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COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

BARBARA A. HARRIS
CLERK OF COMMON PLEAS COURT
CLERMONT COUNTY, OHIO

STATE OF OHIO :
Plaintiff : **CASE NO. 2017 CR 00735**
vs. : **Judge McBride**
PATRICIA JONES : **DECISION ENTRY OVERRULING**
Defendant : **MOTION TO SUPPRESS**

On February 12, 2018, the defendant filed a motion to suppress.

On March 6, 2018, counsel represented that the parties were waiving an evidentiary hearing and were agreeing instead to submit an audio and video recording of the defendant's interrogation for the court's consideration in ruling on the motion to suppress.

On March 21, 2018, defense counsel submitted his written argument in support of the motion to suppress.

Counsel for the state submitted argument in opposition to the motion on April 10, 2018. Upon receipt of the state's written argument, the court took the motion under advisement.

Upon consideration of the defendant's motion to suppress, the record of the proceeding, the evidence presented by the parties, the written arguments of counsel, and the applicable law, the court now renders this written decision.

ISSUES BEFORE THE COURT

“In order to require a hearing on a motion to suppress evidence, the accused must state the motion’s legal and factual bases with sufficient particularity to place the prosecutor and the court on notice of the issues to be decided.” *State v. Codeluppi*, 139 Ohio St.3d 165, 2014-Ohio-1574, 10 N.E.3d 691, ¶ 10, citing and quoting *State v. Shindler*, 70 Ohio St.3d 54, 636 N.E.2d 319 (1994), at the syllabus.

An accused who seeks the suppression of evidence must “raise the grounds upon which the validity of the search or seizure is challenged in such a manner as to give the prosecutor notice of the basis for the challenge.” *State v. Preston*, 12th Dist. Clermont No. CA2012–05–036, 2012-Ohio-6176, 2012 WL 6738263, ¶ 9, quoting *Xenia v. Wallace*, 37 Ohio St.3d 216, 524 N.E.2d 889 (1988), paragraph one of the syllabus.

Defense counsel, in his one-page memorandum which is attached to his motion, cites *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) and raises an issue as to whether *Miranda* was complied with, but he also indicates that the defendant was threatened with incarceration. As such, it appears that the defendant is attempting to raise two different issues- 1) whether the defendant knowingly, intelligently, and voluntarily waived her *Miranda* rights and 2) whether the defendant’s statement to the police was made voluntarily under the Due Process Clause of the United States Constitution. See *State v. Petitjean*, 140 Ohio App.3d 517, 748 N.E.2d 133 (2nd Dist. 2000).

These are two separate but related issues which will be addressed by the court. However, the court would note that the defendant’s motion does not comply with Crim.R.

47 which requires that the motion state with particularity the grounds upon which it is made and which is supported by a memorandum containing citations of authority.

I. SUFFICIENCY OF *MIRANDA* WARNINGS

With respect to the first issue, defense counsel makes a number of different arguments, beginning with his assertion that there was never a complete and thorough *Miranda* warning and ending with his contention that there was never any effective waiver of the defendant's *Miranda* rights.

In an effort to try to take counsel's arguments in some logical order, the defendant first argues that the advisement of rights was incomplete.

A suspect in police custody "must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." *State v. Lather*, 110 Ohio St.3d 270, 853 N.E.2d 279, 2006 -Ohio- 4477, ¶ 6, citing and quoting *Miranda v. Arizona*, 384 U.S. 436, 479, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

Contrary to defense counsel's assertion, the defendant was advised of her rights in this case in more detail than is required. The defendant was advised, for instance, and it was emphasized to the defendant several times, that she could start asking questions and could stop at any time and indicate that she would not answer a particular question, or that she would not answer any further questions, or that she would not answer a question until an attorney was present. This is just an example, and clearly the officer

went into more detail than the court has seen in most interrogations that take place.

II. WAIVER OF *MIRANDA* RIGHTS

Next, defense counsel argues that the defendant never waived her rights as is required because she did not understand her rights.

In the context of *Miranda*, the United States Supreme Court has explained the two aspects of waiver.

“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’ reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.”

Lather, at ¶ 7, citing *Moran v. Burbine*, 475 U.S. 412, 421, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986), quoting *Fare v. Michael C.*, 442 U.S. 707, 725, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979).

As stated above, to meet the first aspect of a voluntary waiver, the waiver must be noncoercive. “A suspect’s decision to waive his Fifth Amendment privilege against compulsory self-incrimination is made voluntarily absent evidence that his will was overborne and his capacity for self-determination was critically impaired because of coercive police conduct.” *Lather*, at ¶ 8, citing *State v. Dailey*, 53 Ohio St.3d 88, 559 N.E.2d 459 (1990), at paragraph two of the syllabus. Although this will be discussed later in terms of the overall issue of voluntariness, the court finds that there is no credible

evidence in this case that the defendant's will was overborne and that her capacity for self-determination was critically impaired because of coercive police conduct. Instead, as in *State v. Lather, supra*, the issue in this case involves the second aspect of the waiver test, whether the waiver was made with full awareness.

A waiver of *Miranda* rights may be implied through “ ‘the defendant's silence, coupled with an understanding of his rights and a course of conduct indicating waiver.’ ” *State v. Adams*, 144 Ohio St.3d 429, 2015-Ohio-3954, 45 N.E.3d 127, ¶ 177, citing *Berghuis v. Thompkins*, 560 U.S. 370, 384, 130 S.Ct. 2250, 176 L.Ed.2d 1098 (2010), quoting *North Carolina v. Butler*, 441 U.S. 369, 373, 99 S.Ct. 1755, 60 L.Ed.2d 286 (1979). A suspect need not be asked directly if she understands her *Miranda* rights before an understanding waiver of *Miranda* rights may be inferred from the totality of the circumstances. *State v. Lather, supra*, at ¶¶ 9-12. Indeed, “[w]here the prosecution shows that a *Miranda* warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent.” *Adams*, quoting and citing *Thompkins* at 384, 130 S.Ct. 2250.

Looking at the circumstances of this case, the defendant, who is clearly intelligent, acknowledged before she answered any questions that it was necessary that she understand her rights. Detective Mullis, who was the police officer interrogating the defendant, went over each right with the defendant separately and took time in doing so. The defendant asked questions during the advisement of rights and was clearly engaged. For example, she asked if she had a right to call a lawyer right away, and Detective Mullis replied affirmatively and informed her that she could immediately say that she did not want to talk to him or alternatively that she could make that election at a later time. She

stated that she did not want a lawyer at that time. Later, as defense counsel notes, she wondered out loud during the course of the interrogation as to whether she should get an attorney. She never invoked her right to counsel, but her mention of counsel reinforces the notion that she was aware of her right to do so. During her discussion with Detective Mullis, she engaged in an extensive colloquy as to her lack of involvement with her son in trafficking activities and as to her lack of culpability for his activities. Although she stated at one point that she did not know her rights, this statement is seemingly contradicted by all the other evidence of her understanding of her rights. The court finds, based on the totality of the circumstances in this case, that the defendant possessed the requisite comprehension of her *Miranda* rights and that she made an understanding waiver of those rights.

The defendant points to the fact that the defendant never signed a waiver form. However, a written waiver is not required. While evidence of a written waiver provides strong proof that the waiver was voluntary, the lack of a written waiver does not render an otherwise knowing and voluntary waiver invalid. *State v. Cedeno*, 192 Ohio App.3d 738, 2011-Ohio-674, 950 N.E.2d 582 (1st Dist.). Indeed, in this case, an understanding waiver of the defendant's *Miranda* rights may be and is inferred from the totality of the circumstances.

III. INVOCATION OF RIGHT TO COUNSEL

Defense counsel also argues that the defendant raised the issue of having counsel present many times and that it was obvious from the tone and questioning of the

defendant that she wanted counsel.

In *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981), the court held that when a suspect in custody expresses “his desire to deal with the police only through counsel,” the suspect “is not subject to further interrogation by the authorities until counsel has been made available to him.” *State v. Voss*, 12th Dist. Warren No. CA2006-11-132, 2008-Ohio-3889, ¶ 65, citing *Edwards* at 484–485.

As explained in *Davis v. United States*, 512 U.S. 452, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994), however, a “suspect must unambiguously request counsel. * * * [H]e must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney. If the statement fails to meet the requisite level of clarity, *Edwards v. Arizona* * * * does not require that the officers stop questioning the subject.” *Voss*, at ¶ 66, citing and quoting *Davis* at 459.

Defense counsel states that the mention of counsel was “a relatively constant theme throughout the interrogation.” The defendant wonders aloud several times whether she should get an attorney. When Detective Mullis asked her what she did with a gym bag that he said had contained marijuana, she said, “Should I call a lawyer? What happens then?” Detective Mullis replied that the discussion would end if she called a lawyer and that he would have to go off of the evidence that he had which would result in her going to jail. The discussion then continued without the defendant asking for an attorney. Regarding whether the defendant could get a lawyer, Detective Mullis had clearly advised the defendant of her right to an attorney earlier, which she acknowledged that she understood, and he never gave her any information to the contrary or which was

equivocal.

In *State v. Tefft* 3rd Dist. Allen No. 1–99–35, 1999 WL 693161 (Sept. 2, 1999), an officer advised a person that he had a right to an attorney. The court determined that person’s response, “Well, I’m going to need one”, was not an unequivocal request for counsel. In summarizing the case law, the *Tefft* court continued:

“In *Davis* [*Davis v. United States*, 512 U.S. 452, 113. S.Ct. 2350, 129 L.Ed.2d 362 (1994)], the Court concluded the statement ‘Maybe I should talk to a lawyer’ was not a clear and unambiguous request for an attorney. Thus, the interrogating officers were not required to terminate the questioning. *Id.*

Since *Davis*, the following statements are among those which have been considered too ambiguous or equivocal to require police to terminate questioning: ‘I think I need a lawyer.’ *Hennessey*, 79 Ohio St.3d at 63, 679 N.E.2d at 696; ‘Maybe I want a lawyer, maybe I should talk to a lawyer’ *State v. Salinas*, (1997) 124 Ohio App.3d 379, 706 N.E.2d 381; ‘I think that I would like an attorney,’ *State v. Taylor*, 1999 Ohio App. LEXIS 397 (Feb. 9, 1999), Medina App. No. 2783–M, unreported; ‘I think I might need to talk to a lawyer,’ *State v. Hanson* (Sept. 13, 1996), Montgomery App. No. 15405, unreported; ‘I plead the Fifth,’ *State v. Peterson* (Oct. 14, 1996), Madison App. No. CA 96–02–010, unreported; * * * ‘I feel like, talk to my, have my lawyer present,’ and ‘well I mean, I’d like to have my lawyer here,’ *State v. Stover* (April 16, 1997), Lorain App. No. 94CA006461, unreported; ‘Do I have to hire an attorney to have him present * * *’ and ‘maybe I need to have an attorney present,’ *State v. Chappell* (Nov. 6, 1997), Franklin App. No. 97APA04–462, unreported; ‘I’d rather have my attorney here if you’re going to talk stuff like that * * *’ *State v. Mills* (Nov. 24, 1997), Clermont App. No. CA96–11–098, unreported; and ‘Maybe I should get a lawyer,’ and ‘Do you think I should get a lawyer?’ *State v. Metz* (April 21, 1998), Washington App. No 96 CA 48, unreported.”

In reviewing some more recent opinions from the Twelfth District Court of Appeals, the court noted in *State v. McGlosson*, 12th Dist. Butler No. CA2012-03-057, 2013-Ohio-774, ¶ 27, that the phrase “If I say I want to talk to a lawyer, what’s that do to this process,” was not an unequivocal request for an attorney. The same conclusion was reached in *State v. Voss*, *supra*, ¶ 67, with respect to the phrase “I think I need an attorney.”

Similarly, the court finds that the each of the statements made by the defendant in

which she alludes to an attorney does not constitute an unambiguous or unequivocal request for counsel. All that she had to say, but did not say, to invoke her right to counsel was "I want to speak to an attorney." As a result, the court finds that Detective Mullis was never required at any time during the interrogation of the defendant to stop his questioning.

IV. INVOLUNTARINESS

Finally, defense counsel argues that the defendant's statements made were involuntary because Detective Mullis allegedly threatened the defendant with "significant charges" and with incarceration.

Coercion may exist when law-enforcement officers "persuad[e] or deceiv[e] the accused, with false promises or information, into relinquishing his rights and responding to questions." *State v. Belton*, 149 Ohio St.3d 165, 2016-Ohio-1581, 74 N.E.3d 319, ¶ 111, citing *State v. Edwards*, 49 Ohio St.2d 31, 39, 358 N.E.2d 1051 (1976). However, "the presence of promises does not as a matter of law render a confession involuntary." *Belton*, citing *Edwards* at ¶ 41.

Officers may discuss the advantages of telling the truth, advise suspects that cooperation will be considered, or even suggest that a court may be lenient with a truthful defendant. *Id.* And "[a]dmonitions to tell the truth are considered to be neither threats nor promises." *Belton, supra*, citing and quoting *State v. Loza*, 71 Ohio St.3d 61, 67, 641 N.E.2d 1082 (1994); *see also State v. Dixon*, 101 Ohio St.3d 328, 2004-Ohio-1585, 805 N.E.2d 1042, ¶ 29. Finally, it is not unduly coercive for a law-enforcement officer to

mention potential punishments. *Belton*, citing *State v. Western*, 2015-Ohio-627, ¶ 29 N.E.3d 245, ¶ 38 (2d Dist.); compare *State v. Robinson*, 9th Dist. Summit No. 16766, 1995 WL 9424, *4 (“While a correct statement of the law may not render a confession involuntary, a misstatement of the law may cause such a confession to be involuntary”).

In the within case, Detective Mullis told the defendant that he could charge her whether she admitted anything or not. He told her she would be charged with permitting drug abuse, which is the same crime that he eventually charged her with. He discussed the evidence that he had in the case and said he already had enough evidence to put her in jail on felonies. He told her that he had evidence of her involvement and that if she denied involvement “the judge is going to laugh you straight to prison for permitting drug abuse, permitting drug trafficking, child endangering.” Clearly, Detective Mullis at that time had probable cause to arrest the defendant for her involvement, and Mullis’ statements were not coercive and did not render the defendant’s statement involuntary.

Detective Mullis told the defendant that honesty helps and “honesty may help keep you out of prison.” When she asked if she was being arrested, he said that he had not determined that yet. He said it depended on how cooperative she was and how honest she was. He said she needed to be honest about her involvement because avoiding or lying about it is “going to bury her.” Admonitions to the defendant that being honest and truthful would help the defendant and might even result in leniency in punishment is not coercive and does not render the defendant’s statement involuntary. Similarly, Detective Mullis’ opinion that the defendant being untruthful and not being forthcoming would result in it being more likely that the defendant would be treated more severely is also not coercive.

Detective Mullis said Children's Protective Services could take away all visitation as a result of the charges against the defendant and her son because the defendant's grandchild was present at the time of the trafficking in drugs. He also said she would lose lots of property as a result of forfeiture. These statements are not untruthful, are not coercive, and do not render the defendant's statement involuntary.

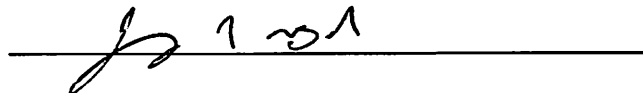
In the within case, Detective Mullis did not promise leniency if the defendant confessed or threaten harsher charges if she did not. He did say that his boss, as well as the court, might treat her differently if the feeling was that she was being truthful rather than if the feeling was that she was being evasive or untruthful. Nothing about these statements is coercive so as to render the defendant's statements involuntary.

CONCLUSION

For the reasons set forth above, the court finds that the defendant's motion to suppress is not well-taken and shall be overruled.

Counsel are requested to conference by telephone and call the Assignment Commissioner within three business days to schedule a plea or trial setting which shall be held within two weeks.

DATED: 8-7-18



Judge Jerry McBride

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing was personally delivered on this 7th day of August 2018 by e-mail to Robert A. Herking, at rherking@clermontcountyohio.gov, and Carol Rowe, at crowe@clermontcountyohio.gov, Assistant Prosecuting Attorneys, and to David S. McCune, Attorney for the Defendant, at dsmccune66@gmail.com.



Bailiff to Judge McBride