Suppress –
DENIED, In Part, and GRANTED, In Part*

Appearances:

Cynthia L. Faraone, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State of Delaware.

Jennifer Kate Aaronson, Esquire, of Aaronson & Collins, Wilmington, Delaware,
Attorney for Michael Wiggins

HERLIHY, Judge

Defendant Michael Wiggins (“Wiggins”) has moved to suppress statements made to the New Castle County Police on October 21, 2010. He is currently charged with Possession of a Firearm by a Person Prohibited. Wiggins claims his weakened physical condition and the presence of two drugs in his blood, one a narcotic pain killer and another designed to relax him, rendered him incapable of knowingly and voluntarily waiving his *Miranda* rights. If, however, his waiver was valid, he argues that on three occasions he expressed his desire to remain silent but the police proceeded each time to further question him in violation of his invocation.

The Court finds Wiggins’ waiver was knowing, intelligent and voluntary. The Court further finds that on the third occasion when Wiggins stated he did not want to speak; the police did not stop questioning him as they should. Anything Wiggins said thereafter is inadmissible.

The motion to suppress is GRANTED, in part, and DENIED, in part.

Factual Background

On Tuesday, October 19, 2010, the police received a call about a possible shooting in the area of Revis Avenue just outside the City of Wilmington. Police responded to 189 Ryan Avenue, and found Shamar Cross (“Cross”), who had suffered at least one gunshot wound to his thigh.¹ While being treated by paramedics, he told

¹ State’s Resp. to Def.’s Mot. to Suppress dated April 28, 2011 at 1. Except for portions of the Factual Background reciting events of Christiana Hospital the balance comes from the State’s April 28, 2011 response.

police he had been shot twice in the leg by a man he knows as “Fat Mike,” at the intersection of Revis and New Castle Avenue. He described Fat Mike’s clothing in detail. Cross was picked up by private vehicle and transported to the Ryan Avenue residence.

At approximately 7:50 p.m., Officer Lewicki was informed that Wiggins had walked into Wilmington Hospital with a gunshot wound to the stomach, and was being treated by doctors there. He had been taken to the hospital in a private car. Due to the severity of his injuries, however, Wiggins was transferred to Christiana Hospital for treatment. New Castle County Detective James Leonard located the driver of the car who had taken Wiggins to the Wilmington Hospital. The driver had seen Wiggins near Rosegate Park holding his side. He told the driver he had been shot. The police searched the driver’s vehicle and found a brown hooded sweatshirt and a brown baseball cap with “NY” on it. The driver said these were the clothes Wiggins said he was wearing when shot. Cross had earlier given a clothing description of his shooter as wearing a dark hooded sweatshirt and a black or brown baseball cap with the letters “NY” on the front. The police seized the clothes.

Detective Leonard went to the Christiana emergency room to see Wiggins. He was told that Wiggins was not able to speak and was on his way to surgery. Wiggins underwent surgery at Christiana Hospital, which began on October 19th at 9:04 p.m., and ended on October 20th at 12:24 a.m. He was under general anesthesia from 8:51 p.m. to 12:50 a.m. on the same dates. The damage from the gunshot wound was

extensive but through and through. Wiggins underwent exploratory laparotomy, two small bowel resections with staple anastomoses, sigmoid resection with end colostomy, exploration of the right retroperitoneum and a bladder repair. The doctors also removed several small bowel segments and a portion of Wiggins' colon.²

Wiggins remained intubated after surgery and was transferred to the Surgical Intensive Care Unit. While in that unit, he remained sedated on Fentanyl and Versed. Fentanyl is a synthetic opiate medication used to relieve pain while Versed is a type of benzodiazepine medication used for sedation, to relieve anxiety and to induce amnesia. Wiggins received IV Fentanyl doses consisting of 2000 micrograms/100 milliliters on October 20th at 1:00 a.m., 7:00 a.m., 7:00 p.m. and on October 21st at 12:00 a.m. and 8:00 a.m. He received Versed doses containing 100 mg/100 ml on October 20th at 1:00 a.m., 7:00 a.m., 7:00 p.m. and on October 21st at 1:00 a.m. The Versed IV drip was discontinued at 7:30 a.m. on October 21st to begin the process of extubation. The Fentanyl drip was discontinued at 3:30 p.m., when a patient controlled pain medication system was substituted for Fentanyl and Versed.

Meanwhile, on October 20, 2010, Cross identified Wiggins as Fat Mike in a photo lineup. Detective Leonard arranged to have Wiggins arraigned, and ordered that Wiggins not have any visitors whatsoever, including family. An arrest warrant was later signed at JP Court 11, charging Wiggins with Attempted Murder, Possession of a

² Def.'s Supplemental Mem. in Supp. of his Mot. to Suppress Statements ¶ 6.

Firearm During the Commission of a Felony and Possession of a Firearm by a Person Prohibited. Detective Leonard told hospital staff about the warrant, and there was a note on his chart to contact him when Wiggins was extubated, and to tell Wiggins there was a warrant out for his arrest. Wiggins was extubated at 8:20 a.m. on October 21st. Someone from the hospital informed Detective Leonard of this around 11:00 a.m.

Dawn Provno, a registered nurse, oversaw Wiggins' care in the Surgical ICU starting about 7:30 a.m. on October 21st. As of October 2010, she had been a nurse for sixteen years and worked in the Surgical ICU for seven years. She provides care to neurosurgical patients nearly every day and has treated patients whom the police wanted to speak. On occasion, she has told the police the patient was not in a condition to speak to them.

Her first evaluation of Wiggins was at 8:20 a.m. on October 21st. When Wiggins was extubated, she thought he progressed well post-extubation. Using the Glasgow Coma Score system ("GCS"), designed to determine level of consciousness, he got the highest score for ability to follow commands.³ When evaluated at 10:30 and again at 12:05 p.m., he got the highest or very high scores for verbal and for motor skills. Nurse Provno was aware that the police wanted to talk to Wiggins. She testified that knowing this did not change her treatment. She also testified Versed could make one sleepy, but she noted the dosages of Versed and Fentanyl were on the low end.

³ State's Hr'g Ex. 1, Wiggins' Medical Records at 92.

Nurse Provno said it was permissible to call the police to come to speak to Wiggins when he was “completely stable, awake and able to communicate.” All this comes from her clinical observations of him. An ability to speak alone is not enough according to her. She did not consult with any physicians about whether it was okay to call the police to see Wiggins.

Detective Leonard went to the hospital with Detective Leonard Bradshaw, after receiving word of Wiggins’ extubation, arriving at 12:35 p.m., a half hour after one of Nurse Provno’s evaluations. Detective Leonard read Wiggins his *Miranda* rights. Wiggins signed the waiver form, though his signature is barely legible.⁴ The interview lasted fifty-two minutes and was recorded. Due to the earlier intubation, Wiggins’ voice was raspy and barely audible. The questions and answers are interrupted by Wiggins’ need to suction his throat. To hear him, Detective Leonard had to lean down close to his mouth. There was a microphone on Wiggins’ leg and Wiggins’ answers to the questions, though raspy and softly spoken, are audible and understandable most of the time. At one point, a nurse comes into the room to check on his blood pressure.

Wiggins, at first, was evasive and reluctant to provide details of how and why he was shot and who shot him. As the interview went on, however, he started providing names and giving reasons. Eventually, Wiggins gave a very detailed account of the shooting, and events in the days leading up to it. He explains that Cross had previously

⁴ State’s Hr’g Ex. 3, *Miranda* warning form.

identified two men, Dale McNeill and Devon Reed, in an attempted murder case (of Cross) that was currently pending. Wiggins paid Cross money to go to the Prothonotary and sign an affidavit recanting this prior identification in the attempted murder case. Wiggins and Cross came to the courthouse and did this the day prior to the shooting. The police, when interviewing Wiggins, were unaware of this until he mentioned it. It was later corroborated by courthouse surveillance video and seeing the affidavit in the Prothonotary's Office.⁵ During the interrogation, Wiggins frequently expressed concern about being a snitch, and said that he could not tell them who shot at him because it would "get back to him." He also made a remark about knowing he would get time due to the possession of a weapon by a person prohibited charge. After the detectives explained Wiggins would be arrested, he admitted shooting Cross. Cross later admitted shooting Wiggins. Each claimed self defense against the other.

At three separate points during the questioning Wiggins contends he expressed a desire not to talk:

"I don't wanna talk about that."⁶

"I ain't fuckin (sic) with this shit no more."⁷

"I don't want to keep talking about this."⁸

⁵ State's Hr'g Ex. 6, Shamarr Cross Aff.

⁶ Ct.'s Hr'g Ex. 1, Tr. of interview at 9.

⁷ *Id.* at 20.

⁸ *Id.* at 22.

In each instance the detectives continued their questioning and never sought clarification of what Wiggins meant or whether he was or may be invoking his right to remain silent.

Parties' Contentions

Wiggins' motion to suppress rests on two independent arguments. The first is that due to his weakened physical condition, but particularly the combination of drugs, the residual anesthesia, the pain reliever and relaxants, he was not in a position to make a knowing, intelligent and voluntary waiver of his *Miranda* rights.

The State's position is that the nurse's clinical observations and how Wiggins responded to various questions, giving important details, etc., demonstrate he was fully or sufficiently aware of his *Miranda* rights and could appreciate the consequence of waiving them.

Wiggins' second argument is that, should the Court find he validly waived his *Miranda* rights, he, nevertheless, later invoked his right to remain silent. Despite those invocations, the police continued their questioning and/or never sought the requisite clarification of his intentions before continuing with further questioning. The State contends, however, that Wiggins, on each occasion, merely expressed an intention to not speak about particular subjects and was not invoking his constitutional right to remain silent. Therefore, it asserts, no clarification of Wiggins' intentions was needed and they did not have to stop their questioning.

Discussion

A

Was Waiver of Miranda Rights Valid?

Before the police undertake custodial interrogation of a person, they are required to advise that person of certain rights as enunciated in *Miranda v. Arizona*.⁹ When the person, after being advised of those rights, chooses to waive them, that waiver must be knowing, intelligent and voluntary.¹⁰ The State, by a preponderance of the evidence, has the burden of proof of showing the waiver was such.¹¹

Before addressing the issue of whether Wiggins validly waived his rights before questioning began, it is necessary to state what is *not* at issue. First, the State concedes under the circumstances of this case, this was a custodial interrogation.¹² Second, Wiggins does not assert the *Miranda* rights read to him were incomplete or inadequate.¹³

⁹ 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

¹⁰ *Id.* 384 U.S. at 444.

¹¹ *Colorado v. Connelly*, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986); *Marine v. State*, 607 A.2d 1185, 1195 (Del. 1992).

¹² State's Resp. to Def.'s Mot. to Suppress dated April 28, 2011 at 4.

¹³ See Ct.'s Hr'g Ex. 1, Tr. of interview at 1, recitation of rights: "You don't know. Alright, you do have the right to remain silent. Anything you say can and will be used against you in the court of law. You have the right to talk to a lawyer and have them present with you while you are being questioned and if you can't afford to hire a lawyer one will be appointed to represent you before any questioning if you wish and if at anytime you wish to discontinue or stop speaking with Mike or I, you have the right to do that. Do you understand all them?"

When making a determination whether the waiver was knowing, intelligent and voluntary, the Court must examine the totality of the circumstances surrounding the interrogation to determine if Wiggins, in fact, knowingly and voluntarily decided to waive his rights.¹⁴ “Determination of whether a statement is voluntary ‘requires more than a mere color-matching of cases.’”¹⁵

*Moran v. Burbine*¹⁶ states that inquiry into waiver has two distinct parts:

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.¹⁷

Wiggins’ claim rests not on police intimidation, coercion or deception. Det. Leonard told Wiggins the police were there to question him about the shooting and that he was a suspect and a victim. And Wiggins makes no argument of police misconduct. The record shows Det. Leonard put his ear near Wiggins’ mouth to hear him better, but there is no claim that this was an act of intimidation. Detective Leonard appreciated that Wiggins was physically weak from the shooting and surgery.

¹⁴ *Fare v. Michael C.*, 442 U.S. 707, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979); *DeJesus v. State*, 655 A.2d 1180 (Del. 1995).

¹⁵ *Mincey v. Arizona*, 437 U.S. 385, 401, 98 S.Ct. 2408, 2418, 57 L.Ed.2d 290 (1978).

¹⁶ 475 U.S. 412, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986).

¹⁷ *Id.* 475 U.S. at 421.

The claim of an unknowing, involuntary and not intelligently made waiver is grounded on Wiggins' physical condition, but more importantly on the medications being administered while being questioned and those, even though previously discontinued, remaining in his bloodstream.

To show the effect of the drugs, Wiggins presented Dr. Edward Ochroch, a Board certified anesthesiologist.¹⁸ He is also the Operating Room Coordinator, Department of Anesthesia at the University of Pennsylvania and Attending Physician, Department of Anesthesia, University of Pennsylvania, both 1996 to present, among other positions held.¹⁹

Dr. Ochroch did not review the recording of Wiggins' statement or the transcription made from it. He sat in the courtroom during Nurse Provno's testimony and found nothing surprising, he said, in it. His opinion was that Wiggins did not appreciate the consequences of his waiver. Dr. Ochroch's opinion derived from Wiggins' height, weight, time and nature of surgery, the amount of medications administered and time administered. He focused primarily on the Versed and the Fentanyl. Versed, he said, is used to sedate and reduce anxiety (describing it as a valium type drug) and it produces amnesia. Dr. Ochroch testified that it reduces a patient's ability to appreciate risks; a patient, he said, would take on riskier behavior.

¹⁸ Def.'s Hr'g Ex. 1, Dr. Edward Andrew Ochroch's Curriculum Vitae.

¹⁹ *Id.*

Wiggins has no recollection of the police questioning or being advised of his *Miranda* rights. Versed and Fentanyl have a synergistic effect, according to Dr. Ochroch, and they make it unlikely Wiggins understood implications of what he was saying. The doctor said Wiggins would accurately report facts but would have no control why he was saying them. Dr. Ochroch testified the GCS tests Nurse Provno, and nurses before her gave Wiggins do not show the “psychotropic” effects of these medications. Nor do the GCS scores measure volition.

Wiggins testified that he has no memory of the police questioning him and no recollection of signing the *Miranda* waiver form. He also has no recollection of his family visiting him while he was at Christiana.

After an examination of the totality of the circumstances the Court is satisfied that Wiggins knowingly, intelligently and voluntarily waived his *Miranda* rights. Unquestionably Dr. Ochroch has extraordinary credentials and, of course, the Court has given much weight to his testimony. In the Court’s view, however, the totality of circumstances lead it to its holding:

1. Unlike Dr. Ochroch the Court listened to the CD of the interview and has read the transcription several times.
2. Doing so raises some key questions about several of the doctor’s opinions.
 - a. Versed, he said produces amnesia. It is unclear whether that means Wiggins’ amnesia would be when he later testified or at some other point in time and, if so, when.

- b. Wiggins testified he had no recollection that his family visited him. Yet when being questioned by the police, he said that he learned about the man he shot from his family when they were visiting him earlier in the hospital.²⁰ The medical records show (despite a no visitor order) the family visited him on October 20th (time recording is illegible).²¹
- c. Wiggins for much of the interview was vague and evasive. It is clear to the Court that this was due to not wanting to provide the police details and even the identity of the person he shot and others. Yet later he supplied many corroborated (either then known to the police or later corroborated) details. A review of the entire tape shows the Court that his evasiveness was volitional.

Listening to and reading Wiggins' statement makes it clear that he was afraid of becoming known as a snitch and having anything to do with assisting the police in resolving neighborhood disputes that erupt into gun violence. The circumstances of him being shot and how people are fearful in his neighborhood clearly play a role in his reluctance to cooperate. Further, the evidence regarding paying someone to come to the courthouse to retract an identification of another in another shooting is at the forefront of his reluctance.

²⁰ Ct.'s Hr'g Ex. 1, Tr. of interview at 32.

²¹ State's Hr'g Ex. 1, Wiggins' Medical Records at 178.

- d. During the questioning he twice said he did not want to talk about certain subjects and his evasiveness persisted. The third time is the subject later in this Court's opinion that he invoked his right to remain silent and the police failed to respect it. The Court finds his reluctance to provide names and details through much of the interview is inconsistent with the lack of inhibition Dr. Ochroch describes.
- e. He knew he was in trouble because he was a person prohibited from possessing a weapon.²² He has a felony record but there is nothing before the Court to show he made statements before or invoked his *Miranda* rights. He is, though, not a neophyte in the criminal justice system.²³
3. Contrasted with Dr. Ochroch's record-only review, exclusive of course of looking at the tape/CD or even reading the transcript, are Nurse Provno's clinical observations. It goes without saying, of course, that their respective medical training, positions and responsibilities differ significantly. She has been a Surgical ICU nurse for seven years as of October, 2010. She has treated neurosurgical patients on an almost daily basis. She has not allowed

²² Ct.'s Ex. 1, Tr. of interview at 24 (there is nothing in the record to show if (1) the hospital staff told him of this charge, (2) Detective Leonard did before the recording was turned on, or (3) knowing he was a convicted felon he should not possess a gun. Clarification of if he was informed, when and by whom (if anyone) or figured it out on his own would have greatly assisted the Court's analysis).

²³ *Whalen v. State*, 434 A.2d 1346, 1351 (Del. 1981).

the police to question patients on occasion. His training and experience in anesthesiology is longer and more vast.

Her clinical observations were discussed earlier.²⁴ Alone, her opinion that Wiggins had the mental faculties, despite any medications and his injury, to speak to the police is determinative. But when coupled with how Wiggins responded, reluctantly and vaguely at first, to police questioning her opinion trumps that of Dr. Ochroch.

Delaware Courts have confronted challenges to confessions made by persons claiming that intoxication meant a *Miranda* waiver was invalid. Instructive is the case of *Howard v. State*.²⁵ First, because it states a person intoxicated during interrogation does not *per se* invalidate a proper waiver of rights.²⁶ The issue is whether the person, here Wiggins, had sufficient capacity to know what he was saying and to have voluntarily intended to say it.²⁷

The Court in *Howard* looked to the detailed nature of the defendant's statement in making that assessment. The Court has examined Wiggins statement, first in the context of his medical condition, Nurse Provno's evaluation and the statement's content. In the beginning, Wiggins is clearly reluctant to give details, provide names,

²⁴ *See supra* p. 4.

²⁵ 458 A.2d 1180 (Del. 1983); *accord Hubbard v. State*, 16 A.3d 912 (Del. 2011).

²⁶ *Id.* at 1183; *accord Traylor v. State*, 458 A.2d 1170, 1176 (Del. 1983) (heroin).

²⁷ *Id.*

etc. But he does later provide important details and even information about which the police had not known at that point. His reluctance and selectivity indicate Wiggins' capacity and intent.²⁸ A similar analysis is found in *Hubbard*, where a defendant claimed drug and alcohol consumption rendered his waiver invalid, but a detailed analysis resulted in the waiver being upheld.²⁹

Detective Leonard told Wiggins he was going to give him his *Miranda* warnings, asked about medication, and after the defendant replied, he recited them. Wiggins, after receiving his rights, indicated he understood. He was handed a *Miranda* waiver form and was told if he understood his rights and wished to waive them, to put an "X" in the appropriate spots, which he did.³⁰

As noted above, Wiggins contends he said he did not want to talk three times, one of which the Court finds was about a specific topic area and another was simply a statement expressing frustration at the violence in the community, not an invocation of his right to remain silent. Finally, on the third occasion, the Court finds he invoked his right to silence.³¹ If anything these three statements but particularly the last, demonstrate Wiggins' waiver was knowing, intelligent and voluntary. Wiggins further argues that the unique circumstances of this case warrant finding that the Delaware

²⁸ *Id.*

²⁹ *Hubbard*, 16 A.3d at 919.

³⁰ State's Hr'g Ex. 3, *Miranda* warning form.

³¹ *See Infra* Part II.

Constitution, Art I, § 7, provides greater protection to him than does the United States Constitution. It is clear that the Delaware Constitution does provide greater protection, as Wiggins notes, than the federal constitution when it comes to the waiver of *Miranda* rights.³² None of the cases he cites, however, provide a basis, in the Court’s view, to extend a greater protection under the Delaware Constitution on the issue of waiver in this case or similar ones. On that basis, Wiggins’ motion to suppress is DENIED.

II

Was Right to Remain Silent Invoked?

When a defendant invokes his right to remain silent, the police cannot continue the interrogation.³³ The admissibility of statements obtained after the right to remain silent is invoked depends on whether the right to cease questioning was “scrupulously honored.”³⁴ For any post-invocation statements to be admissible, the State must establish the defendant initiated further contact *and* validly waived his previously invoked right.³⁵ Where the invocation is ambiguous, the police must stop questioning and determine the defendant’s intentions; this is known as the “clarification

³² *Bryan v. State*, 571 A.2d 170 (Del. 1990); *Weber v. State*, 457 A.2d 674 (Del. 1983).

³³ *Dodson v. State*, 513 A.2d 761, 763 (Del. 1986).

³⁴ *Michigan v. Mosley*, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975).

³⁵ *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981); *Dodson*, 513 A.2d at 763-64.

approach.”³⁶ In this approach, the State retains the burden of showing there was a valid waiver of the prior invocation.³⁷

Wiggins argues each of the three times where he expressed a desire not to talk was an unequivocal invocation of his right to remain silent. The State counters by contending he merely expressed a desire not to discuss certain subjects about which, at that moment, he was being questioned.

The Court finds it necessary in answering Wiggins’ claims to examine the context of each occasion and to determine even if the alleged invocation was equivocal or unequivocal. The first time Wiggins mentioned a desire not to talk was in this context:

Officer #1: So Footy was mad that all that shooting was going on. Who was out there earlier?

Defendant: Young Boys, (not audible) Bobby.

Officer #1: Bobby.

Defendant: Bobby.

Officer #1: White dude?

Defendant: No he was black.

Officer #1: Black dude?

Officer #1: Black dude. Who else? Who were they shooting at?

³⁶ *Crawford v. State*, 580 A.2d 571, 576-77 (Del. 1990).

³⁷ *Oregon v. Bradshaw*, 462 U.S. 1039, 1044, 103 S.Ct. 2830, 77 L.Ed.2d 405 (1983).

Defendant: They were shooting at some people down inside

Officer #1: In Rosegate? Who was that?

Defendant: Yeah.

Officer #1: Who was that?

Defendant: On the back hill

Officer #1: Mmm hmm

Defendant: (Not audible). You knew. (Not Audible)

Officer #1: Huh.

Defendant: I said you all knew, so why you all know so (not audible)

Officer #1: Because I was trying to see how honest you are going to be with me.

Defendant: I am being honest with you.

Officer #1: Ya know what I mean. I know that place is like a war zone down there right now.

Defendant: Yeah.

Officer #1: And I know they are all gunning for a couple people. And I know you know who they are.

Defendant: I am being honest. (not audible)

Officer #1: What?

Defendant: I am being honest with you.

Officer #1: About what?

Defendant: Everything man.

Officer #1: Everything like who shot you. I think you know who shot you. If you are being honest about you don't wanna talk about it, yeah that you are being honest about. But I think, I know you know you know who shot you.

Defendant: *I don't wanna talk about that.*

Officer #1: You don't wanna talk about that. You don't wanna talk about who shot you. Why? Because you don't want nobody in trouble.

Defendant: I don't want nobody in trouble.

Officer #1: Okay. What else you wanna talk about then. I mean that is what we are here to work on why you got shot. I mean we are trying to put an end to it down there.

Defendant: (Not audible.) It's never gonna end³⁸

The Court finds Wiggins statement, "I don't wanna talk about that" concerned telling the police who shot him. In the Court's view it is not an equivocal invocation of the right to remain silent. Even if it were, the police asked him what he was willing to talk about, if anything, constituting the necessary clarification.

Wiggins' next alleged expression not to talk is in this context:

Officer #1: Did he shoot ya?

Defendant: I don't know.

Officer #1: You got shot in the belly in the front side.

Defendant: In the front, yeah.

Officer #1: You had to see who was shoot'n. I know you are a big dude, but you don't turn that fast. I used to be big, you can't get outta your own way. What a, did you see S-R shoot ya?

³⁸ Ct.'s Ex. 1, Tr. of interview at 8-9 (emphasis added).

Defendant: Can I have the water one more time?

Officer #2: Yeah, Do you want the whole cup or do you want the stick?
Now finish that first.

Defendant: Cough. Suction being done. Cough.

Officer #2: Put the stick back in there. You was talking about S-R said something about you want to play shoot'n games.

Defendant: Yeah. He said you want to play these shoot'n games.
Alright, alright we gonna play these shoot'n games.

Officer #1: And then he shot you.

Defendant: I didn't say he shot me.

Officer #1: Someone shot you.

Defendant: Yeah.

Officer #1: Answer me this, just answer me this honestly. Do you know who shot you?

Defendant: (No audible response)

Officer #1: Okay. You just don't wanna tell me who shot you? Okay.
Well. Did you have any guns with you that night?

Defendant: No.

Officer #1: No.

Defendant: My boys did.

Officer #1: What's that bub?

Defendant: I said my homies did.

Officer #1: Oh your boy's did. Who was out there with you?

Defendant: (Not audible). I don't got anything to do with the gang bang'n. I just like to get my money and that's it but that night I almost lost my life.

Officer #1: Yeah.

Officer #2: Mike who was with you while you were walking on Reavis (the correct spelling is Revis but the Court included the spelling used in the original throughout)?

Defendant: *I ain't fuckin with this shit no more.*

Officer #2: Right. Who was walking with you on Reavis? Any of your boy's with you? Or were you just walking by yourself?

Defendant: I was walking by myself...³⁹

The Court does not interpret this statement as Wiggins' intent to invoke his right to silence. The context of the questioning and his response indicate Wiggins' growing frustration with disputes in his community turning to violence. He had just stated that he likes to get his money and almost lost his life. Then a question was asked by one of the officers. Without answering the pending question, Wiggins continued from where he had left off in his previous answer, "I ain't fuckin with this shit no more." The defense is trying to use the statement out of context to say the defendant wished to invoke his right to silence. In context, however, it is clear that Wiggins is not referring to the police questioning but instead his involvement in the activities leading to violence. As soon as Wiggins made the statement at issue, the officer immediately recognized it was an additional comment to the previous answer and repeated the

³⁹ *Id.* at 19-20 (emphasis added).

question. Wiggins moved on and answered the next question without hesitation. The defendant's use of this statement to argue he was invoking his right to silence can only be supported by a reading of the statement out of context. The police were constitutionally permitted to continue their questioning.

It is the third time Wiggins expressed an interest not to talk which requires closer analysis. If unequivocal, the police had to cease questioning. If an equivocal invocation, the police, before any further questioning, were compelled to seek clarification of Wiggins' intentions concerning answering any questions. Fairness dictates his comment be placed in context, also:

Officer #1: What kind of guns do you boys carry?

Defendant: (Not audible)

Officer #1: What kind? I am not asking you who, I am asking you what kind?

Defendant: Deuces.

Officer #2: Just that?

Defendant: Dueces (sic) and Nines. They're easy to get.

Officer #1: Yeah, yeah I know they are over there especially. Dueces (sic) and Nines.

Defendant: 380's and shit.

Officer #1: 380's and shit.

Defendant: Guns are easy to get. (Not audible)

Officer #1: What kind of gun were they using that night?

Defendant: I don't know. (Not audible). I was running from the park.
Take me to the hospital (Not audible)

Officer #1: Who did you tell that to?

Defendant: I told that to Fat Cat and Karisha.

Officer #1: Okay. Where were your boy's when you got shot?

Defendant: You know Reavis, how Reavis comes down. Right.

Officer #1: Yeah.

Defendant: Into Rosegate.

Officer #1: Mmm hmm.

Defendant: I got shot right there at the end. I came running through the park falling and shit. There's probably a blood trail

Officer #1: Mmm hmm.

Defendant: I said I been shot and they was like who. And then two or three of them just jetted off there.

Officer #1: Two or three of your boys? You know which three were out there?

Defendant: *I don't want to keep talking about this.*

Officer #1: Here is the problem you're in at this point man. Is you are the one getting arrested here. Do you know what you are getting arrested for?

Defendant: No I don't.

Officer #2: Let's say this. Did you shoot anybody out there defending yourself? Because that is very important, very important for you right now.

Officer #1: I mean. If that is what went on that is what I am asking you to tell us.

Defendant: No Sir.

Officer #1: Obviously, somebody shot you, somebody else got shot. Okay. Were you doing it to defend yourself or were you out there doing it and somebody else defended themselves. That is what we gotta try to figure out.

Defendant: I told you I wasn't shooting.

Officer #1: You weren't shooting?

Defendant: Mmm.⁴⁰

The context and words do not support the State's view that this statement was not any kind of invocation of the right to remain silent. One, this was the third statement of this kind, though the prior two were not equivocal. Two, the police were pressing for details that Wiggins was clearly not supplying. Three, unlike the prior two claimed invocations, there was no relation back to any particular subject areas. The Court views, "I don't want to keep talking about this," as all encompassing.

If considered equivocal, the police did not undertake any clarification questions. They told Wiggins his problem was that *he* was the one under arrest. They next asked if he shot somebody and he denied it at that point. Subsequent questioning revealed otherwise, of course.

⁴⁰ *Id.* at 21-22 (emphasis added).

Because the police (1) did not scrupulously honor Wiggins invocation of his right to remain silent or (2) failed to follow up and clarify an equivocal invocation, all Wiggins said thereafter is inadmissible.⁴¹

Conclusion

For the reasons stated herein, defendant Michael Wiggins' motion to suppress is **DENIED**, in part, and **GRANTED**, in part.

IT IS SO ORDERED.

J.

⁴¹ *Dodson v. State*, 513 A.2d at 763.