

C. Weber

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

vs.

ROBERT BOHART
Defendant

No. CR-690-2025

Omnibus Pre-Trial Motion
Opinion and Order

FILED
LYCOMING COUNTY
2025 SEP 23 AM 8:41
CLERK OF COURTS

OPINION AND ORDER

By way of background, on April 27, 2025, Pennsylvania State Police (PSP) were dispatched to Liberty Lodge 2021 East Third Street, Loyalsock Township, Lycoming County, Pennsylvania for a welfare check on Robert Bohart ("Defendant") who was making concerning statements. Trooper Phillip Kyle and Trooper Lee Kling responded to the dispatch. They went to the Liberty Lodge and started knocking on doors because they were not given a direct hotel room where Defendant was staying. Defendant answered their knock. They asked Defendant if he had been stabbed or if he stabbed anybody else, which he denied. While speaking with Defendant, it was related to the troopers that there was possibly a stabbing victim. Trooper Kyle received a room number to the left of Defendant's room as the location for the potential stabbing victim. Defendant continued speaking with Trooper Kling when Trooper Kyle knocked on the adjacent room door. At that point, Defendant turned toward Trooper Kyle and said, "He's not gonna answer. He is dead." Trooper Kling detained Defendant and read him his *Miranda* rights. Defendant acknowledged them.

While Trooper Kling and Trooper Kyle dealt with Defendant, additional members of the PSP arrived on the scene. Inside the neighboring room, they found the deceased. They processed the crime scene. Defendant was taken into custody and transported to the PSP barracks.

The Commonwealth charged Defendant with criminal homicide, possession of an instrument of crime, and abuse of a corpse.¹

Defendant filed an Omnibus Pre-Trial Motion (OPTM) which contained: (1) a notice of mental infirmity defense; (2) a motion to suppress evidence based on a violation of his *Miranda* rights; (3) a request for discovery; a motion to preclude photographs and videos of the crime scene and autopsy; (4) a motion to preclude reference to the deceased as “victim”, (5) a motion for 404(b) evidence; a motion for discovery of experts; (6) a motion to preclude improper remarks to the jury; (7) a motion to compel the Commonwealth to provide investigative information regarding potential jurors; and (8) a motion to reserve right. A hearing and argument on Defendant’s OPTM was held on March 6, 2026.

At the hearing, the Commonwealth presented testimony from Trooper Kyle, Trooper Kling, and Trooper Brian Moore, and submitted as exhibits video from the body worn cameras (BWC) of Trooper Kyle and Trooper Kling at the scene² and a video of Defendant’s interview at the PSP barracks.³

Trooper Kyle testified that he responded to the Liberty Lodge for a welfare check because Defendant was making concerning statements. Troopers Kyle and Kling were not given a specific room number so they began knocking on doors in a particular section and made contact with Defendant. Defendant came out of his room and identified himself. They asked Defendant if he was stabbed or if he stabbed anybody else, which he denied. Trooper Kyle told Defendant that he was there because Defendant made concerning statements to someone else. Trooper Kyle talked to him for a bit outside his hotel room and then Defendant allowed him go inside the hotel room and look around. Nothing seemed out of place at that time. Trooper Kling

¹ 18 Pa. C.S.A. §2501(a); 18 Pa. C.S.A. §907; and 18 Pa. C.S.A. §5510, respectively.

² Commonwealth Exhibit 1 and 2, respectively.

³ Commonwealth’s Exhibit 3.

continued to talk to Defendant outside of his room. Shortly after exiting Defendant's room, Trooper Kyle received information that there was possibly a stabbing victim in room 107. Trooper Kyle walked around Defendant's truck and checked it out. He eventually received a room number for the possible stabbing victim. The room was to the left of Defendant's room when looking at both rooms from the parking lot. Trooper Kyle knocked on the door and at that point, Defendant turned toward Trooper Kyle and said, "He's not gonna answer. He is dead." Trooper Kling, who was still with Defendant outside Defendant's room, was ten to fifteen feet away from Trooper Kyle when he was knocking on the deceased's door.

Trooper Kling detained Defendant and read his *Miranda* rights to him. Defendant was coughing. Trooper Kling was very thorough reading the rights and even slowed down to accommodate Defendant's coughing. Although Defendant was coughing while Trooper Kling read the rights, Defendant acknowledged that he understood the rights. Trooper Kyle was going to give Defendant the opportunity to hear the rights again to make sure that he had heard and understood them the first time; however, Defendant acknowledged to both he and Trooper Kling that he understood the rights that were read to him.

Trooper Kyle then asked Defendant if he wanted to talk or answer questions. Defendant said, "I already told you he is dead." Trooper Kyle asked Defendant how it happened or what was going on. Defendant said that the deceased was a f---ing pedophile and he kept running his mouth about it. Trooper Kyle asked what happened or how it occurred and Defendant said, "it's not a f---ing riddle, bro."

Trooper Kyle testified that he and Trooper Kling possessed weapons but they were secured; they were never drawn. There was no use of force involved. Defendant was extremely cooperative the whole time and very calm considering what happened.

Trooper Kyle noticed an odor of alcohol coming from Defendant's person. Although Defendant had bloodshot, watery eyes, he was coherent, upright, oriented, steady on his feet, and wasn't off balance or leaning. Trooper Kyle believed Defendant was intoxicated enough that he would not be able to safely operate a motor vehicle, but Defendant understood everything that was occurring, he listened attentively to all of their requests, and did not hesitate when answering.

Trooper Kyle testified that he believed Defendant said more than once that the person in the adjacent room was not going to answer the door because he was dead. Trooper Kyle was somewhat shocked the first time Defendant said it, so he wanted to make sure what he said and asked him to repeat himself. Defendant then again said he's not coming to that door because he's dead.

A portion of Trooper Kyle's body camera video was played during his testimony. Trooper Kyle believed that his conversation with Defendant occurred on Sunday at around 10:00 a.m. Trooper Kling read Defendant his rights and asked him if he understood. Defendant said yes sir. Shortly after this, Trooper Kyle asked Defendant if he wanted him to reread them, and again Defendant acknowledged that he understood what was read to him.

On cross-examination, Trooper Kyle admitted that in his report he described Defendant as extremely intoxicated. He also disputed defense counsel's assertion that Defendant never directly answered the second or last time that the trooper asked if he understood his rights. Trooper Kyle testified that he did not reread the *Miranda* rights to Defendant. He gave Defendant the option to have the rights reread to him, but he did not reread them because Defendant said he understood them. Defense counsel said he would agree to disagree and let the Judge review the video.

Trooper Kyle testified that Defendant was staying in the room that he exited and Defendant told him that the truck parked outside his room was a work truck. The trooper acknowledged that Defendant had alcohol emitting from his body and Defendant told him that it was Monday when it was actually Sunday morning.

Defense counsel asked Trooper Kyle if the PSP had a paper copy for *Miranda* waivers or a form. Trooper Kyle state that he has never had anyone fill anything out; he just reads the *Miranda* right off a card. Trooper Kyle testified that he was on patrol and he would say that troopers on patrol interview people just as much as troopers in crime. He testified that Trooper Kling read all of the *Miranda* rights and he interjected at the very end because he wanted to make sure Defendant understood. Basically, Defendant told Trooper Kling that he understood the rights and Trooper Kyle just wanted to reiterate and make sure that Defendant did understand because he was coughing.

On re-direct, Trooper Kyle explained that Defendant was intoxicated to a level that he would not safely operate a vehicle on the road but he answered everything thoroughly and responded to them. Trooper Kyle said "Just because someone was intoxicated does not mean they're incapable of answering questions." He stated that Defendant's intoxication level was not high enough to where he did not comprehend what was happening or taking place that morning.

On re-cross, Trooper Kyle said Defendant never said anything about an attorney on scene and he didn't say anything about his right to remain silent. Trooper Kyle was saying that Defendant understood his rights because Defendant said yes to Trooper Kling, he said yes to Trooper Kyle and he answered Trooper Kyle's questions. Defendant did not follow up on anything or ask any questions of his own.

Trooper Kling took the stand after Trooper Kyle. The attorneys stipulated that Trooper Kling would testify in a similar manner to Trooper Kyle. Then the Commonwealth played a portion of the video from Trooper Kling's body camera.

On cross-examination, defense counsel asked Trooper Kling if, after Defendant was asked "do you wish to speak to us without an attorney present", he never directly answered that question. Trooper Kling said they asked Defendant if he understood everything that was read, and Defendant said yes sir to them. Defense counsel asked Trooper Kling if he agreed that Defendant did not answer directly after the final time Trooper Kyle asked Defendant if he understood and wanted to speak. Trooper Kling said he wouldn't say Defendant answered it directly. He just continued answering that the individual was dead and the reasons why.

Trooper Brian Moore testified that he was assigned to the crime unit. He agreed that the call came in on a Sunday morning somewhere shortly after 10:00 a.m. He testified that his interaction with Defendant occurred in an interview room at PSP Montoursville Barracks, which is audio and video recorded. Corporal Morse was also present. Trooper Moore introduced himself to Defendant and, shortly thereafter, Defendant pointed to a small sign in the interview room about telling the truth and he made a comment about that sign. Corporal Morse made a comment along the lines of we understand stuff happens and asked Defendant if he wished to talk with us. At that point, Defendant said, you know what guys, at this time I think I need a lawyer. The troopers told Defendant that was his right, they understood, and that's fine, and they ceased communication with him about the incident.

Trooper Moore asked Defendant if he would like water or a snack. Defendant said something about medication for his heart that he needed to take. Trooper Moore explained that, for liability reasons, he couldn't provide any medication for him to take, even if it was prescribed to him.

It was made known to Trooper Morse that as soon as Defendant arrived at the barracks, he took a shoe off, passed it to another corporal and said you may want this. As far as Trooper Morse was aware, there was body cam video from Corporal Brown about that shoe. Trooper Morse believed that after Defendant asked for a lawyer, he asked for his shoe back. Defendant did not get his shoe back; it was placed into evidence. The shoe was tested and analyzed because there was what was believed to be blood on the shoe. Without having the report in front of him, Trooper Morse did not recall the results of the test.

A portion of the video from the interview room was played. Trooper Morse explained that they stopped recording because Defendant was not being questioned anymore for what he was there for, so Corporal Morse shut off the video recorder prior to them taking Defendant back downstairs.

On cross-examination, Trooper Moore testified that the video occurred about an hour or so after Defendant was detained. He said he arrived on scene prior to going to PSP Montoursville. He had conversations with Trooper Kyle and Trooper Kling and was informed that Defendant was read his *Miranda* rights. To Trooper Morse's knowledge, that was the only time that Defendant was read *Miranda* warning. Defendant was brought to the barracks to question him, to process him and to file charges. It was pretty early on during this interview that Defendant said he didn't want to talk without a lawyer, and after that he asked whether he could have his shoe back.

A general summary of the segments of body-worn cameras worn by Troopers Kyle and Kling and submitted during the OPTM hearing as Commonwealth's "1" and "2", respectively, as well as Defendant's video recorded interview at the PSP barracks and entered as Commonwealth's "3", follows:

10:18:05 – 10:22:40

- Defendant answers Trooper Kyle's knock on his door while on his cellphone.

- Trooper Kyle receives notice from dispatch that Robert is in room

108.

- Defendant states to the person with whom he is speaking that he has the cops here. Defendant provides Trooper Kyle with his name.

- Defendant states that he did not get stabbed and denies stabbing anyone else.

- In response to Trooper Kyle questioning Defendant about his state of mind, Defendant acknowledges that he is fine and that he has been drinking heavy.

- When asked, Defendant does not state the correct day of the week.

- Defendant responds appropriately to Trooper Kyle's questions of "Is this your truck," "Why would someone say you are making concerning statements," "Do you feel like hurting anybody else" and "Do you feel like hurting yourself."

- Defendant agrees that Trooper Kyle may walk around his room.

- Trooper Kyle receives notice from dispatch of an occurrence within room 107 of the Liberty Lodge.

- Trooper Kyle walks around Defendant's truck parked outside his room.

10:22:40 – 10:22:54

- Trooper Kyle knocks on the door of room 107.

- Within moments of Trooper Kyle knocking on the door of room 107, Defendant states while gesturing toward the door/room of 107 that "he is not gonna answer." In response to Trooper Kyle's question, "Why?", Defendant responds that "He is dead."
- Trooper Kling then detains Defendant by placing him in handcuffs.

10:22:54 – 10:24:18

- As Defendant is being detained, Trooper Kyle again asks "Why he is dead," "What is going on here" and "Did you hurt him" in quick succession. Defendant did not respond.
- Trooper Kling confirms comfortability of Defendant's handcuffs and Defendant responds appropriately.
- A supervisor arrives and Trooper Kyle summarizes for his supervisor what has occurred thus far.

10:24:18 – 10:26:35

- As Trooper Kling prepares to administer *Miranda*, Defendant again states that "He is dead." At this point, Trooper Kling begins reading *Miranda* to Defendant.
- As Trooper Kling is reading *Miranda* to Defendant and while Defendant is coughing, Defendant states that "He is in there."
- Immediately after Trooper Kling concludes reading *Miranda* to Defendant he asks if Defendant understands his rights and Defendant responds "Yes sir."
- Defendant apologizes for "all of the coughing."

- Trooper Kyle asks Defendant if he “wishes to answer any questions after being read those” to which Defendant responds, “huh.” Trooper Kyle then states again “after being read the” and Defendant interjects and states “*Miranda* rights.” Trooper Kyle then proceeds by saying “I’m going to read you something” and Defendant again interjects as he starts to cough, “he told...[coughing], he [coughing].” Trooper Kyle states again, “Do you understand this” and Defendant responded “yes” followed by Trooper Kyle asking if Defendant “wished to answer any questions at this time.” Defendant immediately states after he coughs that “I already told you he is dead.”
- Trooper Kyle then asks “Why, what happened. Why is he dead.” Defendant responds “He is a child molester and he would not stop talking about it.”
- Trooper Kyle again asks “Why he is dead,” to which Defendant repeats “He would not stop talking about it.”
- Trooper Kyle asks “What did you do to make him stop talking about it,” to which Defendant responds “He is dead. It is not a fucking riddle bro.”
- Trooper Kyle continues to asks several more questions regarding the manner in which the victim became deceased, to which Defendant responds “Doesn’t matter, he is dead.” Trooper Kyle stops asking questions at this point and both Trooper Kyle and Trooper Kling begin to lead Defendant to the cruiser.

- As Defendant is being escorted to the cruiser, he requests both his phone and his wallet.

Interview of Defendant at PSP (Commonwealth Exhibit 3):

11:26:56 – 11:28:25

- Defendant is handcuffed and seated in an interview room while wearing only his left shoe.
- Trooper Moore and Trooper Morse enter the interview room.
- Defendant comments about a sign contained within the interview room regarding "honesty."
- Trooper Morse says that "Honesty is always the best policy with us" and that he and Trooper Moore are two of the most laid back guys. Defendant comments that Johnny Cochran and Robert Shapiro are the most laid back.
- Trooper Morse sits after removing Defendant's handcuffs and states that "We understand that things happen. Sometimes things get out of control. We just want to hear what happened." At this point Defendant states that he "needs a lawyer" and both Troopers acknowledge that is his right. Immediately following this exchange, Defendant states that he "wants his right shoe," to which Trooper Morse states "that right shoe probably is coming back." Defendant then states that he "probably shouldn't have said that."

11:28:25- 11:29:28

- Defendant asks about his five different heart medications and is advised that he cannot be provided with the medication due to liability. Defendant explains that he did not yet take his medicine that day.
- Video concludes.

Defendant filed his brief in support of the OPTM on April 10, 2026, and the Commonwealth filed its brief in opposition on May 11, 2026.

DISCUSSION

Motion to Suppress Statements

Defendant contends that all statements following when he is in custody must be suppressed due to an invalid waiver of his *Miranda* rights. Defendant argued that he was heavily intoxicated, distracted, appeared confused at times, told the troopers the wrong day of the week, and experienced a coughing fit during the reading of the warnings, and he never explicitly waive his rights. Defendant asserts that the sum of the circumstances should result in a finding that the waiver here was insufficient.

While agreeing with Defendant's recitation of the standard for review, the Commonwealth argued that the sum of the circumstances surrounding Defendant's statements necessitate a finding that Defendant did, in fact, give a proper waiver of his *Miranda* rights. The Commonwealth noted that Defendant responded that he understood his rights, answered the troopers' questions, never declined to speak to the troopers and did not request an attorney until he was in the interview room at the PSP barracks. Defendant understood the troopers' questions and directives and reacted appropriately.

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)).” *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.

Additionally, it is well established in Pennsylvania that volunteered or spontaneous utterances are admissible even though the declarant was not “Mirandized.” *Commonwealth v. Bracey*, 501 Pa. 356, 369, 461 A.2d 775, 782 (1983); *Commonwealth v. Yount*, 455 Pa. 303, 314 A.2d 242 (1974); *Commonwealth v. Clark*, 454 Pa. 329, 311 A.2d 910, 913 (1973) (this Court held that statements were admissible when blurted out spontaneously while appellant was

being given *Miranda* warnings). *Commonwealth v. Baez*, 554 Pa. 66, 85, 720 A.2d 711, 720 (1998).

The initial interaction between Defendant and the Troopers was pleasant, nonconfrontational and the questions more akin to fact-gathering versus custodial interrogation. Following review of the BWC's, Trooper Kyle's initial inquiries of Defendant were for the purpose of ascertaining identification as well as for Trooper Kyle to assess Defendant's mental health and specifically to determine if Defendant was prone to self-harm or harming others. Other than misstating the correct day of the week, Defendant responded appropriately to all of Trooper Kyle's questions. It was not until Trooper Kyle walks to room 107 and knocks on the door that Defendant utters the first incriminating statement in that "he is not going to answer". Then, following Trooper Kyle's follow up question of "why," Defendant responds that "he is dead." The entire interaction from when the Troopers first made contact with Defendant up to when Defendant stated that "he is dead" lasted less than five minutes. Throughout this initial interaction, Defendant was not handcuffed, never told he was not free to leave, his interactions with the Troopers was appropriate and responsive, and although the Troopers were in uniform and their firearms visible, neither Trooper displayed, threatened or used any force against or toward Defendant.

Defendant was handcuffed by Trooper Kling immediately after Defendant stated that "he is dead". Although Trooper Kyle did ask several additional questions after Defendant was handcuffed, Defendant did not respond. Also, after Trooper Kling handcuffed Defendant, he inquired with Defendant whether the handcuffs were comfortable to which Defendant politely answered yes. Within approximately the next minute, Trooper Kling begins to read Defendant *Miranda*. As Trooper Kling is preparing to read *Miranda*, Defendant states again that "he is dead." Also, as Trooper Kling is reading *Miranda* to Defendant and as Defendant is coughing,

Defendant states that "he is in there." After Trooper Kling concludes the reading of *Miranda*, Defendant is asked if he understands his rights to which he responds, "yes sir." Defendant also apologized for "all of the coughing" during the time that Trooper Kling was reading *Miranda* to Defendant.

After Defendant is read *Miranda*, Trooper Kyle asks Defendant if he "wishes to answer any questions after being read those" to which Defendant responds, "huh." Trooper Kyle then states again "after being read the" and Defendant interjects and states "*Miranda* rights." Trooper Kyle then proceeds by saying "I'm going to read you something" and Defendant again interjects as he starts to cough, "he told...[coughing], he [coughing]." Trooper Kyle states again, "Do you understand this" and Defendant responded "yes" followed by Trooper Kyle asking if Defendant "wished to answer any questions at this time." After Defendant coughs, he immediately states that "I already told you he is dead" following by "he is a child molester and he would not stop talking about it" in response to Trooper Kyle's follow up question of "why, what happened, why is he dead." Although Defendant asserts in his motion that law enforcement did not ensure that Defendant understood his *Miranda* rights before questioning him by failing to solicit an affirmative response regarding whether Defendant wished to speak, the Court does not agree. Although Defendant was coughing as *Miranda* was read to him, Defendant clearly states "yes sir" to Trooper Kling's question of whether Defendant understood his rights. Moreover, although Defendant initially paused after Trooper Kyle asked him if wished to answer any questions causing Trooper Kyle to state that he was going to read something to him, it was Defendant who then clearly stated "*Miranda* rights." By this statement ("*Miranda* rights"), Defendant was clearly aware and understood that *Miranda* had already been read to him and that Trooper Kyle was preparing to read *Miranda* to him again. After Defendant stated "*Miranda* rights," Trooper Kyle asks "if he understands that" and

Defendant responds "yes". No further clarification was needed as Defendant acknowledged to both Trooper Kyle and Trooper Kling that he understood the "*Miranda* rights." The time lapse between when Defendant was handcuffed to when questioning by Trooper Kyle ceased was less than three and one-half minutes. The entire encounter between the Troopers point of contact with Defendant and when questioning ceased with Trooper Kyle is approximately eight and one-half minutes.

Defendant also argues that his level of intoxication should be considered when deciding whether he made a knowing, intelligent and voluntary waiver of *Miranda*. 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. During the omnibus hearing, Trooper Kyle acknowledged that Defendant was intoxicated and that he made this determination by noting Defendant had bloodshot, watery eyes and the smell of alcohol. Trooper Kyle further explained that despite these observations, Defendant "was fully competent, knew what was happening and occurring at that time", and was "answering to our commands, answering questions, he wasn't off balance, he wasn't unsure of his footing, he wasn't leaning or anything, I mean he was upright and oriented..." (N.T. 17). Moreover, as previously discussed, Defendant did state that he understood his *Miranda* rights and per the undersigned's review of the BWC, Defendant did stand unassisted, did not appear to stumble or sway during the time that law enforcement interacted with him in front of his motel room, and he followed the requests of law enforcement with little to no hesitation (i.e., complied when asked to hang up the phone, remove his hands from his pockets, lay his phone down on his truck).

Defendant also made statements after he was read *Miranda* at the scene and then transported to the Pennsylvania State Police Barracks located in the borough of Montoursville.

Upon arrival at the PSP Montoursville barracks, Defendant was interviewed by two different troopers, Trooper Moore and Trooper Morse. Although not specifically argued by Defendant, it was suggested during the OPTM hearing that because Defendant was interviewed at the barracks by troopers who were not present at the scene and did not read the initial *Miranda* warnings to Defendant, that Defendant should have been re-Mirandized at the barracks. When evaluating this issue, the criteria to be considered include (1) the time lapse between the last *Miranda* warnings and the appellant's statement; (2) interruptions in the continuity of the interrogation; (3) whether there was a change of location between the place where the last *Miranda* warnings were given and the place where appellant's statement was made; (4) whether the same officer who gave the warnings also conducted the interrogation resulting in the appellant's statement; and (5) whether the statement elicited during the complained-of interrogation differed significantly from other statements which had been preceded by *Miranda* warnings. *Commonwealth v. Upchurch*, 355 Pa. Super. 425 (1986) citing *Commonwealth v. Ferguson*, 444 Pa. 478, 282 A.2d 378 (1971).

Per the testimony of Trooper Moore during the OPTM hearing, immediately upon Defendant's arrival at PSP Montoursville he removed one of his shoes and provided it to another Trooper saying that "you may want this." (N.T. 37). During the recorded interview of Defendant at PSP Montoursville and after Defendant invoked his right to an attorney, Defendant requested that his right shoe be returned to him, to which he was told no. Both of these statements were made within one hour after Defendant was initially detained on scene. (N.T. 39). Defendant invoked his right to an attorney within the first seventy seconds of the recorded interview and as a result the video was shut off after approximately two and one-half minutes. Trooper Moore acknowledged that he was made aware that Defendant was read *Miranda* at the scene and was not reread *Miranda* after arriving at the barracks.

There is nothing in the record to suggest that Defendant's statement, "you may want this" (referring to his shoe), was coerced or made as a result of any threat by law enforcement. Additionally, only one hour or less had passed from the time that Defendant was read *Miranda* and he subsequently acknowledging *Miranda* on scene. Moreover, although Defendant made the statement regarding the shoe at a location different from where he was initially questioned, there is no evidence indicating that Defendant was being interrogated at the time he made this statement. In fact, it appears from the video that Defendant's statements were volunteered and spontaneous. Similarly, after reviewing the video of Defendant's interview at PSP Montoursville, neither Trooper in the room with Defendant made any statement or asked any question that would have invited Defendant to request the return of his shoe leading to the conclusion that the statement was categorically volunteered and spontaneous.

Furthermore, Defendant was obviously aware at the time he requested the return of his shoe that he was no longer under any obligation to speak with law enforcement as he invoked his right to counsel mere moments prior to requesting return of the shoe. Moreover, there is nothing from the interview room video to remotely suggest that either Trooper Moore or Trooper Morse engaged in any interrogation of Defendant and that Defendant's statements were volunteered and spontaneous. Finally, because Defendant invoked his right to counsel within one hour of when *Miranda* was read to him on scene (and within seventy seconds after Troopers Moore and Morse sat down in the interview room with Defendant), this bolsters the Commonwealth's argument that Defendant did knowingly, intelligently and voluntarily waive *Miranda* in that Defendant did possess the awareness, comprehension and memory to invoke his right to counsel consistent with the warnings that were read to him less than one hour prior to his verbal invocation.

Based on the totality of circumstances leading up to the point where Defendant is handcuffed, Defendant was not physically deprived of his freedom in any significant way and was not placed in a situation where a reasonable person would have believed that his freedom of movement was restricted by any of the troopers' questions. As a result, *Miranda* rights had not yet attached and no statements made by Defendant up to the point where he was handcuffed shall be suppressed. Also, based on the totality of circumstances, despite Defendant's cough and intoxication, he was not rendered unable to hear, comprehend, appreciate or understand to a degree that he was incapable of making a knowing, intelligent and voluntary waiver of his *Miranda* rights after he was handcuffed and in custody. Moreover, although Defendant did state that "he is dead" and "he is in there" after he was handcuffed and in custody but before Trooper Kling had formally read *Miranda*, these statements were volunteered and spontaneous and free of any threat or coercion. It is difficult to conclude that these statements are anything but voluntary and spontaneous following review of the BWC. Lastly, there is no evidence to suggest that any statements made by Defendant during the time he was at the PSP Montoursville barracks were made in violation of *Miranda*.

In conclusion and following the analysis and reasons above, no statements made by Defendant shall be suppressed.

In addition to Count 2, the Motion to Suppress, addressed above, the remaining counts in Defendant's OPTM shall be addressed as follows:

1. Notice of Infirmary Defense: No action required.
2. Motion to Suppress: DENIED for the reasons stated above.
3. Motion to Compel Discovery: Deemed moot at the time of the OPTM hearing.

4. Motion to Exclude Photographs and Video of Crime Scene and Autopsy:

Per agreement of the parties at the time of the OPTM hearing, Defendant is ORDERED and DIRECTED to file a praecipe no later than thirty (30) days prior to jury selection requesting that a hearing be scheduled to address this issue. The thirty-day window was specifically discussed to provide the Commonwealth with sufficient time to secure its witness for the purpose of the hearing on whether to exclude photographs, video and autopsy.

5. Motion to Preclude Reference to the Deceased as "Victim": Withdrawn at the time of the OPTM hearing.

6. Motion for Disclosure of Other Crimes, Wrongs, or Acts Pursuant to Pa.R.E 404(b): The Court refers Defendant to Judge Tira's Order of June 2, 2025. Additionally, the Court shall rule on 404(b) evidence that Defendant feels is prejudicial if and when the time presents leading up to and during trial.

7. Motion for Discovery of Expert Reports: At the time of the OPTM hearing, some lab reports remained outstanding and the Commonwealth acknowledged its ongoing obligation to comply with Pa.R.Crim.P. 573.

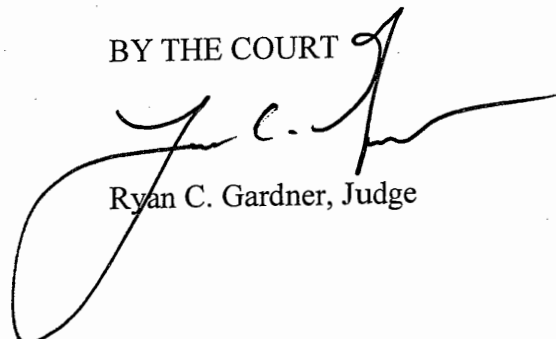
8. Motion for Improper Remarks to Jury: Objections to remarks deemed improper shall be addressed during the trial.

9. Motion to Compel the Commonwealth to Provide Defense All Investigative Information Obtained for Potential Jurors: At this time, the Commonwealth does not utilize NCIC and/or JNET to obtain juror information. If the Commonwealth amends this practice and begins utilizing NCIC and/or JNET to obtain juror information, it shall provide notice to Defendant within five (5) days of obtaining same.

10. Motion to Reserve Right: In accordance with the Rules of Criminal

Procedure, the motion is granted but only to the extent that the opportunity to file a motion did not previously exist or defense counsel was unaware of the grounds for the motion or the interests of justice otherwise require (which reason is being utilized by the defense shall be set forth and explained in the any motion).

BY THE COURT



Ryan C. Gardner, Judge

RCG/kbc

cc: DA (Martin Wade, Esq)
PD (Matthew Welickovitch, Esq.)
Gary Weber, Esq.