

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-156-2021**
 v. :
 :
 BRIAN MOREHART, : **OMNIBUS MOTION**
 Defendant :

OPINION AND ORDER

Brian Morehart (Defendant) was charged on February 4, 2021 with three counts of Rape of a Child¹, Involuntary Deviate Sexual Intercourse with Person Less Than 16², three counts of Aggravated Indecent Assault of Child³, three counts of Indecent Assault Person Less Than 13⁴, Corruption of Minors⁵, three counts of Unlawful Contact with Minor⁶, and Endangering Welfare of Children⁷. The charges arise from allegations of Defendant sexually abusing his eight-year-old daughter. Defendant filed an untimely Omnibus Pretrial Motion on May 7, 2021 without objection from the Commonwealth as to the untimeliness of the motion. This Court held a hearing on the motion on August 3, 2021. In his Omnibus motion, Defendant asserts several arguments to be considered by the Court. Firstly, Defendant challenges the voluntariness of his confession of the abuse to police and believes his statements ought to be suppressed. Secondly, Defendant includes a Motion for Change of Venue/Change of Venire. Thirdly, Defendant submits a Renewed Motion to Set Bail⁸.

Background and Testimony

¹ 18 Pa.C.S. § 3121(C).

² 18 Pa.C.S. § 3123(A)(7).

³ 18 Pa.C.S. § 3125(B).

⁴ 18 Pa.C.S. § 3126(A)(7).

⁵ 18 Pa.C.S. § 6301(A)(1)(ii).

⁶ 18 Pa.C.S. § 6318(A)(1).

⁷ 18 Pa.C.S. § 4304(A)(1).

⁸ The Court declined to consider this motion until after the suppression motion was litigated.

Trooper Matthew Miller (Miller) of the Pennsylvania State Police testified on behalf of the Commonwealth. Miller was involved in an investigation of Defendant that began through a Childline report of allegations that Defendant sexually assaulted his eight-year-old daughter in 2014. On January 19, 2021, Miller spoke with Defendant and asked if he would be willing to sit for an interview with Miller. Defendant consented to the interview, which was set up for the next morning at 8:30 a.m. on January 20th. Miller testified that he did not tell Defendant that he was required to come to the interview, but let Defendant decide for himself if he wanted to come. On the day of the interview, Miller had his uniform on but wore a jacket to cover his firearm and to appear less intimidating to Defendant during the interview process. Miller informed Defendant that he was being recorded and Defendant was free to leave at any time. The door was not closed but kept cracked open for privacy.

Throughout the one hour interview, Defendant never said he did not want to be interviewed. Miller testified that he advised Defendant of the allegations against him in detail, specifically that Defendant's daughter, K.M., claimed Defendant had sex, oral sex, and other forms of intercourse with her. At this point, Defendant made no admissions to abuse. Eventually, Defendant admitted that he was naked after the shower and jumped on top of his daughter. Additionally, Defendant admitted to using her hand to rub his genitals and put his genitals into K.M.'s mouth. Miller testified that these facts were volunteered by Defendant and did not come from Miller's explanation of the allegations against Defendant. Defendant stated that a huge weight was lifted off his shoulders after admitting his conduct to Miller. Miller testified that Defendant told him the allegations were true and he appeared defeated. Miller further explained that he was not under the impression that Defendant thought he had to come. Miller stated that Defendant never admitted to penetration but did admit to rubbing his penis

around K.M.'s vagina and rear end and that penetration may have occurred. Miller conceded that he became accusatory at one point in the interview as part of a police interview tactic but believed he was not haughty or intimidating with Defendant throughout their interaction. Miller stated that charges had not been filed at the time the interview was conducted.

The Commonwealth presented video footage of the January 20, 2021 interview with Defendant, marked as Commonwealth's Exhibit 1. The video establishes the following. Defendant and Miller enter an interrogation room together and Miller props the door open several inches with a doorstop for privacy. Miller tells Defendant explicitly that he is not under arrest at this time and that he is free to leave whenever he wishes. Miller also informs Defendant the interview is being audio and video recorded and Defendant acknowledges he understands. Miller wore a jacket over his uniform so his firearm is not visible. Defendant is talkative, appears engaged in the conversation and his body language is relaxed. Defendant articulates that he did not sexually abuse K.M. and believes that she is lying. Throughout the interview, Miller is sitting back in his chair and does not display aggressive body language. Miller becomes accusatory and more intense with his questioning approximately halfway through the interview but reminds Defendant that he is not under arrest and that he is free to leave. Defendant is still adamant that no abuse occurred.

At one point, Miller asks if Defendant would be willing to submit to a polygraph examination and Defendant says he would have to speak to an attorney first in order to protect his rights. Miller explains the specific allegations K.M. brought against him. Miller attempts to persuade Defendant to tell the truth and to keep K.M. in mind. Eventually, Defendant slowly begins to confess to the abuse. Once again, Miller confirms Defendant is at the interview of his own volition and Defendant agrees. After he starts his admission, Defendant's behavior

becomes increasingly reserved. He appears defeated and embarrassed and speaks in a quieter voice when answering questions. Defendant starts to agree with whatever Miller says, but Miller quickly addresses this behavior and tells him that Miller does not want to put words in Defendant's mouth. Defendant remains firm throughout the entire interview in his assertion that he never penetrated K.M. Miller wraps up his questions and a Children and Youth worker asks Defendant questions to ensure the safety of Defendant's other children. Miller returns and Defendant leaves the interrogation room with Miller following the end of the interview.

Discussion

Motion to Suppress

Defendant contends that his confession was elicited involuntarily during the interview with Miller on January 20, 2021 and therefore all of his incriminating statements during the interview should be suppressed. The voluntariness of a confession is determined by analyzing the totality of the circumstances surrounding the confession. *See Arizona v. Fulminante*, 499 U.S. 279, 285 (1991). "The question of voluntariness 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 unconstrained decision to confess." *Commonwealth v. Nestor*, 709 A.2d 879, 882 (Pa. 1998). A court should look at 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." *Id.* "The Commonwealth has the burden of proving by a preponderance of the evidence that the defendant confessed voluntarily." *Id.*

Defendant argues that his confession was involuntary for a number of reasons. Defendant contends he was under the impression he was required to report to the Pennsylvania State Police Montoursville Barracks. Defendant asserts he felt pressured and intimidated by Miller's "haughty demeanor." Defendant Omnibus Motion, at 5. Defendant also takes issue with the position of the door and claims that it was not ajar, but slightly cracked to give the impression of confinement. Defendant further argues that he was not told the exact allegations that K.M. had brought against him and he was in an agitated state of mind because of this lack of information. Defendant states that he has never been arrested or faced criminal charges before this and therefore lacked the knowledge of the criminal justice system to protect his rights and prevent self-incrimination. The Commonwealth believes Defendant's confession was voluntary because Defendant came to the interview willingly and was informed by Miller that he could leave at any time. The Commonwealth also argues that the video shows banter and laughter between Defendant and Miller. Furthermore, Miller wore a jacket to cover up his firearm during the interview. Miller told Defendant specific allegations throughout the interview and Defendant still provided a blanket admission to all allegations in addition to specific details of abuse.

This Court believes the totality of the circumstances demonstrate Defendant's confession was voluntary. Miller testified that he called Defendant on January 19, 2021 and asked him if Defendant would be willing to sit for an interview and Defendant agreed. Neither Miller's testimony nor the video footage indicated that Miller had forced Defendant to sit for an interview or that he told Defendant he was required to come. Defendant was chatty and laughing with Miller while walking in to the interview room and throughout a good portion of the interview itself. Miller dressed in such a way as to avoid intimidating Defendant with his

firearm and advised Defendant repeatedly that he was not under arrest and could conclude the interview and leave at any time he wished. Throughout the footage of the interview, Miller's body language is relaxed and leaning away from Defendant so as to avoid physical intimidation. The interview, including the questions from Children and Youth, only lasted approximately one (1) hour in total, which is not an excessive amount of time. *See Commonwealth v. Taylor*, 431 A.2d 915 (Pa. 1981). Although this is Defendant's first criminal offense, Defendant's contention that he was unaware how to protect his rights and prevent a confession is unfounded. During the interview, Miller asks if Defendant would submit to a polygraph examination and Defendant said he would need to talk to an attorney first. When Miller asked why he would not just sit for the polygraph, Defendant responded that he needed to protect his rights. It is clear from this footage that Defendant knew perfectly well what to do if he wanted to protect himself and Miller had reminded him repeatedly throughout the interview that Defendant could stop the interview. Miller even reminded Defendant that he came down to the barracks of his own free will and Defendant agreed.

It is also visible on the footage that the door to the interrogation room was cracked by several inches and Miller explained to Defendant that he was not closing the door, but cracking it to keep outside noise to a minimum and allow for privacy during their conversation. Furthermore, the Court recognizes that Defendant may have been in an agitated state when Miller began to press him on the specific allegations, but the footage of the interview shows that Defendant drives the conversation and appears comfortable and relaxed for approximately half of the duration of the interview. Miller's appeal to Defendant to be honest with him and to keep K.M. in mind was not coercive enough to overwhelm Defendant's ability to make an unconstrained decision to confess. *See Miller v. Fenton*, 796 F.3d 598 (3d Cir. 1986) (held that

encouraging a suspect to cooperate with investigation and answer questions honestly is permissible interrogation tactic); *See also* Commonwealth v. Williams, 640 A.2d 1251 (Pa. 1994). This Court believes that the pressure Miller applied on Defendant in this case was not exorbitant enough to overbear Defendant's will to withstand self-incrimination. Therefore, the totality of the circumstances show that Defendant's confession was voluntary and his statements will not be suppressed.

In the alternative, Defendant requests this Court to suppress any "blanket" confession where Defendant stated whatever K.M. alleged must be true. However, this Court does not see how this relief can be granted following the determination that Defendant's confession was voluntary. The video footage shows that Defendant becomes defeated and embarrassed following his piecemeal confession to some of the abuse and from that point onwards until the end of the interview. When Defendant says whatever K.M. alleged is true and becomes nonchalant about it and continues to say "whatever", Miller addresses him specifically and says that Miller cannot put words in Defendant's mouth. After that, Defendant does not admit to blanket allegations again and instead is persistently clear that no penetration occurred despite K.M.'s allegations of penetration. Defendant clarifies what abuse he admits, therefore, Defendant's alternative request is denied.

Motion for Change of Venue

Defendant also challenges his ability to receive a fair trial in the Lycoming County Court of Common Pleas following a few news articles detailing information about this case. The decision to grant a motion for change of venue is within the "sound discretion of the trial court, and its exercise of discretion will not be disturbed by an appellate court in the absence of an abuse of discretion." Commonwealth v. Casper, 392 A.2d 287, 291 (Pa. 1978); *See also*

Commonwealth v. Scott, 365 A.2d 140 (Pa. 1976). A defendant who claims that they have been denied a fair trial because of prejudicial pretrial publicity must show actual prejudice in the empaneling of the jury. Id.; *See also* Murphy v. Florida, 421 U.S. 794 (1975). An exception to this requirement exists where the pretrial publicity has been “so sustained, so pervasive, so inflammatory, and so inculpatory as to demand a change of venue without putting the defendant to any burden of establishing a nexus between the publicity and actual jury prejudice.” Commonwealth v. Frazier, 369 A.2d 1224, 1227 (Pa. 1977). However, “the mere existence of pre-trial publicity does not warrant a presumption of prejudice. Similarly, a possibility that prospective jurors will have formed an opinion based on news accounts will not suffice.” Casper, 392 A.2d at 291-292. Jurors are not required to be “totally ignorant of the facts and issues involved.” Irvin v. Dowd, 366 U.S. 717, 722 (1961).

In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interest of the public in the vicinity, and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case. This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror’s impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.

Id. at 722-723. The court looks to the following factors to determine if the pretrial publicity was prejudicial: “whether the pretrial publicity was, on the one hand, factual and objective, or, on the other hand, consisted of sensational, inflammatory and slanted articles demanding conviction, whether the pretrial publicity revealed the existence of the accused’s prior criminal record; whether it referred to confessions, admissions or reenactments of the crime by the defendant; and whether such information is the product of reports by the police and

prosecutorial officers.” Casper, 392 A.2d at 292. If any of these factors are present, the court must then determine “whether such publicity has been so extensive, so sustained and so pervasive that the community must be deemed to have been saturated with it.” Id. However, the presence of one of these elements does not warrant a presumption of prejudice. Id. Courts are also to look at if there has been a “cooling-off period” between the publicity and the commencement of trial to determine if the “prejudicial effect of the publicity may be deemed to have dissipated.” Id.

In this case, Defendant argues that the public is now aware of the “intimate inner workings of the case” because of various news reports of the allegations against Defendant, some of which included Defendant’s confession. Omnibus Pretrial Motion, at 7. Defense counsel included two examples of said news reports published in January of 2021 in the Omnibus motion, marked as Exhibit A. Defendant is concerned by the reports of this case that were widely circulated in Lycoming County and on social media. Defendant contends that jurors representing a cross section of Lycoming County will include those who have seen these articles and will be prejudiced against him, particularly because of the inclusion of Defendant’s purported confession detailed in the articles. Defendant believes the jury will be prejudiced because of the high profile of the case, multiple news articles across various outlets, and the shock value from the nature of these charges and requests a change of venue to a different county, or in the alternative wishes the Court to grant a change of jury venire. The Commonwealth argues that the jury will not be prejudiced by two minor news articles that are common local reports of the charges filed. The Commonwealth further argues that nothing else has been published since these articles and the articles were online so they were accessible outside this venue.

This Court agrees with the Commonwealth on this issue. Even though Defendant's purported confession was included in the articles, the articles were stating the allegations, the charges brought against Defendant, and the procedural history of the case as it stood in January of 2021. No inflammatory language was included that called for Defendant's conviction and no persuasive language supporting the Commonwealth or Defendant was present. Approximately nine to ten months will have lapsed between the publication of these articles and the beginning of selecting a jury for this matter. The Court can readdress this issue during jury selection if required, but simply because potential jurors might have been made aware of the facts of this case prior to selection does not equate to prejudicial effect against Defendant. A few articles from small online publications even with Defendant's confession does not create prejudice. Based on the articles presented in Defendant's motion, this Court believes that the content was not so prejudicial as to mandate a change of venue and believes that potential jurors who read the articles will be able to separate that information from their deliberations at trial. Therefore, Defendant's motion for change of venue or jury venire is denied.

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. This Court finds that the pretrial publicity did not create prejudice against the Defendant that would result in the inability to hold a fair trial on these charges. Therefore, Defendant's Motion to Change Venue/Motion to Change Venire shall also be denied.

ORDER

AND NOW, this 4th day of October, 2021 based upon the foregoing Opinion, Defendant's Motion to Suppress Evidence is **DENIED**. Defendant's Motion to Change Venue/Change of Venire is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (KG)
PD (TC)
Law Clerk (JMH)

NLB/jmh