

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Crim. No. 04-040-SLR
)
BRANDON EPISCOPO,)
)
 Defendant.)

MEMORANDUM ORDER

I. INTRODUCTION

Defendant Brandon Episcopo moves to suppress statements he made to law enforcement officers on March 22, 2004. (D.I. 12) An evidentiary hearing was held on July 1, 2004. (D.I. 18) The court has jurisdiction pursuant to 18 U.S.C. § 3231. Pursuant to Federal Rule of Criminal Procedure 12(d), the following constitutes the court's essential findings of fact.

II. FINDINGS OF FACT

1. Newark Police Detective Kevin Feeney has been employed as a detective with the Newark Police Department for seven years. (D.I. 18 at 3) For the past three years, Feeney has been a member of the Special Investigation Unit, which is primarily responsible for drug-related investigations. As part of his police training, Feeney received instruction on how to determine whether someone is under the influence of drugs. (Id. at 4) According to Feeney, heroin is a painkiller that can cause a user

to become agitated and restless. When the drug wears off, it is difficult to keep the user awake and cravings for sweets are common. (Id. at 5)

2. On March 22, 2004 at 5:00 p.m., Feeney interviewed defendant.¹ Before questioning began, Feeney read defendant his Miranda warnings.² (Id. at 7; GX1) Feeney testified that defendant verbally affirmed his understanding of the warnings, waived his rights and agreed to answer questions.³ (Id. at 8-9) Feeney found defendant cooperative. Although defendant told Feeney that he was in pain and uncomfortable as a result of injuries sustained related to the charges at bar, the interview lasted, largely uninterrupted, for approximately two hours. (Id. at 6) Feeney never asked defendant if he was under the influence of drugs nor did he inquire into defendant's mental health. (Id. at 26-27)

3. The injuries sustained by defendant were the result of his fall from the roof of a hotel on March 19, 2004. (Id. at 21)

¹The interview between defendant and Feeney was videotaped and portions were shown at the suppression hearing.

²The "Miranda" rights read to defendant included the right: (1) to remain silent and that any statements can be used as evidence against him; and (2) to the presence of retained or appointed counsel during questioning. See Miranda v. Arizona, 384 U.S. 436, 444 (1966).

³Although the court has viewed the entire video tape, the substance of defendant's statements as related to the charged offenses are irrelevant to the suppression issues at bar.

Feeney testified that Newark Police were called to respond to a hotel room where the occupants had failed to vacate after the mandatory check-out time. (Id. at 19) Upon arriving at the scene, the hotel manager told police there had been some kind of disturbance. Two officers responded to the hotel room and knocked on the door. Instead of the occupants opening the door, the police heard a loud crash. The officers entered the room and discovered the window broken and two individuals outside on the hotel roof, which is several stories high. (Id.) Before officers were able to apprehend them, the men jumped off the roof. One man fled into a wooded area, and the other, defendant, slid down the canopy of an adjoining restaurant and landed on the asphalt parking lot. (Id.) Defendant ran across the restaurant parking lot into the highway. Defendant flagged down a truck, entered the vehicle and attempted to drive away. Police arrested him in the truck. As a result of the fall, defendant was transported to a hospital where it was determined he severely fractured both feet.

5. Feeney averred that defendant was not arrested at the scene because: (1) the investigation was incomplete; (2) defendant required medical treatment; and (3) defendant was high on heroin. (Id. at 21, 30) Bags containing heroin were found strewn around the scene. (Id. at 29, 37) Due to defendant's medical condition, Feeney did not consider him a flight risk.

Police officers stayed with defendant while he was treated at the hospital. Defendant was not interviewed at the hospital because he was receiving prescription medicines for pain. (Id. at 29)

6. On Saturday, March 20, 2004, defendant was released from the hospital to his mother's care. (Id. at 21) Feeney stated that family members and police arranged for police to interview defendant on Monday, March 21, 2004.

7. Defendant's mother Pamela Episcopo testified that she has witnessed her son using illegal drugs on many occasions. (Id. at 51) On Saturday, the discharge day, Mrs. Episcopo said defendant was in extreme pain and was very high as a result of the prescription drugs⁴ administered. (Id. at 53) In addition to the prescribed drugs, she saw and allowed defendant to use illegal drugs in her home all weekend. She allowed him to use the drugs because various help hotline counselors told her that it would be detrimental to defendant's health to abruptly stop using heroin. These drug counselors directed her to the Rockford Center ("the Center"), a psychiatric treatment facility, for treatment. (Id. at 34) Mrs. Episcopo spoke with the Center and arranged an admission appointment on Monday, March 22, 2004.

8. On Monday morning, defendant's father Brandon Episcopo called Feeney and told him that defendant was having suicidal

⁴She testified that defendant was taking Percoset and Valium.

thoughts throughout the weekend and was being taken to the Center for evaluation. (Id. at 34, 22, 27) Mr. Episcopo met his son at the Center. (Id. at 57) Defendant entered his father's vehicle and they sat outside the Center for a few minutes before entering. Mr. Episcopo testified that defendant was delusional and shot up heroin before going inside the Center. (Id. at 59) Mr. Episcopo did not tell Feeney defendant had used heroin before entering the Center.

9. Melissa Gorman,⁵ an intake evaluator at the Center,⁶ testified that she interviewed defendant at 11:50 a.m. on Monday morning for about an hour and a half. (Id. at 34, 40) Defendant told Gorman that he had used a "bundle of heroin" before coming to the Center and that he had also taken Xanax, Percoset and smoked marijuana over the weekend. (Id. at 37, 40) A toxicity screen was not performed on defendant. (Id. at 48)

10. Gorman described defendant's mood as "extremely changeable": one minute he was asleep on her desk and the next minute he was screaming and yelling. (Id. at 38) She noticed that defendant's pupils were very small and pinpoint. His speech slurred frequently and Gorman concluded that he was "clearly

⁵Gorman holds a Master's degree in clinical counseling. (Id. at 39)

⁶The Center treats patients whose primary diagnosis is psychiatric. (Id. at 35) The Center also treats secondary problems such as drug addiction.

under the influence.” (Id. at 38, 41) Gorman testified that heroin users can display a mellow personality. (Id. at 39) After viewing a portion of defendant’s interview with police, Gorman testified that he displayed no symptoms of heroin use but noted that “a lot of people hold down jobs and function well with quite a bit in their system.” (Id. at 47)

11. Because Gorman was concerned that defendant may have had a drug overdose from the prescription drugs and heroin ingested, she determined that he needed to be evaluated and cleared by a medical facility before the Center would admit him. (Id. at 22, 37-38) Defendant’s father called Feeney to advise him of the situation and Feeney went to the hospital to meet defendant. (Id. at 23)

12. Defendant arrived at the hospital at 1:00 p.m. Feeney and his partner stayed with defendant the entire time and did not see defendant take any drugs. Defendant’s father told Feeney that defendant had used drugs throughout the previous weekend. When Mrs. Episcopo arrived at the hospital she also told Feeney about the weekend drug use and defendant’s suicidal thoughts. (Id. at 55) At 4:00 p.m., the hospital released defendant to police custody. (Id. at 24) At approximately 5:00 p.m., Feeney began interviewing defendant. (Id. at 25)

III. CONCLUSIONS OF LAW

1. Defendant presents three arguments in support of his

motion to suppress. (D.I. 19, 21) First, he argues that there is insufficient evidence of record establishing that he was properly "Mirandized." Second, he contends that the waiver given was not knowing, voluntary or intelligent because he was under the influence of drugs. Third, the totality of the circumstances demonstrate that the statements were not knowing, voluntary or intelligent.

2. Plaintiff asserts that the videotape establishes that Miranda warnings were given and that defendant knowingly, voluntarily and intelligently waived his rights and agreed to speak with police officers. (D.I. 20)

3. The Fifth Amendment to the United States Constitution, which applies to the states by way of the Fourteenth Amendment, provides that no person shall be compelled in any criminal case to be a witness against himself. U.S. Const. Amend. V; U.S. Const. Amend XIV; Malloy v. Hogan, 378 U.S. 1 (1964).

4. In the seminal case, Miranda v. Arizona, 384 U.S. 436, 444-45 (1966), the Supreme Court held that

the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. . . . As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as

evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently.

5. The examination of whether a defendant has waived effectuation of the Miranda rights has two parts:

First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the totality of the circumstances surrounding the interrogation reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.

Moran v. Burbine, 475 U.S. 412, 421 (1986) (internal quotations marks and citations omitted).

6. As explained by the Third Circuit:

This inquiry requires us to consider the totality of the circumstances surrounding the interrogation, which includes examining the events that occurred and the background, experience, and conduct of the defendant. Miranda rights will be deemed waived only where the totality of the circumstances "reveal[s] both an uncoerced choice and the requisite level of comprehension.

United States v. Sriyuth, 98 F.3d 739, 749 (3d Cir. 1996) (quoting Moran, 475 U.S. at 421) (citations omitted); see also, Reiner v. Larkins, 379 F.3d 76 (3d Cir. 2004).

7. A defendant's drug use does not make a confession involuntary as a matter of law. See United States v. Walker, 272

F.3d 407 (7th Cir. 2001) (voluntariness of confession upheld even though defendant was suffering with painful heroin withdrawal when statement made); United States v. Benish, 782 F. Supp. 35 (W.D. Pa. 1992) (confession given after use of cocaine throughout the weekend ruled voluntary); contra Beecher v. Alabama, 389 U.S. 35 (1967) (confessions given at gunpoint and while on drugs found involuntary).

8. The videotape of defendant demonstrates to the court's satisfaction that Miranda warnings were properly provided and waived. (GX1) In so doing, the court credits the testimony of Feeney. The more complicated issue is whether defendant was competent to waive Miranda rights in light of the drugs he consumed. Although defendant's parents described defendant as out of control, suicidal and high on illegal and prescription drugs, the videotape depicts defendant as composed, responsive and cognizant of events leading to the charges at bar as well as those subsequent. The change in defendant's mental state could be due to the diminution of the drugs in his system. His last reported use of heroin was on Monday morning immediately before entering the Center. The proximity between heroin use and the admission interview would explain Gorman's conclusion that defendant was under the influence of drugs. At least five hours passed, however, between defendant's last use of heroin and the police interview. Feeney's unrefuted testimony establishes that

defendant did not ingest any prescription or illicit drugs while at the hospital or on route to the police station or during the interview. A toxicology report would have been helpful to understand the levels in defendant's system; in the absence of such a report, the court relies on the videotape to determine defendant's competence. A thorough review of that interview demonstrates nothing to suggest that the waiver was not voluntary, knowing or intelligent. The totality of the circumstances reflect that defendant had the requisite level of comprehension and made an uncoerced decision to speak with police officers. United States v. Sriyuth, 98 F.3d at 749.

IV. CONCLUSION

At Wilmington this 15th day of September, for the reasons outlined above;

IT IS ORDERED that:

1. Defendant's motion to suppress is denied. (D.I. 12)
2. The court shall initiate and conduct a telephonic status conference on **Monday, September 27, 2004 at 9:00 a.m.**

Sue L. Robinson
United States District Judge