

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 2186 – 2013
	:	NO. CR – 1226 – 2014
	:	NO. CR – 1868 – 2014
vs.	:	
	:	CRIMINAL DIVISION
DAVID BEAN,	:	
Defendant	:	Motion to Suppress

OPINION AND ORDER

Before the Court is Defendant’s Motion to Suppress Evidence, filed February 17, 2016. Argument was heard March 11, 2016.

Defendant has been charged with numerous burglaries and numerous sexual offenses, and trial on the burglaries is scheduled to begin later this month. The instant motion to suppress seeks to exclude statements Defendant made in a taped (both video and audio) interview with detectives in the District Attorney’s office wherein he incriminated himself with respect to many of the charges. Defendant argues that the statements must be excluded under Pa.R.E. 410, and also that they were obtained in violation of his right to remain silent, any waiver of which was not knowing, intelligent or voluntary. Each of these issues will be addressed in turn.

The rules of evidence provide, in relevant part, as follows:

Rule 410. Pleas, Plea Discussions, and Related Statements

(a) Prohibited Uses. In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

...

(4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later withdrawn guilty plea.

Pa.R.E. 410(a)(4). Defendant's motion thus necessarily relies on his assertion that the admissions were made "during pleas discussions". A review of the tape belies this assertion, however, as the tape does not show, and there was no other evidence of, any plea discussions.

Defendant had written to the detective to offer information about other unrelated matters and was brought into the district attorney's office to be interviewed in that regard. After Defendant has a lengthy, supposedly private,¹ discussion with his attorney, the detectives and the District Attorney enter the room and the District Attorney tells Defendant that in addition to taking the information he has to offer, the detectives will ask him about pending criminal charges because they need to establish his credibility. He is told that he must provide 100% cooperation but that the DA is "not making [him] any promises in exchange" for the information provided, and that there is "no agreement as to how the pending cases are to be handled other than that I will take into account your level of cooperation". The District Attorney promises Defendant that "you will be better off for having cooperated with me than not, but other than that, I can't promise you anything". The only mention of a plea agreement is that there is none. Therefore, Rule 410 does not afford Defendant any relief.

¹ The court finds it appalling that Defendant's private conversation with his attorney was taped by the District Attorney's office. Not only was the recording device activated before Defendant was placed in the room with his attorney for the purpose of receiving that attorney's advice prior to making a statement, but even after the interview by the detectives, when Defendant asks to speak privately with his attorney and the attorney asks that the recording be stopped so they can confer, and is assured that such will be done, the recording continues. This breach of Defendant's right to privacy is a shameful ethical violation which this court cannot condone, and the

The second issue, whether Defendant's waiver of his right to remain silent was not knowing, intelligent or voluntary, is not so clear cut. According to Commonwealth v. Gibbs, 553 A.2d 409 (Pa. 1989), promises of benefits or special considerations can induce admissions and cannot be condoned. "Misleading statements and promises by the police choke off the legal process at the very moment which *Miranda* was designed to protect." *Id.* at 411. Here, the District Attorney's promise to Defendant that "I will take into account your level of cooperation" and that "you will be better off for having cooperated with me than not" is certainly a promise of special consideration. The court nevertheless finds that such did not render Defendant's waiver of his right to remain silent involuntary, however. The Gibbs decision is explained in Commonwealth v. Morgan, 606 A.2d 467, 469 (Pa. Super. 1992)(emphasis added), to "speak[] 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." In the instant case, the promise was not made by police and there is nothing to suggest that it was false, as there is nothing to say that in the end, Defendant will not be better off for having cooperated. Therefore, the court finds that the statements were not made in violation of Defendant's rights, and they will not be suppressed.

court assumes the District Attorney will not be so bold as to attempt to offer at trial any of the statements made during these private conversations.

ORDER

AND NOW, this day of March 2016, for the foregoing reasons,
Defendant's Motion to Suppress Evidence is DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
Peter T. Campana, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

