

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 00-10,559

VS :

JEREMY MICHAEL BALL :

OPINION AND ORDER

Before the Court is Defendant's Suppression Motion. The Defendant has been charged with statutory sexual assault, indecent assault, and corruption of minors as a result of an incident that occurred on September 10, 1999. After reviewing the testimony from the hearing on the motion, the Court finds the following facts relevant to the Suppression.

Following an interview with Kristen Munns in the early morning hours of September 11, 1999, Trooper William Holmes went to the Defendant's residence. He met with the Defendant and requested that he come to the Montoursville Barracks to speak with him. The Defendant testified that he asked if he could meet at a later time, and explained that he had arrived home only one-half hour earlier. The Defendant testified that he was still feeling the effects of the alcohol and other intoxicants from the night before, and preferred to get some sleep. Holmes testified that he did smell an odor of alcohol on the Defendant, but did not notice any other signs of intoxication.¹ Holmes requested that the Defendant come to the barracks immediately.

The Defendant testified that he got a quick shower, brushed his teeth, and went to the barracks. On his way into the barracks, the Defendant passed by Trooper

¹ Trooper Holmes testified that the Defendant's eyes were not bloodshot, nor was his speech slurred. The Defendant displayed no other characteristics that, in his training and experience, suggested that he was under the influence of alcohol.

Harman. Harman had known the Defendant for some time. As Harman passed the Defendant, he asked why he was at the barracks. The Defendant replied that he was there to talk with one of the troopers. When Harman asked what he had done, the Defendant replied that he had cheated on his wife,² and his wife had convinced the girl to call the police. Harman testified that he told the Defendant that there wasn't a problem as long as it had been consensual, to which the Defendant replied "but she was 15 and I'm 23, so it was rape." The Defendant proceeded into the barracks to meet with Holmes.

Holmes testified that when the Defendant arrived at the station at approximately 10:49 a.m., they went into a private interview room. Once there, he informed the Defendant that Ms. Munns and the Defendant's wife had been to see him, and he wanted to do a follow-up interview based on their statements. Holmes testified that he told the Defendant that he was not under arrest, and that he did not have to speak with him. Holmes also verbally told the Defendant his *Miranda* rights. The Defendant agreed to be interviewed. Holmes testified that the Defendant signed a standard form, indicating that he understood his rights, and that he agreed to be interviewed. Holmes then requested that the Defendant provide a written statement about the incident, and the Defendant agreed.³ Holmes estimated that the written statement took approximately 20 minutes to complete. Once he completed the written statement, the Defendant left the barracks.

² Harman testified that he believed the exact statement of the Defendant was that "he and a buddy had 'gang banged' a 15 year old girl".

³ In the statement the Defendant related the details of his sexual encounter with Ms. Munns, and a second male.

The defense first argues that his statements made to Trooper Harman should be suppressed, as they were given without the benefit of Miranda warnings. The Court does not agree. The testimony presented at the hearings indicated that the conversation between the Defendant and Trooper Harman was casual in nature, without any hint of custodial interrogation as is protected by Miranda. The Court therefore denies Defendant's motion to suppress these statements.

Defendant next asserts that his statements made to Trooper Holmes should be suppressed. Defendant argues that, although he had waived his Miranda rights at the time that he gave those statements, he did not do so knowingly and voluntarily. For a waiver of Miranda rights to be valid, it must be knowing, voluntary, and intelligent. [Miranda v. Arizona](#), 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). In other words, the waiver must be "the product of a free and deliberate choice rather than intimidation, coercion, or deception," and "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, 572, 107 S.Ct. 851, 93 L.Ed.2d 954 (1987) (quoting [Fare v. Michael C.](#), 442 U.S. 707, 725, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979)).

The test for determining the voluntariness of a confession and the validity of a waiver looks to the totality of the circumstances surrounding the giving of the confession. [Commonwealth v. Jones](#), 546 Pa. 161, 683 A.2d 1181, 1189 (1996). Some of the factors to be considered include: the duration and means of interrogation; the defendant's physical and psychological state; the conditions attendant to the detention;

the attitude exhibited by the police during the interrogation; and any other factors which may serve to drain one's powers of resistance to suggestion and coercion. [Id.](#)

In the instant case, after looking at the totality of the circumstances, the Court finds that the Defendant knowingly and voluntarily waived his rights. The interview with Trooper Holmes lasted only approximately 20 minutes. Very little verbal questioning was conducted during that time, as the Defendant wrote out his statement. The two sat in a quiet room, without disruptions.⁴ Given these circumstances, the Court finds no indication of coercion or suggestion, and would deny Defendant's motion to suppress on this basis.

⁴ Although the Defendant alleged that he was under the influence at the time of his statements, making him unable to make this decision knowingly, the Court did not find his allegations credible in light of the fact that he did not appear to be visibly intoxicated, the fact that he drove himself to the station, and the fact that his written statement was coherent.

ORDER

AND NOW, this 9th day of October 2002, it is ORDERED and DIRECTED that the Defendant's Motion is DENIED.

By The Court,

Nancy L. Butts, Judge

xc: Robert Ferrell, Esquire, ADA
Michael Seward, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire