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IN COMMON PLEAS COURT
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IN THE COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO

STATE OF OHIO	:	CASE NO. 12C000058
Plaintiff,	:	JUDGE DAVID L. FUHRY
-vs-	:	
THOMAS M. LANE, III,	:	ORDER OF THE COURT
Defendant.	:	

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This matter comes on for consideration on Defendant's Motion to Suppress statements and made by Defendant to law enforcement officers at the Geauga County Safety Center on February 27, 2012. This was incident to an interrogation that took place at the Safety Center beginning at about 9:00 a.m. Inclusive of bathroom breaks, lunch break and related, the interrogation lasted over five and one-half hours. Defendant's Motion claims that the Defendant was not effectively Mirandized for purposes of the interrogation. He maintains that the initial warning was not timely renewed and that Defendant did not voluntarily waive his Miranda rights.

The burden of proof is upon the State to prove by a preponderance of the evidence that the Defendant waived his Miranda rights, and that the waiver was voluntary. The waiver must be voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion or deception. The waiver must be made with full awareness both of the rights abandoned, and of the consequences of the decision to abandon those rights.

The Miranda warnings were given by Deputy Bilicic at about 8:30 a.m. when the Defendant was arrested. The defense concedes that while those warnings may have been effective regarding questioning that took place thereafter in the police cruiser,

they were ineffective and insufficient to permit the Defendant's continued interrogation that took place later at the Safety Center. The claim is that the original reading of his Miranda rights grew stale and was no longer effective once the Defendant was brought to the Safety Center where different interrogators took over.

Further, the defense argues that the waiver was not voluntarily given. The Defendant claims that there was subtle coercion and psychological intimidation because of the methods used by the interrogators. The defense argues that the Defendant was particularly subject to coercion because his youth and mental infirmities made him particularly vulnerable.

The defense places much reliance on the Ohio Supreme Court's ruling requiring that the initial warnings be "sufficiently proximate in time and place to custodial status to serve as protection 'from the coercive pressures that can be brought to bear upon a suspect in the context of a custodial interrogation' ". *State v. Roberts*, 32 Ohio St. 3d 225, 232, 513 N.E. 2d 720 (1987), citing *Berkemer v. McCarty*, 468 U.S. 420, 428, 104 S. Ct. 3138, 82 L.Ed. 2d, 317 (1984).

With respect to this argument, the Court is to consider the totality of the circumstances in making its determination as to the effectiveness of the warning. In its consideration of the totality of the circumstances certain factors need to be considered. There are five such factors. These are: 1) the length of time between the giving of the first warnings and subsequent interrogation; 2) whether the warnings and the subsequent interrogation were given in the same or different places; 3) whether the warnings were given and the subsequent interrogation conducted by the same or different officers; 4) the extent to which the subsequent statement differed from any previous statements; and, 5) the apparent intellectual and emotional state of the suspect. (Citation omitted.) *Id.* While the listed factors shall be considered, they are not exclusive. The Court is to look at the totality of the circumstances.

DECISION

The Court, after applying the totality of the circumstances test to the instant case, determines that the Motion to Suppress should be denied. The Defendant voluntarily waived his Miranda rights. The State met its burden of proof. The waiver was the result of the Defendant's free and deliberate choice. There was no evidence of intimidation, coercion or deception. The waiver was made with full awareness of the accused's rights and of the consequences of waiving those rights.

This decision rests on the fact that the time line involved establishes that the Defendant was repeatedly made aware of his rights and that he acknowledged that awareness.

Geauga County Deputy Bilicic effectively Mirandized the Defendant at about 8:30 a.m. on the day of the incident, February 27th, 2012. This was when Defendant was inside the police cruiser. The Defendant proceeded to admit that he "shot people" as he was questioned by Deputy Bilicic. The interrogation covered other aspects of the shooting incident.

Deputy Bilicic took the Defendant directly to the Geauga County Safety Center. He arrived there at about 9:00 a.m. Detective Vetter testified that within several minutes of his arrival at the Geauga County Safety Center she placed the Defendant in an interrogation room. She inquired of the Defendant as to his awareness of the continued application of the Miranda warnings that he had received from Deputy Bilicic. The Defendant acknowledged that he knew that they still applied.

Thereafter, Detectives Vetter, Graley and/or Officer Delisa conducted further interrogation. A close review of State's Exhibit 1-C, at Pages 117 and 118, reveals that Officer Delisa points out the Defendant's Miranda rights on a form that the Defendant was asked to fill out. Officer Delisa invites the Defendant to read the rights over again and says, "You know those are your rights again". The Defendant answers, "I

remember". This is at about 11:08 a.m.

Then at approximately 12:49 P.M., Detective Graley goes over the Defendant's rights in a written format and has him sign (State's Exhibit 2.) This was as a result of an exchange between Detective Graley and the Defendant wherein the Defendant was asked if he remembered the rights that Deputy Bilicic read to him earlier in the day. The Defendant recited some of those warnings and then indicated that he didn't "remember the rest".

The defense points to this statement as being a virtually definitive piece of evidence that the Defendant was unaware of all his rights. However, inability to parrot all four prongs of the Miranda warnings is not the same as being unaware of them all. Many seasoned police officers are sometimes unable to recite all the four warnings without some forethought. The Defendant knew two of the rights well enough to recite them on call. The Court is convinced that Defendant was *aware* of all four Miranda warnings even if he couldn't recite them all when called upon to do so at that particular moment.

The Court further finds that a review of the applicable case law reveals that a Miranda warning can remain effective much, much longer than the few hours that elapsed before re-Mirandizing as occurred in this case. The fact that the initial rights were given to the Defendant in a police cruiser as opposed to the Safety Center where the interrogation continued is not determinative. The Defendant was only in the cruiser for a short time before he was handed off to officers of the very same department as the arresting deputy, e.g. the Geauga County Sheriff's Office. That Deputy, Deputy Bilicic, accompanied the Defendant into the Safety Center and immediately turned the Defendant over to Detective Vetter who placed him in an interrogation room. Detective Vetter later was joined by Detective Graley and Officer Delisa in the interrogation room. The Defendant was coherent, cooperative, and

composed. He was not handcuffed during the interrogation. The Court's own view of the videos admitted into evidence establish this. All the questioning was concerning the same incident and subject matter. Defendant's later statements were not in any way markedly different from his initial statement that he had shot people. This was all part of a series of the same discussion while the Defendant was in continuous custody.

A suspect who receives adequate Miranda warnings prior to a custodial interrogation need not be warned again before each subsequent interrogation. *State v. Treesh,* 90 Ohio St. 3d 460 (2001).

The statement of a Defendant made 24 hours after being originally advised of his Miranda warnings was held admissible in *State v. Barnes*, 25 Ohio St. 3d. 203 (1986).

Statements made by the Defendant 30 hours after Miranda warnings were held admissible where the Defendant was in continuous custody and where the statements were the retelling of the same events. *State v. Powell*, 132 Ohio St. 3d 233 (2012).

A later confession is admissible even if it comes a day after Miranda warnings were given when it is part of a series of discussions. *State v. Brewer*, 48 Ohio St. 3d 350 (1992).

A waiver of Miranda rights doesn't even have to come through direct questioning. The Ohio Supreme Court has held that a subject need not be asked directly whether he or she understands the Miranda warnings. An understanding waiver of those rights may be inferred from the totality of the circumstances. *State v. Lather*, 110 Ohio St. 3d 270 (2006).

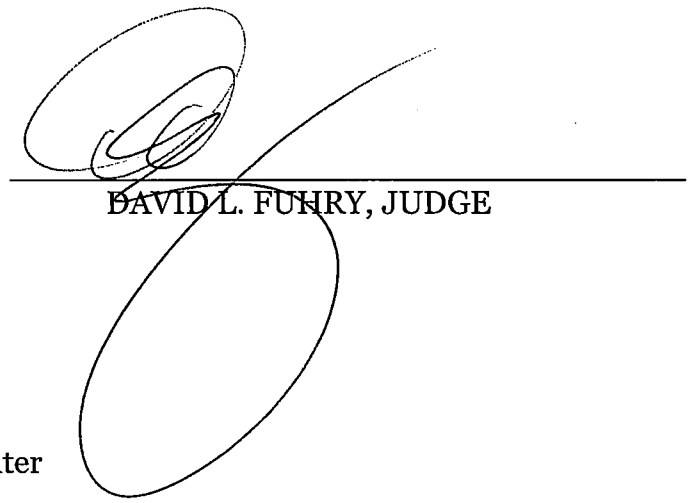
In the instant case the State established that the Defendant was alert and conversant while at the Safety Center. He appeared thoughtful and open in his responses to the police. The Defendant was cooperative throughout. He indicated that he wanted to talk. While the defense has claimed that the mental issues that the

Defendant may have suffered from impaired his ability to give a voluntary waiver, none of that is evident from the evidence admitted. The Defendant himself admitted that at the time of the interviews he had no psychological issues.

While it is true that the Defendant was a juvenile, he was but six months away from his 18th birthday. His performance at school was more than adequate. He was on track to graduate at the end of his junior year. He generally maintained a B average even though some of his courses were for seniors.

In considering the totality of the circumstances the Court finds that the Defendant voluntarily waived his Miranda rights. He was fully aware of the fact that he was making such a waiver and of the consequences of such a waiver. That awareness continued throughout the entire interrogation. No statements made during the interrogation at the Geauga County Safety Center on February 27, 2012 are suppressed. The Motion to Suppress is denied.

IT IS SO ORDERED.



DAVID L. FUHRY, JUDGE

cc: Prosecutor
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