

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 vs. : No. CR- 2003-2013  
 :  
 MICHAEL WRIGHT, :  
 Defendant :

**OPINION AND ORDER**

This Opinion and Order addresses the motion to suppress contained in Count 1 of Defendant’s omnibus pretrial motion. The court held hearings on the motion to suppress on November 17, 2014, March 26, 2015, and June 25, 2015.

The Commonwealth presented testimony from Officer Mark Lindauer, Lieutenant Steven Helm, and Agent Trent Peacock. The Commonwealth also presented 6 DVDs, which depicted Defendant in the processing room at City Hall before he was charged and arraigned. Defendant presented testimony from Dr. Lawrence Guzzardi.

Defendant was charged with an open count of homicide, arson and related offenses stemming from allegedly stabbing his wife to death sometime between October 23, and October 25, 2013, and then setting fire to their residence on October 25, 2013.

County Communications received a 911 call at approximately 10:35 p.m. on October 25, 2013, reporting a fire at 1450 West Fourth Street in Williamsport. After the fire department extinguished the fire, they found the victim’s body in a bedroom closet. Shortly after midnight (in the early morning on October 26, 2013), County Communications called Agent Peacock to investigate the fatal fire at Defendant’s residence.

When Agent Peacock arrived at the scene, he asked Lieutenant Helm if he

knew who the occupants were. At that time, they did not, so Agent Peacock asked Lt. Helm to contact neighbors and try to determine who the occupants would be.

Lt. Helm came in contact with Keith Wright, Defendant's brother, who explained who lived in the apartment. Subsequently, Keith Wright informed Lt. Helm that Defendant's family members had located Defendant at Ann's Tavern and took him to a friend's house. Lt. Helm asked Keith Wright to bring Defendant to the scene. Lt. Helm's intention was to ask Defendant to come to City Hall so they could determine where Defendant had been, who was last in the house, and the like.

At around 1:00 a.m., Sgt. Fred Miller asked Officer Lindauer and his partner, Officer Roy Snyder, to go to Ann's Tavern and find out if the people there knew Defendant and determine how much he had to drink if he had been there that night. Employees of Ann's Tavern told Officer Lindauer that Defendant had been in the tavern at 7:30 p.m. and purchased a six-pack of "pounders" (16 oz. beers) and he returned at approximately 11:00 p.m., had a drink, and was making statements that he killed his wife.

Around the same time, Keith Wright brought Defendant to the scene. Defendant initially agreed to accompany Agent Peacock to City Hall. Defendant got out of his brother's truck unassisted and walked to Agent Peacock's vehicle without difficulty. Agent Peacock put Defendant in his unmarked vehicle and began to drive to City Hall where he could speak to Defendant in a warmer and quieter environment. After driving a block or two, Defendant changed his mind and did not wish to go City Hall. About that time, Officer Snyder contacted Agent Peacock and told him that Defendant had made statements at Ann's

Tavern that he had killed his wife.

Agent Peacock pulled over. He advised Defendant he was being detained, placed him in handcuffs and put him in the back of Officer Lindauer's marked vehicle. Agent Peacock then asked Officer Lindauer to transport Defendant to City Hall. Lt. Helm followed in his own unit.

On the way to City Hall, Defendant told Officer Lindauer that he needed to go to the bathroom. As soon as Officer Lindauer reached City Hall, he and Lt. Helm took Defendant to use the restroom. Officer Lindauer removed Defendant's handcuffs. While Defendant was using the urinal, he made unsolicited statements that he killed his wife.

After Defendant was finished using the restroom, he was taken to the processing room and told to sit on a bench. Although there was a video system in the ceiling of the processing room, it did not have audio. Lt. Helm set up a video camera with audio capabilities, which taped Defendant the entire time that he was on the bench, which was in excess of 13 hours.<sup>1</sup>

On the videotape, Defendant repeatedly tells Lt. Helm to take the camera away or to turn it away from him. Defendant also asks why he is being held and asks for an attorney and to make a phone call. Lt. Helm tells Defendant he is being held for questioning.

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<sup>1</sup> Defendant was transported to City Hall sometime between 1:15 and 1:30 a.m. Agent Peacock testified that Defendant's preliminary arraignment occurred in the late afternoon or early evening. The docket transcript from the Magisterial District Judge (MDJ) indicates that Defendant's preliminary arraignment occurred at approximately 6:15 p.m.

Defendant says, "Ask me anything you want." Lt. Helm repeatedly tells Defendant that he does not wish to speak with him. He also tells Defendant that he is being detained because Agent Peacock wants to talk to him about the fire at his house. Defendant asks Lt. Helm to get Agent Peacock. Lt. Helm tells Defendant that Agent Peacock is interviewing other people. After about 28 minutes, Defendant says: "You want me to tell you I killed my wife? You want to know why, because of the crack addict she was." Shortly thereafter, Defendant tells Lt. Helm he never got a phone call. About a minute later, Defendant makes three consecutive statements admitting that he killed his wife. Then he points to the camera and says, "Get the damn thing away from me." Agent Peacock comes into the room, handcuffs Defendant to the wall, and then leaves the room.

In the next few minutes Defendant recants his prior statements. He says "why'd you handcuff me? All I said to you was nothin' but lies." He asks if he was detained because of the things he said earlier as a joke. He also says "I sobered up" and "what I said to you was bullshit."

Attorney George Lepley was contacted by the Defendant's family, reported to City Hall, and asked to see Defendant sometime between 8:00 and 11:00 a.m. on October 26, 2013. The police, at the District Attorney's direction, would not allow Attorney Lepley to see Defendant.

Attorney Lepley testified that the District Attorney told him he could not see Defendant, because Defendant had not asked for counsel. The parties stipulated that if called, both the District Attorney and Agent Peacock would testify that they were not aware

that Defendant had requested an attorney. In fact, Defendant had asked to call or talk to an attorney several times before he made any of the incriminating statements that were videotaped while he was in the processing room.

All of the police officers admitted in their testimony that Defendant was intoxicated, but he was not falling down drunk. Officer Lindauer testified that Defendant was intoxicated. Defendant had slurred speech and an odor of alcohol. Officer Lindauer indicated that if Defendant had been behind the wheel of a vehicle he would have given Defendant field sobriety tests and would have had concerns about Defendant's ability to safely drive a vehicle, but Defendant was not stumbling or having any difficulty maintaining his balance and he used the restroom appropriately without assistance. He stood straight in front of the urinal without leaning to either side. He urinated into the urinal; he did not miss or urinate onto the floor. He flushed the urinal, then washed and dried his hands without needing any assistance. (N.T., 11/17/14, at 28-30, 40-41).

Agent Peacock also testified it was obvious that Defendant was intoxicated, but he was not falling down drunk. Defendant had an obvious odor of alcohol on his breath and in talking to him it was obvious he was intoxicated but he didn't need assistance to stand. Agent Peacock also admitted that Defendant needed to sober up before he could be questioned. (N.T., 11/17/14, at 46, 52-53).

Similarly, Lt. Helm testified that Defendant was drunk, but he did not have any difficulty getting out of his brother's truck or walking to Agent Peacock's vehicle unassisted. (N.T., 11/17/14, at 82-83).

Dr. Lawrence Guzzardi, a toxicologist and emergency room doctor, testified that based on Defendant's level of intoxication and possible other substance abuse, Defendant was unable to make knowing, intelligent and voluntary statements. He estimated Defendant's blood alcohol content at the time he made his incriminating videotaped statements to be between .25 and .30%. He based this conclusion on Defendant's slurred speech, his sleepiness, his appearance and demeanor, and his inability to understand why he was being detained or why he was unable to obtain counsel. Dr. Guzzardi admitted that Defendant's statements could be considered voluntary if one used a narrow definition of that term to mean without physical coercion. In Dr. Guzzardi's opinion, however, Defendant's statements were not voluntary in a broader, cognitively aware sense of that term. In this broader sense, an individual would have to know what he was saying and understand the significance for Dr. Guzzardi to consider it voluntary.

Defendant first argues that his statements were involuntary and must be suppressed because he was intoxicated. The court cannot agree.

“When a defendant alleges that his waiver or confession was involuntary, the question ‘is not whether the defendant would have confessed without interrogation, but whether the interrogation was so manipulative or coercive that it deprived the defendant of his ability to make a free and unrestrained decision to confess.’” *Commonwealth v. Sepulveda*, 55 A.3d 1108, 1137 (Pa. 2012). “The fact that an accused has been drinking does not automatically invalidate his subsequent incriminating statements.” *Commonwealth v. Cruz*, 71 A.3d 998, 1005 (Pa. Super. 2013). “[I]ntoxication is a factor to be considered, but

it is not sufficient, in and of itself[, ] to render the confession involuntary.” *Commonwealth v. Manning*, 495 Pa. 652, 435 A.2d 1207, 1209 (1981). In fact, the standard jury instruction states, “A defendant’s statement is always regarded as voluntary if it is made spontaneously, that is, not in response to police questioning. This is true even though the defendant is intoxicated, mentally ill, or influenced by some internal compulsion to speak.” Pa.SSJI (Crim) §3.04B.

With the exception of the statement made after Lt. Helm asked Defendant if he was willing make the statement on tape (which the Commonwealth indicated in footnote 5 of its brief that it had no objection to being suppressed), the police did not question Defendant in any manner or do anything to prompt him to make any statement. In fact, Lt. Helm repeatedly told Defendant that he was not asking him anything and he didn’t want to talk to him; Defendant would have to wait for Agent Peacock.

Relying on *Milligan*, defense counsel contends that the test is whether Defendant had sufficient mental capacity to know what he was saying and to have voluntarily intended to say it. Defense counsel then argues that based on Dr. Guzzardi’s testimony Defendant did not have such a capacity. Again, the court cannot agree.

With all due respect to Dr. Guzzardi, Defendant did not appear to be that intoxicated. After viewing the DVDs, the court finds the police testimony credible. Although Defendant’s speech appeared somewhat slurred, he was not “falling down drunk.” He was able to sit upright on the bench with his one leg crossed over the other without falling over or even swaying at the time that he made the statements at issue. Defendant was aware

he was in a police station. He knew he was being videotaped and expressed his displeasure with the camera. His comments and questions, such as asking why he was being detained and telling Lt. Helm he didn't get a phone call, were responsive to the situation. He even mentioned Pennsylvania Attorney General Kathleen Kane by name. Furthermore, the court did not view Defendant's repeated questions about why he was being detained as evincing a lack of mental capacity or understanding on Defendant's part, but rather frustration and a lack of patience. Instead of patiently waiting for Agent Peacock to arrive, Defendant blurts out unsolicited incriminating statements during the first twenty to forty minutes of sitting on the bench without being handcuffed. The statements included, but were not limited to: (1) "You want me to tell you I killed my wife? You want to know why, because of the crack addict she was" (2) "I killed my wife, I'll tell you that right now" and (3) "You want a confession; I killed my wife." Shortly thereafter, Defendant recanted by saying things such as "all I said to you was nothing but lies" and "what I said to you was bullshit."

In the alternative, Defendant asserts that his statements were involuntary under the totality of the circumstances. Defendant contends that the police engaged in multiple inducements and manipulations which, when considered in conjunction with his obvious intoxication, were designed to deprive him of his rights, including: (1) failing to promptly and properly advise Defendant of his *Miranda* rights; (2) ignoring Defendant's numerous demands for counsel, to call his lawyer, to leave and to make a phone call; (3) capturing Defendant's ramblings on video and audio recording, when just video was constantly active in the room where Defendant remained, even when he expressed



displeasure with the camera; and (4) sitting Lt. Helm in the room with Defendant. The court cannot agree.

“In making this inquiry, a court is not concerned whether the substance of the confession is true. Rather, a court is constrained to examine only whether an individual’s confession was the product of coercion, duress, or the use of other measures by interrogators deliberately calculated to overcome his or her free will.” *Commonwealth v. Smith*, 85 A.2d 530, 537-38 (Pa. Super. 2014). Similarly, a defendant need not be protected against his own innate desire to unburden himself; the law does not require such coddling of the accused. *Commonwealth v. Templin*, 568 Pa. 306, 795 A.2d 959, 966 (2002). Instead, the “[f]actors to be considered in assessing the totality of the circumstances include ‘the duration and means of 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 facts that could drain a person’s ability to withstand suggestion and coercion.’” *Templin*, supra (quoting *Commonwealth v. Nester*, 551 Pa. 157, 161, 709 A.2d 879, 882 (1998)).

The police did not interrogate Defendant at any time before he made the incriminating statements. In fact, Lt. Helm, who was trying complete paperwork, kept telling Defendant that he did not want to talk to him and Defendant would have to wait for Agent Peacock, but Defendant kept asking Lt. Helm questions and making statements to him.

Although Defendant was in custody for more than 13 hours before being arraigned, he blurted out the incriminating statements within the first forty (40) minutes that he was in the processing room.

The police candidly admitted that Defendant was intoxicated when he made the statements. There are, however, varying degrees of intoxication. Defendant's speech was somewhat slurred, but he was aware of where he was and he appeared to know what he was saying. He was not mumbling in some semi-conscious state. He was voicing his objections to being detained and not being given the opportunity to make a phone call or to talk to an attorney.

Admittedly, Defendant made several requests or demands to call or talk to an attorney before he made the statements in question. The Sixth Amendment right to counsel, though, attaches only at critical proceedings after the government initiates adversarial judicial proceedings. *Commonwealth v. McCoy*, 601 Pa. 540, 975 A.2d 586, 590 (2009). The right to counsel under Article 1, §9 of the Pennsylvania Constitution is coterminous with the Sixth Amendment for purposes of when the right to counsel attaches. Defendant made these statements prior to any criminal charges being filed against him. Therefore, his rights to counsel under the Sixth Amendment and Article 1, §9 were not violated. Moreover, the police did not question Defendant or initiate conversations with him following those requests. Defendant spontaneously uttered the statements, despite his request for counsel. Therefore, Defendant's *Miranda*-based right to counsel also was not violated.<sup>2</sup>

When the court considers the totality of the circumstances, it finds that Defendant's statements are admissible and the weight to be given to those statements is an

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<sup>2</sup> While the court is concerned with the fact that Defendant's pleas to go to the bathroom were refused or ignored and his attorney was prohibited from seeing him based on the District Attorney's mistaken belief that Defendant had not requested counsel, these events occurred well after Defendant made the statements in question;

issue for the jury.

**ORDER**

**AND NOW**, this \_\_\_ day of August 2015, with the exception of the statement conceded by the Commonwealth, the court denies Defendant's motion to suppress his statements.

By The Court,

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Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
Nicole Spring, Esquire (APD)  
Gary Weber, Esquire (Lycoming Reporter)  
Work file

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therefore, they could not have affected the voluntariness of the statements.