

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. Henley Graves
Resident Judge

SUSSEX COUNTY COURTHOUSE
THE CIRCLE
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GEORGETOWN, DE 19947
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December 23, 2003

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Adam D. Gelof, Esquire
Department of Justice
114 East Market Street
Georgetown, DE 19947

RE: Sean A. Dupree
Defendant ID No. 0303015975

Dear Counsel:

This is the Court's decision on the defendant's motion to suppress statements made by him to the Delaware State Police. The defendant argues that his inculpatory statements should be suppressed because the defendant did not knowingly and voluntarily waive his rights under Miranda v. Arizona, 384 U. S. 436 (1966). Specifically the defendant alleges he was mentally incapacitated due to medication given to him by the police.

On the date of his arrest, while being taken into police custody, the defendant asked the police officers to retrieve his prescribed pain medication. Defendant testified that there were three pain medication prescriptions which he took due to an industrial accident.

Defendant testified that he had taken two of these prescriptions prior to being taken into custody by the police. An additional pain medication which was based on morphine was to be administered once every four hours as needed.

After defendant was Mirandized, he was asked if he understood the rights and if he wished to make a statement. He answered affirmatively to both of those questions. Initially, the defendant denied any involvement in the criminal activity of which he was accused, but later he began making inculpatory statements. Even later, he requested his pain medication. The police retrieved his pain medication and gave him one of the every four hour morphine pills. The defendant's claim is based on the police providing him with his medication. Basically the defendant alleges the police overreached by giving him morphine which made him high and caused his subsequent statements to be involuntary.

After considering the testimony and the exhibits which were introduced, I find that the defendant's motion to suppress should be denied.

As to the applicable law, I quote from Norcross v. State, 816 A.2d 757 (Del. 2003) at page 762:

A suspect who is being subjected to a custodial interrogation has a Fifth Amendment right to remain silent and must be clearly informed of this and related rights before an interrogation begins. Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966). The suspect may waive his/her rights. To be valid, however, the waiver must be knowing, voluntary and intelligent. Colorado v. Spring, 479 U. S. 564, 573, 107 S.Ct. 851 (1987). Based on the totality of the circumstances, the court must be satisfied that the waiver was 'the product of a free and deliberate choice rather than intimidation, coercion or deception'. Moran v. Burbin, 475 U. S. 412, 421, 106 S. Ct. 1135 (1986) (defining the voluntariness test). In other words 'the question in each case is whether the defendant's will was overborne by official coercion when the statement was made'. Marine v. State, 607 A.2d 1185, 1197 (1992). Finally, under the Delaware constitution, if a suspect attempts to invoke Miranda rights during an interrogation, but does not do so unequivocally, the police must clarify the suspect's intention before continuing with the interrogation. Draper v. State, Del. Supr., No. 147, 2000, Berger, J. (Jan. 28, 2002).

Both the state and the defendant acknowledge the defendant was permitted to consume one prescription drug for pain relief. The fact that the defendant consumed the drug does not per se invalidate an otherwise proper waiver. It is a factor I should consider, but not "the" factor. The real issue is whether he had the capacity to know what he was saying and doing and did he voluntarily intend to make the statements given. Traylor v. State, 458 A.2d 1170, 1176 (Del. 1983).

In reviewing the videotape, it is clear the defendant understood his Miranda rights and that he wished to talk to the police. The defendant has acknowledged in his testimony that he has been Mirandized at least three times prior to this and has been arrested many times. This testimony, together with an observation of his demeanor, leads to the reasonable conclusion that the defendant was streetwise and knew exactly what he was doing when he decided to talk with the police. He knowingly, voluntarily and intelligently made a decision that he wished to discuss the charges with police officers.

I do not find that there was any police overreaching. There was no intimidation, coercion, or deception used by the police in obtaining the defendant's statement. The tape is rather long and there are gaps in the tape where the police are out of the room, presumably checking on portions of the information provided by the defendant. There are periods when the police are not in the room, but the videotape continued, wherein he makes comments and actions which would evidence that he was in discomfort and wanted his pain medication. Subsequently, when he brought this to the attention of the police, the police retrieved his pain medication and allowed him to consume one pill, which he acknowledges was the correct medication under the circumstances. Defendant further testified that all of the pain medication he had consumed that day was pursuant to that which had been prescribed. In other words, he had not overdosed on his pain medication.

I do not find that the police did anything wrong by allowing him access to the prescribed amount of pain medication. Had the police not provided his medication, the defendant would have surely argued that they were using his pain and the withholding of pain medication in order to force or extract a statement from him.

It is noteworthy that the defendant did not begin making his inculpatory statements after he received his pain medication, but before he took the pain medication. In other words, the police did not give him his pain medication and then take advantage of him.

Under the totality of the circumstances test, I find the defendant was informed of his Miranda rights, understood those rights, and voluntarily and intelligently decided to waive those rights. His waiver was his deliberate choice and there was no police intimidation or deception used in obtaining it. It was uncoerced. I find the medication that the defendant testified he ingested prior to his arrest and that which was administered to him by the police during his interrogation did not impact on his capacity to know what he was saying and doing, nor did it impact upon his voluntary decision to talk with the police officers.

The police officers' testimony concerning their opinion the defendant was not under the influence is corroborated by the defendant's demeanor as evidenced by the videotape.

IT IS SO ORDERED.

Yours very truly,

T. Henley Graves

THG:baj
cc: Prothonotary