

STATE OF NEW HAMPSHIRE

**HILLSBOROUGH, SS.
NORTHERN DISTRICT**

SUPERIOR COURT

State of New Hampshire

v.

Adam Montgomery

Docket No. 216-2022-CR-00020
216-2022-CR-00577

**ORDER ON MOTION TO SUPPRESS STATEMENTS
FROM JANUARY 4, 2022**

In Docket No. 216-2022-CR-20, the defendant is charged with second degree assault, endangering the welfare of a child, and interference with custody. In Docket No. 216-2022-CR-577, the defendant is charged with two counts each of armed career criminal, felon in possession, theft, and receiving stolen property. The defendant now moves to suppress statements made to police during an interview on January 4, 2022. The State objects. The Court held a hearing on September 28, 2022. For the reasons that follow, the defendant's motion is GRANTED in part and DENIED in part.

Factual Background

On January 4, 2022, Detectives Dunleavy and Riley conducted an interview with the defendant. The interview took place at the Manchester Police Department and was audio and video recorded.

The interview began with Detective Dunleavy reading the defendant his Miranda rights. The defendant read each right aloud and indicated that he understood his rights and agreed to waive them. (State's Ex. 2 at 1:10–2:30.) The police began the substance

of the conversation by discussing the defendant's daughter, Harmony, whose whereabouts were and remain unknown. Approximately eight minutes into the interrogation, when the defendant asked why he was being charged with second degree assault, the following exchange occurred:

Dunleavy:	Well, your daughter had some injuries that you know about when you lived on Gilford Street.
Defendant:	No I do not. What are you referring to?
Dunleavy:	Well you were there, I wasn't, right?
Defendant:	What are you referring to?
Dunleavy:	I'm referring to her having some good marks.
Defendant:	What are you referring to?
Dunleavy:	Marks that were left on her by you.
Defendant:	Absolutely not. I have nothing else to say.

(State's Ex. 5 at 8:25–8:50.)

After his last statement, the defendant sat hunched forward with his arms crossed, avoiding eye contact. After a pause of approximately fifteen seconds, Detective Dunleavy began to talk again by saying, "Like I'm . . ." Defendant interrupted by shaking his head and saying, "No." (Id. at 9:05.) Detective Dunleavy continued, saying that they had talked to the defendant earlier because they were worried about his daughter. The defendant accused the police of being out of line with the way in which they were approaching the conversation. Detective Dunleavy said, "So explain to me, how are we out of line?" The defendant stated, "I have nothing to explain." (Id. at 9:24–:27.) Detective Dunleavy said, "But wouldn't you rather explain it so we can make sense of it than just have other people's side of the story?" (Id. at 9:27–33.)

The interview continued for another twelve minutes until the defendant stated, "You know what, man, like I don't even want to talk anymore. Like this is just beating around the bush. It just seems a little too silly to me." (Id. at 21:40–:51.) Detective Dunleavy

responded that he was trying to give the defendant an opportunity to speak his piece, and the defendant said, “No, I get what you’re saying, I just got nothing else to say, man.” (Id. at 22:53–23:15.) After a short pause, the defendant asked for a cigarette and then mentioned again how he felt the conversation was pointless. The police reiterated that they were just giving him an opportunity to explain himself. The conversation picked up again after this exchange.

A few minutes later, the police told the defendant there were some discrepancies between what the defendant was telling them and what they were hearing from other people. Specifically, Detective Riley stated that, “You’re saying you brought her [Harmony] down to Mass[achusetts], someone said she [Harmony’s mother] came up from Mass.” The defendant responded, “I never once said I went down to Mass.” Detective Riley said, “So you’re saying she came up from Mass.” The defendant then said, “I’m not saying anything else.” (Id. at 25:30–:57.) Detective Riley asked, “Why is it that you refuse to talk about her every time we bring her up?” (Id. at 25:59–26:03.) This prompted the defendant to continue talking briefly. Shortly thereafter, however, Detective Riley accused the defendant of continually “locking up” on them, and the defendant stated, “I got nothing else to say.” (Id. at 26:53–:57.)

Detective Dunleavy continued to press forward, talking about how he knew that the defendant cared about Harmony, and explained that all he was trying to do was help her and that he needed the defendant’s help. The defendant re-engaged with the police and the conversation continued for a few minutes before once again the defendant said, “I’ve got nothing else to say. That’s it guys, I got nothing else to say.” (State’s Ex. 6 at 3:07–:15.) The police attempted to get the defendant to speak again, peppering him with

questions about Harmony. The defendant repeatedly asserted that he had nothing to say, and finally stated that he wanted a lawyer. (State's Ex. 6 at 3:55.) At that point, the police terminated the interview.

Analysis

The defendant argues that he invoked his right to remain silent during the interrogation on a number of occasions. “[A]fter a knowing and voluntary waiver of the Miranda rights, law enforcement officers may continue questioning until and unless the suspect clearly requests an attorney.” Davis v. United States, 512 U.S. 452, 461 (1994). “If an accused makes a statement concerning the right to counsel that is ambiguous or equivocal or makes no statement, the police are not required to end the interrogation or ask questions to clarify whether the accused wants to invoke his or her *Miranda* rights.” Berghuis v. Thompkins, 560 U.S. 370, 381 (2010) (citation omitted). “[T]here is no principled reason to adopt different standards for determining when an accused has invoked the Miranda right to remain silent and the Miranda right to counsel” Id. “To determine whether, after initially waiving his constitutional rights under Miranda, the defendant subsequently invoked those rights, [the Court] examine[s] his statements under the totality of the circumstances.” State v. Lynch, 169 N.H. 689, 693 (2017). “An expression of doubt or uncertainty cannot be considered unequivocal.” Id. at 697.

The defendant argues that he first invoked his right to remain silent when he told the police that he had nothing else to say at approximately nine minutes into the interview. The State objects, arguing that the defendant’s statement at that time did not constitute an unambiguous and unequivocal invocation. The State concedes, however, that the defendant did invoke his right to remain silent when, at approximately twenty-two minutes

into the interview, he said, “I don’t even want to talk anymore.” (State’s Pleading Re: Defendant’s Statements on January 4, 2022 (Doc. 64).) Therefore, the Court grants the defendant’s request to suppress the defendant’s statements from that point forward, and confines its analysis to the first exchange identified by the defendant.

In considering the totality of the circumstances, the Court begins by noting that the defendant initially expressed no hesitation about speaking with the police. He expressed a clear understanding of his Miranda rights when going over the waiver form, and he readily waived his rights and agreed to speak with the police. (See State’s Ex. 5 at 2:15–:20.) The interrogation had a conversational tone, with both sides participating and neither side raising voices. Despite accusing the police of generally trying to make him look like a monster, the defendant answered the detectives’ questions, and asked some of his own.

The alleged invocation at issue arose in the context of Detective Dunleavy explaining the nature of the second degree assault charge. In response to a direct accusation that the defendant had physically harmed his daughter, the defendant stated, “Absolutely not. I have nothing else to say.” This statement, considered in this context, indicates that the defendant did not wish to respond to the accusation that he had physically harmed his daughter, rather than a clear desire to terminate the interrogation in its entirety. Indeed, the defendant accused the police of being out of line with the way they were approaching the conversation, stating, “You’re sitting there telling me that, right off the rip, that there was something wrong with my daughter because of me, no that’s bullshit. (10:32–:43.) The defendant continued to respond as the police continued to ask questions and make statements on the topic.

While the defendant's statement, considered in isolation, could be interpreted as indicating a desire to no longer speak to police, when considered in context it indicates a desire to not speak about a particular topic. Cf. State v. Pouliot, 174 N.H. 15, 22 (2021) ("Conduct indicating that a defendant is uncomfortable or apprehensive about speaking with the police about a particular topic, without more, is not an unambiguous invocation of the right to remain silent—particularly when the defendant continues to speak with the officer and does not affirmatively state that he wishes for the interview to end."). Upon consideration of the totality of the circumstances, the Court finds the defendant's statement that he had nothing else to say was at most ambiguous and was insufficient to invoke his right to remain silent. See State v. Watson, 170 N.H. 720, 727 (2018) ("[T]o invoke the Miranda right to silence, an accused must do so unambiguously."). Therefore, the statements made prior to his invocation at approximately twenty-two minutes into the interrogation need not be suppressed.

Accordingly, for the foregoing reasons, the defendant's motion to suppress is DENIED with respect to any statements made prior to 21:44 in State's Exhibit 5, and GRANTED with respect to any statements made after that point in time.

SO ORDERED.

October 19, 2022
Date


Amy B. Messer
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 10/19/2022