IN THE SUPREME COURT OF THE STATE OF DELAWARE

SEAN DUPREE,	§	
	§	No. 120, 2004
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware, in and for
v.	§	Sussex County
	§	
STATE OF DELAWARE,	§	No. 0303015975
	§	
Plaintiff Below,	§	
Appellees.	§	

Submitted: March 18, 2005
Decided: April 12, 2005

Before **HOLLAND, JACOBS** and **RIDGELY,** Justices**.**

ORDER

This 12th day of April, 2005, on consideration of the briefs of the parties, it appears to the Court that:

(1) The defendant-appellant, Sean A. DuPree ("DuPree") was convicted following a jury trial in the Superior Court on seven counts of burglary in the second degree, three counts of theft of a firearm, three counts of theft over $1,000, three counts of theft under $1,000, one count of theft from a victim who is 62 years of age or greater and four counts of criminal mischief less than $1,000. Following his convictions, DuPree was declared a habitual offender and sentenced accordingly. DuPree appeals from his convictions on two grounds. He first contends the trial court erred in its denial of his motion to suppress. Second, he contends that his statement was involuntary and should not have been admitted into evidence. We find his appeal to be without merit. Accordingly, we affirm.

(2) In February 2003, there were a series of six daytime residential burglaries occurring in Sussex County. A seventh burglary occurred in March 2003. All seven burglaries occurred in a relatively compact geographical area and most involved forced entry through a door of an unoccupied residence. The property taken during those seven burglaries included three guns, three laptop computers, cameras, jewelry, cash and electronic equipment.

(3) Each burglary victim promptly reported the crimes to the Delaware State Police. The first investigative lead, however, came as a result of the March 2003 burglary when the police were advised that a white Saturn automobile with a Delaware vanity license plate "Sean D" had been observed parked in the victim's driveway on the same date of the burglary. After consulting the Delaware Motor Vehicle Department, the police determined that the vanity tag was registered to DuPree's 1992 white Saturn automobile. The police then interviewed DuPree and confirmed that the "Sean D" vanity tag belonged to him.

(4) The next investigative break occurred when DuPree's aunt, Gardina Turner, was found to be in possession of stolen property. At Turner's residence the police discovered some of the stolen property taken from the victims' residences. Turner also informed the police that DuPree was in possession of firearms and three laptop computers on March 10, 2003. At the request of the police, Turner placed a telephone call to DuPree and told him that she was interested in purchasing a laptop he had shown her. During this telephone call,

DuPree advised Turner that the laptop was at his home and that he would have to go and get it and then return to Turner's residence. The police arrested DuPree later that day.

(5) Following his arrest, DuPree was taken to Delaware State Police Troop 4 for a videotaped interview. While in police custody, DuPree asked the police to retrieve his prescribed pain medication. DuPree testified that there were three pain medication prescriptions that he took due to an industrial accident. DuPree also testified that he had taken two of those prescriptions prior to being taken into custody by the police, but that an additional morphine pill was to be administered every four hours as needed. Thereafter, DuPree was read his *Miranda* rights,[1] and he was asked if he understood his rights and if he wished to make a statement. He answered affirmatively to both of those questions. DuPree initially denied any involvement in the criminal activity, but he later began making numerous inculpatory statements. After DuPree again requested his pain medication, the police retrieved the pain medication and gave him one morphine pill.

(6) DuPree's first argument on appeal is that the trial court erred when it declined to suppress incriminating portions of his videotaped statements made while in police custody. DuPree maintains that he only made the statements in order to obtain his prescribed pain medication. As a result, DuPree contends that he did not knowingly, voluntarily and intelligently waive his Fifth Amendment

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

self-incrimination privilege. DuPree assigns error to the trial court's denial of his motion to suppress, arguing that the trial court narrowly focused on whether the pain medication he consumed overbore his will to remain silent. We analyze the admissibility of DuPree's inculpatory videotaped statements to determine whether the trial court properly applied the law to the facts, whether the trial court's factual findings were supported by competent evidence and whether the trial court abused its discretion in making its evidentiary ruling.[2]

(7) A suspect may waive his Fifth Amendment self-incrimination privilege if the waiver is knowing, voluntary and intelligent.[3] The prosecution bears the burden of proof by a preponderance of the evidence to establish that the suspect, after receiving his *Miranda* rights, voluntarily waived those rights.[4] A waiver issue is to be determined from a review of the "totality of the circumstances" surrounding the police interrogation.[5] In this case, the trial court correctly recognized, after a careful review of the videotaped statement and the testimony of witnesses at the suppression hearing, that DuPree understood his *Miranda* rights and voluntarily spoke with the police. We also find that the one morphine pill consumed by DuPree was the exact amount prescribed, indicating that there was no overdose. Furthermore, the trial court observed the demeanor of DuPree in the

[2] *See State v. Rooks*, 401 A.2d 943, 949 (Del. 1979). *Cf. Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

[3] *Miranda*, 385 U.S. at 444.

[4] *Colorado v. Connelly*, 479 U.S. 157, 168 (1986).

[5] *Fare v. Michael C.*, 442 U.S. 707, 724-25 (1979).

videotape and was able to conclude that the morphine pill did not impact DuPree's decision to voluntarily speak with the police.

(8) DuPree's second argument, being raised for the first time on appeal, is that his inculpatory statements were not voluntarily made to the police because the police made a strategic decision to withhold his pain medication to improperly extract a confession. As a result, DuPree contends that the trial court erred in denying his motion to suppress portions of his videotaped statement. DuPree's argument on appeal is different from the issue framed at the suppression hearing. At the suppression hearing, the issue was whether DuPree's consumption of the morphine pill rendered his waiver of his Fifth Amendment privilege against self-incrimination invalid. Accordingly, we review this new argument only for plain error.[6] We find that there is no error because DuPree made the incriminating statements both before and after he took the morphine pill. Moreover, the trial court heard all of the evidence presented at the suppression hearing and expressly found that the videotaped statements were not coerced.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgments of conviction against Sean A. DuPree entered by the Superior Court are AFFIRMED.

/s/Henry duPont Ridgely
Justice

[6] *See* DEL. SUP. CT. R. 8. *See also Monroe v. State*, 652 A.2d 560, 563 (Del. 1995) (citations omitted) (providing that this Court may excuse a waiver of an appellant's argument only upon a finding of plain error).