NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. KALIL SIED DIXON, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 70 WDA 2013

Appeal from the Judgment of Sentence Entered December 17, 2012
In the Court of Common Pleas of Beaver County
Criminal Division at No(s): CP-04-CR-0000523-2012

BEFORE: BENDER, P.J., GANTMAN, J., and OLSON, J.

MEMORANDUM BY BENDER, P.J. FILED: November 27, 2013

Kalil Sied Dixon, Appellant, appeals from the judgment of sentence of an aggregate period of thirty to sixty years' incarceration after he was convicted by a jury of burglary, criminal trespass, robbery, unlawful restraint/involuntary servitude, two counts of kidnapping, two counts of rape by forcible compulsion, two counts of involuntary deviate sexual intercourse by forcible compulsion, three counts of aggravated indecent assault, simple assault, terroristic threats, theft, receiving stolen property, and possession of weapons. On appeal, Appellant challenges the trial court's denial of his motion to suppress statements he made to police. After review, we affirm.

The relevant factual history was related by the trial court in its August 2012 opinion and order, disposing of Appellant's omnibus pre-trial motion.

> As a result of a report of an alleged rape of a female victim in the early morning hours of January 7, 2012, Sergeant [Ronald]

Walton [of the New Brighton Police Department] was requested to report early for work and arrived at the New Brighton Police Department at 12:00 P.M. At approximately 2:00 P.M. the same day, Stacey Young, the girlfriend of [Appellant], appeared at the police station, made a complaint of domestic violence against [Appellant] and advised that he was passed out from being under the influence of alcohol and/or drugs at her residence located at 518 Sixth Avenue, New Brighton, where they resided together. Ms. Young reported that she had encountered [Appellant] with a female earlier in the day, resulting in an argument during which he assaulted her. She gave police consent to enter her home for the purpose of arresting [Appellant]. She also cautioned the officers that as a result of [Appellant] being intoxicated, several officers should proceed to the residence. Shortly thereafter, Sergeant Walton and three or four officers proceeded to Ms. Young's residence. [Appellant] was observed lying on an ottoman. The officers attempted to rouse [Appellant], who did not respond other than raising his head on one occasion. After failing to wake [Appellant] with verbal commands and being unable to view his hands, the officers attempted to take him into physical custody and he resisted. Sergeant Walton was required to implement his taser to subdue [Appellant]. [Appellant] sustained personal injuries and was transported to the Heritage Valley Medical Center for treatment, arriving at approximately 4:00 P.M. Officer [Stephen] Ivan was assigned to guard the [Appellant] at the hospital.

Sometime between 7:00 P.M. and 8:00 P.M., Sergeant Walton relieved Officer Ivan at the hospital to remain with [Appellant] while he was being treated. [Appellant] displayed an arrogant demeanor, noted Walton's rank of sergeant and commented regarding the need for a sergeant in connection with a simple assault charge. Sergeant Walton informed [Appellant] that he was relieving Officer Ivan on the security detail in connection with the incident involving Ms. Young. [Appellant] was advised by Sergeant Walton of his rights pursuant to ***Miranda v. Arizona***, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 694 (1966). [Appellant] acknowledged understanding the ***Miranda*** warnings. [Appellant] was alert, did not appear to be intoxicated, was aware of the situation and was prying Sergeant Walton for information. Officer Ivan remained for a few minutes and was present when Sergeant Walton read [Appellant] the ***Miranda*** warnings.

> Approximately 45 minutes to one hour later, while in the presence of [Jeffery] Williams[, lead security officer at Heritage Valley Health System, Beaver County Campus], Sergeant Walton again informed [Appellant] of his ***Miranda*** rights when the conversation turned to the subject of the alleged rape. [Appellant] again indicated that he understood the ***Miranda*** rights and agreed to talk to Sergeant Walton. Both Sergeant Walton and Mr. Williams related that [Appellant] was cognizant of his circumstances in speaking about the events which had occurred earlier and did not appear to be under the influence of drugs or alcohol.
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> [Appellant] informed Sergeant Walton that he was wandering the streets in the early morning of January 7 and came upon his friend's home directly across the street from the victim's residence. [Appellant] indicated that he remained there with his friend drinking and consuming Adderall. He subsequently encountered a blond female prostitute who performed oral sex on him. Upon further questioning, [Appellant] provided an inconsistent statement in which he indicated that the female had pulled up in a vehicle and he had asked his friend about her. [Appellant] was informed by his friend not to even approach her because he had previously attempted contact with her without success. [Appellant] recalled observing a police vehicle patrolling the area and he hid behind the rear of the victim's residence. He found the door unlocked and walked into the kitchen assuming that the house was unoccupied. He helped himself to beer in the refrigerator and sat down to watch television. Subsequently, he proceeded to the second floor and surprisingly encountered the female victim in the bedroom. He initially said there were no sexual acts and he left the residence. Following the conversation with [Appellant], another officer relieved Sergeant Walton.
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> The following day on January 8, 2012, Sergeant Walton transported [Appellant] to the police department upon his release from the hospital and interviewed him for approximately one hour. The interview was recorded by video and audio and was introduced as an exhibit for the court's review. [Appellant] executed a standard written ***Miranda*** warning waiver form at 5:35 P.M. Sergeant Walton informed [Appellant] that in addition to his arrest for domestic violence with his girlfriend, further information was needed in regard to the alleged rape of a female victim. [Appellant] expressed remorse, indicating he had no intention of injuring the female and was not aware that anyone

> was at home when he entered the residence. The female victim, according to [Appellant], appeared to be understanding of his mistake. [Appellant] indicated that he drank alcohol and went through her closet and felt that if he provided sexual pleasure to her, she would be more understanding. He bound her hands with handcuffs found in the closet and performed alleged consensual oral sex on her. He denied having vaginal intercourse; however, he admitted that he digitally penetrated her. Upon completion of the sexual activity, he did not want to leave her alone and took her for a walk when he encountered his girlfriend, which precipitated an argument.[1] At the interview conducted at the police station, [Appellant] was coherent, alert and aware of his surroundings. Sergeant Walton advised that there was no question as to [Appellant]'s ability to understand the ***Miranda*** warnings and subsequent questioning.
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> The laboratory report from the hospital indicated the presence of amphetamines and cannabis in [Appellant's] blood at 1:52 P.M. on January 8, 2012. The following four search warrants were obtained by the police for: (1) [Appellant's] residence to obtain [Appellant's] clothing and items taken from

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[1] In its opinion pursuant to Pa.R.A.P. 1925(a), the trial court set forth the victim's version of her encounter with Appellant, which we summarize as follows. The victim was awoken around 5:30 to 6:00 A.M. by Appellant, a stranger to her, holding one hand over her mouth and brandishing a kitchen knife in the other. Appellant handcuffed and blindfolded the victim and, in addition to sexually assaulting her, forced her to ingest various medications found in the apartment, namely Nyquil, Motrin, and Benadryl. Following his assault of the victim, Appellant forced her to proceed to his home, where he said he would release her. Shortly after leaving the house, Appellant was confronted by his girlfriend, Ms. Young, who angrily questioned Appellant as to his reasons for being with the victim and whether he had had sexual relations with her. Around this time, the victim escaped from Appellant and sought help from a postal carrier, Georgette Davis. Ms. Davis testified that she observed Appellant and the victim walking on the sidewalk until they reached the residence of Ms. Young. She also testified that Appellant held his left arm around the victim's neck with a kitchen knife in his left hand and characterized the victim as hysterical, upset, and disheveled. Ms. Davis remained with the victim until police arrived. Trial Court Opinion, 4/2/13, at 5-10.

> the victim; (2) [Appellant's] blood and clothing to perform a sexual assault suspect kit; (3) the medical records of [Appellant]; and (4) the medical records of the victim.

Trial Court Opinion and Order (T.C.O.O.), 8/28/12, 2-7.[2]

Following the denial of Appellant's motion to suppress, the case proceeded to a jury trial. On September 14, 2012, the jury found Appellant guilty on all of the eighteen counts that were submitted to them. On December 17, 2012, the trial court sentenced Appellant to an aggregate term of thirty to sixty years' incarceration, from which he timely appealed.

On appeal, Appellant raises two issues for our review:

> I. Whether the statements provided by Appellant, Kalil Sied Dixon, to [Sergeant] Ronald Walton of the New Brighton Borough Police Department, at the Heritage Valley Medical Center and the New Brighton Borough Police Department, should have been suppressed by the trial court because the statements were not made following a knowing, voluntary and intelligent waiver of ***Miranda***?
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> II. Whether the statement provided to [Sergeant] Walton at the New Brighton Borough Police Department should have been suppressed by the trial court because it was "fruit of the poisonous [tree?]"

Appellant's Brief at 6.

In Appellant's first issue, he argues that his confessions were involuntary because of his drug intoxication. Specifically, Appellant emphasizes that he "was passed out as a result of his level of intoxication

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[2] The trial court incorporated its August 2012 opinion into its Rule 1925(a) opinion filed on April 2, 2013.

and slumped over an ottoman when the police first encountered him." Appellant's Brief at 11. A scuffle ensued as police attempted to arrest Appellant, resulting in his hospitalization. Appellant additionally emphasizes that he was still in the hospital when the first of his statements was obtained. He asserts that his statements were not "the product of rational intellect and free will." ***Id.***

Our standard of review is as follows:

> In reviewing a suppression ruling, this Court is bound by the lower court's factual findings that find support in the record but we are not bound by the court's conclusions of law. The determination of whether a confession is voluntary is a conclusion of law and, as such, is subject to plenary review.

Commonwealth v. Templin, 795 A.2d 959, 961 (Pa. 2002) (citations omitted).

"In ascertaining the voluntariness of a confession, we examine the totality of the circumstances surrounding the confession." ***Commonwealth v. Rushing***, 71 A.3d 939, 952 (Pa. Super. 2013) (quoting ***Commonwealth v. Nester***, 709 A.2d 879, 882 (Pa. 1998)).

> This Court has set forth the following numerous factors that should be considered under a totality of the circumstances test to determine whether a statement was freely and voluntarily made: the duration and means of interrogation, including whether questioning was repeated, prolonged, or accompanied by physical abuse or threats thereof; the length of the accused's detention prior to the confession; whether the accused was advised of his or her constitutional rights; the attitude exhibited by the police during the interrogation; the accused's physical and psychological state, including whether he or she was injured, ill, drugged, or intoxicated; the conditions attendant to the detention, including whether the accused was deprived of food,

> drink, sleep, or medical attention; the age, education, and intelligence of the accused; the experience of the accused with law enforcement and the criminal justice system; and any other factors which might serve to drain one's powers of resistance to suggestion and coercion. ***Id.*** at 785, 787.

Commonwealth v. Bryant, 67 A.3d 716, 724 (Pa. 2013). Ultimately, "[t]he question of voluntariness is not whether the defendant would have confessed without interrogation, but whether the interrogation was so manipulative or coercive that it deprived the defendant of his ability to make a free and unconstrained decision to confess." ***Rushing***, 71 A.3d at 952 (quoting ***Nester***, 709 A.2d at 882).

Of additional relevance to the facts of this case, our Supreme Court has observed:

> The fact that [***Miranda***] warnings were given is an important factor tending in the direction of a voluntariness finding. This fact is important in two respects. It bears on the coerciveness of the circumstances, for it reveals that the police were aware of the suspect's rights and presumably prepared to honor them. And .... it bears upon the defendant's susceptibility, for it shows that the defendant was aware that he had a right not to talk to the police.

Templin, 795 A.2d at 966 (quoting W.R. LaFave et al., *Criminal Procedure*, § 6.2(c), at 460).

Appellant argues that his confessions were involuntary due to amphetamine intoxication that rendered him confused and disoriented. As indicia of his intoxication, he points to the fact that, at the hospital, he questioned the need for a police sergeant, and notes that Ms. Young, his girlfriend, stated that Appellant was intoxicated when she contacted police.

He asserts that, following the police officers' beating and tasering him in the course of his arrest, he "simply did not have the will to resist the questioning while initially handcuffed to a hospital bed, with amphetamines in his system and, subsequently at the police department." Appellant's Brief at 12.

The trial court ruled that Appellant's confession was voluntarily given. The court heard testimony that, at the time of the confessions, Appellant did not exhibit any signs of intoxication, was coherent and alert and, in sum, "displayed that he had sufficient mental capacity to understand and waive his ***Miranda*** rights, to know what he was saying and voluntarily intended to say it." T.C.O.O., 8/28/12, at 9.

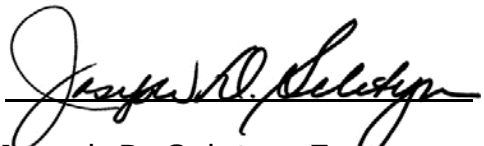
After review of the totality of the circumstances, we conclude that there is no merit to Appellant's first issue. Although there is evidence that Appellant had taken drugs at an undetermined time earlier in the day, nothing in the record demonstrates that he was intoxicated at the time of his confessions. Additionally, intoxication alone does not render a confession involuntary. ***Commonwealth v. Ventura***, 975 A.2d 1128, 1137-38 (Pa. Super. 2009). Because the record demonstrates that the confessions were coherent and alert, ***Miranda*** warnings were given before each of Appellant's three statements, Appellant's third statement followed his execution of a written ***Miranda*** warning waiver, and because there was no outward indication of a compromised mental state, we conclude that Appellant's statements were voluntarily made. Neither manipulation nor coercion deprived Appellant of a free and unconstrained decision to confess and,

therefore, Appellant's statements were voluntarily made. Accordingly, the court did not err in denying his motion to suppress.

Appellant's second issue is dependent upon this Court's finding merit in his assertion that his hospital confession was unlawful. If we were to find that confession was unlawfully obtained, Appellant argues we should also exclude his subsequent confessions at the police station as 'fruit of the poisonous tree.' Because we concluded that Appellant's confession at the hospital was voluntary, we do not reach the question of whether Appellant's later confessions were the fruits of the poisonous tree.

Judgment of sentence affirmed

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 11/27/2013