

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY,
PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	No. 267-2009
	:	
v.	:	
	:	
	:	
MICHAEL W. LISTER,	:	
Defendant	:	

OPINION SUR OMNIBUS PRETRIAL MOTION

This matter comes before the Court for decision on an Omnibus Pre-trial Motion filed by Defendant on March 13, 2009, wherein Defendant moves to suppress statements made to the police. After receiving testimony at the May 1, 2009 hearing, and upon review of the briefs filed by counsel, as well as DVDs and transcripts of Defendant's interview with police, this matter is hereby ready for disposition.

Whereby we make the following:

FINDINGS OF FACT

1. On October 26, 2008, Detective Christopher Miller of the Easton Police Department responded to 327 North Tenth Street at approximately 7:25 p.m. for a report of a shooting.
2. Upon arrival at 327 North Tenth Street, Detective Miller discovered a female victim, Tracie Raisner, had been killed.
3. A juvenile at the scene stated that the victim was his mother and that he had witnessed Defendant, his father, run from the scene and flee in a red vehicle.

4. Police secured the crime scene and the juvenile called Defendant on Defendant's cell phone and left a message.

5. At the same time, Defendant had called the residence phone at 327 North Tenth Street, which was answered by another juvenile at the residence.

6. Detective Miller spoke with Defendant on the residence phone and Defendant indicated that he wanted to turn himself in to the police.

7. Detective Miller agreed to meet Defendant at the Easton Police Station at approximately 8:45 p.m.

8. Defendant arrived at the police station and was patted down for weapons.

9. Defendant followed Detective Miller into an interview room.

10. Detective Miller read Defendant his Miranda warnings. N.T. 10/26/08, 8:46 p.m.
at p. 5.

11. Defendant stated that he understood the form and signed the Miranda Rights and Waiver form in two separate places. Id.; See Exhibit C-1.

12. The Miranda Rights and Waiver form was also witnessed by Detective Miller and Inspector Gerould. Id.

13. The entire interview of Defendant was also audio and video recorded. See Exhibit C-2.

14. Defendant was cooperative and did not appear lethargic to Detective Miller and did not state or look like he was under duress.

15. Defendant was given water during the interview.

16. The interview began at 8:46 p.m. and concluded at 9:10 p.m.

17. At the conclusion of the interview, Defendant was placed under arrest and taken to a booking cell.

18. Defendant was interviewed a second time at 9:53 p.m., after police had spoken with an eyewitness.

19. Prior to the beginning of the second interview, Defendant asked Officer Ocetnik if he would get a chance to call his lawyer. N.T. 10/26/08, 9:53 p.m. at p. 7.

20. Detective Miller and Inspector Gerould were not in the room when Defendant requested to call his lawyer.

21. Defendant did not ask to speak with a lawyer at any time during the first interview.

22. The preliminary hearing in this case was held on January 22, 2009 at which time the charge of Criminal Homicide was held for court.

DISCUSSION

Defendant argues that the statements he made to the police on October 26, 2008, between 8:46 p.m and 9:10 p.m. should be suppressed because Defendant did not fully understand his rights or waive them knowingly.

The burden is on the Commonwealth, by a preponderance of the evidence, to establish that the confession was voluntary and that the waiver of constitutional rights was knowing and intelligent. Commonwealth v. Fahy, 516 A.2d 689 (Pa. 1986). This Court must undertake a two step inquiry to determine the validity of a Miranda waiver. Commonwealth v. Cephas, 522 A.2d 63, 65-66 (Pa. Super. 1987), appeal denied 531

A.2d 1118 (Pa. 1987), Cert. denied 484 U.S. 981 (1987). The Court must first determine whether the waiver was voluntary in the sense of being the result of an intentional choice on the part of a defendant who had not been subject to undue governmental pressure. Id. The Court must then focus on cognitive factors to determine if the waiver was knowing and intelligent – i.e., whether the defendant was aware of the nature of the choice that he made by giving up his Miranda rights. Id. In reviewing whether the waiver was voluntary and knowing, the Court is to employ a totality of the circumstances test. Commonwealth v. Logan, 549 A.2d 531, 537 (Pa. 1988).

The first inquiry to determine the validity of a Miranda waiver is whether Defendant has voluntarily relinquished his rights. Cephas, supra. To be voluntary, the statement “must have been the product of a free and deliberate choice rather than intimidation, coercion or deception.” Id. at 65. Voluntariness is determined from a totality of the circumstances surrounding the confession. Commonwealth v. DiStefano, 782 A.2d 574, 581 (Pa. Super. 2001). 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. Id.

When assessing the 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.

Id.

In the instant case, it is clear that Defendant was not under undue pressure at the time he made the statements to Detective Miller and Inspector Gerould. Defendant informed Detective Miller upon their initial telephone communication that he wanted to turn himself in to the police. Thereafter, Defendant voluntarily proceeded to the police station to speak with Detective Miller. In the interview room, Defendant was not restrained in any way, was offered water and was cooperative. It is also clear from the taped interview that the interaction between Defendant and the officers was not confrontational and Defendant did not appear lethargic or under duress. Additionally, the first interview lasted only approximately 25 minutes.

Furthermore, Detective Miller read Defendant the Miranda warnings and Defendant responded affirmatively that he understood.. (N.T., 10/26/08, 8:46 p.m. at p. 5). In fact, it is clear from the transcript of the interview that Defendant answers affirmatively that he understood his rights and wanted to speak with the police no less than five times. Id. Defendant also signed the Miranda Rights and Waiver form in two separate locations, indicating that he both understood his rights and wanted to waive them to speak with the police. See Exhibit C-1.

“The pertinent question is whether the defendant in fact knowingly and voluntarily waived the rights delineated in the Miranda case.” Commonwealth v. Bomar, 826 A.2d 831, 843 (Pa. 2003). “Waiver can be clearly inferred from the actions and words of the person interrogated.” Id. During the initial interview, Defendant affirmatively answered all questions asked in the Miranda waiver and agreed to be interviewed. The foregoing demonstrates that Defendant knowingly and voluntarily waived his Miranda rights prior to any statement to the police during the first interview.

Nonetheless, prior to the initiation of the second interview, Defendant asks, “[c]an I get a chance to call my lawyer?” N.T. 10/26/08, 9:53 p.m. at p. 7. The defense argues that this demonstrates that Defendant did not fully understand rights during the first interview. We disagree. To the contrary, by asking for an attorney, Defendant demonstrates that he did understand his rights and knew how to invoke them. While asking for a lawyer may impact on the admissibility of the second interview, that issue is not currently before the Court. At issue is only the admissibility of Defendant’s statements during the first interview. As such, Defendant’s request to speak to a lawyer during a subsequent interview does not bar the admissibility of Defendant’s first interview where it is clear that Defendant was given his Miranda rights, understood those rights and freely decided to speak to the police. There is no basis for suppressing Defendant’s statements made during the first interview.

For the above stated reasons, Defendant’s Omnibus Pretrial Motion is denied.

CONCLUSIONS OF LAW

1. Defendant knowingly and voluntarily waived his Miranda rights prior to any statement to the police. Commonwealth v. Bomar, 826 A.2d 831, 843 (Pa. 2003).
2. There is no basis for suppressing the statements made by Defendant to the police during the first interview conducted on October 26, 2008.

**IN THE COURT OF COMMON PLEAS OF NORTHAMPTON COUNTY,
PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	No. 267-2009
	:	
v.	:	
	:	
	:	
MICHAEL W. LISTER,	:	
Defendant	:	

ORDER OF COURT

AND NOW, this day of May, 2009, upon consideration of the Omnibus Pretrial Motion by Defendant, Michael W. Lister, it is hereby **ORDERED** and **DECREED** that Defendant's Motion is **DENIED**.

BY THE COURT:

_____,
F. P. KIMBERLY McFADDEN, P.J.