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**COURT OF COMMON PLEAS  
CLERMONT COUNTY, OHIO**

<b>STATE OF OHIO</b>	:	
Plaintiff	:	<b>CASE NO. 2018 CR 000456</b>
vs.	:	<b>Judge McBride</b>
<b>MATTHEW LEE STURGILL</b>	:	<b>DECISION/ENTRY</b>
Defendant	:	

2018 DEC 21 PM 3:06  
 CLERK OF COURT  
 CLERMONT COUNTY, OHIO

FILED

Darren Miller, assistant prosecuting attorney for the state of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103

Robert D. Karl, counsel for the defendant Matthew Lee Sturgill, 1243 West Eighth Street, Suite 2000, Cincinnati, Ohio 45203

This cause is before the court for consideration of the motion to suppress filed by the defendant Matthew Lee Sturgill on July 11, 2018. The court held an evidentiary hearing on the motion on August 20th, at which time it allowed oral arguments as well. At the conclusion of the hearing, the court took the motion under advisement.

Upon consideration of the motion, the record of the proceedings, the evidence presented for the court's consideration, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

## FINDINGS OF FACT

On June 5, 2018, the defendant Matthew Lee Sturgill was indicted on two counts of felonious assault in violation of R.C. 2903.11(A)(2), a felony of the second degree.

The above charges arise from an incident that occurred on May 28, 2018. The defendant was at his mother's apartment where other people were visiting. In the bill of particulars, the defendant is alleged to have stabbed two minors, one in the leg and one in the arm.

Later that night, the defendant was taken into custody and was held into the next morning and was questioned at the Union Township Police Department. He was brought into an interview room in handcuffs. After approximately two hours, his interview began. During the time he was waiting, the defendant was given water and was released from handcuffs. After getting preliminary information from the defendant (e.g. name, address, height, weight, etc.), the detective who interviewed the defendant administered to him the *Miranda* warning.

Before reading the warning, the detective told the defendant that he was going to read him his rights, and that the defendant could follow along on the paper. He instructed the defendant to stop him at any time if he had any questions. He asked the defendant if he understood, and the defendant responded that he did. The detective asked the defendant if he has been drinking or using drugs, to which the defendant responded he only had a sip of an alcoholic beverage. The detective asked if the defendant could understand him, and the defendant responded "yeah."

The detective then read the defendant his *Miranda* rights. After each right, he paused to ask if the defendant understood the right. On each occasion the defendant responded that he did understand the right. At the end of the reading of rights, the detective told the defendant that he could talk to him now, and that if the defendant decided later he did not want to talk to him, he did not have to. The detective asked the defendant to sign a written waiver of *Miranda* rights. The defendant said he was not signing it because "Last time I signed it f\*\*\*ed me for the rest of my life." The detective responded that the defendant did not have to as long as he understood it and wanted to talk to the detective at that point. The defendant replied: "That's what I'm saying. Yeah, I'll talk to you."

The detective then had the defendant read the following out loud: "I have read the statement of my rights, and ... I am willing to make a statement and answer questions, and I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me, no pressure or coercion of any kind has been used against me." The detective explained that what the defendant read "just means I'm not making you do this, I'm not promising you anything, I'm not forcing you to talk to me. But you do want to talk to me? You want to give me your side?" The defendant replied, "I would."

Over the course of more than an hour, the detective interrogated the defendant about the events that occurred. He took photos of the defendant's hands and clothes, as well as mouth swabs, upon receiving the defendant's consent. After the detective continued to express that the defendant was not being honest based on the evidence available, the defendant stated that he would like a lawyer, saying: "Alright, if you're going

to keep on blaming me, saying I done it, I want a lawyer." At that point, the detective did not ask any more questions and the interview stopped.

### **STANDARD OF REVIEW**

A motion to suppress is defined as "a device used to eliminate from a criminal trial evidence that has been secured illegally, generally in violation of the Fourth Amendment (search and seizure), the Fifth Amendment (privilege against self incrimination), or the Sixth Amendment (right to assistance of counsel, right of confrontation, etc.) of the United States Constitution."<sup>1</sup> When a defendant's motion to suppress is successful, the principal remedy for a constitutional violation is to exclude the evidence from the criminal trial.<sup>2</sup>

Pursuant to Crim.R. 12(C), before trial "any party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination without the trial of the general issue." A motion to suppress evidence "on the ground that it was illegally obtained" must be made prior to trial.<sup>3</sup>

In filing a motion to suppress, the defendant "shall state with particularity the grounds upon which it is made and shall set forth the relief or order sought."<sup>4</sup> The defendant 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."<sup>5</sup> Once the

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<sup>1</sup> *State v. Scruggs*, 12th Dist. Clinton No. CA2005-11-042, 2007-Ohio-6416, ¶ 4, citing *State v. French*, 72 Ohio St.3d 446, 449-50 (1995).

<sup>2</sup> *State v. Haines*, 12th Dist. Clermont No. CA2003-02-015, 2003-Ohio-6103, ¶ 8.

<sup>3</sup> Crim.R. 12(C).

<sup>4</sup> *State v. Way*, 12th Dist. Butler No. CA2008-04-098, 2009-Ohio-96, ¶ 7, quoting Crim.R. 47.

<sup>5</sup> *Way*, 2009-Ohio-96 at ¶ 7, quoting *State v. Wood*, 12th Dist. Clermont No. CA2007-12-115, 2008-Ohio-5422, ¶ 10.

defendant has satisfied his or her burden of “placing the prosecutor and the court on sufficient notice of the issues to be determined, the burden then shifts to the state to show substantial compliance with the applicable standards.”<sup>6</sup>

A motion to suppress typically “presents mixed questions of law and fact.”<sup>7</sup> In reviewing such a motion, “the trial court, as the trier of fact, is in the best position to weigh the evidence in order to resolve factual questions and evaluate witness credibility.”<sup>8</sup>

### **LEGAL ANALYSIS**

The Fifth Amendment to the United States Constitution prohibits any person in a criminal case from being compelled as a witness against himself.<sup>9</sup> To protect this Fifth Amendment right, “statements resulting from custodial interrogations are admissible only after a showing that the procedural safeguards set forth in *Miranda v. Arizona*, 348 U.S.

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<sup>6</sup> *Way*, 2009-Ohio-96 at ¶ 7, citing *State v. Plunkett*, 12th Dist. Warren No. CA2007-02-012, 2008-Ohio-1014, ¶ 11.

<sup>7</sup> *State v. Codeluppi*, 139 Ohio St.3d 165, 2014-Ohio-1574, 10 N.E.3d 691, ¶ 7, citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5373, 797 N.E.2d 71, ¶ 8.

<sup>8</sup> *State v. Deluca*, 12th Dist. Butler No. CA2016-03-055, 2017-Ohio-1235, ¶ 9, citing *State v. Vaughn*, 12th Dist. Fayette No. CA2014-05-012, 2015-Ohio-828, ¶ 9. See *Codeluppi*, 2014-Ohio-1574 at ¶ 7, citing *Burnside*, 2003-Ohio-5373 at ¶ 8 (explaining that when the trial court reviews a motion to suppress “the court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses.”).

<sup>9</sup> *State v. Johnson*, 12th Dist. Warren No. CA2015-09-086, 2016-Ohio-7266, ¶ 75.

436, 86 S.Ct. 1602 (1966), have been followed.”<sup>10</sup> This encompasses two distinct concepts, those of custody and interrogation.<sup>11</sup>

For a defendant to be in custody, there must be a formal arrest or a restraint on the defendant’s freedom of movement “of the degree associated with formal arrest.”<sup>12</sup> Stated differently, the defendant must be either under arrest or “otherwise deprived of his freedom of action in any significant way.”<sup>13</sup> Accordingly, if a defendant is not in custody, then he is not entitled to have been administered *Miranda* warnings.<sup>14</sup>

“The police are neither required to provide a written copy of *Miranda* rights to a suspect or obtain a written waiver of rights from a suspect.”<sup>15</sup> Indeed, Ohio courts, including the Ohio Supreme Court, have recognized that the defendant’s refusal to sign a written waiver form does not prevent the defendant’s statements from being voluntary.<sup>16</sup>

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<sup>10</sup> *Johnson*, 2016-Ohio-7266 at ¶ 75, citing *State v. Zylko*, 8th Dist. Cuyahoga No. 89949, 2008-Ohio-3032, ¶ 13. See *Fridley*, 2017-Ohio-4368 at ¶ 35, quoting *State v. Hernandez-Martinez*, 12th Dist. Butler No. CA2011-04-068, 2012-Ohio-3754, ¶ 8 (explaining that in order for a defendant’s statements made during a custodial interrogation to be “admissible as evidence,” the defendant “must be advised of his *Miranda* rights and make a knowing and intelligent waiver of those rights.”).

<sup>11</sup> *State v. Robinson*, 12th Dist. Clermont No. CA2015-01-013, 2015-Ohio-4533, ¶ 11, quoting *State v. Staley*, 12th Dist. Madison No. CA99-08-019, 2000 WL 553512, \*3 (May 8, 2000).

<sup>12</sup> *State v. Lynch*, 98 Ohio St.3d 514, 2003-Ohio-2284, 787 N.E.2d 1185, ¶ 47, quoting *California v. Beheler*, 463 U.S. 1121, 1125, 103 S.Ct. 3517 (1983).

<sup>13</sup> *Fridley*, 2017-Ohio-4368 at ¶ 36, citing *State v. Vansickle*, 12th Dist. Fayette No. CA2013-03-005, 2014-Ohio-1324, ¶ 54.

<sup>14</sup> *Fridley*, 2017-Ohio-4368 at ¶ 8, citing *State v. Byrne*, 12th Dist. Butler Nos. CA2007-11-268 and CA2007-11-269, 2008-Ohio-4311, ¶ 10. See *State v. Moore*, 2018-Ohio-1778, 112 N.E.3d 1, ¶ 20 (12th Dist.), quoting *State v. Fridley*, 2017-Ohio-4368, 93 N.E.3d 10, ¶ 35 (12th Dist.) (“Rather, the ‘duty to advise a suspect of constitutional rights pursuant to *Miranda* is only required when the police subject a person to a custodial interrogation.”).

<sup>15</sup> *State v. A.P.*, 12th Dist. Warren No. CA2018-01-006, 2018-Ohio-3423, ¶ 28, citing *State v. Fowler*, 5th Dist. Tuscarawas No. 2015 AP 0054, 2016-Ohio-1209, ¶ 15.

<sup>16</sup> See *State v. Scott*, 61 Ohio St.2d 155, 161, 400 N.E.2d 375 (1980) (explaining that a defendant’s “refusal to sign a waiver form is not conclusive that his waiver was involuntary.”); *State v. Harvey*, 12th Dist. Butler No. CA90-06-117, 1990 WL 235517, \*1 (Dec. 31, 1990), citing *North Carolina v. Butler*, 441 U.S. 369, 374-75, 99 S.Ct. 1755 (1979) (“The mere refusal to make an express written waiver of the right to remain silent or the right to counsel, however, does not automatically render such a waiver involuntary”); *State v. Dillon*, 2016-Ohio-1561, 63 N.E.3d 712, ¶ 59 (2d Dist.), citing *Butler*, 441 U.S. at 373 (“No express written or oral waiver is required.”); *State v. Streeter*, 162

A defendant can “waive or relinquish a known right if ‘relinquishment of the right was voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception.’”<sup>17</sup> To be valid, “\* \* \* 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.”<sup>18</sup> Furthermore, the “court may infer from the totality of the circumstances that a defendant voluntarily, knowingly, and intelligently waived his rights.”<sup>19</sup> Instead of signing a written waiver form, the defendant’s waiver can be “inferred where a defendant proceeds to speak after being advised of his rights and indicating an understanding of them.”<sup>20</sup> “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.”<sup>21</sup>

Once a suspect knowingly, intelligently, and voluntarily waives *Miranda* rights, “law enforcement officers may continue questioning until and unless a suspect clearly requests

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Ohio App.3d 748, 2005-Ohio-4000, 835 N.E.2d 42, ¶ 21 (6th Dist.), citing *Butler*, 441 U.S. at 373 (finding that no written waiver of *Miranda* rights is necessary in order for waiver to be knowing and voluntary); *State v. Underdown*, 10th Dist. Franklin No. 06AP-676, 2007-Ohio-1814, ¶ 24, citing *Streeter*, 2005-Ohio-400 at ¶ 29 (noting that an express written waiver is not required for valid *Miranda* waiver); *Hernandez-Martinez*, 2012-Ohio-3754 at ¶ 12, citing *Harvey*, 1990 WL 235517 (“[F]ailure of the detectives to have appellant sign the waiver form does not render that waiver invalid.”); *State v. Alford*, 2d Dist. Montgomery No. 23332, 2010-Ohio-2493, ¶ 12, citing *Scott*, 61 Ohio St.3d at 161 (“Defendant’s refusal to sign a waiver form is not conclusive evidence that his waiver was involuntary”); *State v. Bass*, 10th Dist. Franklin No. 02AP-547, 2003-Ohio-1642, ¶ 66, citing *Scott*, 61 Ohio St.2d at 161 (“A defendant’s refusal to sign a waiver form is not conclusive that his waiver was involuntary”).

<sup>17</sup> *A.P.*, 2018-Ohio-3423 at ¶ 28, quoting *State v. Lather*, 110 Ohio St.3d 270, 2006-Ohio-4477, 853 N.E.2d 279, ¶ 7.

<sup>18</sup> *A.P.*, 2018-Ohio-3423 at ¶ 28, quoting *Lather*, 2006-Ohio-4477 at ¶ 7.

<sup>19</sup> *A.P.*, 2018-Ohio-3423 at ¶ 28, quoting *Lather*, 2006-Ohio-4477 at ¶ 9.

<sup>20</sup> *Dillon*, 2016-Ohio-1561 at ¶ 59.

<sup>21</sup> *A.P.*, 2018-Ohio-3423 at ¶ 29, quoting *Moran v. Burbine*, 475 U.S. 412, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986).

an attorney."<sup>22</sup> If the defendant invokes the right to assistance at any time, law enforcement must immediately cease questioning until counsel is present.<sup>23</sup>

In examining the case at bar, neither party presented testimony about how the defendant came to be at the Union Township Police Department for a police interview. Instead, they admitted Exhibit 1, which is video footage of the interview itself. The state has not argued that the defendant was not in custody at the time of the interview. The defendant was brought into the room in handcuffs, the door was closed the entire time (except when police personnel entered or exited), and he was not free to leave. Thus, it is clear the defendant was in custody at the time of his interrogation.

The sole issue is whether the defendant knowingly, intelligently, and voluntarily waived his *Miranda* rights before being interrogated and making statements to the detective.<sup>24</sup> The defendant argues that he did not because he refused to sign a written waiver form.

The court reaches the opposite conclusion. The defendant was read his *Miranda* rights while he followed along on the page. The detective explained that the defendant could stop him at any time to ask questions. After each right, the detective paused to see

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<sup>22</sup> *Davis v. U.S.*, 512 U.S. 452, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994), at paragraph one of the syllabus. See *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 328 (holding that law enforcement must immediately stop questioning a suspect who clearly asserted his or her right to have counsel present for the interrogation).

<sup>23</sup> *Edwards*, 451 U.S. at 484-85. See *Minnick v. Mississippi*, 498 U.S. 146, 111 S.Ct. 1176 (1990) (holding that a suspect who invokes the right to counsel cannot be questioned regarding any offense unless counsel is actually present).

<sup>24</sup> The defendant's motion to suppress also states that the defendant was intoxicated at the scene and therefore could not knowingly and intelligently waive his *Miranda* rights. However, at the time of the hearing, the defense indicated that is no longer at issue, as the defendant only had a small amount of alcohol. Moreover, the defendant's statements to the detective indicate he only had a "few sips" of his Four Loko, an alcoholic beverage. The court notes, however, that "simply being intoxicated does not preclude the ability to knowingly, voluntarily, and intelligently waive one's rights." *State v. Marsh*, 12th Dist. Butler No. CA84-09-108, 1985 WL 8675, \*2 (May 20, 1985), citing *State v. Shipley* 12th Dist. Butler No. CA84-01-012 (Oct. 22, 1984).

if the defendant understood the right, and each time the defendant said “yeah.” Although the defendant did not want to sign the *Miranda* waiver form, he clearly stated to the detective that he wanted to talk to him. The defendant also read aloud another form, indicating he was not coerced into making statements. Only then did the detective proceed with the interrogation, at which time the defendant made a variety of statements. When the defendant said he wanted a lawyer, the interrogation immediately stopped.

Based upon the totality of the circumstances, the court finds that the defendant knowingly, intelligently, and voluntarily waived his *Miranda* rights before making a litany of statements to the detective.<sup>25</sup> The court can infer the defendant’s waiver because he proceeded to speak to the detective even after being read his *Miranda* rights and indicating that he understood them. The interview video demonstrates that the defendant made statements as a deliberate and free choice, a choice that was free from intimidation, coercion, or deception. Accordingly, the court concludes that the defendant’s statements do not contravene the Fifth Amendment and should not be suppressed.

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<sup>25</sup> See *Dillon*, 2016-Ohio-1561 at ¶ 60 (finding a defendant did waive his *Miranda* rights, even though he refused to sign a written waiver form, where the defendant was advised of his *Miranda* rights, indicated an understanding of those rights, and chose to speak with a detective for nearly 15 minutes before unequivocally invoking his rights); *Streeter*, 2005-Ohio-4000 at ¶ 29 (finding that the defendant made knowing and voluntary statements, despite refusing to sign a waiver, because he was read his rights, acknowledged he had been notified of those rights and understood them, and then voluntarily responded to the detective’s questions); *Alford*, 2010-Ohio-2493 at ¶ 12 (finding that the defendant’s refusal to sign a waiver form did not render his statements inadmissible since the defendant received his *Miranda* warnings and orally waived his rights); *Bass*, 2003-Ohio-1642 at ¶ 67 (“The October 3, 2001 statement was a custodial interrogation. Appellant arrived in handcuffs and was told he was being charged with murder; however, even though appellant refused to sign the rights waiver, he indicated to the detective that he understood his rights as they discussed each one. Appellant continued to talk even after he refused to sign the waiver. Appellant’s rights were not overborne and the statement was given voluntarily. The trial court did not err in refusing to suppress the October 3, 2001 statement.”).

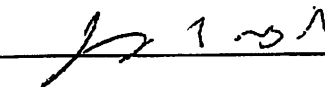
**CONCLUSION**

For the foregoing reasons, the court finds that the defendant's motion to suppress is not well-taken and shall be denied.

Counsel shall conference by phone and call the Assignment Commissioner in order to schedule a plea or trial setting, which shall be scheduled and held within two weeks of the date of this Decision/Entry.

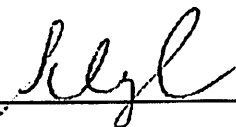
**IT IS SO ORDERED.**

DATED: 12.21.18

  
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Judge Jerry R. McBride

**CERTIFICATE OF SERVICE**

I certify that copies of the within Decision/Entry have been sent on this 21<sup>st</sup> day of December 2018 by e-mail to Darren Miller, Assistant Prosecuting Attorney, at [dmiller@clermontcountyohio.gov](mailto:dmiller@clermontcountyohio.gov), and to Robert D. Karl, Attorney for the Defendant, at [rkarl@yrmlaw.com](mailto:rkarl@yrmlaw.com).

  
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Judicial Assistant to Judge McBride