

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-1329-2022
v.	:	
	:	
EZRA BUCKMAN,	:	OMNIBUS PRETRIAL
Defendant	:	MOTION

OPINION AND ORDER

Ezra Buckman (Defendant) was charged by the Pennsylvania State Police (PSP) on September 16, 2022 with one count of Aggravated Assault,¹ a felony of the first degree; Aggravated Assault, victim less than 6 and Defendant, 18 years of age or older,² felony of the second degree; Endangering the Welfare of Children,³ felony of the second degree; Simple Assault⁴, misdemeanor of the first degree; and Recklessly Endangering another Person,⁵ a misdemeanor of the second degree. The charges arise from an investigation of a 7-week-old child (M.C.) being treated for head and spinal trauma consistent with child abuse, at the Janet Weis Children's Hospital (Geisinger) in Danville, PA. The motion alleges that the statement that Defendant gave at the hospital to the PSP implicating himself in the injury to the child was in violation of his *Miranda*⁶ rights. As a result of that *Miranda* violation, any evidence obtained from the Defendant was illegal. A hearing on the Motion was held on April 28, 2023.

Background

At the hearing on the suppression motion Corporal Joel Follmer (Follmer) testified on behalf of the Commonwealth. On September 16, 2022 he learned of a possible shaken baby

¹ 18 Pa. C.S. §2702 (a)(1).

² 18 Pa. C.S. §2702 (a)(8).

³ 18 Pa. C.S. §4304 (a)(1).

⁴ 18 Pa. C.S. §2701 (a)(1).

⁵ 18 Pa. C.S. §2705.

⁶ *Miranda v. Arizona*, 384 U.S. 436 (1966).

case being treated at Geisinger. He went to Geisinger with Trooper Watkins and before he spoke with Defendant, he waited for both Trooper Siebert, the affiant, and Laura Quick, an investigator from Lycoming County Department of Children and Youth. They met together before talking with anyone to discuss who to talk to and what they knew.

Follmer, Watkins, and Quick went to the Pediatric Intensive Care Unit (PICU) room where the 7-week-old child was being treated. They approached Defendant to see if he would be willing to speak with them. Defendant agreed, and they all went down the hallway to a family waiting room. Follmer sat across from Defendant who was sitting on a couch with his back to the door. Watkins was sitting the closest to Defendant, and Quick was across from the PSP. Quick did not ask any questions of Defendant. Although the door was closed, it was not locked. There was a row of windows behind Quick.

Follmer testified that Defendant was not handcuffed or touched or restrained in any way. Defendant was not told that he was under arrest or not free to leave the room. Follmer was able to audio record the interview in which both Follmer and Watkins asked questions. Based upon the notations on the recording, Follmer testified that the interview began at 2:28 PM and ended at 4:29 PM. Defendant never broke down during the interview. During the late stages of the interview, Defendant made statements about shaking the child. Follmer testified that he shared that information with the treating physician, Dr. Justin Azar.

On cross-examination, Follmer testified that Defendant never told him that he had Asperger's. The only thing that Follmer noticed was that he would repeat certain words. Follmer never thought there was a time that Defendant was not understanding either by words or physical reactions. Defendant did not show any signs of exhaustion. No *Miranda* warnings

were given by anyone. Although Defendant said that he had been at the hospital, he didn't have a lot of sleep.

The Commonwealth introduced the audio recording of the interview into evidence. While parts of the interview were obscured by hospital announcements and ambient sound, Defendant was generally able to be understood at most times during the recording.

Follmer asks Defendant background information, specifically how he came to meet M.C. and his mother. Defendant and M.C.'s mother were living with his grandmother in South Williamsport. Defendant is not the biological father of M.C. Defendant talked about having experience with small children, specifically with his step-brother and youngest brother.

Defendant described that he has been very careful around M.C. and that he has been corrected when picking up M.C. Defendant described the morning routine at the house. Defendant told the troopers that when he wakes up in the morning he feeds M.C. because he is hungry. Some nights M.C. wakes up screaming but when he is fed and changed, he calms down. He also says that when he is upset he "flails around" and Defendant has been head-butted by him.

He also described that there are times when he cannot calm him, M.C.'s mother is there and M.C. calms down for her. Defendant explained when M.C. is upset he likes to be held close and rocked or cradled in Defendant's legs when he is sitting, and they are crossed. M.C. is easier to soothe in the car. When he is home and awake, Defendant will do laundry and play video games. When M.C.'s mom is not home, Defendant says that his grandmother will help with "a lot of stuff".

On the day in question, Defendant explained that he woke up around 10 a.m. and let M.C.'s mom sleep since she was going into work that day. J.C. usually leaves around 2:10 p.m.

for work. His grandmother left early for the day to go out of town to see a show. He felt that the baby was “calm/chill.”

Defendant then explained that it was around 4 p.m. when “it happened.” Defendant described that he had placed M.C. in his bassinet to go into the kitchen to make food. While in the kitchen, he heard M.C. crying; he had been asleep when Defendant went into the kitchen. Defendant said that when he picked M.C. up, he felt “sweaty and cold.” Defendant went upstairs to take M.C.’s temperature. When asked why M.C. might be crying, Defendant said that maybe he might have hit M.C.’s head on some piece of the bassinet that hangs over where M. C. is laying. Defendant acknowledged that he sometimes gets “a little panicky” when M.C.’s mom is not there.

Defendant then described that he went upstairs and took both his and M.C.’s clothes off to go into the bath to warm him up. He described the importance of “skin to skin” contact to help calm him. Defendant also described knowing that M.C. has different cries depending upon what he needs. Usually, M.C.’s mom is the one who can calm him down.

At this point in the conversation, Defendant talks about how “his brain doesn’t work like others” and that it doesn’t shut down. Normally, he is “very stuttery” and “having to focus.” Approximately 30 minutes have elapsed since the interview began.

When asked by PSP what could have happened to have caused M.C. to have received this injury, Defendant said that he doesn’t remember but that it could have happened bumping his head on whatever was hanging over his bassinet. Defendant described how he went into the bath with M.C. when he thought that his temperature was 94.1 and sat there for about an hour to get M.C.’s temperature to rise. He thought that M.C.’s temperature had come up to 98.6 degrees and he got out of the bath.

Defendant told the troopers that around 6:00 p.m. he called M.C.'s mom and she asked him to call his father. Defendant called his father and described what he was seeing. His father told him that he has never seen a baby do that. He describes that he is partially opening his eyes and he is not responding normally. He then explained that he called his father first, because he "went through nurse training." He repeated that his father could not understand why M.C. was hypothermic.

At about 50 minutes into the interview, Defendant said that when he called J.C., she told him to call the doctor. The nurse told him that he should "probably take him to the hospital. Defendant said that he couldn't do that himself, because "he doesn't have power of attorney."

Defendant then said that his grandmother came home around 7 p.m. He told her what was going on but "she doesn't see anything wrong." M.C.'s mom came home around 9 p.m. and Defendant told her that he thought they should take him to the hospital. Once at the hospital, Defendant said that they "looked him over but didn't see anything wrong." He was released to go home, and he went to bed.

Thursday morning when woke, he fed M.C. at 9 a.m. Defendant described that M.C. appeared to be "twitching or seizing". Defendant went back to bed and woke up around 12:00 p.m. Defendant tried to feed M.C. about 4 oz. of milk and M.C. began "projectile vomiting." He described that vomit was "coming out of his nose and mouth" and "he had a noise, too." Defendant sat him up and tried to give him more milk, but M.C. vomited again.

The interview continued without a break. Defendant did not ask for one even though he was receiving phone calls from his family while he was talking to the troopers. He repeated that

he didn't know how this happened, but he felt bad because it "happened on his watch." He again tells them to ask his family that "he is very careful and gentle with children."

After about one hour, Follmer told Defendant that they will be taking a break soon, but he started going back over the details again to fill in some of the gaps. Defendant provided details about M.C.'s mom and Defendant's father. He told the troopers that he learns about taking care of children because he is constantly researching and watching videos on YouTube.

He explained when he spoke with his father they discussed ways "to solve the problem." He described that his father told him to check for a startle reaction, but there wasn't one. Defendant explained that he knows that baby's brains shouldn't bounce around. They are fragile creatures and didn't want to cause him any injury. Defendant said that he was scared because he didn't know how this would have happened.

The troopers then asked Defendant again what efforts he took to calm M.C. and how often he screamed after the initial scream that brought Defendant out from the kitchen. He didn't remember any. He again thinks that perhaps he bumped M.C.'s head when he got him out of the bassinet.

At 77 minutes in, Defendant said that he hadn't slept all night since he heard that M.C. had bleeding in his head. He said that he was told that it can be caused by shaking or hitting his head. When asked who told him about shaking the baby, Defendant said that the doctor says that is what could have caused it. He said that M.C.'s mom is "freaking out." He says that he has tried to "figure out what he could have missed."

Defendant was asked if perhaps he blocked out what happened during the day with M.C. He said that he didn't think so. He said that he can remember most things. He then proceeded to describe for the troopers what he had for lunch that day. The troopers asked him

if he prefers order in his life to which the Defendant said that he did, but he understands that he cannot have perfect order in his life. What he does is set his schedule based upon when people woke up who are working.

One of the troopers asked him “if he were to take a polygraph, what did he think that the results would be?” Defendant said that he thinks that “he would pass”. Defendant then is asked if someone accidentally hurt a child would he deserve a second chance. Defendant stated that it would depend on the whether or not it was intentional and how serious the injury was.

One of the troopers tried to use a hypothetical example with the Defendant being the investigator to get him to think about how he might have reacted if M.C. wasn't able to settle. He stated that he thought that the investigator would need to talk to someone to learn how to deal with the frustration. The trooper also asked Defendant what he could say to him to get him to understand what he was going through. While Defendant did not appear to understand what the trooper was trying to say, Defendant did say that his father and Gram told him that the medical professionals think that the baby was shaken.

The lead trooper asked Defendant to again walk him through what was going on with the Defendant and M.C. that day. Defendant said that he was trying to figure out what M.C. wanted and what was wrong with him and he was trying to calm him down. Defendant said that he didn't think he was hungry as it would be unusual for M.C. to be hungry just two hours after he had already been fed. He agreed that nothing was working. When the trooper said to him that the anxiety and frustration was building during this time, he also agreed with that.

After 90 minutes, the troopers asked him what was going on through his head with M.C. and he replied that he didn't know what was going on. The trooper told Defendant that it was not being disputed what happened by medical staff. The trooper asked, “in your head like, were

you sorry with what happened?” In response the Defendant said that he did not know what happened that caused the issue in the first place, causing the seizures; he did not understand what was causing them and was trying to calm M.C. down. Defendant described that he held him in his arms, walked him around, bounced him around and talked to him.

The trooper asked whether Defendant thought that in most cases like this that most people are intending to hurt a baby or is it a quick moment of frustration. Defendant thought that it would be a quick moment of frustration and the trooper agreed with him. The trooper then told him that in other interviews that he has held, when people tell him that “I don’t know what happened, that this is my best guess that is them not giving their side of the story.” The trooper says that he has “never had anyone tell me that it was their intention to hurt the person.” The trooper then stated that what they hear is that overall the person is a good person, they care, but that people are imperfect. What he hears from others he has interviewed is “I am a good person, here is what happened, here is what was going through my head that what was going through my head I made a quick lapse of judgment, and this was going through my head and I am sorry for it. But then there are others that continue to say that they do not know what happened.” The trooper was asking for the why of what happened to assist the doctors in treating the child; to find out the “why.”

The trooper believed that whatever happened was a quick moment of frustration. Defendant said that he was never frustrated with the baby; that he was a “perfect baby.” He stated that he was frustrated with himself because he could not figure out how to calm M.C. When asked if he takes his frustration out on others, he said no that he did not.

When the trooper pressed him on this, Defendant stated that this was the first time that mom wasn’t there; maybe it was overwhelming and he was frustrated with himself. Defendant

said that when he's frustrated with himself he doesn't take it out on others. He learned that he is not supposed to do that.

The trooper asked if there "was a moment in time when something got out of hand, accidentally". When asked, Defendant demonstrated again to the troopers how he walked the baby or bounced him around using movement to try to calm him. He was asked if he went faster to get him to calm down. Defendant wondered if when he began to bounce him if that was too much. He began to bounce him a little faster.

Defendant was then asked to demonstrate what he was doing. He described that he held him in the "crook of his arm" to move him but that he also held him close to his body as well. And "angled toward him." Defendant believed that he wasn't doing anything out of the ordinary. At this point the Defendant said that "his biggest fear" was that he was a strong guy and worried that he was "accidentally hurting him." Defendant did believe that M.C. was calming down.

Defendant also talked about laying M.C. on his chest, and bouncing him there, too. He was not crying but moving him around, bouncing him up and down. Defendant then showed the troopers all of the positions that he had held him in. The Defendant demonstrated the positions, but the description on the recording isn't specific enough to understand exactly what he is demonstrating.

The trooper then gave another hypothetical situation placing himself as the actor and doing the same things and stressing to the Defendant that the trooper is a good guy and "being frustrated and normally a decent guy and I made a quick move that was an accident, do you believe that it was an accident?" Defendant responds that it probably was. He again demonstrates to the trooper what he did when he took M.C. out of the swing.

The trooper told Defendant that it was not bumping his head on the swing that caused the injury. He told Defendant that it is a shaking that caused the damage to M.C. and wants to know how the shaking happened. Defendant again demonstrated what he did and acknowledged he might have bounced him “vigorously” but he did not hold him like this because it is not “supporting his body very well...or his airway” because he “cannot support his own head” and continued to show the trooper how he remembers holding the child.

At minute 98, the trooper tried to tell Defendant what the doctors were saying but Defendant interrupts and tells the trooper that he knows that they think it is him. The trooper tells him that “no one is blaming you or [you’re] a bad person” Defendant received a text from his father to let him know what is going on at this point in the interview. The trooper tells him that [no one is] or trying to give you a hard time”. Trooper then said that the doctor was saying that it was not slowly lifting a kid out of a crib or maybe hitting it off of something or jerking him out of a car seat. Defendant described that the car seat had no support. But the doctors said that it has nothing to do with that.

The Trooper is repeating to the Defendant that he has no clue of what happened and the Defendant agreed that he does not remember shaking M.C. or holding him in a way that would cause him to shake M.C. The trooper told Defendant that M.C. has injuries that are consistent with that type of behavior which is an indisputable fact or physical evidence. The trooper told Defendant that if something happened that was out of character, “now is the time to say that it was an isolated incident. Don’t let me sit here and think that you are the type of person that might do it again.” But the trooper tells Defendant that he doesn’t want to be wrong about that. He also said that he is not sure of Defendant because he is not talking about what happened.

The trooper stressed that if this is an isolated incident then Defendant should tell them that. He also tells Defendant that when it is a one-time incident it is different from a habitual situation.

One of the troopers told him that a one-time lapse of judgment without giving him information about what happened “leaves him to give up the decision.” He then told Defendant that he needs to tell the trooper what he knows because it makes him think that “maybe he [Defendant] did it before and maybe it will happen again or a one-time thing.” He stresses that he wants to understand what is going through his head. The trooper is trying to write a detailed report but tells Defendant is not giving him anything to include in that report.

The trooper then directly discussed what happened. He again tells him that he “wants to think that this is a ‘one-time thing’” and is a “momentary lapse of judgment.” However, since the Defendant is not telling him what happened, he cannot. The trooper also said “don’t let five seconds define who you are for the rest of your life.” He follows with “there are bad people out in the world, and he doesn’t think that he is one of them.” The trooper said that he “is not saying anything complicated or isn’t straightforward about what the doctors are saying.” The trooper is trying to explain to the Defendant about people who care less about injuring people and that “he isn’t one of those, that it was a one-time deal, and it was a lapse of judgment.”

Defendant then tells the trooper that it is “wrong to say that it was a momentary lapse” because he is worried that M.C. would be taken away. And if it was [a momentary lapse], would he [M.C.] be taken away. The trooper says that he doesn’t know the answer to that question, that it would not be his decision. The trooper says that he knows that Defendant cares about M.C. a lot and wants to see him get better. But that if Defendant does not tell me what happened, then the trooper cannot tell the doctors what happened to help him get better. Defendant agrees to work with the trooper to help him.

He then restates the timeline to the Defendant. The trooper starts with the Defendant coming in from the kitchen and picking M.C. up as usual but Defendant acknowledges that he didn't calm down. He was trying to do the things he normally did but that M.C. didn't calm and M.C.'s mom was not there. The trooper asks Defendant to help him help the doctors know what happened.

Defendant says that he knows how long it would take to cause brain damage. "That is something that you learn about shaken baby syndrome; that you learn [about] five seconds" and he appears to describe ways of holding the child, but no one describes what he is doing for the recording.

The trooper then tries to explain to him though that possibly what happened was what might happen when he played video games; that Defendant can get frustrated and threw the controller. However, Defendant responded that it would "not make sense to do that." He then indicates that what happened is buried.

At about 107 minutes in, the trooper then said, "let's do this together" and to tell him what happened. Defendant describes what he thinks he may have done but he is not sure. He said that "you [Defendant] see it there, you don't want to see it; it is a hard memory to think about." He also told Defendant to "be brave enough to show what happened so he can share with the doctors the positioning" to help them treat him. In response Defendant says that he held M.C. up like he always did and supported his head. Defendant then described that 1 or 2 times he moved the baby away from his body and then "snapped him back." Defendant followed by saying that he would "never want to cause harm to him on purpose." He agrees with the trooper that M.C. would have "snapped back."

The trooper followed up by asking Defendant if he understood what he was asking or if he was confused. Defendant says that emotions are hard to process. Defendant then told the trooper that with his Asperger's he doesn't have memory issues, rather emotions or social things are hard to process and comprehend. He confirms that he doesn't have memory issues "unless I am repressing something." He knows that memory can be affected by things like depression or lack of sleep. He then worries about M.C.'s mom not having enough sleep. The trooper tells Defendant he does not want to put words into his mouth or misinterpret what he is saying. Trooper says that Defendant should not tell them what it "could have been" or "what you think I want to hear, I want to know just what happened to M.C. so that we can properly tell the doctors." Defendant says that is "kinda how I word my statements or phrasing when I say that I, like, could have done this." The trooper then asks "that means you did it? When you say I could have done does that mean you've done it?" He responds yes, sure. Defendant explains that "is how I think, that is me trying to recall if I did it."

At minute 115, the following takes place.

PSP: Let me ask you this. Did you do it?

Def: I really don't know....

PSP: Let's make it very easy. This is a very brave question and answer. I know that you know the answer to this, what you just demonstrated there did you do that to M.C.?

Def: Yes, but not on purpose.

Defendant goes on to say that after about an hour of trying to calm him Defendant says that he shook M.C. twice, then said it could have been 2 or 3 times. He describes a shake, back/forth. And when he shook him, he went "uh..." then upset at first when shaken, jostled.

Defendant then took him upstairs because he got cold and clammy to take his temperature multiple times.

He then said after he shook him, he did all of the other things he described, taking his temperature. He would have then called M.C.'s mom and he calmed down, warmed back up and appeared to be looking at Defendant normally and fell back asleep.

The trooper asked to take a break to relay the information to the doctors. Defendant wanted to check on M.C.'s mom and the recording was stopped at 4:29 p.m.

Discussion

When a defendant files a motion to suppress evidence, the Commonwealth shall have the burden of proving to a preponderance of the evidence that the challenged evidence was not obtained in violation of the defendant's rights. Pa. R. Crim. P. 581 (H). A preponderance of the evidence standard is tantamount to a "more likely than not" burden of proof. *Commonwealth v. McJett*, 811 A.2d 104, 110 (Pa. Cmwlth. Ct. 2002). Because a waiver of one's *Miranda* rights is dealing with constitutional rights, "[the] courts should indulge every reasonable presumption against waiver." *Commonwealth v. Cohen*, 53 A.3d 882, 887 (Pa. Super. 2012).

When deciding a motion to suppress a confession, the touchstone inquiry is whether the confession was voluntary. Voluntariness is determined from the totality of the circumstances surrounding the confession. 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. The Commonwealth has the burden of proving by a preponderance of the evidence that the defendant confessed voluntarily.

Commonwealth v. Ross, 279 A.3d 1263 (Pa. Super.2022) citing *Commonwealth v. Harrell*, 65 A.3d 420 (Pa. Super. 2013).

When assessing voluntariness pursuant to the totality of the circumstances, 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. *Jones*, (citing *Commonwealth v. Edmiston*, 535 Pa. 210, 634 A.2d 1078 (1993)); *Commonwealth v. Nester*, 551 Pa. 157, 164, 709 A.2d 879, 882 (1998).

The first determination the Court must make is whether the Defendant was in custody at the time that the statement was taken.

Miranda's procedural safeguards only apply to custodial interrogation. *Commonwealth v. Yandamuri*, 159 A.3d 503, 520 (Pa. 2017)(Miranda warnings "are required only where a suspect is both taken into custody and subjected to interrogation."). The test for custodial interrogation is "whether the suspect is physically deprived of his freedom in any significant way or is placed in a situation in which he reasonably believes that his freedom of action of movement is restricted by such interrogation" *Commonwealth v. Romberger*, 454 Pa. 279, 283, 312 A.2d 353, 355 (1973), vacated, 417 U.S. 964, 94 S.Ct. 3166, 41 L.Ed.2d 1136 (1974), reinstated on remand, 464 Pa. 488, 347 A.2d 460 (1975)), citing *Commonwealth v. Marabel*, (445 Pa. 435, 441, 283 A.2d 285, 288 (1971))." Accord, *Commonwealth v. Fisher*, 466 Pa. 216, 352 A.2d 26 (1976). The test for custodial interrogation does not depend upon the subjective intent of the officer; rather, the test focuses on whether the individual being interrogated believes his or her freedom of action is being restricted. *Commonwealth v. Sloan*, ___ A.3d ___, 2023 PA Super 173, 2023 WL 6152612, *9 (Pa. Super. 2023); *Commonwealth v. Williams*, 941 A.2d 14, 31 (Pa. Super. 2008). Stated another way, detentions become custodial when, under the totality of the circumstances, the conditions or duration of the detention

become so coercive as to constitute the functional equivalent of an arrest. *Commonwealth v. Pakacki*, 587 Pa. 511, 901 A.2d 983, 987 (2006); *Sloan, id.*

Under the totality of the circumstances approach, the following factors are relevant to whether a detention has become so coercive as to constitute the equivalent of a formal arrest: the basis for the detention; its length; its location; whether the suspect was transported against his or her will, how far, and why; whether restraints were used, whether the law enforcement officer showed, threatened or used force; and the investigative methods employed to confirm or dispel suspicions.

Williams, 941 A.2d at 31.

Follmer testified that the Defendant's interview took place in a lounge or family area on the PICU floor of Janet Weis Children's Hospital. Defendant was not in told he was in custody nor was he placed in handcuffs or restrained in any way. Although four (4) troopers responded to the hospital, there were just four (4) people in the room—Trooper Watkins, Trooper Follmer, CYS employee Quick, and Defendant. The troopers were not in uniform but wore dress pants, shirt, and tie and were wearing both badges and guns. Defendant was given the opportunity to speak with the troopers if he wished. Defendant's back was to the exit and there were windows behind Quick as she faced Defendant. The door was closed during the interview, but not locked. Follmer described the room as one of a fairly decent size. In listening to the interview, Defendant made no statements that he was feeling pressured or coerced by the physical surroundings to make him believe that he had no choice but to speak with the troopers. The interviewing trooper was not aggressive or angry; he didn't appear to lead or pressure the Defendant to tell him what he wanted to hear. While the questioning lasted for two hours, there was no time where the Defendant became emotional or indicated that he wanted to stop answering questions. The Court cannot find from the Defendant's attitude or behavior that he

reasonably believed that his freedom of action was being restricted. Therefore, the Defendant was not in custody under circumstances to which *Miranda* warnings would have been required.

Next, the Court must determine if the statement made by the Defendant was voluntary. The voluntariness standard derives from the right against self-incrimination guaranteed by the Fifth Amendment to the United States Constitution and the right to due process guaranteed by the Fourteenth Amendment to the United States Constitution. *Minnesota v. Murphy*, 465 U.S. 420, 104 S.Ct. 1136, 79 L.Ed.2d 409 (1984).

Voluntariness is determined from the totality of the circumstances surrounding the confession. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); *Commonwealth v. Jones*, 546 Pa. 161, 683 A.2d 1181 (1996). 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. Nester*, 709 A.2d 879, 882 (Pa. 1998). The Commonwealth has the burden of proving by a preponderance of the evidence that the defendant confessed voluntarily. *Id. citing Commonwealth v. Watts*, 319 Pa.Super. 179, 465 A.2d 1288 (1983), *aff'd* 507 Pa. 193, 489 A.2d 747 (1985); *see also Colorado v. Connelly*, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986).

When assessing voluntariness pursuant to the totality of the circumstances, 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. *Jones*, (citing *Commonwealth v. Edmiston*, 535 Pa. 210, 634 A.2d 1078 (1993)).

Here, Defendant went with the troopers and C&Y representative to a family room near where he was supporting M.C. as he was being treated. He was interviewed by the troopers in street clothes and not in uniform at the police station. They did not tell Defendant that he was under arrest or otherwise not free to leave. No promises were made to Defendant for his cooperation. Defendant never told the police that he wanted to stop the questioning. Defendant was interviewed slightly more than two hours, which did not appear to be overly long. Encouraging a suspect to cooperate with the investigation and answer questions honestly is a permissible interrogation tactic. *Commonwealth v. Williams*, 640 A.2d 1251 (Pa. 1994).

Defendant alleges that his self-reported Asperger's diagnosis negates the voluntariness of his statements to the troopers. An individual's mental condition is relevant to his susceptibility to coercion, but it is only one factor in analyzing voluntariness under the totality of the circumstances. *Nester*, 709 A.2d at 884. "The line of distinction between a voluntary and an involuntary confession is that at which governing self-direction is lost and compulsion propels the confession." *Commonwealth v. Whitney*, 512 A.2d 1152, 1157 (Pa. 1986).

While Defendant noted that because of his Asperger's social and emotional things were hard to process, it appeared that he was describing how he processed things generally and that it did not interfere with the way that he acted in response to police questioning. In fact, it led the trooper questioning the Defendant to believe that he was not telling what happened when he was proud of his ability to "remember everything" at other times during the day. Despite the fact that Defendant may have been diagnosed with Asperger's, it did not appear to make him susceptible to coercion and confess to something that he did not do. He appeared to be motivated by his concern for the child and to enable the troopers to determine what happened to assist the doctors in treating M.C. Defendant's responses were appropriate and it was clear that

he knew why the troopers were talking with him. The lead trooper told Defendant that he knew people with Asperger's and that memory was not an issue, to which defendant agreed. He did not sound like he was being pressured to tell the troopers what they wanted him to say or to continue with the questions if he did not want to.

Conclusion

The circumstances surrounding Defendant's questioning did not rise to the level of custodial interrogation. Defendant was encouraged to cooperate with the troopers and answer the questions honestly, which did not rise to the level of coercion despite his self-reported diagnosis of Asperger's. Therefore, the statement will not be suppressed.

ORDER

AND NOW, this 30th day of October, 2023, based upon the foregoing Opinion, the Defendant's Motion to Suppress is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge