

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No. CR-1924-2016
	:	
vs.	:	
	:	
	:	Opinion and Order re
JEROME KENNEDY, JR.,	:	Motion to Suppress
Defendant	:	

OPINION AND ORDER

This Opinion and Order is being entered as a follow-up to this Court’s April 25, 2017 Opinion and Order. As noted in said Opinion, Defendant is charged with delivery of a controlled substance, possession with intent to deliver controlled substances and a handful of related counts.

Further and as noted in the prior Opinion and Order, Defendant has filed a Motion to Suppress. Defendant asserts that he was interrogated while in custody and allegedly confessed, but was neither advised of nor did he waive his rights under Miranda.

Two hearings were held in this matter. The first was held on June 26, 2017. The second hearing was held on July 25, 2017.

On or about October 18, 2016, Officer Jeremy Brown of the Williamsport Bureau of Police interviewed Defendant after Defendant was taken into custody. Prior to interviewing Defendant, Officer Brown reviewed Defendant’s written waiver of Miranda. He confirmed with Defendant that he signed the Miranda waiver with another officer.

After confirming that Defendant had signed his Miranda waiver form, he asked Defendant if the Suboxone that was found was Defendant’s. Defendant indicated that it was and explained that he got “high off Suboxone and stuff.”

Former Detective Matthew Rickert testified that on October 18, 2016, he was

working as a Lycoming County Detective with the District Attorney's office. He was involved in the investigation of Defendant.

After Defendant was taken into custody and Detective Rickert identified Defendant, Detective Rickert reviewed with Defendant his Miranda rights. He read the Miranda form to Defendant. The form includes questions which Detective Rickert asked to Defendant. Defendant indicated that he understood his Miranda rights and was willing to speak to law enforcement authorities without an attorney.

After the Defendant signed the Miranda waiver form, Detective Rickert gave the form to Officer Brown who then questioned Defendant.

Detective Rickert indicated that in connection with Defendant's waiver, Detective Rickert did not coerce Defendant in any manner whatsoever. Defendant signed the form "of his own free will." Furthermore, Detective Rickert verified that no questions whatsoever were asked of Defendant prior to Defendant being read his Miranda rights, the Defendant being asked the questions on the Miranda form, answering the questions, signing the form and then agreeing to speak.

The written Miranda warning and waiver were entered in evidence and marked as Commonwealth's Exhibit 1. Consistent with the testimony of Officer Brown, the form had handwriting on the back of it confirming that Officer Brown verified that Defendant was read and waived his Miranda rights.

Defendant testified that after he was taken into custody, he was handcuffed to a bench. He testified that a "younger officer" came in the room and questioned him. The officer prefaced his questioning by noting to Defendant that a gun was found inside of the

apartment and because it was his girlfriend's residence, she could be arrested. In response, Defendant indicated that he would take responsibility for whatever was found in the house.

It was after this statement that an officer came in and read to Defendant the Miranda rights form. While he acknowledged being read the form, answering the questions and signing the form, Defendant contends that no one questioned him after that.

“Statements made during custodial interrogation are presumptively involuntary, unless the accused is first advised of [his] Miranda rights.” *Commonwealth v. Williams*, 941 A.2d 14, 30 (Pa. Super. 2008) (citations omitted).

This Court finds as credible the testimony of Detective Rickert and Officer Brown. Of particular significance is the fact that Defendant admitted to being read the Miranda rights form, being asked the questions on it and then signing it. Of further significance is the fact that Officer Brown confirmed with Defendant that he signed the waiver of Miranda, made notations on the back regarding such, and then spoke with Defendant.

The Court does not find as credible Defendant's testimony that he was interrogated first and then subsequently waived his Miranda rights. The Court also does not find as credible Defendant's claim that he was somehow forced to waive Miranda.

Under the circumstances of this case, Defendant's Miranda waiver was voluntary. More specifically, the Court finds that Defendant's waiver was a result of his choice and not the end result of governmental pressure and that it was made with full comprehension of both the nature of the rights being abandoned and the consequence of that choice. *Commonwealth v. Pruitt*, 597 Pa. 307, 951 A.2d 307, 318 (Pa. 2008), cert denied,

Pruitt v. Pennsylvania, 556 U.S. 1131, 129 S. Ct. 1614 (2009).

The Court finds that the Commonwealth has met its burden to establish that Defendant knowingly and voluntarily waived his Miranda rights.

In sum, the issue raised by Defendant is virtually if not entirely a factual issue. Defendant claims that he was questioned, made incriminating statements and subsequently read his Miranda rights. The Commonwealth claims that Defendant was read his Miranda rights, waived those rights and then made incriminating statements. The Court finds credible the Commonwealth's version and will enter the following Order.

ORDER

AND NOW, this ____ day of August 2017 following a hearing and argument, the court **DENIES** Defendant's motion to suppress. All of the statements made by Defendant following the waiver of his Miranda rights may be utilized against Defendant during the trial in this matter.

By The Court,

Marc F. Lovecchio, Judge

cc: Scott, Werner, Esquire (ADA)
Matthew Zeigler, Esquire
Gary Weber, Lycoming Reporter
The Honorable Marc F. Lovecchio