

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 02-11,322
:
:
vs. : CRIMINAL DIVISION
: Pre-Trial Motion
MARK D. TANNER, :
Defendant :

OPINION AND ORDER

Defendant has been charged with two counts of kidnapping, unlawful restraint, interference with the custody of children, aggravated assault, simple assault, recklessly endangering another person and possessing instruments of crime in connection with an incident alleged to have occurred on December 4, 2001, and with four counts of criminal attempt and two counts of interference with the custody of children in connection with an incident alleged to have occurred on July 30, 2002. In the instant omnibus pre-trial motion, filed December 18, 2002, Defendant seeks the appointment of a psychiatrist to determine his competency to stand trial and his ability to waive his Miranda rights, and also seeks to suppress evidence, specifically the statements given by Defendant to police after questioning. A hearing on the motion was held April 2, 2003.

With respect to Defendant's request for appointment of a psychiatrist to evaluate his competency to stand trial and to give a knowing, intelligent waiver of his Miranda rights, the Court notes an examination may be directed where the Court finds a prima facie question of incompetency. 50 P.S. Section 7402 (d). Further, the Court is not required to order such an examination where no prima facie evidence of incompetency is presented. Commonwealth v Megella, 408 A.2d 483 (Pa. Super. 1979) (the language of Section 402 of the Mental Health Procedures Act is advisory rather than mandatory in nature); see also Commonwealth v Wood, 612 A.2d 474 (Pa. Super. 1992) (request for psychiatric examination denied where insufficient evidence for necessity of such was

presented).

In the instant case, in support of his request Defendant attempted to introduce a four-page report by Dan Egli, PhD, clinical psychologist. The report was not introduced, however, as objected to by the Commonwealth as hearsay. Defendant did not call Dr. Egli to testify and therefore the Commonwealth's objection was sustained. It is further noted that Defendant provided the Commonwealth with a copy of the report at the hearing. Defendant did present his own testimony, specifically indicating that he suffered a head injury as a child and has had a history of seizures that continue to date. Defendant testified that he was not a behavior problem in school. He also testified that he does not understand the nature of the charges against him and feels that he needs to be evaluated to determine his competency. With further questioning by the Court, however, it appears Defendant, while mentally below average, did graduate from high school and appears functional in his day-to-day life. While he does live with his mother and it appears he does not take care of his own finances, he was able to answer the Court's questions satisfactorily, appearing to understand the questions and responding appropriately. He also responded to questions put to him by his counsel and, as will be noted below, appears to remember the details of the interviews with police last July 2002. While not admitted into evidence, in deference to the defense, the Court has read the report by Dr. Egli and notes that Dr. Egli does not find that Defendant is substantially unable to understand the nature or object of the proceedings against him or to participate and assist in his defense. Rather, Dr. Egli indicates that Defendant is non-psychotic and does not have a thought disorder. He also finds that Defendant is not hallucinating or delusional. It appears Dr. Egli's conclusion is that Defendant is depressed and suffering from an extremely low self-esteem. It is interesting to note, moreover, that in the Background Information section of his report, Dr. Egli reports that Defendant indicated he was being incarcerated on two separate cases, one involving attempting to lure or kidnap two children and the other involving using a stun gun on a child.

Considering all of the evidence presented at the hearing, including Defendant's testimony as well as the testimony of Agent Dincher, described below, as well as Dr. Egli's report,¹ the Court finds

¹ The report is not considered in support of the Court's Opinion, but was reviewed and noted that it did not negate

insufficient evidence to support a prima facie determination that Defendant is not competent to stand trial.

With respect to Defendant's Motion to Suppress, Defendant made two statements to police after questioning on July 30 and July 31, 2002. Before each interview session, Defendant was provided with his Miranda rights from the standard form used by the Williamsport Bureau of Police. On both occasions, Defendant indicated he understood his rights and that he agreed to waive those rights. Defendant signed the waiver form on both occasions. He now seeks to suppress his statements in spite of having waived his rights, arguing that he was unable to give a knowing and voluntary waiver of his rights due to a "diminished mental capacity." Agent Leonard Dincher, who, with Agent Stephen Sorage, interviewed Defendant on both occasions, testified that Defendant appeared to understand the questions and gave answers which seemed appropriate based on the questions. He also testified that Defendant did not ask any questions about the waiver of rights form and he appeared to understand his rights. Nothing occurred, according to Agent Dincher or Agent Sorage, that would lead them to believe Defendant was not able to understand the Miranda rights before waiving them. Further, even though Defendant testified that Agent Dincher yelled at him and poked him in the chest, and called him a liar, and that Agent Sorage also yelled at him and called him a liar, the Court finds that such tactics, assuming Defendant's testimony is accurate, would not constitute coercion sufficient to make an otherwise knowing and intelligent waiver of Miranda rights unknowing and involuntary. Indeed, defense counsel argues that although an ordinary person would not feel coerced by the questioning which occurred in this case, Defendant felt coerced because he is easily led. As noted above, however, there is insufficient evidence that Defendant suffers from a diminished mental capacity to the extent he would be unable to make a knowing and voluntary waiver of his rights. Therefore, the statements given by Defendant after having waived his rights need not be suppressed.

ORDER

AND NOW, this 11th day of April, 2003, for the foregoing reasons, Defendant's Motion for Psychiatric Examination is hereby denied. Defendant's Motion to Suppress is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA
John Piazza, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson