

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-1125-2019
v.	:	
	:	
MICHAEL GEORGE HARRIS, JR.	:	MOTION TO SUPPRESS
Defendant	:	

OPINION AND ORDER

Michael Harris (Defendant) was charged on July 1, 2019 with multiple counts of sexual assault offenses involving an adult woman, a minor child and a canine. He was arrested on July 8, 2019 and interviewed by Trooper Keeler on July 9, 2019. Defendant filed an Omnibus Pretrial Motion on June 22, 2020 seeking suppression of the statements made to Trooper Keeler and a motion to sever the charges along with a motion in limine to preclude any references to the allegations of inappropriate conversations with minors. A hearing on the motion was held by this Court on September 24, 2020. At that hearing, an agreement was reached to defer the motion in limine and focus on the suppression motion and the motion to sever. At the conclusion of the hearing, the parties requested the opportunity to submit briefs on the issues presented on both the suppression and the Motion to Sever.

Background and Testimony

According to information provided, the Pennsylvania State Police (PSP) were made aware of possible sexual assault offenses perpetrated by the Defendant in or around late May of 2019. Trooper Jamesan Keeler (Keeler) began investigating the incident, which ultimately concluded with filing charges against Defendant. A warrant was issued for the Defendant on July 1, 2019 for the following charges against the alleged child victim: 2 counts Rape Forcible

Compulsion¹, 3 counts Criminal Attempt, Rape of Child², 4 counts Rape of a Child Less Than 13³, 2 counts Involuntary Deviate Sexual Intercourse with Child⁴, 2 counts Criminal Solicitation, Involuntary Deviate Sexual Intercourse⁵, 1 count Statutory Sexual Assault⁶, 3 counts Aggravated Indecent Assault of Child⁷, 3 counts Indecent Assault without Consent⁸, Endangering Welfare of Children⁹, and Corruption of Minors¹⁰. The warrant also included the charges for the alleged adult victim which are: Indecent Exposure¹¹, Rape by Forcible Compulsion¹², Attempted Rape¹³, Rape of an Unconscious Person¹⁴, Attempted Rape of an Unconscious Person¹⁵, Involuntary Deviate Sexual Intercourse, Forcible Compulsion¹⁶, Involuntary Deviate Sexual Intercourse Person Unconscious¹⁷, Criminal Attempt, Involuntary Deviate Sexual Intercourse¹⁸, and Indecent Assault Person Unconscious¹⁹. In addition, allegations were made that the Defendant had sexual intercourse with an animal, specifically a dog, and was charged with Sexual Intercourse with an Animal²⁰. The Defendant was arrested on the warrant and detained at the Lycoming County Prison (LCP) on July 8, 2019 following

¹ 18 Pa.C.S.A. § 3121(1).

² 18 Pa.C.S.A. § 901(a).

³ 18 Pa.C.S.A. § 3121(c).

⁴ 18 Pa.C.S.A. § 3121(c).

⁵ 18 Pa.C.S.A. § 902(a).

⁶ 18 Pa.C.S.A. § 3121.1(b).

⁷ 18 Pa.C.S.A. § 3125(b), (a)(7), (a)(8).

⁸ 18 Pa.C.S.A. § 3126(a)(1).

⁹ 18 Pa.C.S.A. § 4304.

¹⁰ 18 Pa.C.S.A. § 6301(a)(1)(ii).

¹¹ 18 Pa.C.S.A. § 3127(a).

¹² 18 Pa.C.S.A. § 3121(1).

¹³ 18 Pa.C.S.A. § 901(a).

¹⁴ 18 Pa.C.S.A. § 3121(3).

¹⁵ 18 Pa.C.S.A. § 901(a).

¹⁶ 18 Pa.C.S.A. § 3123(a)(1).

¹⁷ 18 Pa.C.S.A. § 3123(3).

¹⁸ 18 Pa.C.S.A. § 901(a).

¹⁹ 18 Pa.C.S.A. § 3126(a)(4).

²⁰ 18 Pa.C.S.A. § 3129.

his preliminarily arraignment conducted by Magisterial District Judge Jon Kemp. MDJ Kemp refused to set bail and the Defendant was committed to the LCP.

On July 9, 2019, Keeler was advised that the Defendant had been arraigned and incarcerated, so he transported the Defendant from LCP to the State Police barracks to be processed. After Keeler processed the Defendant, he was placed in an interrogation room where Keeler advised Defendant of his *Miranda* rights. N.T. 7/9/2019, at 2-3. Defendant then told Keeler that he “probably will lawyer up.” Id. at 4. Keeler informed Defendant if he wanted an attorney then he and Defendant were likely not going to have a discussion with each other. Id. Nevertheless, Defendant stated that he wanted to continue their conversation because he wanted to “know everything that’s going on.” Id. Keeler clarified that Defendant wanted to proceed without an attorney present. Id. Defendant answered that he would eventually want an attorney but understood the process and wished to continue talking to Keeler. Id. at 4-5. Once again, Keeler explained to Defendant that he had the right to refuse to answer questions and ask for an attorney at any point during their conversation. Id. Defendant responded, “I know how it works.” Id. at 5. Defendant then proceeded to discuss different aspects of his case. At another point, Defendant told Keeler that he “just wants it dealt with” and that he feels better that he “got to tell his side.” Id. at 19, 43.

Defense counsel now argues that the Defendant's statements made to Keeler were in violation of his rights under Pennsylvania Constitution Article 1 Section 9 and both the Fifth and Sixth amendments to the U.S. Constitution. Additionally, Defendant submits a motion to sever that concerns the request to divide the charges into three separate trials: one involving the sexual offences against the child, another involving the sexual offences with the adult mother, and the third dealing with the sexual intercourse allegation with the dog. As part of the

evidence presented at the hearing, the video recording of the interrogation was played. Both Keeler and the Defendant also testified about the events of the interview on July 9, 2019.

Discussion

Motion to Suppress Defendant's statements during interview with Trooper Keeler

Defense counsel alleges that any statement the Defendant made should be suppressed because Keeler continued to question Defendant after he exercised his right to remain silent and requested an attorney. In the alternative, Defendant argues that since the Defendant had already been arraigned on the charges, Keeler's questioning of the Defendant deprived him of his right to counsel. The Commonwealth alleges that the Defendant neither invoked his right to counsel nor gave involuntary statements to Keeler. The Commonwealth also alleges that Defendant waived his right to counsel under both Pennsylvania and U.S. constitutional provisions.

The United States Supreme Court in *Berghuis v. Thompkins* formulated a standard to determine whether a Defendant has invoked his rights under *Miranda*. *Berghuis v. Thompkins*, 560 U.S. 370 (2010). The Court ruled that in order for a defendant to invoke his protections under *Miranda*²¹, it must be clear and unambiguous. *Id.* at 382. The Pennsylvania Supreme Court also examined this issue in *Commonwealth v. Lukach*, 195 A.3d 176 (Pa. 2018). In *Lukach*, when being interviewed by the police Lukach stated, "I don't know. I'm done talking. I don't have nothing to talk about." *Id.* at 181. Even though defendant's exercise of his right to remain silent was accompanied with "I don't know", the Court found that the defendant clearly and unambiguously exercised his rights under *Miranda* and the police violated them when they continued to question him. *Id.* at 190. The question here, then, is whether the Defendant clearly and unambiguously invoked his right to remain silent.

²¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

In reviewing the video tape, the Court does not agree with defense counsel that the Defendant appeared reluctant to speak with the police. Defendant did mention he eventually wanted to get an attorney. However, when Keeler followed up by letting him know that if he wished to invoke his rights they would have to stop talking, the Defendant continued to speak about the incident, was curious about what evidence the police had, and even said that he felt glad that he was able to talk about his side of the story. At one point, in response to Keeler, Defendant said specifically that he was familiar with the process. In addition, Keeler ensured several times before beginning their conversation that Defendant knew he could stop the interview at any time, could refuse to answer questions, and could request an attorney before continuing. Therefore, in reviewing the video the Court finds that the Defendant did not clearly and unambiguously invoke his rights to attorney under *Miranda* and waived his rights under *Miranda* knowingly, intelligently and voluntarily. Consequently, the Court will not suppress his statements on these grounds.

In the alternative, defense counsel argues that Keeler should not have spoken with Defendant because his right to counsel had attached. At the time Keeler spoke with Defendant, he had been brought before the MDJ the day prior for preliminary arraignment on his charges which resulted in him being officially charged. The right to counsel in a criminal proceeding is a fundamental right guaranteed by the Sixth Amendment of the United States Constitution and Article 1 Section 9 of the Pennsylvania Constitution. *Faretta v. California*, 422 U.S. 806, (1975); *Commonwealth v. Szuchon*, 484 A.2d 1365 (Pa. 1984) (cited by *Commonwealth v. McDonough*, 812 A.2d 504, 506 (Pa. 2002)). Police interfere with a defendant's Sixth Amendment right to counsel when they question them without an attorney or a waiver of their right to counsel. *Commonwealth v. Cornelius*, 856 A.2d 62, 72 (Pa. 2004). A defendant may

waive their Sixth Amendment right to counsel so long as the waiver is voluntary, knowing, and intelligent. *Patterson v. Illinois*, 487 U.S. 285, 292 (1988). Although a Defendant's *Miranda* rights have their source in the Fifth Amendment, a defendant who is admonished with the warnings set forth in *Miranda* has been sufficiently apprised of the nature of their Sixth Amendment rights, and thus a waiver of *Miranda* rights may constitute a waiver of both the Fifth and Sixth Amendment right to counsel. *Id.* at 296; see also *Montejo v. Louisiana*, 556 U.S. 778, (2009) (quoted in *Commonwealth v. Kunkle*, 79 A.3d 1173, 1181–82 (Pa. Super. 2013)). The Court must determine that the “totality of the circumstances surrounding the interrogation reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the constitutional rights to counsel have been waived.” *Id.* at 1173, 1182 (internal citations omitted).

Neither party disputes that the Defendant was eligible for counsel as soon as he was arraigned before MDJ Kemp. The question before the Court is whether the Defendant gave up his right to counsel by waiving his *Miranda* rights after charges were filed against him before being questioned by Keeler. In this case, the Defendant was advised of his *Miranda* warnings after going into the interrogation room and several more times prior to questioning. Further, there is no evidence presented to show Defendant was pressured to cooperate with the trooper. In fact, Defendant was comfortable asking questions when he needed clarification of his rights and told Keeler he understood how the process worked. Moreover, Keeler told Defendant several times that even if he signed the form, he could change his mind at any point during the interview. On the video recording of the interview, Defendant did not appear to be confused about his rights under *Miranda* when he chose to waive them. Although Defendant’s right to

counsel had attached, the Court finds that he executed a valid waiver of his rights, including that of counsel, before he spoke with Keeler.

Motion to Sever charges against Defendant based on victim

Defendant also alleges that, because of both the nature of the charges and the different types of victims, the charges should be severed according to the pertinent victim. In the Commonwealth's brief, they concede the issue of severance. Therefore, the charges shall be severed based on the appropriate victim for each charge.

Conclusion

Defendant made a knowing, intelligent and voluntary waiver of his right to counsel and protections afforded under *Miranda*. Therefore, Defendant's Motion to Suppress Evidence shall be denied. As the Commonwealth has conceded the Motion to Sever, it shall be granted, and the sexual assaults of the minor child, dog and adult woman shall be severed for trial and tried separately.

ORDER

AND NOW, this 4th day of March, 2021 based upon the foregoing Opinion, Defendant's Motion to Suppress Evidence is **DENIED** and the Motion to Sever is **GRANTED** and the sexual assault allegations of the minor child, adult mother, and canine shall be tried separately.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)
Matthew Welickovitch, Esq.
Law Clerk (JMH)

NLB/n