SJC-12612

COMMONWEALTH vs. ROBERT WEIDMAN.

Middlesex. March 6, 2020. - September 10, 2020.

Present: Gants, C.J., Lenk, Lowy, Cypher, & Kafker, JJ.

Homicide. Due Process of Law, Police custody. Constitutional Law, Admissions and confessions, Waiver of constitutional rights, Voluntariness of statement. Evidence, Admissions and confessions, Voluntariness of statement, Intoxication. Intoxication. Practice, Criminal, Motion to suppress, Admissions and confessions, Voluntariness of statement, Capital case.

Indictment found and returned in the Superior Court Department on August 26, 2014.

A pretrial motion to suppress evidence was heard by Thomas P. Billings, J.; and the case was tried before Merita A. Hopkins, J.

Theodore F. Riordan (Deborah Bates Riordan also present) for the defendant.

Casey E. Silvia, Assistant District Attorney (Christopher M. Tarrant, Assistant District Attorney, also present) for the Commonwealth.

LENK, J. The defendant was convicted of murder in the first degree, on theories of deliberate premeditation and

felony-murder, for the stabbing death of Hector Almedina. On appeal, he argues that all the statements he made to investigators while being questioned at a police station should have been suppressed, and that the admission of those statements at trial resulted in prejudice requiring a new trial. In the alternative, the defendant asks us to exercise our authority under G. L. c. 278, § 33E, to reduce the verdict or to order a new trial. As we conclude that there was no error in the denial of the motion to suppress or the introduction of the defendant's statements at trial, and that no other relief is appropriate, we affirm the conviction.

1. Background. We recite the facts as the jury could have found them, reserving certain details for later discussion.

a. The stabbing. Two weeks before the July 10, 2014, stabbing of the victim, the defendant told his then girlfriend, Lynn,[1] that he was considering robbing his drug dealer. The defendant remarked that he also would have to kill the dealer, and that he was thinking of stabbing him. He mentioned this plan to Lynn again two days before the stabbing and said that he intended to go through with it because he needed the money.

On July 10, 2014, the defendant called his drug supplier, known as Javier. He requested that Javier send a dealer with a

[1] To protect their privacy, we refer to friends and associates of the victim and the defendant by their first names.

delivery of heroin to his apartment complex in Lowell between approximately 9:30 P.M. and 9:40 P.M. that evening. Shortly before 9:30 P.M., the defendant left his apartment, walked to the adjacent parking lot, and waited in his vehicle for the dealer to arrive. When the dealer, the victim, parked his vehicle in the lot, the defendant approached. The defendant spoke with the victim through the driver's side window, before striking him multiple times with a knife.

Mortally wounded, the victim drove to a gasoline station located around the corner from the defendant's residence. He called his girlfriend, and she dialed 911. Officers responded to the gasoline station, where they found Javier tending to the victim.[2]

Paramedics transported the victim to a nearby community hospital. By the time he arrived, he had lost an immense quantity of blood . His condition rapidly deteriorated, and he succumbed to his wounds early in the morning of July 11, 2014.

An autopsy revealed that the victim suffered three stab injuries to his chest and two to his right arm. One of these stab wounds pierced a major artery as well as the victim's

[2] Video footage from the gasoline station's surveillance cameras showed that Javier arrived there shortly after the victim.

heart; it resulted in significant internal bleeding and proved fatal.

b. The investigation. The next day, Javier, accompanied by an attorney, met with officers of the Lowell police department. He conceded that the victim had been working for him as a dealer selling drugs on his behalf. Javier informed police that he had asked the victim to deliver drugs to a man named "Bob" and directed officers to the defendant's apartment complex.

After going door to door, officers ultimately found the defendant with Lynn in their apartment. He invited the officers into the apartment to speak. Officers then asked him to come to the police station to talk about the stabbing. The defendant agreed so long as he could drive himself and that Lynn could accompany him.

Police officers later searched the defendant's apartment with his consent. Based on information provided by the defendant, a forensic scientist found a folding knife in a walk-in closet. The blade of this knife measured three and one-quarter inches long and three quarters of an inch wide.[3] The forensic scientist observed red brown stains on the knife, as

[3] The stab wounds to the chest were approximately three quarters of an inch in length and up to four inches in depth. An instrument shorter than four inches in length could have caused these injuries.

well as yellow skin-like debris; testing confirmed that human blood was present on the knife. The forensic scientist also tested a T-shirt found in a laundry basket; it too tested positive for human blood. A chemist later compared samples from the knife handle, the knife blade, and the exterior and interior of the T-shirt to known standards from the defendant and the victim. The blade of the knife and bloodstains on the T-shirt matched the victim's deoxyribonucleic acid (DNA).

c. The interrogation. When the defendant and Lynn went to the police station for questioning, they were brought into separate interview rooms. The two officers interviewing the defendant began by advising him of his Miranda rights[4] by reading aloud a police department-issued form explaining these rights. After listening to this explanation, the defendant signed and dated the form, indicating that he understood his Miranda rights and wished to speak with the officers.[5] The officers then began interrogating the defendant.

Initially, the defendant denied that he had been involved in the victim's death. He agreed that he had met with the victim outside his apartment to purchase drugs from the victim,

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[4] See Miranda v. Arizona, 384 U.S. 436 (1966).

[5] One of the interviewing officers also signed and dated the form. By signing another part of the form, the defendant consented to the interview being recorded.

but said that that was the extent of his interaction with the victim on the evening of the stabbing. Later, however, police revealed to the defendant that Lynn had made statements to them implicating the defendant. Specifically, she told police that the defendant said that he intended to rob the victim. The officers then brought Lynn into the defendant's interrogation room. The defendant became irate, urging Lynn not to cooperate with the police. She responded, "I already told them." After she left, the defendant claimed that he did not remember making such a comment and that, even if he had, it must have been a joke.[6] The investigators did not believe the defendant and pressed him to admit that he had planned to rob the victim.

Eventually, the defendant changed his story; he admitted that he had stabbed the victim, but claimed that it had been in self-defense. Following the defendant's repeated denials that he had intended to rob or kill the victim that evening, the investigators revealed that Lynn had said not only that the defendant had intended to rob the victim, but also that the defendant had intended to kill him. The defendant continued to deny that he had had any such plan and to claim that he had acted in self-defense.

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[6] The defendant conceded that he had intended to "short change" the victim when making the drug purchase.

At the conclusion of the interrogation, the interviewing officers briefly stepped out of the room. When they returned, they found that the defendant had attempted suicide by slitting his neck with a piece of metal. He told the officers, "I'm not going back to fucking jail." After being transported to a local hospital for treatment, he was assessed by a forensic psychologist. Based on that assessment, the defendant was transferred to Bridgewater State Hospital for observation.

d. Procedural history. The defendant was indicted on charges of murder, G. L. c. 265, § 1; armed assault with intent to rob, G. L. c. 265, § 18 (b); and assault and battery by means of a dangerous weapon, causing serious bodily injury, G. L. c. 265, § 15A (c) (i). In December of 2015, the defendant moved to suppress statements he made at the Lowell police station prior to his arrest. A Superior Court judge denied that motion following an evidentiary hearing. In December of 2017, the defendant was tried on all charges before a jury and a different judge. Prior to submitting the case to the jury, the Commonwealth filed a nolle prosequi on all but the murder indictment. After deliberating over two days, the jury convicted the defendant of murder in the first degree on theories of deliberate premeditation and felony-murder.[7]

[7] The defendant's trial took place shortly after the issuance of our decision in Commonwealth v. Brown, 477 Mass.

2. Discussion. The defendant's main argument on appeal is that the statements he made to police officers shortly after the stabbing should have been suppressed under the Fifth Amendment to the United States Constitution and art. 12 of the Massachusetts Declaration of Rights, and that admitting them at his trial resulted in two reversible errors. First, he claims that, at two different times during his interrogation, the officers continued to question him after he had invoked his right to remain silent pursuant to the United States Supreme Court's decision in Miranda v. Arizona, 384 U.S. 436 (1966), and that the subsequent statements should not have been admitted. Second, he contends that because he was under the influence of narcotics or suffering from withdrawal at the outset of the interrogation, his initial waiver of his Fifth Amendment rights was involuntary, and all of the statements that he made during the custodial interrogation should have been held to be inadmissible.

a. Standard of review. "In reviewing the denial of a motion to suppress, we defer to the motion judge as to the weight and credibility of the evidence. We accept the motion

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805, 807-808 (2017), cert. denied, 139 S. Ct. 54 (2018), narrowing the scope of felony-murder in cases decided after that date. Under that more narrow scope, the evidence before the jury of the defendant's conduct at the scene of the intended robbery clearly evinced the necessary malice.

judge's findings of fact unless they are clearly erroneous and assess the correctness of the judge's legal conclusions de novo" (citations omitted). Commonwealth v. Bell, 473 Mass. 131, 138 (2015), cert. denied, 136 S. Ct. 2467 (2016). To the extent that the motion judge's findings are based entirely on documentary evidence, including video recordings, that are equally available to a reviewing court, no deference is owed because the reviewing court is "in the same position as the [motion] judge." Commonwealth v. Novo, 442 Mass. 262, 266 (2004), quoting Commonwealth v. Prater, 420 Mass. 569, 578 n.7 (1995).

b. Whether the defendant was in custody. As a preliminary matter, the parties dispute if and when during his interrogation the defendant was actually "in custody."[8] "Miranda warnings are required only when a suspect is subject to custodial interrogation." Commonwealth v. Simon, 456 Mass. 280, 287, cert. denied, 562 U.S. 874 (2010). As a result, if, as the Commonwealth contends, the defendant was not in custody when he made the two statements at issue, then he had no right to remain silent to invoke; in other words, the police had no obligation to cease asking him questions. See, e.g., Commonwealth v. Molina, 467 Mass. 65, 75 (2014).

[8] The Commonwealth does not contest that the police questioning at the station was an interrogation.

"[W]hether there is a 'custodial interrogation'" depends on "whether the defendant has been 'deprived of his freedom of action in any significant way.'" Commonwealth v. Accaputo, 380 Mass. 435, 452 (1980), quoting Commonwealth v. Haas, 373 Mass. 545, 551 (1977), S.C., 398 Mass. 806 (1986). "The critical question in determining whether an individual is in custody is whether a reasonable person in the individual's position would feel free to leave." Simon, 456 Mass. at 287, citing Commonwealth v. Damiano, 422 Mass. 10, 13 (1996), "When considering 'how a suspect would have gaug[ed] his freedom of movement, courts must examine all of the circumstances surrounding the interrogation'" (quotations omitted). Commonwealth v. Medina, 485 Mass. 296, 300 (2020), quoting Howes v. Fields, 565 U.S. 499, 509 (2012). Based on all these circumstances, we must determine "whether the defendant was subjected to 'a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.'" Medina, supra at 301, quoting Thompson v. Keohane, 516 U.S. 99, 112 (1995).

It suffices for our analysis that, based on all the circumstances surrounding the interrogation, the defendant was in custody by the time he first purportedly invoked his right to remain silent. The ongoing interrogation took place within the police station, an inherently coercive environment in which the

police investigators "possess[] all the advantages." Haas, 373 Mass. at 553, quoting Miranda, 384 U.S. at 450. It was also clear to the defendant that he was suspected of having committed a serious crime. Moreover, the nature of the interrogation had become hostile; the officers had accused the defendant of lying to them. By that point, a reasonable person in the defendant's position would not have felt free to cut off questioning and leave.

c. Whether the defendant clearly and unambiguously invoked his right to remain silent. Because the defendant was in custody when, he claims, he invoked his right to remain silent, we must consider whether the police violated that right. A defendant in custody may "voluntarily, knowingly and intelligently" waive his or her Miranda rights and consent to being interrogated. Miranda, 384 U.S. at 444. Even after such a waiver, as here, however, a defendant may reassert his or her right to remain silent. See Commonwealth v. Bradshaw, 385 Mass. 244, 265 (1982). The defendant bears the burden to establish, based on a totality of the circumstances, that his or her statements purportedly reasserting that right were "clear and unambiguous[], such that a reasonable police officer in the circumstances would understand the statement to be an invocation of the Miranda right" (quotation omitted). Commonwealth v.

Smith, 473 Mass. 798, 808 (2016), quoting Commonwealth v. Howard, 469 Mass. 721, 731 (2014), S.C., 479 Mass. 52 (2018).

The defendant first points to his statement that, "No, it was nobody with me except [my girlfriend], and I'm not going to keep answering the same questions," as indicating that he wanted to terminate the interview. He made this statement about two hours into the interrogation. By then, the officers had asked him several similar questions, and had twice previously asked the defendant if someone who was with him might have been involved in the stabbing. It is clear that the defendant was in an agitated state at that time, as indicated by the next exchange between the officers and him:

Q.: "Why are you getting angry?"

A.: "Because you're accusing me and I didn't do anything."

Considering the context surrounding this first statement, it falls well short of an unequivocal invocation of the defendant's Miranda rights. It appears far more likely that the defendant was expressing frustration with the repetitious nature of the officers' questioning rather than that he intended to assert his constitutional right to remain silent. A reasonable officer would not have understood the statement about not answering "the same questions" as an expressed refusal to answer any further questions. See, e.g., Commonwealth v. Santos, 463 Mass. 273, 285 (2012) ("a suspect's unwillingness to answer

questions on a particular topic does not unambiguously indicate that the suspect is unwilling to continue speaking with police or obligate them to inquire whether the suspect would "like to reassert his right to silence" [citation omitted]).

The cases cited by the defendant to show that his statement was a clear and unambiguous reassertion of his Miranda rights actually contrast markedly with the facts here. In all of those cases, the defendants "manifest[ed] an expressed unwillingness to continue with the interview" as a whole; unlike the defendant here, he did not merely "refus[e] to answer certain questions." Commonwealth v. Robidoux, 450 Mass. 144, 161 & n.7 (2007). Also, by contrast to the circumstances in Commonwealth v. Neves, 474 Mass. 355, 364-365 (2016), the defendant here points to no previous statements by him that, in context, would have clarified that his first statement was an invocation of his right to remain silent, nor does the transcript indicate that he sought to explain his statement as an invocation of his rights immediately after he made it.

For similar reasons, the second statement the defendant relies upon, "then [I] guess we should stop this conversation," also was not a clear expression of an unwillingness to continue answering questions. By the time the defendant made this second statement, he knew that he was a suspect in the stabbing. He then began trying to persuade the officers that he must have

been "joking around" with his girlfriend when he said that he had intended to rob the victim, and that he would never do such a thing, but the officers did not seem to believe him. When the defendant said again that he did not even remember making such a statement, they responded by calling him a liar three times in a row. After the third time, the defendant answered with this exasperated, sarcastic remark, "Oh, okay, then [I] guess we should stop this conversation because apparently I'm not going to give you the truth."

The defendant places almost talismanic weight on his use of the word "stop" in that sentence. To be sure, this court has described a "defendant's use of the word 'stop,' or the phrase, 'I would like to stop at that point,'" as a "red flag for an interrogating police officer" indicating that a defendant may be attempting to invoke his or her right to remain silent. See Howard, 469 Mass. at 733 n.13. Again, however, our fact-specific inquiry requires us to consider the totality of the circumstances; to determine whether a reasonable officer would have understood the defendant to be invoking his Miranda rights, we cannot isolate the defendant's choice of words from tone or context.

In Commonwealth v. Pennellatore, 392 Mass. 382, 386-388 (1984), for example, this court held that a defendant's statement, "Can we stop please?" did not manifest an

unwillingness to continue answering police officers' questions, because it was clear from the context that the defendant merely was requesting a break. In particular, the court held that the defendant's request for the interview to "stop" had to be viewed in light of the defendant's "willingness to talk both immediately prior to and subsequent to the break." Id. at 387. The court pointed to the fact that the defendant made this request at "one particularly emotional point during the questioning," and that he willingly continued to answer questions after a short break. Id. at 385–386.

Similarly here, a reasonable police officer would likely interpret the defendant's statement as an expression of frustration with the officers' questions and their unwillingness to believe the defendant's story. And as with a defendant who is willing to continue answering questions after a break, it also is telling that the defendant continued to answer the officers' questions, without any apparent hesitation, after making this statement. The next words he spoke were not along the lines of, "I'm done talking," but, rather, "I'm telling the truth[,] I didn't hurt anybody, I wouldn't hurt anybody, no way." This later statement evinces that the defendant had not been trying to terminate the interrogation; he became distressed that the officers did not seem to believe him, and after

expressing this frustration, he persisted in his efforts to persuade the officers.

Because neither of the defendant's statements was a clear and unambiguous invocation of the right to remain silent, the defendant has failed to meet his burden.

d. Whether the waiver was knowing, voluntary, and intelligent. In the alternative, the defendant challenges whether his initial waiver of his Miranda rights was knowing, voluntary, and intelligent, and whether his subsequent statements were voluntary. Specifically, he asserts that his drug use left him without the requisite capacity to make such a waiver knowingly and intelligently, and that his subsequent statements were involuntary as a matter of law.

"Although the voluntariness of a Miranda waiver and the voluntariness of a particular statement made during custodial interrogation 'are separate and distinct issues,' the 'test' for both is 'essentially the same.'" Commonwealth v. Newson, 471 Mass. 222, 229 (2015), quoting Commonwealth v. Edwards, 420 Mass. 666, 670 (1995). A waiver of Miranda rights is valid only if made "voluntarily, knowingly and intelligently." Miranda, 384 U.S. at 444. "The initial burden is on the defendant to produce evidence tending to show that his statement was involuntary; if he satisfies this burden, the Commonwealth is required to prove beyond a reasonable doubt that the statement

was voluntarily made." Commonwealth v. Montoya, 464 Mass. 566, 577 (2013). See Edwards, supra at 669 (applying same standard to voluntariness of Miranda waiver).

Of relevance here, "statements that are attributable in large measure to a defendant's debilitated condition, such as drug abuse or withdrawal symptoms, [or] intoxication . . . are not the product of a rational intellect or free will and are involuntary." Bell, 473 Mass. at 141, quoting Commonwealth v. Allen, 395 Mass. 448, 455 (1985). Nonetheless, an "otherwise voluntary act is not necessarily rendered involuntary simply because an individual has been drinking or using drugs." Commonwealth v. Silanskas, 433 Mass. 678, 685 (2001), quoting Commonwealth v. Shipps, 399 Mass. 820, 826 (1987). Accord Newson, 471 Mass. at 231. If a defendant is able to give coherent answers during an interrogation and the defendant's responses "evince a concerted effort to rebut any involvement" in the crime of which the defendant is suspected, the fact that a defendant consumed drugs or alcohol shortly before the interview does not necessarily render the subsequent conduct involuntary. See id. at 231–232.

Here, the defendant contends that he was under the influence of drugs when he signed the form waiving his Miranda rights and during his subsequent interrogation. In support of this argument, he relies primarily on statements he made during

the interrogation, observations by a police psychologist with whom he spoke the day after the interrogation, as well as a number of statements that he made to his own expert psychologist.[9] According to the police psychologist, during his evaluation, the defendant seemed depressed and was exhibiting physical symptoms that could be consistent with drug withdrawal, such as yawning and fidgeting.[10] He claimed to have used two bags of heroin per day for several years, and also claimed to have used heroin on the day of the interrogation. The police psychologist noted also, however, that the defendant was alert, cooperative, and polite during his evaluation, and he did not display other withdrawal symptoms such as nausea or nodding off.

The defense psychologist testified that, in his opinion, the defendant was going through drug withdrawal when he was interrogated. According to the defense psychologist, the defendant used heroin daily,[11] and had consumed cocaine on the day of the interrogation; that evening, he also consumed heroin in order to mitigate stimulation from the cocaine. In addition

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[9] Both psychologists testified at the hearing on the motion to suppress and prepared reports that were admitted in evidence.

[10] On cross-examination, the police psychologist conceded that the defendant had been in the hospital overnight and likely had not slept well before his interview.

[11] The defendant apparently developed a dependency on opiates after he was prescribed Percocet and oxycodone to cope with a serious work-related injury.

to the defendant's statements to him and other sources,[12] in forming his opinion, the defense psychologist also reviewed the recording of the defendant's interrogation. He characterized the defendant as agitated, restless, and irritated during the interrogation, which would be consistent with heroin withdrawal.

The motion judge did not share the defense psychologist's opinion, and pointedly criticized the defense psychologist's "uncritical acceptance" of the defendant's statements. Contrary to the psychologist's view, the motion judge found that the defendant's "actions, words and demeanor" indicated "a lengthy, calculated and voluntary effort to persuade the police that he should not face charges, especially of murder." "The defendant showed himself, in the recorded statement, to be well aware of his jeopardy, ready to lie when and as long as it might benefit him, and surprisingly energetic given the length of the interview and the late hour." In sum, the motion judge found that the defendant's heroin use "did not materially affect his ability to make informed, rational, and voluntary decisions concerning whether to waive his Fifth Amendment rights and what to tell the police to further his own interests."

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[12] These included hospital records, the police psychologist's evaluation, and an interview that the defense psychologist conducted with the defendant's girlfriend.

Based on our review of both the transcript and the recording of the defendant's interview, we agree that the Commonwealth has met its burden to prove, beyond a reasonable doubt, that the defendant had the capacity knowingly, voluntarily, and intelligently to waive his Miranda rights, and voluntarily to respond to police questioning. The defendant's answers to questions do not appear to have derived in large part from his use of heroin or cocaine. Even granting that the defendant may have been influenced by withdrawal from drugs when the interrogation took place, he was able to give clear answers to the officers' questions from their introductory questions about his background and continuing throughout the interview.

Further, the defendant's answers indicate that he was aware enough to formulate a plan to persuade the officers that he had not been involved in the victim's death. He initially explained to the officers that he simply had purchased drugs from the victim, and repeatedly denied involvement in the stabbing. After being confronted with his girlfriend's statements, however, the defendant changed tactics. He then admitted that he had stabbed the victim, but claimed that he had done so in self-defense. This change in his story evinces that the defendant was cognizant of what was going on around him; he was able to understand that his previous efforts to rebut any involvement in the crime were contradicted by other evidence in

police possession, so he adapted accordingly. The defendant's self-destructive actions at the end of his interrogation were consistent with his growing fear that he likely would face imprisonment for murder,[13] and not evidence that his state of mind was so altered by drugs as to make his statements and waiver involuntary.

In sum, the defendant voluntarily waived his Miranda rights, voluntarily made statements to the police, and did not thereafter unambiguously reassert his right to remain silent. Thus, the motion judge did not err in denying the defendant's motion to suppress, and the admission of those statements at the defendant's trial was not error, reversible or otherwise.

e. Review under G. L. c. 278, § 33E. The defendant urges us to order a new trial or to reduce the degree of guilt pursuant to our authority under G. L. c. 278, § 33E. Having carefully reviewed the entire case pursuant to our statutory obligation, we conclude that there is no basis to reduce the verdict or to order a new trial.

Judgment affirmed.

[13] Although not revealed at trial, the defendant told the interrogating officers that he previously had served a two-year term of incarceration for an unrelated offense.