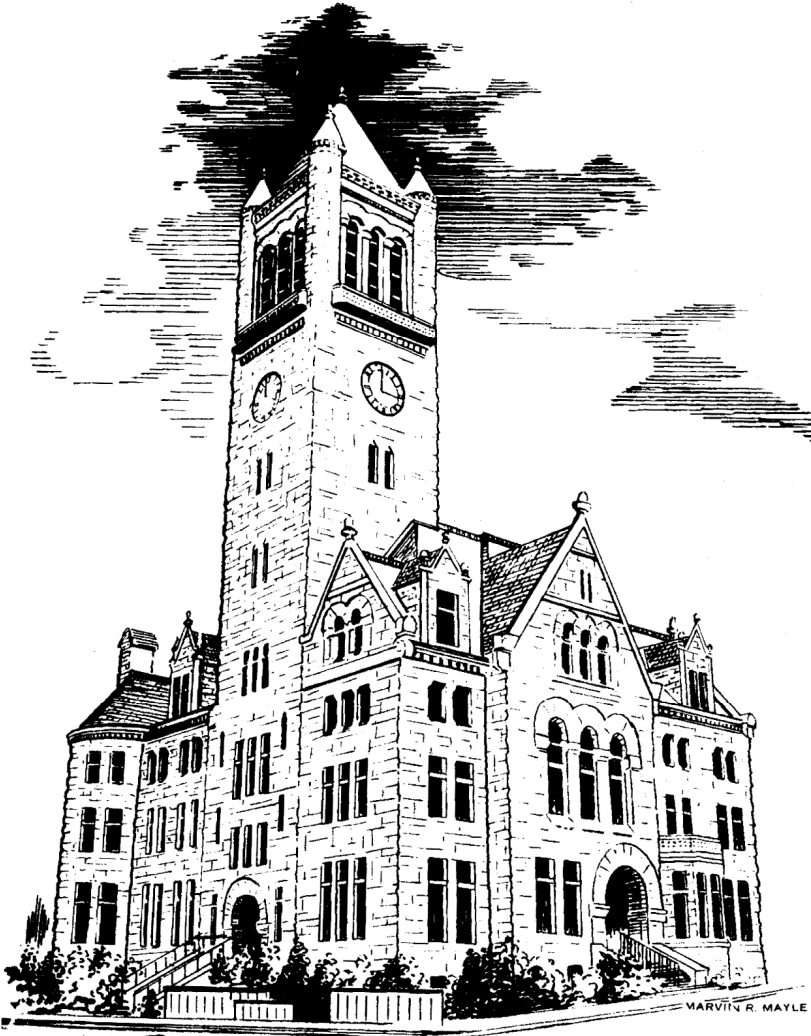


FAYETTE LEGAL JOURNAL

VOL. 82

AUGUST 3, 2019

NO. 31



FAYETTE LEGAL JOURNAL

The FAYETTE LEGAL JOURNAL is published weekly by the Fayette County Bar Association, 45 East Main Street, Suite 100, Uniontown, Pennsylvania 15401, 724-437-7994. Legal advertisements should be submitted online at www.fcbar.org no later than 12:00 noon on Friday for publication the following Saturday. No date of publication is promised, however. Legal notices are published exactly as submitted by the advertiser. Copyright 2001 Fayette County Bar Association. All rights reserved.

Co-Editors: Garnet L. Crossland and Melinda Deal Dellarose

Cover Design by Marvin R. Mayle, 207 Lick Hollow Road, Hopwood, PA

FAYETTE COUNTY BAR ASSOCIATION Board of Directors

President: James E. Higinbotham, Jr.
President Elect: Louise D. Monaghan
Vice-President: Gretchen A. Mundorff
Secretary: Timothy J. Witt
Treasurer: Vincent J. Roskovensky, II
Past President: Gary N. Altman

Executive Director: Garnet L. Crossland

Directors
 Jennifer M. Casini
 Jeremy J. Davis
 Benjamin F. Goodwin
 Robert A. Gordon
 Sheryl R. Heid
 Margaret Zylka House
 Wendy L. O'Brien
 Douglas S. Sholtis
 Charles O. Zebley, Jr.

ETHICS HOTLINE

The Ethics Hotline provides free advisory opinions to PBA members based upon review of a member's prospective conduct by members of the PBA Committee on Legal Ethics and Professional Responsibility. The committee responds to requests regarding, the impact of the provisions of the Rules of Professional Conduct or the Code of Judicial Conduct upon the inquiring member's proposed activity. All inquiries are confidential.

Call (800) 932-0311, ext. 2214.

LAWYERS CONCERNED FOR LAWYERS

Our assistance is confidential,
non-judgmental, safe, and effective

To talk to a lawyer today, call:
 1-888-999-1941
 717-541-4360

ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

MARCIA SUE DILLOW, late of Smithfield Borough, Fayette County, PA (3)

Personal Representatives:

Darrin Wade Dillow and Aaron J. Dillow
c/o Watson Mundorff & Sepic, LLP
720 Vanderbilt Road
Connellsville, Pa 15425

Attorney: Charles W. Watson

VIOLET D. GERBER, a/k/a VIOLET GERBER, late of Menallen Township, Fayette County, PA (3)

Co-Executor:

George A. Gerber and Terry L. Gerber
c/o Proden & O'Brien
99 East Main Street
Uniontown, PA 15401

Attorney: Wendy L. O'Brien

Second Publication

KAYLA BURWELL, late of Smithfield, Fayette County, PA (2)

Administratrix: Frances Burwell
341 Puritan Village Road
McClellandtown, PA 15458
c/o Conti Law

986 Brodhead Road
Moon Township, PA 15108
Attorney: Michele Conti

ERIC XAVIER CULLETON, late of German Township, Fayette County, PA (2)

Administrator: Mark Culleton
c/o Monaghan & Monaghan, LLP
57 East Main Street
Uniontown, PA 15401
Attorney: Gary D. Monaghan

VIRGINIA LEE DAVIS, late of Springhill Township, Fayette County, PA (2)

Executor: Mark Howard
c/o Proden & O'Brien
99 East Main Street
Uniontown, PA 15401
Attorney: Jeffrey S. Proden

WILLIAM LAMBERSON, late of Saltlick Township, Fayette County, PA (2)

Executrix: Debra Lamberson
10086 Mansion Drive
Gibsonia, PA 15044

BRUCE J. MATSON, SR., late of Belle Vernon, Fayette County, PA (2)

Executor: Bruce J. Matson, Jr.
813 Speer Street
Belle Vernon, PA 15012
c/o 101 North Main Street, Suite 106
Greensburg, PA 15601
Attorney: Susan N. Williams

First Publication

NORMA J. HIGHBURGER, late of Luzerne Township, Fayette County, PA (1)

Executrix: Gloria J. Shanaberger
c/o 51 East South Street
Uniontown, PA 15401
Attorney: Anthony S. Dedola, Jr.

LORRAINE K. LANDY, late of Bullskin Township, Fayette County, PA (1)

Executor: Dennis Landy
555 Kreinbrook Hill Road
Mt. Pleasant, PA 15666
c/o 314C Porter Avenue
Scottdale, PA 15683
Attorney: David G. Petonic

REGINA CATHERINE MUNCZENSKI, a/k/a REGINA C. MUNCZENSKI, late of Luzerne Township, Fayette County, PA (1)
Executor: Ronald Munczenski
 c/o 815A Memorial Boulevard
 Connellsville, PA 15425
Attorney: Margaret Zylka House

VERNA M. SHIPLEY, late of Dunbar Township, Fayette County, PA (1)
Personal Representative: Barry L. Shipley
 c/o P.O. Box 953
 Uniontown, PA 15401
Attorney: Ricardo J. Cicconi

JAMES E. SMALLEY, late of Dunbar Township, Fayette County, PA (1)
Personal Representative: Jimmie A. Fosbrink
 c/o River Front Professional Center
 208 South Arch Street, Suite 2
 Connellsville, PA 15425
Attorney: Richard A. Husband

EUGENE A. STERATORE, late of South Union Township, Fayette County, PA (1)
Executor: Anthony J. Steratore
 c/o DeHaas Law, LLC
 51 East South Street
 Uniontown, PA 15401
Attorney: Ernest P. DeHaas, III

ELIZABETH A. STICKEL, late of Washington Township, Fayette County, PA (1)
Executor: Kenneth E. Stickel
 816 Morgan Street
 Washington Township, PA 15012
 c/o France, Lint & Associates, P.C.
 308 Fallowfield Avenue
 Charleroi, PA 15022
Attorney: David N. Lint

ELIZABETH UHAL, a/k/a ELIZABETH A. UHAL, late of Uniontown, Fayette County, PA
Executor: Bernadette C. Stash (1)
 c/o Higinbotham Law Offices
 45 East Main Street, Suite 500
 Uniontown, PA 15401
Attorney: James E. Higinbotham, Jr.

LEGAL NOTICES

CIVIL ACTION
 COURT OF COMMON PLEAS
 FAYETTE COUNTY, PA
 CIVIL ACTION-LAW
 NO. 2019-00255
 NOTICE OF ACTION IN MORTGAGE
 FORECLOSURE

REVERSE MORTGAGE SOLUTIONS INC.,
 Plaintiff
 v.
 JOSEPH EDWARD BOLLIBON, JR., IN HIS
 CAPACITY AS HEIR OF JOSEPH E.
 BOLLIBON A/K/A JOSEPH BOLLIBON, SR.;
 Defendants

To: UNKNOWN HEIRS, SUCCESSORS,
 ASSIGNS AND ALL PERSONS, FIRMS OR
 ASSOCIATIONS CLAIMING RIGHT, TITLE
 OR INTEREST FROM OR UNDER JOSEPH
 E. BOLLIBON A/K/A JOSEPH BOLLIBON,
 SR. Defendant(s), 151 ELM GROVE RD,
 DUNBAR, PA 15431

COMPLAINT IN MORTGAGE FORECLOSURE

You are hereby notified that Plaintiff, REVERSE MORTGAGE SOLUTIONS INC., has filed a Mortgage Foreclosure Complaint endorsed with a Notice to Defend, against you in the Court of Common Pleas of FAYETTE County, PA docketed to No. 2019-00255, seeking to foreclose the mortgage secured on your property located, 151 ELM GROVE RD, DUNBAR, PA 15431.

NOTICE

YOU HAVE BEEN SUED IN COURT. If you wish to defend against the claims set forth in this notice you must take action within twenty (20) days after the Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court

your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you, and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH THE INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYERS REFERRAL SERVICE
 Pennsylvania Lawyer Referral Service
 Pennsylvania Bar Association
 100 South Street
 P.O. Box 186
 Harrisburg, PA 17108
 800-692-7375

RAS CITRON, LLC
 ATTORNEYS FOR PLAINTIFF
 Jenine Davey, Esq. ID No. 87077
 133 Gaither Drive, Suite F
 Mt. Laurel, NJ 08054
 855-225-6906

August CLE Seminars / Ethics Galore

Frank Sarris Public Library

35 North Jefferson Avenue
 Canonsburg, PA 15317
 Conveniently located off of the I-79
 Canonsburg, PA Exit
 Free Parking in Murdock Street Lot
August 29 – August 30, 2019

August 29, 2019 - 9 AM-12:15 PM

Potpourri of Hot Legal Topics Plus Ethics
 Mike Fitzpatrick, Esq. / Joe Dimperio, Esq. /
 Richard McMillan, Esq./ Anthony Fitzpatrick,
 Esq. / Fitzpatric & LaCava, PC
1 Substantive Credit/ 2 Ethics - \$85

August 29, 2019 - 1 PM-4:15 PM

Family Law and Ethical Concerns
 William R. Friedman, Esq. / David J. Slesnick,
 Esq.
2 Substantive Credits/1 Ethics - \$79

August 30, 2019 - 9 AM-12:15 PM

Basics for the Attorney Debt Collector
 James P. Valecko, Esq. / Weltman, Weinberg &
 Reis Co., L.P.A..
2 Substantive Credits/1 Ethics - \$79

August 30, 2019 - 1 PM-4:15 PM

**Retirement Plans: A Primer on Plan Options,
 Hot Topics and Potential Pitfalls**
 Elisa J. Cavalier, Esq. / Rachel Hawili, AIFA /
 Hefren-Tillotson
 Nicholas J. Zapf / Dunbar, Bender & Zapf
 Gary J. Gunnnett, Esq. / Houston Harbaugh
2 Substantive Credits/1 Ethics - \$79

PA CLE approved

**To register: www.calu.edu/ilpp
speer@calu.edu /724-938-4054**

California University of PA
 250 University Avenue, Box 6| California,
 Pennsylvania 15419

The Institute for Law & Public Policy is a PA
 CLE Accredited Provider (Provider # 5872)

**Join our mailing list to keep up with our
 latest offerings – email Speer@calu.edu**

JUDICIAL OPINION

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

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
	:	
vs.	:	
	:	
GORDON LAMBERT,	:	Nos. 1112 & 1113 of 2018
Defendant.	:	Honorable Linda R. Cordaro

OPINION

CORDARO, J.

April 15, 2019

SUMMARY

Before the Court is Defendant's Omnibus Pretrial Motion: Motion to Suppress Statements. For the following reasons, Defendant's Motion is denied.

BACKGROUND

Defendant, Gordon Lambert, is charged in two separate cases as the result of an incident that took place on the night of March 31, 2018.

On that night, according to the Affidavits of Probable Cause, a fifteen-year-old girl was a passenger in the vehicle of her guardian's ex-boyfriend. The vehicle got stuck in the mud in an area outside of Connellsville, Fayette County. Multiple people tried to help them, including a man in an orange hunting cap and a brown jumpsuit with a purple hooded sweatshirt underneath. That man assisted for a short period of time and then disappeared.

The fifteen-year-old girl got frustrated of waiting after several hours and began to walk back towards Connellsville. After walking for about an hour, she came across the man in the orange hunting cap and brown jumpsuit lying on the side of a dirt road. That man, later identified as the Defendant, Gordon Lambert, jumped up and started walking with and talking to the girl.

After a short period of time, the Defendant allegedly pulled the girl into the woods and began to forcefully kiss and grope the minor. The Defendant then pulled the minor's pants and underwear down around her knees and began to rub her vagina. When the Defendant attempted to remove his own clothing, the girl was able to escape. She was then able to locate the male guardian who had taken her into the woods.

Meanwhile, Pennsylvania State Troopers had been dispatched to the area regarding a missing fifteen-year-old girl. Upon arrival, they spoke with the minor, who related her encounter with the man in the orange hat and brown jumpsuit with the purple hooded sweatshirt underneath. The Troopers subsequently located a man matching that exact description in the woods nearby.

That man, Mr. Lambert, was then arrested. He was also found to have drugs and drug paraphernalia on his person. From there, Mr. Lambert was taken to the police barracks for an interrogation. Mr. Lambert was advised of his Miranda rights; he signed a written waiver of those rights and an interrogation ensued.

At Case Number 1112 of 2018, Mr. Lambert is charged with two violations of the Controlled Substance Act-Possession of a Small Amount of Marijuana for Personal Use (35 P.S. §780-113(a)(31)(i)) and Use or Possession of Drug Paraphernalia (35 P.S. §780 - 113(a)(32)).

At Case Number 1113 of 2018, Mr. Lambert is charged with Kidnapping a Minor-Infliction of a Bodily Injury (18 Pa.C.S.A. §2901(a.1)(3));Criminal Attempt-Rape (18 Pa.C.S.A. §901; 18 Pa.C.S.A. §3121); Unlawful Restraint of a Minor-Risk of Serious Bodily Injury (18 Pa.C.S.A. §2092(b)(1)); Aggravated Indecent Assault-Forcible Compulsion (18 Pa.C.S.A. §3125(a)(2)); Corruption of Minors (18 Pa.C.S.A. §6301(a)(1)(ii)); Simple Assault (18 Pa.C.S.A. §2701(a)(3)); Recklessly Endangering Another Person (18 Pa.C.S.A. §2705); and Indecent Assault-Victim Under 16 (18 Pa.C.S.A. §3126 (a)(8)).

Defendant filed Omnibus Pretrial Motions in both cases on December 27, 2018. {1} Both Motions are exactly the same. Defendant argues in his Motions that certain portions of the interrogation violated his Constitutional rights, and that any statements made after those portions should be suppressed.

Defendant specifically claims in his Motions that: 1) Questioning continued after Defendant stated he did not desire to make additional statements; 2) The officers threatened Defendant with incarceration; and 3) The officers began yelling at and acting aggressively toward the Defendant. The Motions seek to suppress any statements made by Defendant after these alleged occurrences during the interrogation.

At the Hearing on Defendant's Motions, the Commonwealth and Defendant agreed that this matter could be determined by this Court viewing the video of the interrogation. After review of the video and relevant caselaw, this Court finds that Defendant's claims are without merit.

DISCUSSION

The Fifth and Fourteenth Amendments to the United States Constitution, as well as Article 1, Section 9 of the Pennsylvania Constitution, provide that individuals shall not be compelled to testify against themselves in criminal cases. The United States Supreme Court in *Miranda v. Arizona* examined the federal constitutional right "to be free from compelled self-incrimination" in the context of custodial interrogations. *Alston v. Redman*, 34 F.3d 1237, 1242 (3d. Cir. 1994) (citing *Miranda v. Arizona*, 384 U.S. 436,468 (1966)). The Supreme Court concluded that certain procedural safeguards are necessary to "dissipate the compulsion inherent in custodial interrogation[s]," thereby protecting

{1} There were procedural irregularities on the part of Defendant in his filing of the Omnibus Pretrial Motions. However, at the Hearing on the Motions, Counsel for the Defendant claimed that he wasn't able to file the Motions until he had a working version of the interrogation video.

the constitutional rights of individuals suspected of a crime. Alston at 1242 (Internal citations omitted). The Third Circuit in Alston went on to state that, "[o]nly if there is a voluntary, knowing, and intelligent waiver of the rights expressed in the warnings can police question a suspect without counsel being present and introduce at trial any statements made during the interrogation." *Id.* (Internal citations omitted).

Defendant now challenges that those constitutional rights were violated during his interrogation.

The interrogation of Mr. Lambert was custodial, and Mr. Lambert did not have counsel present during the interrogation. However, before the interrogation began, the Troopers gave Mr. Lambert his Miranda warnings, and Mr. Lambert signed a written waiver of those rights. Defendant acknowledges as much, and only challenges that the interrogation became unconstitutional after a certain point.

First, Defendant claims that the interrogation continued after he stated a desire to end the interrogation. Specifically, Defendant points to a portion of the interrogation where one of the Troopers asks Mr. Lambert if he has anything to add to his story, to which Mr. Lambert replies, "No." The Troopers then continue to ask Mr. Lambert questions.

It is well-settled law that the prosecution may not use statements stemming from custodial interrogations of defendants unless the Commonwealth demonstrates that defendants are apprised of their right against self-incrimination and their right to counsel. *Commonwealth v. Lukach*, 195 A.3d 176, 184-85 (Pa. 2018) (citing *Commonwealth v. Gaul*, 912 A.2d 252,255 (Pa. 2006)). If individuals are given their Miranda warnings and respond that they wish to exercise those rights, all interrogation must cease. *Lukach* at 185 (citing *Commonwealth v. Mercier*, 302 A.2d 337, 339 (Pa. 1973)).

When individuals assert their right to counsel or their right to remain silent, courts must make an "objective inquiry" as to whether the invocation was unambiguous. *Lukach* at 185 (citing *Davis v. U.S.*, 512 U.S. 452,459 (1994)). This inquiry involves determining whether a reasonable interrogating officer, in light of the circumstances, would only have understood that suspects might be invoking their right to counsel or right to remain silent. *Lukach* at 185 (citing *Davis* at 459 and *Berghuis v. Thompkins*, 560 U.S. 370,381 (2010)). {2} If a suspect makes a reference that is ambiguous or equivocal, legal precedent does not require cessation of questioning. *Lukach* at 185.

Here, Mr. Lambert's response that he did not wish to add anything else to his story was not an unambiguously expressed desire to end the interrogation based on his constitutional right to remain silent. Rather, it was a statement that he had nothing further to add to his recollection of events that were being discussed at that specific moment during the interrogation. Without further indication by Mr. Lambert that he wanted the interrogation to end at that point, the Troopers could not have reasonably understood that Mr. Lambert was invoking a constitutional right. Mr. Lambert's one-word response to

{2} The U.S. Supreme Court in *Davis* stated this rule in relation to suspects invoking their right to an attorney. The Court in *Berghuis* expanded the unambiguous invocation rule to include the right to remain silent.

the question posed to him was clearly not an unambiguous invocation of his right to remain silent. The Troopers were acting within their constitutional authority to continue questioning Mr. Lambert at that point.

Additionally, Mr. Lambert continued to answer questions posed to him by the Troopers after he answered "No." Mr. Lambert never made any statements after that point that could have been construed as an invocation of his right to remain silent. He never expressed a desire for the interrogation to end. Because Mr. Lambert did not express an unambiguous invocation of his right to remain silent, there is no merit to Defendant's argument that his statements after answering "No" in reply to a question should be suppressed.

Defendant's second and third arguments require the same analysis and will therefore be discussed together.

Defendant's second argument is that the officers threatened him with incarceration, and that any statements made by Mr. Lambert after that should be suppressed. Defendant does not point to any specific statements by the Troopers in the video. However, this Court reviewed the interrogation video and found that at one point, one of the Troopers says, "You are facing serious charges." At another point, a Trooper says, "You're sitting there handcuffed because we already know the answers." Finally, one of the Troopers tells Mr. Lambert, "You're going to jail tonight."

Defendant's third argument is that the Troopers began yelling at him and acting aggressively, and that one of the Troopers took an intimidating step towards him during the interrogation.

When deciding whether to suppress statements made during an interrogation, the "touchstone inquiry" is whether the statements were voluntary. See *Commonwealth v. Nester*, 709 A.2d 879, 882 (Pa. 1998). {3} The standard for determining whether the statements are voluntary is based on the totality of the circumstances. *Id.* at 883. The question of voluntariness is whether an interrogation is so manipulative or coercive that it deprives the accused of their ability to make a free and unconstrained decision to confess. *Id.* at 882.

A court should look at the following factors when assessing voluntariness pursuant to the totality of the circumstances:

[T]he 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. (citing *Commonwealth v. Jones*, 683 A.2d 1181, 1189 (Pa. 1996)). Applying those factors to the interrogation at issue, this Court finds that the interrogation was neither manipulative nor coercive, and that the statements made by Mr. Lambert to the officers were voluntary.

{3} The Supreme Court in *Nester* discusses the voluntariness of confessions-rather than statements-made during an interrogation. There does not appear to be any caselaw that distinguishes suppressions of confessions from suppression of statements made during interrogations.

The analysis begins with a look at the duration and means of the interrogation. The interrogation lasted roughly forty minutes. This is hardly enough time for interrogating officers to drain a person's ability to withstand suggestion and coercion absent extreme circumstances. Further, the interrogation was done by standard means—two officers questioning a suspect in a room with a video camera on. The Troopers never touched or physically harmed Mr. Lambert during the interrogation.

The second factor is the physical and psychological state of the accused. Mr. Lambert did not appear to be physically injured in any way, nor did his physical appearance appear to be out of the ordinary. Mr. Lambert did say during the interrogation that he had been drinking and smoking marijuana earlier that evening; however, his physical and psychological state appeared to be relatively normal. Mr. Lambert did not slur his words. He spoke in complete sentences. He told his story from his perspective in a manner that was understandable. Mr. Lambert indicated that he had some college education. He appeared calm. Even when the tone of the officers became more accusatory and their voices got louder, Mr. Lambert seemed to be unaffected. He never became emotional or upset during the interrogation. Nor did he have trouble answering the questions posed by the officers for the most part. His story was full of details, except for one small part that Mr. Lambert said he couldn't remember.

As to the conditions attendant to the detention, the interrogation was conducted in a small room. Mr. Lambert was already under arrest at this point, so it should have been apparent to him that he would be unable to leave police detention.

The attitude of the interrogators does change during the course of the interrogation. For the first twenty-to-thirty minutes, the officers are calm in asking Mr. Lambert questions about the incident in question. However, towards the end of the interrogation, the officers' voices become a little bit louder, they start making accusatory statements to Mr. Lambert, and they appear to become annoyed that Mr. Lambert is not telling them what they want to hear. However, Mr. Lambert does not appear to be phased by this during the interrogation. Further, an interrogation is an adversarial affair, and an officer posing as a friend could be considered an improper interrogation technique in some circumstances. See *Spano v. New York*, 360 U.S. 315, 323-24 (1959) (where a suspect's confession was unconstitutional, in part because there was a bond of friendship between the officer and the suspect going back a decade).

As to any and all other factors that could drain a person's ability to withstand suggestion and coercion, the only other thing worth mentioning here is Defendant's suggestion that the officers threatened him with incarceration. It is true that one of the Troopers told Mr. Lambert that he was going to jail. However, Mr. Lambert was under arrest and in handcuffs. He was already going to jail, and he should have known this. The Troopers never said anything to the effect that Mr. Lambert could avoid going to jail by saying what they wanted him to say. The Troopers did not make any promises that could have influenced Mr. Lambert into confessing to any crimes or making incriminatory statements.

Based on the totality of the circumstances attendant during the interrogation, this Court does not find that Mr. Lambert made any statements that were a result of manipulation or coercion.

CONCLUSION

As a result of the foregoing analysis, Defendant's Omnibus Pretrial Motion is denied. This case shall be listed for trial.

BY THE COURT:
LINDA R. CORDARO, JUDGE

ATTEST:
Clerk of Courts

*Quality... Experience... Results...
It's what your clients deserve.*

Medical Malpractice • Auto Accidents • Personal Injury



GISMONDI
& ASSOCIATES

412-281-2200

www.gislaw.com

700 Grant Bldg., 310 Grant St., Pgh., PA 15219