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LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JOURNAL ENTRY
Hon. D. Chris Cook, Judge

Date Jan. 21, 2021 Case No. 20CR102080

STATE OF OHIO
Plaintiff

Chris Pierre
Plaintiff's Attorney

VS

JAMES BURKES
Defendant

Denise Demmitt
Defendant's Attorney

This matter is before the Court on Defendant's Motion To Suppress, filed October 15, 2020, and the State's Response, filed November 6, 2020.

Hearing had January 19, 2021.

The Motion is not well-taken and hereby DENIED.

See Judgment Entry.

IT IS SO ORDERED.

Judge D. Chris Cook

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cc: Pierre, Asst. Pros. Atty.
Demmitt, Esq.

LORAIN COUNTY COURT OF COMMON PLEAS
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I. INTRODUCTION

This matter is before the Court on Defendant's Motion To Suppress, filed October 15, 2020, and the State's Response, filed November 6, 2020.

Hearing had January 19, 2021.

II. ABBREVIATED STATEMENT OF FACTS

The facts at issue in this dispute are not particularly contested.

On January 13, 2020, Kelly Friedel ("Friedel") and her minor daughter (K.S.) presented to the North Ridgeville Police Department ("NRPD") where K.S. described being sexually assaulted by the Defendant, James Burkes ("Burkes"), Friedel's live-in boyfriend, two-days earlier.[1]

Shortly after their discussion at NRPD, Burkes was arrested and transported to the station. At approximately 10:12 PM on January 13, 2020, Burkes was placed in an audio/video interview room, Mirandized, then questioned about the allegations.

Burkes was in handcuffs and was verbally advised of his Miranda rights. The interview lasted about four-hours and was solely conducted by Detective Aaron Neff ("Det. Neff") of NRPD.

[1] The sexual assault allegedly occurred on January 11, 2020.

Ultimately, Burkes admitted to sexually assaulting K.S. and wrote a two-page highly incriminating "Statement."

III. LAW AND ANALYSIS

STIPULATIONS

The parties stipulate that 1) Burkes was in custody at the time he was questioned and thus he was subject to a "custodial interrogation," and, 2) that the burden to proceed is on the State of Ohio.

THE RIGHT TO A HEARING

If a defendant in a criminal case files a motion to suppress that complies with Crim. R. 47 by setting forth sufficient factual and legal basis for the challenge of evidence obtained as a result of a warrantless seizure, the court must afford the defendant a hearing.

"We therefore hold that in order to require a hearing on a motion to suppress evidence, the defendant must state the motion's legal and factual [basis] with sufficient particularity to place the prosecutor and court on notice of the issues to be decided." *State v. Shindler,* 70 Ohio St.3d 54 (1994).

"We have held that "[i]n order to require a hearing on a motion to suppress evidence, the accused must state the motion's legal and factual [basis] with sufficient particularity to place the prosecutor and the court on notice of the issues to be decided." *Shindler,* syllabus. Failure to include or particularly state the factual and legal basis for a motion to suppress waives that issue. *See Defiance v. Kretz,* 60 Ohio St.3d 1, 573 N.E.2d 32 (1991); *State v. Codeluppi,* 139 Ohio St.3d 165, 2014-Ohio-1574, at ¶ 10.

STANDARD OF REVIEW – *MIRANDA*

In *Miranda v. Arizona,* 384 U.S. 436 (1966),[2] the United States Supreme Court fashioned a set of rules governing custodial interrogations and confessions under the Fifth Amendment Privilege against self-incrimination, now incorporated into the Fourteenth Amendment Due Process clause.[3]

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[2] String citations omitted.

[3] See: *Malloy v. Hogan,* 378 U.S. 1 ((1964), string citations omitted.

Decided under a Sixth Amendment right to counsel analysis, the United States Supreme Court affirmed the existence of an absolute right to remain silent and the need for police to advise a suspect of that right. *Escobedo v. State of Ill.,* 378 U.S. 478 (1964).[4]

Over the years since *Miranda* was decided, a panoply of decisions have emerged at both the federal and state levels addressing the never-ending factual scenarios implicated by the decision.

Ohio is no exception.

While certainly not the first case in Ohio to address *Miranda,* the Ohio Supreme Court noted in the matter of *State v. Dailey,* 53 Ohio St.3d 88 (1990),[5] the following,

> In *Miranda, supra,* the court indicated that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Id.* at 444, 86 S.Ct. at 1612. The court indicated that in the absence of *other effective measures* the following procedures to safeguard the Fifth Amendment privilege must be observed:
>
> "Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Id.*

A few years later, in the matter of *State v. Foust,* 105 Ohio St.3d 137, 2004-Ohio-7006, the Ohio Supreme Court addressed the specifics of a *Miranda* warning,

> *Miranda v. Arizona* (1966), 384 U.S. 436 * * * requires that before questioning a suspect in custody, law-enforcement officials must inform the suspect (1) that he or she has the right to remain silent, (2) that his or her statements may be used against him or her at trial, (3) that he or she has the right to have an attorney present during questioning, and (4) that if he or she cannot afford an attorney, one will be appointed.

And of course, the number of decisions released by the Ninth District Court of Appeals addressing *Miranda*, confessions, and custodial interrogations are legion. See: *State v. Copley,* 170 Ohio App.3d 217, 2006-Ohio-6478,[6] and its progeny.

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[4] String citations omitted.

[5] *Dailey* is instructive for other reasons germane to this decision which will be discussed *infra.*

[6] This case is also applicable for other reasons and will be discussed *infra.*

WERE THE *MIRANDA* WARNINGS THE DEFENDANT RECEIVED CONSTITUTIONALLY SUFFICIENT[7]

The gravamen of Burkes' first argument is that the *Miranda* warnings provided by Det. Neff were "inadequate." In reaching this conclusion, Burkes urges that ". . . he was not apprised of his full *Miranda* rights at the time Detective Neff read him his rights at the start of the interrogation."

Further, Burkes argues that Det. Neff ". . . never advised [Burkes] that he could decide at any time that he could exercise these rights and not answer any questions or make any statements." Further, Burkes urges that Det. Neff ". . . never asked if he wished to make a statement or if he wished to waive his rights." And finally, that Det. Neff ". . . did not provide Defendant with any express written waiver of rights form . . ."

None of these arguments are persuasive.

The evidence is uncontroverted that the following exchange occurred between Det. Neff and Burkes prior to the start of the interrogation,

DET. NEFF: Uhm, obviously, you're in handcuffs. I want to read you your rights OK?

BURKES: Yes sir.

DET. NEFF: All right. You have the right to remain silent. Anything you say or do can and will be held against you in a court. Alright? You have the right to an attorney. If you cannot afford an attorney, one will be provided to you by the State. Alright? Do you understand your rights?

BURKES: Yes.

According to Burkes, this recitation of *Miranda* rights provided to him by Det. Neff was constitutionally infirm for the reasons noted *supra,* to wit: Det. Neff never advised Burkes that he could decide at any time that he could exercise these rights and not answer any questions or make any statements; that that Det. Neff never asked if [Burkes] wished to make a statement or if he wished to waive his rights; and, that Det. Neff did not provide Burkes with any express written waiver of rights form.

[7] The Court is addressing the two issues raised by Burkes in the order that they were argued at the hearing, not in the order they were presented in his motion.

In addition to the arguments raised in his motion, Burkes argues that Det. Neff's recitation does not exactly mirror the language contained in the *Miranda* decision.

The problem, of course, with Burkes' argument is that Det. Neff had no duty to provide any of the "extra" warnings that Burkes suggests and there is no constitutional requirement that law enforcement officers recite verbatim the *Miranda* language contained in the actual case.

Both federal and state courts have consistently held since *Miranda* was decided that rote adherence to the language in the *Miranda* decision is not constitutionally required. For instance, in the *Dailey* case previously discussed, the Ohio Supreme Court observed,

> The United States Supreme Court has often indicated that there is no rigid rule requiring that the content of the *Miranda* warnings given to an accused prior to police interrogations be a virtual incantation of the precise language contained in the *Miranda* opinion * * * The warnings required by *Miranda* are necessary in the absence of any other effective equivalent * * * They are simply required to convey to a suspect his rights and are not themselves rights protected by the Constitution * * * They are measures to insure that the right against compulsory self-incrimination is protected. Hence, a reviewing court need not examine the warnings as if construing a will or defining the terms of an easement.

A few years later, in the *Foust* decision, also discussed *supra,* the Ohio Supreme Court noted,

> The Supreme Court has never insisted that *Miranda* warnings be given in the exact form described in that decision. Instead, the court has stated that " 'the "rigidity" of *Miranda* [does not] exten[d] to the precise formulation of the warnings given a criminal defendant,' and that 'no talismanic incantation [is] required to satisfy its strictures.'" * * * "Reviewing courts therefore need not examine *Miranda* warnings as if construing a will or defining the terms of an easement. The inquiry is simply whether the warnings reasonably 'conve[y] to [a suspect] his rights as required by *Miranda*.'" * * *.

Id. at ¶ 68.

The *Foust* decision further held,

> Police do not have to provide additional warnings to a suspect beyond what *Miranda* requires. Indeed, in *State v. Edwards* (1976), 49 Ohio St.2d 31, 39–41, 3 O.O.3d 18, 358 N.E.2d 1051, we found that *Miranda* warnings were

> adequate even though the defendant was not explicitly asked whether he wanted an attorney. Similarly, in *State v. Dailey* (1990), 53 Ohio St.3d 88, 90-91, 559 N.E. 2d 459, *Miranda* warnings were deemed adequate even though they did not explicitly refer to "appointment of counsel."

Arguments regarding the propriety of *Miranda* warnings, whether they be parroted exactly like the language in the case itself or where challenges have been made that the suspect was not given "additional" warnings or explanation of his rights have been repeatedly rejected.

For instance, in *State v. Farris,* 109 Ohio St.3d 519, 2006-Ohio-3255, the Ohio Supreme Court held,

> The overarching concern when considering the sufficiency of a *Miranda* warning is whether it is given in a manner that effectuates its purpose of reasonably informing a defendant of his rights. The words themselves are not magical and are not curative of interrogation mistakes that occur before it is given:

Id. at ¶17.

> "Just as 'no talismanic incantation [is] required to satisfy [*Miranda*'s] strictures,* * * it would be absurd to think that the mere recitation of the litany suffices to satisfy *Miranda* in every conceivable circumstance. 'The inquiry is simply whether the warnings reasonably "conve[y] to [a suspect] his rights as required by *Miranda.*" * * *.

Id. at ¶ 18.

In all of these cases, *Dailey, Foust,* and *Farris,* the defendant argued that the *Miranda* warnings/rights he was given were constitutionally inadequate because either 1) the law enforcement officer failed to recite the *Miranda* case-law language precisely as written in the decision and/or 2) that the officer failed to explain the rights further or inquire if they wished to be exercised.

As noted, both of these arguments that seek to the expanded the extent and nature in which *Miranda* warnings must be given have been repeated rejected by both state and federal courts.[8] Quite simply put, as long as a custodial suspect is provided his *Miranda* rights in a manner sufficiently adequate to apprise him (or her) of those rights, then law enforcement's constitutional obligations in this regard have been fulfilled.

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[8] See: *United States v. DiGiacomo* (C.A. 10, 1978), 579 F.2d 1211, 1214, (no express requirement under Miranda to advise suspect of the right to terminate questioning), and its progeny.

WERE THE INCULPATORY STATEMENTS/ADMISSIONS THE DEFENDANT MADE COERCED AND THUS INVOLUNTARY

Burkes next argues that his admissions, statements, and written "Statement" should be suppressed as they were coerced and thus involuntary.

This argument is also without merit.

In support of this position, Burkes points to a number of factors that he alleges, taken as a whole, render his statements constitutionally infirm.

For instance, Burkes argues that 1) he has no prior criminal record and thus, was unfamiliar with the criminal justice system; 2) that he was handcuffed for the entire interview; 3) that the interview lasted for four hours; 4) that he was crying, throwing-up,[9] and rocking himself back and forth during the interview; 5) that during the interview, Det. Neff told Burkes that "you need help," that "Kelly and K.S. love you," that "people who are honest and seek help are more likely forgiven," and that "why don't you write them apology letters."

This argument advanced by Burkes in reality posits two separate and distinct theories: First, that the interview was so coercive that Burkes' statements were involuntarily obtained; and, Two, that Det. Neff employed the tactic of "the flattery of hope or the torture of fear"[10] in order to "force" a confession out of Burke.

THE INTERVIEW WAS NOT COERCIVE

In a very recent decision, *In Re M.H.,* 2020 WL 7061616, 2020-Ohio-5485, (12/3/2020), the Ohio Supreme Court discussed in great detail the constitutional constructs of *Miranda* warnings, custodial interrogations, and confessions. The decision is nothing short of a law-review worthy primer on Fifth Amendment protections relative to custodial interrogations. In short, it is a roadmap for trial courts to follow when adjudicating suppression issues relative to custodial interrogations.[11]

Regarding the protection against self-incrimination, the Supreme Court stated,

> The Fifth Amendment to the United States Constitution provides that "[n]o person * * * shall be compelled in any criminal case to be a witness against himself." This

[9] The record, including the video recording of the interview, does not show Burkes, at any time, "throwing-up."
[10] See: *State v. McClellan,* 4th Dist., Highland No. 18CA11, 2019-Ohio-4339, at ¶ 16, discussed further *infra.*
[11] While admittedly *M.H.* involves a juvenile and includes a detailed analysis of law enforcement vs. non-law enforcement personnel, the decision nevertheless is edifying in its discussion of the issues at hand.

right applies to state action through the Due Process Clause of the Fourteenth Amendment. * * *

M.H., at ¶ 17.

The Court continued,

> The United States Supreme Court has "adopted a set of prophylactic measures designed to safeguard the constitutional guarantee against self-incrimination." * * * In *Miranda*, the court held that prior to questioning, a suspect "must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." * * * *Miranda* warnings are not given prior to a custodial interrogation, the prosecution may not use the statements obtained from the suspect at trial. *Id.* The court clarified, however, that by "custodial interrogation" it meant "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."

M.H., at ¶ 18.

Regarding coerced confessions, particular as analyzed under federal due-process standards, the Ohio Supreme Court noted,

> In cases decided before and after the Fifth Amendment protection against self-incrimination was first applied to the states, the United States Supreme Court has analyzed the admissibility of a confession under the rubric of due process. * * * We have therefore explained that "[c]onstitutional principles of due process preclude the use of coerced confessions as fundamentally unfair, regardless of whether the confession is true or false." * * *

M.H., at ¶ 23.

> However, in defining the protections due process affords against coerced confessions, the Supreme Court has held that "coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment." * * * "Absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law." * * *

M.H., at ¶ 24.

And finally, with regard to the standard of review that a trial court is to employ when deciding *Miranda* based suppression issues, the Ohio Supreme Court observed,

> The Supreme Court has applied the Due Process Clause of the Fourteenth Amendment to examine "the circumstances of interrogation to determine whether the processes were so unfair or unreasonable as to render a subsequent confession involuntary." * * * The court established a procedural safeguard to ensure that "tactics for eliciting inculpatory statements * * * fall within the broad constitutional boundaries imposed by the Fourteenth Amendment's guarantee of fundamental fairness." * * * Confessions obtained using interrogatory techniques that offend the standards of fundamental fairness under the Due Process Clause may not be used in court against the accused.

M.H., at ¶ 38.

> An interrogator's use of " 'an inherently coercive tactic (*e.g.*, physical abuse, threats, deprivation of food, medical treatment, or sleep)' " triggers the due-process analysis of the totality of the circumstances. * * * Those circumstances include "the age, mentality, and prior criminal experience of the accused; the length, intensity, and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement." * * *

M.H., at ¶ 39.

The Ninth District Court of Appeals has adopted and applied an identical standard,

> "[W]e will not conclude that a waiver was involuntary 'unless there is evidence of police coercion, such as physical abuse, threats, or deprivation of food, medical treatment, or sleep.'" (Emphasis sic.) *Id.* at ¶ 107, quoting *State v. Wesson*, 137 Ohio St.3d 309, 2013-Ohio-4575, ¶ 35.

State v. Jackson, 9th Dist. Summit No. 28691, 2018-Ohio-1285, 4/4/2018, at ¶ 11.

In the case at bar Burkes urges that his admissions were involuntarily coerced due to the four factors listed above, to wit: 1) his inexperience with the criminal justice system; 2) the fact that he was handcuffed for the duration of the interview; 3) that the interview lasted for four-hours; and 4) that he expressed emotional discomfort during the interview.

This Court must determine whether these factors created conditions that were so "unfair or unreasonable as to render the confession involuntary" or were techniques that so "offended the standards of fundamental fairness under the due process clause" that they should not be used against the defendant.

Clearly, they were not.

First, Det. Neff did not employ any tactics remotely related to physical abuse, threats, deprivation of food, medical treatment, or sleep. Quite the opposite, actually. Det. Neff repeatedly inquired if Burkes was alright, offered him something to drink, asked him if he needed to use the restroom, and wiped Burkes eyes after Burkes teared-up when discussing the sexual assault.

In addition, the Court must consider other factors such as Burkes' age (33), his mental stability, prior criminal experience, the length, intensity, and frequency of the interrogation, and the existence of physical deprivation or mistreatment and/or the existence of threat or inducement.

At 33 years of age, Burkes was not a person of tender years but a mature adult. Burkes was admittedly emotional at times during the interview and made some bizarre "excuses" for his conduct but otherwise, there was no indicia of mental instability.[12] Regarding prior criminal experience, he had none and this mitigates in his favor.

Nevertheless, the length of the interrogation, four-hours, was hardly excessive given Burkes was being investigated for the rape and assault of a minor child in his care. And, after carefully listening and watching the entire interview,[13] the Court finds Det. Neff to be calm, patient, understanding, even compassionate. In fact, the interview was anything but "intense." In addition, Det. Neff was the only member of law enforcement to interview Burkes and the interview was completed in a single session.

Moreover, when considering other factors attendant to the interview that the State deduced at the hearing, the Court is convinced that no constitutional violations of Burkes' rights occurred. For instance, Burkes clearly and unambiguously affirmed that he understood his rights; was emotion yet lucid and awake for the entire interview; showed no sign of drug or alcohol impairment; on more than one occasion, thanked Det. Neff for his kindness; Burkes wrote a voluntary statement; and never once did Burkes ask to terminate the interview or request the assistance of an attorney.

The Ohio Supreme Court addressed these very issues in a death penalty case in the matter of *State v. Sapp,* 105 Ohio St.3d 104, 2004-Ohio-7008. Sapp was sentenced to death for raping four women and murdering three of them. After 15-hours of interviews conducted over 27-hours and three sessions, Sapp confessed to the crimes.

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[12] On June 18, 2020, this Court journalized its findings that the parties had stipulated to the admission of the written report "Psychological Evaluation by Dr. Nichole Livingston dated May 12, 2020, finding the Defendant competent to stand trial. And, on August 18, 2020, the Court provided the parties with Dr. Livingston's report wherein she opined that the Defendant "was not suffering from a major mental disease or defect at the time of the alleged offense which caused him to not know the wrongfulness of his alleged actions."

[13] State's Exhibit "A," the CD of the interview.

Sapp argued that his Fifth Amendment rights were violated by law enforcement during his interviews and that his confessions were coerced.

The Supreme Court disagreed.

Regarding the 15-hours of interviews, the Court said, "Nor was the length of the interrogation coercive." *Id.* at ¶ 85. The Court further found that "Sapp understood his rights" and that his "waivers and confessions were voluntary" applying the *Edwards* factors. *Id.* at ¶ 88-89.[14]

The facts and circumstances surrounding Sapp's interviews were much more lengthy, intense, and involved multiple interviewers over three sessions – Burkes' interview was nowhere near as involved and *Sapp* and it should be noted, parenthetically at least, that *Sapp* was a death penalty case which demands the greatest scrutiny by the Court.

All things considered, Burkes admissions were voluntarily made, there was no coercion exacted upon him by Det. Neff, and his interrogation of Burkes was nothing short of "by the book."

THE LAW ENFORCEMENT OFFICER DID NOT EMPLOY IMPROPER "FLATTERY AND HOPE OR THE TORTURE OF FEAR" TACTICS DURING THE COURSE OF THE INTERROGATION

In his next argument, Burkes urges that Det. Neff employed constitutionally impermissible tactics during the interview by telling Burkes that "you need help," that "Kelly and K.S. love you," that "people who are honest and seek help are more likely forgiven," and that "why don't you write them apology letters."

Accordingly to Burkes, these statements gave him "false hope" and diminished the voluntariness of his admissions.

I disagree.

Unlike issues involving *Miranda* in general and the specifics of coercive interrogation techniques, there is little case law on the concept of implementing "flattery and hope" during a custodial interrogation.[15]

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[14] See: *State v. Edwards* (1976), 49 Ohio St.2d 31, string citations omitted.

[15] As there is no allegation of "the torture of fear" made in this case, the Court will confine its discussion to the first prong of the concept.

The genesis of the "flattery of hope" construct is one of federal import. The first case to address it was a United States Supreme Court case, *Dickerson v. United States,* 530 U.S. 428 (2000).[16] In *Dickerson,* the high court noted,

> "A free and voluntary confession is deserving of the highest credit, because it is presumed to flow from the strongest sense of guilt * * * but a confession forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape * * * that no credit ought to be given to it." *Id.*

This concept was discussed further in the matter *State v. McClellan,* noted *supra.* The Fourth District explained,

> The line to be drawn between permissible police conduct and conduct deemed to induce or tend to induce an involuntary statement does not depend upon the bare language of inducement but rather upon the nature of the benefit to be derived by a defendant if he speaks the truth, as represented by the police. * * *.

Id. at ¶ 18.

The court continued,

> * * * When the benefit pointed out by the police to a suspect is merely that which flows naturally from a truthful and honest course of conduct, we can perceive nothing improper in such police activity. On the other hand, if in addition to the foregoing benefit, or in the place thereof, the defendant is given to understand that he might reasonably expect benefits in the nature of more lenient treatment at the hands of the police, prosecution or court in consideration of making a statement, even a truthful one, such motivation is deemed to render the statement involuntary and inadmissible.

Id. at ¶ 19.

Sapp, discussed *supra,* also touches on the concept. As part of his Fifth Amendment claims, Sapp raised similar issues. Addressing these claims, the Supreme Court noted,

> Sapp contended at trial that the detectives played on his psychological vulnerability by promising to obtain help for his psychological problems. For instance, one of the Florida detectives told him, "You want to get some help for Bob [a reference to Sapp's supposed alter ego], we'll get you help for Bob." At various times, detectives suggested that Sapp "need[ed] to talk" because it would help him in "dealing with"

[16] String citations omitted.

> his problems. By telling the truth, they said, Sapp would "get the demon out," "get rid of Bob," and "take control [of himself] back." He would thereby "get some peace," "stop * * * the pain," and be able to "live a normal life."

Sapp, at ¶ 83.

The high court dispensed with these claims thus,

> Promises of help with "collateral problems," such as psychological problems, are not inherently coercive. * * * The detectives never offered to obtain psychiatric help for Sapp *in exchange for information.* * * * Nor did they suggest that Sapp could expect to receive psychiatric help "instead of prosecution and punishment." * * * The detectives simply "suggest[ed] that telling the truth would relieve defendant of a psychological burden." * * * That suggestion is not coercive.

Sapp, at ¶ 84.

In addition, the Ninth District Court of Appeals addressed the issue of promises of leniency and the issue of being "truthful" during an interrogation in *State v. Copley,* 170 Ohio App.3d 217, 2006-Ohio-6478.

The Ninth District said,

> The police can render a confession involuntary if they extract a confession by the use of a direct or implied promise of leniency. * * * However, the mere presence of a promise of leniency does not as a matter of law render a confession involuntary. * * * Instead, as enunciated by the Supreme Court in *Edwards,* a promise of leniency must be coupled with other factors to render a confession involuntary under the totality of the circumstances test. * * *

Id. at ¶ 18.

And finally, regarding the importance of truthfulness, the Ninth District concluded,

> Furthermore, Officer Shows's statement "[W]e'll see * * * how we can work this out" if appellee continued to be truthful also rose to the level of a promise of leniency. However, as in *Robinson,* the officer made this statement after appellee had confessed to inappropriate activity with the child. Accordingly, Officer Shows's statement could not have induced appellee's prior confession.

Contra the *McClellan, Sapp,* and *Copley* cases where there was arguably some discussion of getting help, obtaining psychological relief, and/or the importance of being truthful,[17] in the case at bar there were no promises at all made to Burkes by Det. Neff.

Det. Neff's four statements to Burkes, "you need help," "Kelly and K.S. love you," "people who are honest and seek help are more likely forgiven," and that "why don't you write them apology letters," were not tethered to any *quid pro quo* or promise of leniency.

As such, even considering the facts surrounding Burkes' interview in a light most favorable to him (which this Court is not required to do), the conduct of Det. Neff comes nowhere near coercive such that Burkes' will was overborne rending his confession involuntary. *McClellan, supra,* at ¶ 15.

In closing, *Miranda* jurisprudence has developed a three-part test that courts must apply to support the proposition that a confession was coerced. As noted in *McCellan* (and many other state and federal cases), the test is thus,

> To support a determination that a confession was coerced, the evidence must establish that: (1) the police activity was objectively coercive; (2) the coercion in question was sufficient to overbear defendant's will; and (3) defendant's will was, in fact, overborne as a result of the coercive police activity. * * *

Id. at ¶ 18.

Here, as discussed *supra,* Burkes can meet none of the factors and as such, his motion to suppress is without merit.

IV. CONCLUSION

This Court has carefully considered the parties briefs, the testimony and exhibits in evidence, the applicable law, and most significantly, viewed the actual interrogation of Burkes by Det. Neff.

In the case at bar, the detective fulfilled his obligation to protect Burkes' constitutional rights by providing him with sufficiently proper, if not exactly verbatim *Miranda* warnings/rights. Moreover, Det. Neff was professional, polite, and arguably compassionate throughout the entire interview. Quite simply put, there was nothing even remotely coercive about the interrogation.

[17] None of which, recall, arose to the level of coercion.

The Motion To Suppress is without merit and DENIED.

JUDGE D. CHRIS COOK