

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
 :
 vs. : No. CR- 558-2020
 :
 TYLER VAUGHAN, :
 :
 Defendant : Omnibus Pretrial Motion

OPINION AND ORDER

Defendant is charged with, among other things, aggravated assault of a five-week old infant. Defendant is alleged to be the natural father of the infant who was born on October 26, 2019. Since his birth, the infant resided with Defendant and the infant's mother. On December 4, 2019, the infant was found at home to be unresponsive and was transported by emergency personnel to Geisinger Jersey Shore Hospital. He was then transported to the Janet Weiss Children's Hospital at Geisinger Medical Center in Danville, PA. Upon being admitted to Geisinger Medical Center, the infant was found to have numerous injuries which were allegedly non-accidental and consistent with Shaken Baby Syndrome. Law enforcement was contacted to investigate the cause of the infant's injuries and as part of the investigation, Defendant was first interviewed at Geisinger Medical Center by Corporal Joseph Akers of the Pennsylvania State Police. Defendant was subsequently interviewed at the Pennsylvania State Police Barracks in Montoursville, PA and underwent a polygraph examination by Corporal Robert Reeves. Subsequently, and based in part on the statements made by Defendant during those interviews, the charges were filed against him. More specifically, Defendant is alleged to have inflicted the injuries on the infant between November 1, 2019 and December 4, 2019 by

“subjecting the child to shaking motions on more than one occasion.” (Criminal Complaint)

Defendant filed an Omnibus Pretrial Motion on September 1, 2020. The motion included a motion to suppress both the statements Defendant allegedly made to Corporal Akers and Corporal Reeves on December 4, 2019. Hearings were held, testimony was taken, exhibits were admitted and counsel made arguments with respect to their respective positions, on November 16, 2020 and January 8, 2021.

With respect to Defendant’s meeting with Corporal Akers, Defendant claims that during the interview process, it progressed from an interview to a custodial interrogation and that anything said after that point by Defendant must be suppressed because first, Defendant was not Mirandized, nor did he waive his Miranda rights and secondly, the statements were involuntary under the circumstances.

With respect to Defendant’s meeting with Corporal Reeves, Defendant claims that while he was Mirandized, the initial waiver of those rights was not voluntary, intelligent or knowing. Alternatively, even if Defendant is deemed to have validly waived his Miranda rights, his statements during the interrogation were involuntary. On both of these bases, Defendant claims that the court must suppress everything he said to Corporal Reeves.

“Statements made during custodial interrogation are presumptively involuntary unless the accused is first advised of his Miranda Rights.” *Commonwealth v. (Hope) Williams*, 941 A.2d 14, 30 (Pa. Super. 2008).

In reviewing the record in this case, the Commonwealth has met its burden in establishing that at no time during the interview with Corporal Akers, was Defendant in

custody.

On December 4, 2019, Corporal Akers, as part of his duties as the supervisor of the Pennsylvania State Police major case team, traveled to Geisinger Medical Center in Danville for the purpose of interviewing Defendant. Corporal Akers was dressed in a suit and tie. He carried his badge, as well as his weapon, although the weapon was not visible.

He made contact with Defendant in the family waiting room area of the Pediatric ICU (PICU) family lounge. This was a large room with numerous couches, chairs, tables, a TV, a computer, a refrigerator and an eating table with chairs. (Commonwealth Exhibits 1 through 4). Defendant was sitting in the room with his mother when Corporal Akers arrived.

Corporal Akers introduced himself and asked to speak with Defendant. He indicated to Defendant that he wanted to speak with him regarding the injuries to his son. Defendant agreed to talk. They sat at the eating table each on one side of the table. The table was on one side of the room away from the other items of furniture but in full view of whoever else was in or came into the room.

With Defendant's consent, Corporal Akers also recorded the interview. The interview began at approximately 4:48 p.m. Corporal Akers obtained some biographical information and explained that he was there trying to determine how the injuries occurred to the infant. He explicitly told Defendant that at the time he was not in any trouble, not under arrest, did not have to talk and could leave at any time that he wanted. Corporal Akers emphasized by saying "I mean that" and "if you don't want to talk, just say so."

(Commonwealth Exhibit 5).

They spoke in detail about that morning's events involving the infant, Defendant and the infant's mother. The method, substance and tone of Corporal Akers questioning was conversational and not formal. It was casual, relaxed and idiomatic. Corporal Akers asked open-ended questions, gave Defendant time to think about his answers, and did not threaten, pressure or cajole the defendant. At no time did Defendant seem reluctant to speak. He was open in answering all of the questions, occasionally even volunteering information. He added unrelated comments and even found some of the conversation humorous. At no time did Defendant appear unwilling, resistant, hesitant, unsure, averse, or even disinclined to speak or answer questions. Indeed, he appeared eager, ready and willing to continue the conversation.

Approximately an hour into the interview, shortly after Corporal Akers again explained to Defendant that he was trying to determine the mechanism of the injuries to the infant, Corporal Akers told Defendant that while he appreciated his being open and detailed, if something happened but was not intended, he needed to let the doctors know. Corporal Akers explained the nature of the infant's injuries and how such injuries were inconsistent with Defendant's version of what happened.

Defendant told Corporal Akers that he did not like where "this was going now." Defendant indicated that the infant's symptoms were "things he's been experiencing for a couple weeks." Defendant explained that he had bad luck with cops. Corporal Akers told Defendant that if Defendant shook his son, for some reason, [they] needed to know.

This specific conversation and the statements by Corporal Akers were prompted

the Defendant to state: “I wouldn’t shake my baby” and “I’m not where I’d like to be sitting right now.” Corporal Akers insisted that he was not trying to trick Defendant but needed to know if something “like that” happened. He offered to Defendant different possible scenarios that might have occurred and even gave Defendant a chance to demonstrate what he did on a baby doll.

Becoming frustrated, Defendant said, “I don’t know why I’m sitting here, it’s been shoved down my face since I’ve been here.” Importantly, he looked at Corporal Akers and explained to him that it’s “not you...her mother is nagging on me for shaken baby.” He followed up noting that the mother is a nurse and doesn’t like him. Corporal Akers offered to end the interview if Defendant “felt” that Corporal Akers was nagging him. Defendant declined.

Following some back and forth, Defendant told Corporal Akers that he “gave” Corporal Akers the best he possibly could. Corporal Akers explained how the investigation would then proceed, noted that he appreciated Defendant speaking with him and giving him his time. He asked Defendant to let him know if something changed and to let the doctors know as well because time was of the essence. They discussed a polygraph and Defendant agreed to take one. The interview ended at approximately 6:21 p.m. It lasted for approximately one and-a-half (1 ½) hours.

While certainly believing that the infant was abused in light of the medical evidence and opinion that the injuries were not accidental, the entire purpose of the interview as credibly testified to by Corporal Akers was to determine if something criminal occurred and

to elicit a truthful version from Defendant. Further, the more information that Corporal Akers could obtain because of the injuries, the better the doctors could treat the infant.

Certainly, while Corporal Akers became more focused in his questioning and challenged Defendant's version of what occurred, he did nothing to physically deny Defendant of his freedom of action.

Moreover, he did nothing that placed Defendant in a situation in which Defendant could reasonably believe that his freedom of action or movement was restricted by the interview.

There was in fact no detention. Corporal Akers met with Defendant in the PICU family lounge to interview him to determine what may have caused the serious injuries to a five-week old infant. Even though Defendant may have been a suspect, he was met by Corporal Akers at the hospital and was not transferred anywhere, let alone against his will. There was absolutely no show of threat or force. Defendant was not restrained. Defendant was advised of and knew that he was not accused of doing anything wrong, charged with any crime, he was not under arrest and he did not have to talk and could leave at any time.

The methods of Corporal Akers' investigation were not at all coercive. While he certainly made statements to Defendant that inferred suspicion, and while Defendant became increasingly uncomfortable, Defendant was not placed in any situation in which he might reasonably believe that he was in custody. All of the circumstances demonstrated that Defendant was completely free to talk or not talk, free to participate or not participate in the interview and most importantly free to leave at any time he chose.

The court acknowledges the recent decision in *Commonwealth v. Harper*, 230 A.3d 1231 (Pa. Super. 2020) but concludes that it is distinguishable. In this case, Corporal Akers' conduct was not intended to elicit an incriminating response. Rather, it was an impartial investigation into Defendant's connection, if any, to the injuries to Defendant's infant son. Corporal Akers did not initiate the interview to confirm any suspicions that Defendant engaged in criminal behavior but to determine the cause of injury to the child. Corporal Akers did not engage in any ruses to induce Defendant into possibly incriminating himself. Additionally, and unlike in *Harper*, a reasonable person in Defendant's situation would have believed that he was free to leave. The court is cognizant that in determining what a reasonable person believes, it must proceed with caution informed by lived experience and balance real world experience with a practical need to allocate only a very modest weight to the possibility for psychological coercion arising from a fairly wide range of police conduct. *Id.* at 1239, citing *Commonwealth v. Cost*, 224 A.3d 641, 645 (Wecht, J., concurring).

In this case, Defendant was not hospitalized as a patient, he was not being treated for any injuries, he was not restrained or being cared for in a room, on a gurney or in a bed, he was not directed to do anything by way of any tests or exams, he was confronted by one officer in plain clothes and not two uniformed and armed officers, and the questioning was not immediately or even remotely accusatory.

Accordingly, Defendant's motion to suppress his statements to Corporal Akers on the basis that Defendant was in custody, undergoing custodial interrogation and was not Mirandized, shall be denied.

Defendant next argues that his statements to Corporal Akers were not voluntary. In determining the voluntariness of a confession, the court must view the totality of the circumstances including the duration and methods of interrogation, the length of delay between the arrest and arraignment, the conditions of detainment, the attitudes of the police towards the defendant, the defendant's physical and psychological state, and all other conditions present which may serve to drain one's powers of resistance to suggestion or to undermine one's self-determination. *Commonwealth v. Chacko*, 459 A.2d 311, 317 (Pa. 1983). In essence, the court must determine if defendant's confession was the product of an essentially free and unconstrained choice. *Id.*

The particulars of the interview between Corporal Akers and Defendant were as set forth above. The totality of the circumstances demonstrate that while Corporal Akers attempted to persuade Defendant into being more specific and possibly candid about the nature and means by which Defendant may have handled the infant, Corporal Akers' conduct and statements did not drain Defendant's powers of resistance to any suggestions by Corporal Akers, nor did they undermine Defendant's self-determination. All of Defendant's statements to Corporal Akers were of Defendant's free and unconstrained will.

The interview lasted only ninety (90) minutes, it was conducted in an open setting in a large room where others could come and go, Defendant was told that he was not in trouble, was not under arrest and was free to decline talking about anything or everything, and could leave at any time. When the questions by Corporal Akers became more focused and even imputative, Corporal Akers reminded Defendant that he could stop the interview.

The court recognizes that these types of situations are unusual and stress-producing. Whether described as nervousness, apprehension, concern or otherwise, any interaction with a police officer, especially unavoidable or uninvited, is not an everyday occurrence. It is a rare person who under these circumstances would not feel a measure of compulsion. See for example, *Commonwealth v. Arrington*, 223 A.3d 910, 917 (Pa. Super. 2020).

But the standard is not “some measure.” Defendant was not badgered, intimidated, compelled, coerced or browbeaten by Corporal Akers. Corporal Akers did not force, demand, pester, harass, arm twist or nag any statements from Defendant. Corporal Akers treated Defendant respectfully, politely and courteously. He did not talk over Defendant, interrupt Defendant or even raise his tone. He gave Defendant time to think and consider his answers, as well as time to reconsider what he said. Defendant was engaged in the conversation, was conversational and colloquial in his answers and, while certainly concerned about the condition of his son and perhaps even his role in potentially causing such, his psychological state was stable, well balanced and sensible. Defendant appeared mentally strong and healthy.

Accordingly, Defendant’s motion to suppress on the grounds that his statements to Corporal Akers were involuntary, shall be denied.

Defendant next argues that when he was interviewed by Corporal Reeves, when he signed his Miranda Waiver Form, that it was not knowing, intelligent or voluntary.

On the late afternoon or early evening of December 4, 2019, Corporal Reeves,

then a 25-year veteran with the Pennsylvania State Police, was called in to conduct an interview and polygraph of Defendant. Corporal Reeves was previously briefed that the Pennsylvania State Police were investigating a suspected child abuse case involving a young infant with head injuries and that Corporal Reeves was to interview and polygraph Defendant, the infant's biological father.

Defendant arrived at the barracks from the hospital with his mother and was directed to Corporal Reeves' office. After some brief introductory conversation, Corporal Reeves explained to Defendant because he would be asking questions that might incriminate Defendant, that he was going to Mirandize him. He indicated to Defendant as well, reading Miranda rights was standard procedure with respect to individuals with whom he was going to conduct a criminal polygraph test. Corporal Reeves explained that while they were in a closed room and that the equipment might lead Defendant to believe that he was not free to leave, in fact, Defendant was free to leave at any time. Corporal Reeves told Defendant that he could say "Rob, I don't want to do this anymore" and if so, they would stop.

Defendant indicated that he was anxious and took an anxiety pill approximately 12 hours earlier. He did not express however, nor did he appear to show any signs of impairment.

Corporal Reeves explained how the entire process would go and that it concerned the injuries to the infant and how they occurred. Corporal Reeves told Defendant that they were trying to figure out if someone abused the infant. Corporal Reeves acknowledged with Defendant that Defendant was voluntarily submitting to the interrogation

and polygraph without any duress or coercion. He told Defendant that he was not in custody but nonetheless was going to provide Defendant with Miranda rights. While the details are set forth below, he then read to Defendant the entire Miranda rights. Defendant then signed the rights forms and the interrogation proceeded.

Backtracking and more specifically, and as depicted on the audio-video recording which the court thoroughly reviewed, the interrogation began at approximately 9:25 p.m. Defendant was seated comfortably in a chair across from Corporal Reeves in an office. Corporal Reeves explained to Defendant the procedures involved with the polygraph examination. As Corporal Reeves was explaining the different procedures, Defendant kept nodding “yes” and after Corporal Reeves was done, Defendant said “sounds good.” Defendant indicated upon being asked, that he had no questions.

Corporal Reeves began preparing what he referred to as the Polygraph Rights, Warning and Consent Form. After some back and forth, with input from Defendant, they decided the purpose of the interview and polygraph was “relative to reported reasons why [the infant] was at the hospital.” While Corporal Reeves was preparing the form, Defendant was reviewing it from his vantage point.

Approximately eight minutes into the interview, Corporal Reeves indicated that he was going to read to Defendant his Miranda rights. Corporal Reeves indicated that he was going to read the Miranda rights because later, when undergoing the polygraph, Defendant might “feel” that he was not free to leave. Corporal Reeves explained that in reality that was not the case and that Defendant could stop the interview and/or the polygraph five minutes in,

one hour on, or five minutes after, or whenever. Approximately nine minutes and forty seconds in, Corporal Reeves read to Defendant his Miranda rights. Corporal Reeves read them verbatim but rather quickly. Defendant listened intently, nodded his head in agreement and occasionally looked at the paperwork. Corporal Reeves also read a release form and asked Defendant if he was okay with everything being audio and videotaped. While reading Defendant's Miranda rights with the other rights and consent forms, Corporal Reeves denied trying to minimize those rights.

Defendant indicated that he understood everything, was willing to talk and take the polygraph and that he had no questions. Corporal Reeves gave the waiver and other forms to Defendant and told Defendant that he could read them over and "check" them. Defendant appeared to further read and review the documents, including the Miranda Waiver, and signed and initialed them at 11 minutes and 20 seconds into the interview.

In order for Miranda rights to be properly waived, the prosecution must prove, by a preponderance of the evidence, that the waiver was knowing, intelligent and voluntary. *Commonwealth v. Logan*, 549 A.2d 531, 537 (Pa. 1988); *Commonwealth v. Knox*, 219 A.3d 186, 194 (Pa. Super. 2019).

The waiver must have been voluntary in the sense that it was an intentional choice made without any proper government pressure. *Logan, supra*; *Commonwealth v. Pruitt*, 951 A.2d 307, 318 (Pa. 2008), *cert. denied*, 556 U.S. 1131 (2009). It must be the product of a free and deliberate choice rather than coercion, intimidation or deception. *In re T.B.*, 11 A.3d 500, 505 (Pa. Super. 2010).

In order to be knowing and intelligent, the waiver must have been made with a full comprehension of both the nature of the right being abandoned and the consequence of that choice. *Logan, supra; Pruitt, supra.*

The nature of Miranda rights requires officers to inform the person in custody that he has the right to remain silent and that anything the person says can and will be used against him. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). Additionally, the person must be informed of his right to consult with an attorney and to have that attorney present during questioning *Id.*

Only if the totality of the circumstances surrounding the waiver reveal both an uncoerced choice and the requisite level of comprehension, can a valid waiver be found. *In re T.B., supra.* The courts must consider many different factors including the duration and means of the interrogation, the defendant's physical and psychological state, the conditions attendant to the detention, the attitude exhibited by the police during the interrogation, and any other factors which may serve to drain one's powers of resistance to suggestion and coercion. *Commonwealth v. Perez*, 845 A.2d 779, 787 (Pa. 2004).

Clearly, the circumstances established a knowing, intelligent and voluntary waiver. Defendant was made aware of his rights, the reasons behind the interview and the anticipated process. His waiver was made with a full comprehension of both the nature of the right being abandoned and the consequences of that choice. Moreover, the decision to sign the waiver form was the product of a clear and deliberate choice rather than any coercion, intimidation or deception.

Accordingly, Defendant's motion to suppress based upon an alleged deficient waiver of Miranda, will be denied.

Defendant's final claim asserts that his statements made to Corporal Reeves during the entire time they were together, were involuntary. The court cannot agree. In fact, the Commonwealth clearly proved that Defendant's confession was the product of a free and unconstrained choice.

At the very outset, following the waiver of his Miranda rights, Defendant indicated that he wanted to "come down here", "get it done" and do "what's right." He maintained that although others think that he might have caused the injuries, he did not do so. He answered the numerous questions that were posed to him without hesitation or concerns. When confronted about lying, he stood his ground and denied such. He volunteered information and was very candid in expressing his opinions.

Defendant described his interactions with the infant consistently and in detail. He continually used opportunities to express his love for the infant and how his actions saved the infant's life. At one point during the interview, he was comfortable to both answer the questions and simultaneously text the infant's mother. He was entirely cooperative with the instructions, pre-test and test. As instructed during the exam, he sat still, looked straight ahead and did not talk except to answer.

Two hours into the interrogation which included the taking of the polygraph exam, following the exam, he was told by Corporal Reeves that he did not pass. Corporal Reeves elaborated that it was obvious that Defendant was holding back. Corporal Reeves

utilized varied techniques to convince Defendant to be more truthful. He told Defendant that he seemed like a good guy and that everybody makes mistakes. Corporal Reeves referred in detail to the significant injuries caused to the infant and that the infant could not speak for himself. He explained to Defendant that he knew it was “killing” him inside and that he needed to “fix it” now or that it would “eat [him] up inside.” He suggested that Defendant “man up” and that Defendant came there to talk and take the test “for a reason.”

Yet in the face of this, Defendant maintained that he did what he did to save the infant’s life. Defendant continued to deny that he voluntarily shook the infant. Approximately two hours and twenty minutes in, Defendant acknowledged that he might not have been entirely candid, however, about a prior incident because he didn’t want to make himself look like a bad father. He stressed how everyone thought badly of him and that it was he who put the infant in the hospital.

He agreed with Corporal Reeves that maybe as a parent, he wasn’t good with medical stuff. In appearing to acquiesce to the questions from Corporal Reeves and in order to be entirely honest, approximately two hours and fifty minutes into the interview, Defendant admitted that the previous Monday, on November 26, 2019, it was the worst day of his life and that he shook the infant “pretty hard.” He made a series of admissions relating to shaking the baby apparently hard enough to injure him and for the baby to be hospitalized. He declined to demonstrate how hard to Corporal Reeves indicating that he didn’t want to relive it. He resigned himself to the conclusion that he was a “bad guy” because he shook his baby. The interview ended approximately three hours and sixteen minutes after it started.

Overall, Defendant's demeanor was calm and relaxed although increasingly self-deprecating. He appeared eager and willing to answer questions and to provide his side of the story. Corporal Reeves was relaxed as well and created a comfortable environment for the defendant. He offered breaks if needed and was very careful to not unduly pressure, intimidate, coerce or even cajole Defendant.

After the exam when Defendant purportedly failed, Corporal Reeves attempted to convince the defendant to become more truthful. Indeed, he appeared to be lecturing Defendant as to why he should be more candid. There was conversational dialog between Corporal Reeves and Defendant and despite Corporal Reeves' concerns, the conversation remained collected and it did not heighten or escalate in substance, tone or method.

While Defendant expressed concerns as to the interview becoming uncomfortable, he admitted that he was being treated fairly, not threatened or coerced and would even come back again to answer more questions.

Neither the duration of the interview nor the methods utilized by Corporal Reeves drained Defendant's power of resistance of suggestion or undermined his self-determination. The conditions of detainment were not coercive to any extent. Corporal Reeves, while insistent, was not rude, impolite, coercive or demanding of the defendant. Corporal Reeves did not use his position as a law enforcement officer to threaten, pressure or coerce Defendant. Defendant was ready, willing and able to talk. Although he was finishing off a very long and stressful day, he wanted to be there to tell his side of the story. He clearly knew that he could stop talking or leave at any time but he chose not to.

In the final analysis, while Corporal Reeves can be said to have used techniques to influence or persuade Defendant, Defendant confessed not because of coercion, threats, force or intimidation but rather out of his internal obligation or moral character to do the right thing. Clearly Defendant was embarrassed, frightened and perhaps even guilt-ridden for all he allegedly may have caused or contributed to his infant son's injury. His confession was not involuntary; rather it was a result of circumstances that enabled him to rid himself of his own feelings. Accordingly, Defendant's motion to suppress based on the allegation that his statements to Corporal Reeves were involuntary, will be denied.

ORDER

AND NOW, this 25th day of February 2021, following a hearing and oral argument, Defendant's Motions to Suppress as set forth in Counts IV and V of Defendant Omnibus Pretrial Motion are **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Matthew Welickovitch, Esquire (APD)
Gary Weber, Esquire, Lycoming Reporter
Judge Marc F. Lovecchio