

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**NICO SCOTT,
Defendant**

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CP-41-CR-1753-17

MOTION TO SUPPRESS

OPINION AND ORDER

Before the Court is the Defendant, Nico Scott's timely filed Omnibus Pretrial Motion. Hearing was held on the motion on March 19, 2018.

Factual and Procedural Background

On May 31, 2017, the Old Lycoming Township police executed a search warrant at 510 Dylan Drive, Cogan Station, Hepburn Township in Lycoming County Pennsylvania. The police were investigating the report of a possible drug related homicide. While executing the search warrant, Defendant was interviewed. She confirmed that the various controlled substances found within her residence were hers. Among the items were various quantities of pills, marijuana, crystal methamphetamine along with electronic devices, and U.S. currency. The controlled substances and pills were all contained in various packaging materials and found within a locked safe located in Defendant's bedroom.

While being interviewed by the police, Defendant admitted that she used the marijuana and methamphetamine for pain. She also volunteered that "although it looks like she sells drugs she was only stockpiling them for her own personal use." As a result of the items found in the search, police charged the Defendant with two

counts of Possession of a Controlled Substance¹ for the methamphetamine and marijuana; and, one count of Possession of Drug Paraphernalia².

Defendant alleges that the items seized from her home are a product of a violation of her constitutional rights under both the U.S. and Pennsylvania Constitutions since the reason for their presence there (the investigation of the homicide) no longer existed and they had no reason to suspect drugs were present in the house.

The parties agreed that the facts were not in dispute. Detective Christopher Kriner of the Old Lycoming Township Police Department went to Defendant's residence on May 31, 2017, to locate the cremains of an individual they believed had been killed and burned by the Defendant. While the search warrant was being executed, the Defendant was placed in handcuffs and relocated to the back of a police cruiser to await the results of the search. The warrant was specifically issued to "search the residence for evidence related to the death/disappearance of an unknown Hispanic male." Commonwealth's exhibit 2, Search warrant issued 5/31/2017.

While the home was being searched and Defendant is still in the cruiser but no longer in handcuffs, Kriner reads her Miranda warnings and she agrees to talk with him. Defendant makes incriminating statements regarding drugs which could be found inside her house. She talks about the fact that she uses marijuana and methamphetamine for pain that she suffers in her stomach. She further states that she has been stockpiling the drugs because she doesn't use them all of the time. She

¹ 35 P.S. § 780-113 (a) 16

² 35 P.S. § 780-113 (a) 32

also mentions a large quantity of cash that she has because she recently collected rents so it looks like she might be selling drugs.

Police then receive confirmation that the person believed to be deceased is still quite alive. However as a result of the search, police discover a safe in Defendant's bedroom which is locked and bolted to the floor. While Defendant is still located in the cruiser and knowing the information she has volunteered to them about the drugs in the house, the police request her consent to search the safe. Kriner advises her that she doesn't have to give them consent, but they would need to get a search warrant if she chooses not to consent. She then provides the police with the key to the safe so they can open it.

Defendant argues that the consent to search the house was a product of coercion or duress and therefore her statements and consent were not voluntarily given.

In order for a waiver of Miranda rights to be valid, it must be made knowingly, voluntarily, and intelligently. 384 U.S. at 475; See also ***Commonwealth v. Scarborough***, 491 Pa. 300, 421 A.2d 147 (1980) (holding that "the Commonwealth need only show by a preponderance of the evidence that a voluntary, knowing and intelligent waiver of a constitutional right was made"). There are two requirements to determine if a Miranda waiver is valid. First, the waiver of one's Miranda rights must have been voluntary, in 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 both of the nature of the right being abandoned and the consequences of the decision to abandon it." ***Colorado v. Spring***, 479 U.S. 564, 573

(U.S. 1987) (quoting **Fare v. Michael C.**, 442 U.S. 707, 725 (1979)). The Court in determining the validity of a waiver under Miranda and the voluntariness of a confession looks to the “totality of the circumstances surrounding the interrogation.” **Spring**, 479 U.S. at 573 (quoting **Fare**, 442 U.S. at 725). See also **Commonwealth v. Carter**, 546 A.2d 1173 (Pa. Super. Ct. 1988). Factors the Court must consider include the following: “the duration and methods of interrogation, the conditions of detention, the manifest attitude of the police toward the accused, the accused's physical and psychological state, and any other conditions which ‘may serve to drain one's powers of resistance to suggestion and undermine his self-determination.’” **Commonwealth v. Probst**, 580 A.2d 832, 836 (Pa. Super. Ct. 1990) (quoting **Commonwealth v. Carter**, 546 A.2d 1173 (1988)).

The Court listened to the audio recording of Kriner's interview with the Defendant and is satisfied that the Defendant made a knowing and voluntary waiver of her right to remain silent. Although the Defendant was upset, there was nothing in her responses or the manner in which Kriner was talking with her that indicated her waiver was not knowing, intelligent or voluntary. Despite the fact that she was sitting in Kriner's vehicle, the conditions appeared to be free of coercion. Kriner's attitude toward Defendant was professional, not condescending or demanding.

Although the Court could not see Defendant in her encounter with Kriner, he attempted to make her comfortable by not only taking the handcuffs off of her, but starting the car so she would be warm. Although she fluctuated between being emotional and calm, Kriner was able to get her to focus on the questions at hand to

insure that she understood what she was doing, and that she intended to speak with him.

“To establish a voluntary consensual search, the Commonwealth must prove ‘that a consent is the product of an essentially free and unconstrained choice--not the result of duress or coercion, expressed or implied, or a will overborn--under the totality of the circumstances.’” ***Commonwealth v. Acosta***, 815 A.2d 1078, 1083 (Pa. Super. 2003)(citations omitted).

When addressing the voluntariness of a consent, the court considers numerous factors including “the length and location of the detention; whether there were any police abuses, physical contact, or use of physical restraints; any aggressive behavior or any use of language or tone by the officer that were not commensurate with the circumstances; whether the questioning was repetitive and prolonged; whether the person was advised that he or she was free to leave; and whether the person was advised of his or her right to refuse to consent.” ***Commonwealth v. Caban***, 60 A.3d 120, 131 (Pa. Super. 2012).

Defendant’s consent was not a product of duress. Kriner was calm and patient with Defendant; he continued to speak with her trying to keep focused to establish for the recording that Defendant understood what was being asked of her. Although she was not advised that she was free to leave, she was advised of her right to refuse consent. The Court finds that there was nothing inherently coercive about the circumstances that evening. Defendant’s consent to search was voluntarily made.

ORDER

AND NOW, this _____ day of May, 2017, after hearing on the Defendant's Omnibus Pretrial Motion, it is hereby ORDERED and DIRECTED as follows:

By the Court,

Nancy L. Butts, President Judge

cc: DA (JR)
Ryan Gardner, Esq.