

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 2259 - 2006
:
vs. : CRIMINAL DIVISION
:
DWAYNE JALEEL HALL, :
Defendant : Motion to Suppress

OPINION AND ORDER

Before the Court is Defendant's Motion to Suppress, filed September 18, 2007. A hearing on the motion was held October 16, 2007.

Defendant has been charged with robbery, conspiracy and related crimes in connection with the robbery by two individuals of a Uni-Mart store on West Fourth Street in the early morning hours of December 19, 2006. Later that day, after the other individual had been arrested and based on information from that individual's father, Defendant was arrested, questioned, and admitted his involvement. In the instant motion to suppress, Defendant now seeks to suppress that confession, asserting that such was not given knowingly, voluntarily and intelligently. Specifically, Defendant contends his age (16 at the time), his low level of intelligence and the effect of illegal narcotics (which he alleges were consumed by him just prior to his arrest) rendered invalid his waiver of his *Miranda* rights.

According to the testimony of one of the arresting officers, Raymond Kontz, several officers went to Defendant's residence and advised his caregiver that they had a warrant for Defendant's arrest. She advised that Defendant was not yet home from school and they therefore walked toward the school, meeting Defendant on his way home. Defendant was arrested and, after returning to his residence to inform his caregiver that Defendant was being taken to City Hall and to advise her of her right to accompany him (which she declined), officers took him to City Hall. Defendant was placed in the processing room, on a bench where he remained handcuffed during the interview. Defendant was advised by Agent Kontz that he had been arrested in connection with the robbery, and was asked whether he was willing to speak with officers about the incident. Defendant indicated that he would speak with them and

he was then presented with a *Miranda* rights waiver form, which he read to himself and which was then read to him. Defendant signed the waiver form, indicating he understood his rights and was willing to speak with officers without an attorney present. He did not ask to have his caregiver present. Defendant was then questioned by Agent Kontz regarding the robbery and gave a detailed confession. Agent Kontz testified that Defendant was clear and concise, appeared lucid, carried on the conversation in a normal manner, appeared to understand the questions and respond appropriately, and did not appear to be under the influence of anything.¹

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. DeJesus, 787 A.2d 394 (Pa. 2001). In the case of a juvenile, the Court is to specifically consider the juvenile's age, experience, comprehension and the presence or absence of an interested adult. In the Interest of N.L., 711 A.2d 518 (Pa. Super. 1998). In the instant case, the Court finds, based on all the circumstances as testified to by Agent Kontz,² that Defendant's waiver of his rights was made in a knowing and voluntary manner.

Defendant was 16 years, nine months of age at the time of his arrest, and had been previously adjudicated delinquent and was familiar with the juvenile justice system. Defendant appeared on the video to comprehend what was taking place, and the questions being asked of him. During his testimony at the hearing, he also appeared to understand what the process was about, and had no difficulty answering the questions posed to him. While Defendant is soft-spoken, and was quiet and subdued while being questioned at the police station, the Court does not believe he was under the influence of any drugs.³ With respect to his level of intelligence, while Defendant argues that he is of "low" intelligence, the Court has seen no evidence to that effect.⁴ Finally, while an interested adult was not present while Defendant was asked to waive

¹ The Court's viewing of the video-taped interview supports that conclusion.

² Although Defendant testified in a manner inconsistent with Agent Kontz, discussed *infra*, the Court finds Agent Kontz' testimony credible.

³ Defendant testified that he left school (Bethesda Day Treatment program) at 2:00 and walked to the Bethune Douglas Center, where he proceeded to smoke marijuana before he walked home. Defendant testified that he had the marijuana on his person while at school. Agent Kontz testified, however, that he did not smell any odor of marijuana on Defendant's person at the time of his arrest, and did not observe any signs that Defendant was under the influence of marijuana.

⁴ Defendant refers to documentation of such in his written motion, but no document was produced at the hearing.

his rights and was interviewed, Defendant's caregiver had been given the opportunity to be present but declined to do so, and Defendant did not ask to have her present.

Defendant explained at the hearing that he knew he was talking to the police, and that he knew he was being accused of a crime, but that he thought he would be charged as a juvenile and therefore simply recited to police all the facts as had been told to him prior to the video-taped interview, in an effort to "just go home." Even if the Court accepted this statement, that Defendant would have had the presence of mind to anticipate being charged as a juvenile and assess that such would be so insignificant that he could admit to a crime in order to be able to leave is, in and of itself, evidence that he sufficiently appreciated the situation. The Court does not believe this statement, however, as such is belied by the detailed description of the crime provided by Defendant during the interview. Considering the level of detail, and that Defendant at times contradicted statements about the crime made by Agent Kontz, Defendant could not have been simply reciting back facts previously told to him.

Accordingly, considering all of the circumstances, the Court finds Defendant's waiver to have been made in a knowing and voluntary fashion, and that his confession is admissible at trial.

ORDER

AND NOW, this 22nd day of October 2007, for the foregoing reasons, Defendant's Motion to Suppress is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
Paul Petcavage, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson