

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

ERIC DAUBER,
Defendant

:
:
:
:
:
:

No. 121-2008
CRIMINAL

OPINION IN SUPPORT OF PREVIOUSLY ISSUED ORDER

Before this Honorable Court is the Defendant’s Motion to Suppress filed March 25, 2007. A hearing on the Motion was held on May 2, 2008. An order suppressing the Defendant’s statements was issued by this Court on June 2, 2008. This opinion is written in support of that order.

Background

The following is a summary of the facts presented at the Suppression hearing and interview of Eric Dauber (“Defendant”) on January 4, 2008. On December 17, 2007, Rodney Butler (“Butler”) was assaulted and robbed by several individuals. Butler identified Defendant as being involved. Defendant was interviewed by the Pennsylvania State Police (“PSP”) on December 17, 2007, wherein he told them that he was not involved. On January 4, 2008, a criminal complaint was filed charging Defendant with three counts of Robbery at 18 Pa. C.S.A. §3701(a)(1), three counts of Criminal Conspiracy at 18 Pa. C.S.A. §3701(a)(1), one count of Criminal Conspiracy at 18 Pa. C.S.A. §3934(a), one count of Simple Assault at 18 Pa. C.S.A. § 2701(a)(1), and one count of Harassment at 18 Pa. C.S.A. § 2709(a)(1). On that same day, Trooper Brad Eisenhower (“Eisenhower”) of the PSP obtained an arrest warrant for Defendant.

Eisenhower and Trooper Sversko (“Sversko”) went to the Defendant’s residence and took him into custody. Defendant was brought to the Montoursville Barracks and interviewed.

Eisenhower began the interview by advising Defendant of his Miranda¹ rights. Eisenhower explained that Defendant told Eisenhower he could not read. Eisenhower then orally explained to Defendant his Miranda rights. Defendant told them he understood and wished to speak without an attorney present. Sversko testified that he was also present to attest to the reading of Defendant’s Miranda rights. Sversko testified that Defendant related he understood his rights and wished to speak without an attorney present.

Eisenhower told Defendant that he was arrested because he was implicated in a robbery. Eisenhower then proceeded to ask Defendant if he knew Butler. Defendant stated that he knew Butler from a carnival and that he and Butler got into a fight about two years ago. Eisenhower asked Defendant if he remembered what he did on December seventeenth. Defendant stated that he arrived at his Aunt Jean’s house at five thirty and then left with his mom around nine something. He also stated that he was not involved in the alleged robbery. Eisenhower told Defendant that his Aunt would be biased because she is a good friend and “good friends lie for one another.” (Transcript of Interview, 1/4/08 p. 6) Eisenhower also told Defendant that Butler positively identified Defendant as the one who assaulted him. Defendant continued to state that he was not involved. Eisenhower told Defendant “you need to own up to it like a man and help us out with whoever else was involved.” Id. at 8. Eisenhower also told Defendant “[i]f you can do that then I will let the DA’s office know that you were very cooperative with us and that may help you out.” Defendant continued to insist that he was not involved. Id.

¹ Miranda v. Arizona, 384 U.S. 436, (1966).

Eisenhower stopped the interview and went to call Defendant's aunt. Eisenhower returned and told Defendant that he was lying. Eisenhower also said,

if you sit here and continue to lie with me that's fine but you are going to get arraigned before the Judge and good chance is that he is going, that you are going to jail. This is your last opportunity to come clean with this because I know you are sitting here lying out your face. . . . [T]he District Attorney's Office is waiting for me to call them now to review this whole case with them again and they are pretty pissed off about this too. They agree that you are lying too. If you want me to call them now and say that you are still lying then that's fine, if you want me to call them and say hey, he finally owned up to it, he was a man about it, he owned up to making a mistake, we will see if we can do something for him because he helped us out in getting all of these other kids that did it with him. . . . [P]eople that are man about, own up to about it as a man, the Courts look better in their favor upon them. The people that sit here and lie, won't own up to making a mistake, try to squirm out of something the Court system doesn't like. What happened that night and this is your last opportunity, what happened that night?

(Interview, pgs. 11-12). Immediately after this speech by Eisenhower, Defendant responded, "I did hit him." Defendant then continued to make inculpatory statements regarding the assault and robbery of Butler.

Michelle Dauber ("Dauber"), Defendant's mother testified at the Suppression Hearing on behalf of Defendant. She stated that Defendant was in an accident in 1999, where he was hit by a car and subsequently spent three weeks in a coma. Dauber testified that Defendant suffered from a head injury, where his brain hemorrhaged and went to Hershey Medical Center for rehab where he had to learn to talk again. She also related that Defendant was in learning support classes while attending school and only completed the tenth grade. Dauber stated that Defendant does not have a GED. She also testified that Defendant does not work and receives Social Security Income because he is considered mentally retarded. Dauber stated further that this was not the first time Defendant was interviewed by Police as he had been in a fight while he was in high school, for which he was placed on Juvenile Probation.

On rebuttal, Eisenhower testified that he was not aware of Defendant's accident at the time of the interview and was only later informed of the accident by Defendant's mother.

Discussion

Defendant argues that under the totality of the circumstances, he did not voluntarily waive his Miranda rights and freely make a statement to police. Specifically Defendant argues that Eisenhower's statement to Defendant that if he "owned up to it" he would receive favorable treatment from the District Attorney's Office was an impermissible inducement that tainted Defendant's statement. In opposition, the Commonwealth argues that Defendant's waiver was voluntary as Eisenhower did not indicate Defendant would receive a reduced sentence or reduced charges.

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). When assessing the totality of the circumstances, the Court should consider the “following factors: the duration and means of the interrogation; the physical and psychological state of the accused; the conditions attendant to the detention; the attitude of the interrogator; and any and all other factors that could drain a person's ability to withstand suggestion and coercion.” Commonwealth v. Nester, 709 A.2d 879, 882 (Pa. 1998) (and cases cited therein).

In Commonwealth v. Gibbs, after the Defendant was advised of his Miranda rights, he stated “[m]aybe I should talk to a lawyer. What good would it do me to tell you?” In response, the police officer said, “The only thing is I would tell the District Attorney you cooperated for whatever good that would be” 553 A.2d 409 (1989). In its decision, the Pennsylvania Supreme Court held, “[b]y conveying the distinct impression that the district attorney would be told of his cooperation in giving a confession on the spot, there occurred an inescapable inducement which cannot be condoned under our law.” Id. at 410-411. The Court concluded its decision by holding “authorities are not permitted to employ inducements which impair in any way a suspect's right to his own unfettered evaluation of the need for legal counsel. Miranda and its progeny . . . otherwise would make no sense.” Commonwealth v. Morgan, 606 A.2d 467, 469 (Pa. Super. Ct. 1992) (citing Gibbs, 553 A.2d at 411).

In Morgan, the suspect was advised of his Miranda rights and chose to waive them. Id. at 468. The police proceeded to question the suspect regarding a stolen car. Id. The suspect admitted to stealing the car. Id. Then the police questioned the suspect about four armed robberies and a homicide. Id. However, prior to this questioning, the suspect was told the police would inform the district attorney’s office of his cooperation. Id. The Pennsylvania Superior Court found that the Supreme Court decision in Gibbs, which applied “to the right to counsel,

was also intended . . . to extend to all of the rights elucidated in *Miranda* and subsequent derivative case law, including the right to remain silent.” *Id.* at 469. The Court stated further,

It is the *inducement* which leads to overcoming resistance to police procedures with which *Gibbs* is concerned and not the specific right waived; nor is it dispositive whether the inducement occurred before or after a *Miranda* warning. *Gibbs* speaks to the fact that police cannot deliver what they promise in the inducement and, therefore, waiver of a right based upon a false promise cannot be fairly accepted as a knowing and voluntary waiver.

Id. (emphasis in original).

The Court finds that based on the totality of the circumstances, Defendant’s statement was not voluntary. After waiving his Miranda rights, Defendant repeatedly told Eisenhower that he was not involved. He also told Eisenhower that he had an alibi. Eisenhower then told Defendant that he was lying and may go to jail or be arraigned that day. Eisenhower told Defendant if he “owned up to it,” then Eisenhower would tell the District Attorney’s Office that Defendant cooperated and see if “we” could do something for him. Defendant still claimed he was not involved. Eisenhower proceeded to tell Defendant that the District Attorney’s Office was “pretty pissed off” and agreed that he was lying. (Interview, p. 11). Eisenhower again told Defendant he would notify the District Attorney’s Office of his cooperation if Defendant would “own up to it like a man.” Eisenhower’s statements that he would notify the District Attorney’s Office of Defendant’s cooperation were impermissible inducements. *See Gibbs*, 553 A.2d at 410-411; *Morgan*, 606 A.2d at 469. Eisenhower could not guarantee that the District Attorney’s Office might help Defendant out and therefore, Defendant’s waiver was not knowing and voluntary. *See Morgan*, 606 A.2d at 469.

Not only was Defendant’s confession impermissibly induced by the statements that the District Attorney’s Office may help him out, the Court finds it was also coerced. Defendant has a limited mental capacity and education level which affected his ability to withstand coercion.

Eisenhower's threats to the Defendant, that he may be arraigned or go to jail that night, negatively affected Defendant's ability to withstand coercion. Further, Eisenhower's statements that he and the District Attorney's office believed Defendant was lying and were "pretty pissed off" were coercive. Therefore, based on the totality of the circumstances, the Court finds the Defendant's statement was not voluntary and the motion to suppress properly granted.

DATE: _____

By the Court,

Nancy L. Butts, Judge

cc. DA (PP)
PD (CK)
Hon. Nancy L. Butts
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber (LLA)