

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA)
)
vs.) CP-02-CR 6450-2021
)
KEITH FOSTER,)
)
Defendant.)
)

DEPT. OF CRIMINAL JUSTICE
2022 NOV 22 AM 11:21
FILED

OPINION

Mariani, J.

This is a Commonwealth appeal of this Court’s grant of a motion to suppress the defendant’s statements. During the course of an investigation into a sexual assault, Detective Brian Sellers of the City of Pittsburgh Bureau of Police obtained a search warrant for a buccal swab of the defendant’s DNA. In the affidavit of probable cause submitted in support of that search warrant, Detective Sellers represented to a judicial officer that probable cause existed to obtain the defendant’s DNA based on the fact that male DNA was recovered from the alleged victim and the defendant was alone with the alleged victim on the evening of the alleged sexual assault. Shortly after obtaining the search warrant, Detective Sellers summoned the defendant to police headquarters and interviewed the defendant. The defendant was not placed in handcuffs or other restraints and he was not provided with Miranda warnings. Detective Sellers specifically informed the defendant that he was not under arrest and he was not a suspect in the sexual assault of the victim. He then interviewed the defendant.

This Court granted suppression because it believed the defendant's statement was not voluntary. "[T]he ultimate test for voluntariness is whether the confession is the product of an essentially free and unconstrained choice by its maker." Commonwealth v. Fleck, 471 A.2d 547, 549 (Pa.Super.1984). "[T]he voluntariness of a confession is determined by the totality of the circumstances." Commonwealth v. Templin, 795 A.2d 959, 963-964 (Pa. 2002) (citation omitted). In Templin, the Pennsylvania Supreme Court has explained as follows:

In determining voluntariness, the question 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. "By the same token, the law does not require the coddling of those accused of crime. One such need not be protected against his own innate desire to unburden himself." Commonwealth v. Graham, 408 Pa. 155, 162, 182 A.2d 727, 730-31 (1962). Factors to be considered in assessing the totality of the circumstances include the duration and means of the interrogation; the physical and psychological state of the accused; the conditions attendant to the detention; the attitude of the interrogator; and any and all other factors that could drain a person's ability to withstand suggestion and coercion.

Id. at 966 (some internal quotation marks and citations omitted).

It is this court's view that the circumstances of the defendant's interrogation deprived the defendant of making a free and unconstrained choice to undergo an interview relative to the sexual assault of the alleged victim. The defendant was not restrained or informed that he was not permitted to leave and the interview did not appear coercive. However, Detective Sellers misrepresented to the defendant that he was not a suspect in the sexual assault of the victim prior to interviewing him. It is this

Court's belief that Detective Sellers' misrepresentations were designed to and did induce the defendant to speak with Detective Sellers. This Court firmly believes that had Detective Sellers been truthful with the defendant, Detective Sellers would have informed the defendant of his Miranda rights and the defendant would have been in a position to knowingly and intelligently make a decision as to his constitutional rights. This Court does not believe that the defendant's decision to speak with Detective Sellers was a product of an informed and conscious choice. On the contrary, his decision to speak with Detective Sellers was borne solely from Detective Sellers' affirmative misrepresentation that the defendant was not a suspect in a sexual assault. This assurance manipulated the defendant to believe that he was exposed to no jeopardy by agreeing to the interview.

For the foregoing reasons, the suppression motion was properly granted.

By the Court:

Date: NOVEMBER 22, 2022


Anthony M. Mariani, J.