

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE :
 :
 v. : Crim. I.D. No. 0101026786
 :
 ANTHONY E. LLOYD, :
 :
 Defendant. :

Submitted: October 1, 2001
Decided: October 9, 2001

O R D E R

This 9th day of October 2001, upon consideration of Defendant's motion to suppress his statement made at his bail hearing, it appears that:

(1) On January 31, 2001, at approximately noon, a detective of the Newark Police Department placed the Defendant in custody on a charge of rape. The Defendant was transported to the Newark Police Department. The Defendant was interviewed at one o'clock in the afternoon. The detective read the Defendant his *Miranda* warnings at the beginning of the interrogation. The Defendant was told, "you have a right to have an attorney present during any questioning."¹ The Defendant responded, "How do I get a [sic] attorney present?"² After a brief but inconclusive exchange, the detective continued the interrogation.³

¹ Videotaped Police Interrogation, *State v. Lloyd*, Crim. I.D. No. 0101026786, (January 31, 2001).

² *Id.*

³ The interrogation continued as follows:

THE DETECTIVE: umm... We would...we would get one for you uh...If you don't...if you don't...if you're not gonna talk to me now... You probably going to get an attorney. Just we just won't interview you right now.

THE DEFENDANT: A public defender? How long will I have to stay here?

THE DETECTIVE: Eventually, if you get a public defender...how long you have to stay here...um we've got some paperwork to do.

THE DEFENDANT: I won't be released today?

THE DETECTIVE: Well, I don't know that, I don't know that. You'll be released from here

(2) At approximately 7:30 p.m. that evening, the Defendant appeared before a magistrate for a bail hearing on the charge of Second Degree Rape. The Defendant was not represented by counsel. The Court asked the Defendant if he wanted to state anything in reference to bail. The Defendant stated, “I just want to say I’m sorry I did it.”⁴

(3) The Defendant filed a motion to suppress the videotaped confession. At the hearing on the motion the Defendant was informed for the first time that a second incriminating statement was made at the time bail was set. The motion to suppress the videotaped confession was granted. The parties were permitted to submit supplemental memoranda on two issues: (1) whether the second statement should be suppressed on state and federal constitutional grounds;

definitely.
THE DEFENDANT: What to Gander Hill?
THE DETECTIVE: Well, I don’t know. That’s up to the judge.
THE DEFENDANT: Oh, I go to court here?
THE DETECTIVE: No.
THE DEFENDANT: See the judge here?
THE DETECTIVE: No. Well we can, we can either go directly to a JP Court or we can do it on a video phone from here, we can sit right in another room. You know inside this building, right where you were sitting a few minutes ago. I don’t know if you noticed the computer with the screen. You can sit there and you can see the judge on the screen while he talks to you but he’s actually not in this building, he’s at the...uh...whatever JP Court.
THE DEFENDANT: And he determine whether I be...uh.
THE DETECTIVE: He’d determine your bail. Whether you’d have to put up any money before you uh...leave or uh sometimes you can leave without any money at all. It’s up to the judge. It’s up to a lot of things...whether you have a steady job, uh your past criminal record.
THE DEFENDANT: My...my past.
THE DETECTIVE: Past criminal record things like that um...whether you are a resident of the State. You live in Delaware right?
THE DEFENDANT: Yeah.
THE DETECTIVE: Things like that would ensure that if he does release you, you’ll come back for your next hearing...um. Anything you can say can be used against you in a court of law. If you agree to answer questions with or without an attorney present you can stop at any time. You understand that?
THE DEFENDANT: (head nods affirmatively).
THE DETECTIVE: Now when you talked about some of the things in the car on the way over here...um...one of them was Michelle Keenan, you know Michelle?
THE DEFENDANT: Yes.

Videotaped Police Interrogation, *State v. Lloyd*, Crim. I.D. No. 0101026786, (January 31, 2001).

⁴ Supplemental Report, *State v. Lloyd*, Crim. I.D. No. 0101026786.

and (2) whether either statement is admissible in rebuttal if the Defendant chooses to testify at trial.

(4) The Fifth Amendment to the United States Constitution and Art. I § 7 of the Delaware Constitution provide in part that a person shall not be compelled to give evidence against himself. Before a custodial interrogation, a person must be advised of his/her right to remain silent and his/her right to an attorney.⁵ When a defendant waives a right, the waiver must be made knowingly and intelligently.⁶

(5) Justice of the Peace Criminal Rule 44 states: “If the defendant appears in court without counsel the Justice of the Peace shall advise the defendant of the defendant’s right to counsel.” Before a defendant makes a statement during a bail hearing, the defendant must knowingly and intelligently waive his Fifth Amendment rights against self incrimination.⁷

(6) In the case at bar, the State concedes that the Defendant did not knowingly and intelligently waive his Fifth Amendment right against self incrimination at the bail hearing. Moreover, the Defendant contends in an affidavit that the Justice of the Peace failed to follow Justice of the Peace Criminal Rule 44 when he failed to inform him of his right to counsel when he appeared without counsel. The State does not contest the Defendant’s assertion. Accordingly, the Defendant’s motion to suppress the statement made at the bail hearing is GRANTED.

(7) The question of whether or not the suppressed statements from the police interrogation and the bail hearing may be used as rebuttal testimony for impeachment purposes is not ripe for decision at this time. The issue arises only if the Defendant decides to testify at trial.

⁵ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁶ *Howard v. State*, Del. Supr., 458 A.2d 1180, 1183 (1983).

If he does testify, the issue of the voluntariness and relevance of his statements will be considered.

IT IS SO ORDERED.

Judge Susan C. Del Pesco

Original to Prothonotary

xc: Peter W. Veith, Esquire, Deputy Attorney General
Jennifer-Kate Aaronson, Esquire

⁷ *State v. Williams*, Del. Super., C.R. No. 9711009866, Terry, J. (July 15, 1998) (Defendant's incriminating statement made in response to the Court's question at a bail hearing was suppressed because the Defendant was not informed of his rights against self incrimination).