

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE)	
)	
v.)	ID No. 0111003002
)	
GARY W. PLOOF,)	
)	
Defendant.)	

Submitted: May 22, 2002
Decided: July 3, 2002

Robert J. O'Neill, Jr., Esq. and Marie O'Connor Graham, Esq., Deputy Attorneys General, for the State of Delaware.

Sandra W. Dean, Esq. and Thomas D. Donovan, Esq., for the defendant.

**Upon Defendant's Motion
to Suppress Statement
*DENIED***

RIDGELY, President Judge

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ORDER

This 3rd day of July, 2002, upon consideration of the evidence presented, the arguments of counsel, and the record in this case, it appears that:

(1) Defendant, Gary Ploof, has been charged with Murder in the First Degree, 11 *Del. C.* § 636, and Possession of a Firearm During the Commission of a Felony, 11 *Del. C.* § 1447A. The State contends that Ploof intentionally caused the death of his wife by shooting her in the head with a hand gun. Ploof has moved to suppress the videotaped statement he gave to police on the evening of November 5, 2001 at the Dover Police Station. He contends that the statement was obtained without a clear and unequivocal waiver of his rights under *Miranda v. Arizona*.¹ He argues that *Miranda* applies because the statement was taken during a custodial interrogation. After considering the evidence, I find Defendant clearly and unequivocally waived his *Miranda* rights before providing the November 5th statement. It is unnecessary to decide the point in time Ploof came to be in custody that evening, because even if he was, there was a knowing, voluntary and intelligent waiver of his *Miranda* rights. Accordingly, the motion to suppress is denied.

(2) Ploof was first questioned at the Dover Police Department on November 4, 2001 regarding the murder of his wife, Heidi Ploof. No *Miranda* warnings were given prior to or during this interview, and when the interview was over, Mr. Ploof went home. On November 5, 2001, the Dover Police asked Ploof

¹ 396 U.S. 868 (1969).

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to come in to the station for another interview and he complied. Before this second interview began, Detective Joseph E. Richardson of the Dover Police Department read Ploof his *Miranda* rights.² Richardson then asked Ploof if he understood his rights, and Ploof answered, “Yes.” Richardson then asked, “All right, having these rights in mind, you want to talk to us?” Ploof did not hear the question and replied, “I’m sorry.” Detective Richardson then repeated, “Having these rights in mind, do you still want to talk to us now?” Ploof then responded, “I’ll help you out as much as I can.” During the statement a search warrant was being executed at his home and the alleged murder weapon was found. At that point he was not free to leave.

(3) Assuming *Miranda* applies, the burden of proof is on the State to show by a preponderance of the evidence that a voluntary, knowing, and intelligent waiver of Defendant’s rights under *Miranda* took place.³ The Court has carefully reviewed the videotape of the entire interview. I am satisfied that Ploof understood

² The evidence shows that the following rights were explained to Ploof:

Det. Richardson: Okay, ahem... (unknown noise in background)... all right Gary, ahem... you have the right to remain silent, anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer and have him present with you while you’re being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish one. (someone clears their throat) You can stop these questions at any time. Okay do you understand these rights? (Transcript of defendant’s November 5, 2001 video taped statement, p. 1, State’s Exhibit 2).

³ See *Colorado v. Connelly*, 479 U.S. 157, 168 (1986); see also *Marine v. State*, Del. Supr., 607 A.2d 1185, 1195, cert. *dism’d.*, 505 U.S. 1247 (1992).

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his rights and that he made a knowing, voluntary and intelligent waiver of them. Ploof's answer, "I'll help you out as much as I can," clearly conveyed a willingness to talk to the police and to help them to the best of his ability. Ploof's argument that this answer required further clarification is without merit.

(4) Defendant knowingly, voluntarily, and intelligently waived his *Miranda* rights. Therefore, the videotaped statement is admissible subject to redactions of Ploof's ultimate invocation of his right to counsel. If the parties are unable to agree upon those redactions, the Court will address that issue at trial.

NOW, THEREFORE, IT IS ORDERED that Defendant's Motion to Suppress Statement is ***DENIED***.

/s/ Henry duPont Ridgely

President Judge

cmh

oc: Prothonotary

xc: Order distribution