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*Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201-2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.*

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**Commonwealth of Pennsylvania v. Caleb Matthew Reed, Defendant**  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch, Criminal Action No. 1530-2014

**HEADNOTES**

*Criminal Law- Suppression of Evidence due to Miranda Violations*

*Criminal Law; Suppression of Evidence*

1. In deciding the merits of a suppression motion, the suppression court must make findings of fact and conclusions of law as to whether evidence was obtained in a manner that is inconsistent with a defendant's constitutional rights. Pa. R. Crim. P. 323(i) (now Pa. R. Crim P. 581 (i)).

*Criminal Law; Burden of Proof when deciding Suppression Motion*

1. The Commonwealth must prove by a preponderance of the evidence that the evidence seeking to be suppressed is admissible. See Pa.R.Crim.P. 323 (h) (now Pa. R. Crim. P. 581 (h)).  
2. To meet its burden, the Commonwealth must prove that Miranda warnings were given, and that the accused evidenced an understanding of the warnings. Com. v. Smith, 472 Pa. 492, 372 A.2d 797 (1977); Com v. Bullard, 465 Pa. 341, 350 A.2d 797 (1976).

*Criminal Law; Miranda Rights and Custodial Interrogation*

1. Miranda rights must be given before all custodial interrogations. Com v. Johnson, 541 A.2d 332, 336 (Pa. Super. Ct. 1988).
2. Miranda warnings are a prerequisite, absent a fully effective equivalent, to the admissibility of any statement made by a defendant. Miranda v. Arizona, 384 U.S. 436, 476 (1966).
3. The determination of whether an interrogation is custodial is an objective determination that is based on the totality of the circumstances, with consideration given to the person subject to the interrogation. Com v. Mannion, 725 A.2d 196, 200 (Pa. Super. Ct. 1999) (citing Com. v. Gwynn, 723 A.2d 143, 148 (Pa. 1998)).
4. A custodial interrogation is defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his [or her] freedom of action in any significant way." Miranda v. Arizona, 384 U.S. 436, 444 (1966).
5. Interrogation is defined as police activity that is calculated to, expected to, or likely to evoke admissions. Com. v. Simala, 252 A.2d 575,578 (Pa. 1969) (citations omitted).
6. A person's inculpatory statement is gratuitous and not subject to suppression for lack of Miranda warnings if it is not made in response to a custodial interrogation. Com v. Mannion, 725 A.2d 196, 200 (Pa. Super. Ct. 1999)
7. The test for determining whether a suspect is involved in a custodial interrogation, which requires the giving of Miranda warnings, is whether the suspect is physically deprived of his freedom in any substantial manner or is placed in a position where he reasonably believes that his movement is restricted by the interrogation. Com v. Rosario, 652 A.2d 354, 365-366 (1994) en banc appeal denied, 685 A.2d 547 (1996) (citations omitted).
8. The factors to determine if an interrogation is custodial are: (1) the reason for the detention; (2) the length of the detention; (3) the location of the detention; (4) whether the suspect was transported against his or her will, how far, and why; (5) whether restraints were used;

(6) whether the police officer showed, threatened, or used force; and (7) the investigative methods employed to confirm or dispel suspicions. Com v. Mannion, 725 A.2d 196, 200 (Pa. Super. Ct. 1999) (citing Com v. Busch, 713 A.2d 97, 101 (Pa. Super. Ct. 1998)).

9. The mere fact that the police focus on one particular suspect does not necessarily mean that a suspect is in a custodial interrogation. Com v. Mannion, 725 A.2d 196, 200 (Pa. Super. Ct. 1999) (citing Com v. Fento, 526 A.2d 784, 787 (Pa. Super. Ct. 1987)).

10. A defendant is not subject to a custodial interrogation if she is free to move about, is interrogated in her home, free of fear of imminent arrest, and free of any type of police restraint. Com v. Mannion, 725 A.2d 196, 202 (Pa. Super. Ct. 1999).

### *Criminal Law; Waiver of Miranda Rights*

1. There is a two-step inquiry that is required when deciding if a Miranda waiver is valid: (1) whether the waiver was voluntary in the sense of it being the result of an intentional choice by the defendant and not of significant government pressure and (2) whether the waiver was knowing and intelligent. Com v. Cephas, 522 A.2d 63, 65-66 (Pa. Super. Ct. 1987).

2. Any evidence that an accused defendant was threatened or tricked into a waiver will show that the waiver was not voluntary. Miranda v. Arizona, 384 U.S. 436, 476 (1966).

### *Criminal Law; Nature of Miranda Warnings*

1. A person must be informed of their rights in clear and unequivocal terms if he or she is subject to a custodial interrogation. Miranda v. Arizona, 384 U.S. 436, 467-68 (1966).

2. Miranda warnings must clearly inform defendants of their right to counsel. Miranda v. Arizona, 384 U.S. 436, 471 (1966).

3. The warning of a defendant's right to remain silent is required to be accompanied with a warning that anything the defendant says or does can be used against him or her in court. Miranda v. Arizona, 384 U.S. 436, 469 (1966).

### *Criminal Law; Policy behind Miranda Warnings*

1. Without Miranda warnings, a person suspected or accused of crime could have his or her will overborne during an in-custody interrogation and would speak where he or she would not otherwise do so. Miranda v. Arizona, 384 U.S. 436, 468 (1966).

2. Miranda warnings will assist in making an individual who is being interrogated aware of the Fifth Amendment privilege, assist in preventing those who are being interrogated from succumbing to interrogation pressures, and will show a willingness on the part of the interrogators of recognizing the rights of those being interrogated. Miranda v. Arizona, 384 U.S. 436, 468 (1966).

3. Since the Fifth Amendment privilege of self-incrimination is fundamental to the United States judicial system and giving an adequate warning about the privilege is so simple, the Supreme Court of the United States will not pause to inquire as to if a defendant was aware of his rights where no warning was given. Miranda v. Arizona, 384 U.S. 436, 469 (1966).

4. The requirements to give a defendant Miranda warnings and to obtain a waiver of Miranda rights before a defendant's statements can be admissible are fundamental to the Fifth Amendment privilege. Miranda v. Arizona, 384 U.S. 436, 476 (1966).

### *Criminal Law; Ineffective Miranda Waiver due to Psychological Coercion*

1. In Pennsylvania, an evaluation for the purpose of determining whether a confession is

voluntary or a result of psychological coercion must factor in the following elements: (1) the duration and methods of interrogation, (2) the conditions of detention, (3) the attitude shown by the police toward the defendant, (4) the defendant's physical and psychological state and (5) all other conditions present which may serve to drain ones powers of resistance to suggestion and undermine his self-determination. Com. v. Crosby, 346 A.2d 768, 771 (Pa. 1975) (quoting Com. v. Alston, 317 A.2d 241, 244 (Pa. 1974)).

2. Sickness may affect a suspect's will to resist and make an accused succumb to overbearing and improper questioning but the relevant issue is whether the accused's will was overborne at the time the statement was made to police. Commonwealth v. Perry, 475 Pa. 1, 379 A.2d 545 (1977); Commonwealth v. Holton, 432 Pa. 11, 247 A.2d 228 (1968); Com. v. Hernandez, 446 A.2d 1268, 1272 (Pa. 1982).

#### *Criminal Law; Prior Experience with Miranda*

1. Prior experience with Miranda evidences that the current waiver is knowing and voluntary. Com v. Hughes, 555 A.2d 1264, 1267, 1275 (Pa. 1988) (citing Com. v. Hernandez, 446 A.2d 1268 (Pa. 1982); Com v. Granger, 528 A.2d 244 (Pa. Super. Ct. 1987)).

#### *Criminal Law; Miranda Warnings- Issues Involving Health and Intelligence*

1. A defendant's low I.Q. does not show his inability to understand his rights. Com v. Hughes, 555 A.2d 1264, 1267, 1275 (Pa. 1988) (citing Com. v. Hernandez, 446 A.2d 1268 (Pa. 1982); Com. v. Whitney, 512 A.2d 1152 (Pa. 1986)).

2. An illiterate defendant is able to effectively waive his Miranda rights by having them read to him orally by police. Com v. Hughes, 555 A.2d 1264, 1267, 1275 (Pa. 1988); Com v. Stafford, 301 A.2d 600 (Pa. 1973).

3. The fact that a defendant is unable to read or write goes to the weight and not the admissibility of a confession. Com. v. Glover, 412 A.2d 855, 858-59 (Pa. 1980) (citing Com. v. Harper, 403 A.2d 536, 543 (Pa. 1979)).

4. The fact that a defendant has a low I.Q. is not, in itself, enough to deem a confession to be involuntary. Com. v. Glover, 412 A.2d 855, 859 (Pa. 1980).

5. Mental or physical deficiencies of an accused are not conclusive evidence of an accused's inability to waive his constitutional rights. Com. v. Cephas, 522 A.2d 63, 66 (Pa. Super. Ct. 1987) (Olszewski, J. concurring) (citations omitted).

#### Appearances:

Steven N. Necaster, Esq., *Attorney for Defendant*

Franklin County District Attorney's Office

### **OPINION**

Before Meyers, J.

### **FACTUAL AND PROCEDURAL HISTORY**

On May 13, 2014, Defendant stayed the night at his friend's house. Defendant's friend's parents alleged that Defendant stole a golden heart pendant and a silver coin piece during his time at their residence. Defendant states that he walked upstairs to get a cigarette and he accidentally knocked over a jewelry box. He further claims that, while in the process of picking up the jewelry box, he took a heart shaped necklace, which he has since returned.

The theft was reported on May 13, 2014. On May 14, 2014, Trooper Corey Folino of the Pennsylvania State Police spoke to the Defendant at his home for the first time. On May 23, 2014, Trooper Folino questioned Defendant again. According to Trooper Folino's affidavit of probable cause, the Defendant "subsequently confessed to the stealing of the gold necklace he sold to Collectors Dream Pawn Shop from the victim." On May 24, 2014, Defendant was arrested.

Defendant raises a few claims in support of suppression. First, Defendant alleges that Trooper Folino was aggressive, lied, and treated him like he was already guilty. Thus, Defendant claims "that he was repeatedly questioned and 'confessed' only to make the questioning cease and that the initial 'confession' should be suppressed because the statements were therefore involuntary." Defendant's Omnibus Motion to Suppress Evidence, Paragraph 7. Defendant seeks to have the subsequent "confession" at the Pennsylvania State Police barracks suppressed as "the subsequent 'confession' was a product of the first illegally obtained 'confession'" and Defendant did not waive his Miranda warnings. Id. at Paragraph 8.

Second, Defendant alleges that he did not understand his rights and they were not explained properly to him by Trooper Folino. Defendant also stated that his Asperger Syndrome symptoms made understanding and completing the paperwork difficult. Defendant further asserts that Trooper Folino told him that the quicker you fill in the paperwork, the quicker you can go home. Thus, according to Defendant, that is why he indicated on the custodial written statement that he understood his rights when, in actuality, he did not. Defendant also said that Trooper Folino stated that "I should arrest you right now. I have all the evidence I need."

## LEGAL ANALYSIS

"When ruling on suppression motions, the suppression court is required to make findings of fact and conclusions of law as to whether evidence was obtained in violation of the defendant's constitutional rights." Pa.R.Crim.P. 323(i). "The suppression court must determine whether the Commonwealth has established by a preponderance of the evidence that the

challenged evidence is admissible.” See Pa.R.Crim.P. 323(h). To meet its burden, the Commonwealth “must establish that the warnings were given, and that the accused manifested an understanding of the warnings.” Com. v. Smith, 472 Pa. 492, 372 A.2d 797 (1977); Com. v. Bullard, 465 Pa. 341, 350 A.2d 797 (1976).

## I. CUSTODIAL INTERROGATION

It is well-established that Miranda rights must be given before all *custodial* interrogations. Com. v. Johnson, 541 A.2d 332, 336 (Pa. Super. Ct. 1988). “The standard for determining whether an encounter with the police is deemed ‘custodial’ or police have initiated a custodial interrogation is an objective one based on a totality of the circumstances, with due consideration given to the reasonable impression conveyed to the person interrogated.” Com. v. Mannion, 725 A.2d 196, 200 (Pa. Super. Ct. 1999) (citing Com. v. Gwynn, 723 A.2d 143, 148 (Pa. 1998)). The United States Supreme Court has defined custodial interrogations as “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his [or her] freedom of action in any significant way.” Miranda v. Arizona, 384 U.S. 436, 444 (1966). Police activity “calculated to, expected to, or likely to evoke admissions” is the definition of “interrogation.” Com. v. Simala, 252 A.2d 575, 578 (Pa. 1969) (citations omitted). “When a person’s inculpatory statement is not made in response to custodial interrogation, the statement is classified as gratuitous, and is not subject to suppression for lack of warnings.” Mannion 725 A.2d at 200.

According to the Pennsylvania Supreme Court,

[t]he test for determining whether a suspect is being subjected to custodial interrogation so as to necessitate Miranda warnings is whether he is physically deprived of his freedom in any significant way or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by such interrogation.

Com. v. Rosario, 652 A.2d 354, 365-366 (1994) en banc appeal denied, 685 A.2d 547 (1996) (citations omitted).

The Superior Court has outlined the factors a court should use to determine if an interrogation is custodial under the totality of the circumstances test. The factors used in finding

whether a detention has become so coercive as to constitute the functional equivalent of arrest include: the basis for the detention; its length; its location; whether the

suspect was transported against his or her will, how far, and why; whether restraints were used; whether the law enforcement officer showed, threatened or used force; and the investigative methods employed to confirm or dispel suspicions.

Mannion, 725 A.2d at 200 (citing Com v. Busch, 713 A.2d 97, 101 (Pa. Super. Ct. 1998)). Moreover, “[t]he fact that a police investigation has focused on a particular individual does not automatically trigger ‘custody’ thus requiring Miranda warnings.” Id. (citing Com v. Fento, 526 A.2d 784, 787 (Pa. Super. Ct. 1987)).

The Superior Court decided a case outlining if and when an interrogation is custodial. In Mannion, two Pennsylvania State Police Troopers, both dressed in street clothes, questioned an approximately sixty-year-old defendant regarding the theft of approximately \$200,000 from a company. 725 A.2d at 198. Defendant, a former bookkeeper was alleged to have committed the crime. Id. The troopers questioned defendant at her home. Id.

Before entering, the troopers knocked, “identified themselves as state police troopers, and stated that they were investigating an alleged theft of approximately \$200,000 taken from [the company].” Id. Defendant stated she trusted the police and was willing to discuss the matter with them as she believed they could help. Id. Subsequently, the troopers informed defendant “that she: was not under arrest; was not required to speak with the troopers; could ask the troopers to leave at anytime [sic]; and could have an attorney present.” Id. The interrogation took place in defendant’s living room for about 90 minutes. Id. During this interrogation, one trooper went over the books with defendant. Id. “During and after this interview, neither trooper was convinced that a theft as opposed to an accounting error had occurred; or, if one had occurred, that [defendant] was the perpetrator.” Id.

After obtaining additional documentation from the owners of the company, one of the troopers contacted defendant and scheduled a second meeting at her home. Id. Both troopers were again dressed in street clothes when arriving at defendant’s residence. Id. at 198-99. Still, neither trooper was certain a theft occurred or if one did, that defendant was the perpetrator. Id. at 199. The troopers knocked on the door again and advised defendant that “she . . . was not required to speak with them; was free to stop speaking with them at any time; and could ask them to leave at any time.” Id.

Defendant prepared tea and coffee for the troopers and moved freely, while smoking cigarettes during the interrogation. Id. Defendant’s telephone rang and she asked the police if she could answer. Id. The troopers said she could do as she wanted and she stayed on the phone for

about five minutes. Id.

After two hours into the interrogation, defendant stated she paid the company's electric and postage bills in cash. Id. The troopers then began to think she was lying as a business would need to keep receipts for tax purposes. Id. Next, one trooper said that defendant was lying and she was going to be arrested soon. Id.

Subsequently, defendant began to cry and stated that the company's owners children "had so much and were spoiled brats[ and] she took the money to help her children because she deserved a better life." Id. She wrote a written statement and was later charged with (1) theft by unlawful taking or disposition and (2) receiving stolen property. Id. Defendant moved to suppress her statements as she was not given her Miranda rights even though her statements came during a custodial interrogation. Id. The trial court granted the motion. Id.

In overruling the trial court, the Superior Court found that "police detentions in Pennsylvania become custodial when, under the totality of the circumstances, the conditions and/or duration of the detention become so coercive as to constitute the functional equivalent of arrest." Id. at 201 (citations omitted). The Court found that defendant was not subjected to a custodial interrogation as she agreed to talk, she set up the meeting location, and the police received her permission before beginning the questioning. Id. at 202. In addition, defendant moved around her house freely, smoked cigarettes, made coffee and tea, and talked on the phone for five minutes. Id. Defendant was also informed "that she was free to do as she pleased." Id.

The Superior Court found that "[a]t all times, [defendant] was free to move about her home, free to do what she wanted . . . free of any type of police restraint and free of the fear of imminent arrest." Id. Police also did not remove defendant from her home, use restraints, or search her. Id. The troopers also "made no show, threat, or use of force." Id.

The troopers did not become suspicious of defendant until she stated that she paid the company's bills with cash. Id. at 203. Even when the troopers doubted defendant, "the record reflect[ed] no testimony that [defendant] . . . felt intimidated by the troopers or that her freedom was restricted." Id. Therefore, the Superior Court found that defendant's statements should not have been suppressed as she acted consistently with a "willing and cooperative witness." Id.

Here, there is, likewise, no evidence that Defendant could reasonably believe he was under arrest or in custody during the time of his May 23, 2014 questioning at his home. Defendant alleges that Trooper Folino was forceful when he came to his residence to question him but



such allegations are vague. At the suppression hearing, Defendant states Trooper Folino was speaking in an aggressive and demanding tone when asking about the jewelry. In addition, Defendant states that Trooper Folino was demanding, repeated questions over and over, and showed Defendant very little respect. Defendant also stated that Trooper Folino acted like he was guilty but never explicitly said that he was. Defendant claimed, and Trooper Folino denied, that Trooper Folino said that “I should arrest you right now. I have all the evidence I need.” Defendant claims that his first confession should be suppressed as he only confessed in order to make the questioning stop.

Like in Mannion, Defendant here seemed to act consistently with a willful participant. While, unlike Mannion, defendant may have felt some level of intimidation, this Court finds that such intimidation does not transform the interrogation into a custodial interrogation. Defendant was never threatened with force, searched, or restrained. Defendant could have refused to allow Trooper Folino into the residence and could have, at any time, moved around or asked Trooper Folino to exit the premises. While this Court is sensitive to Defendant’s physical and mental condition, this Court cannot find that Defendant had his freedom of movement curtailed significantly or was placed in a position where he reasonably believed he was under arrest. In addition, Defendant never testified that he felt such a way. See Rosario, 652 A.2d at 365-66. Therefore, this Court finds that the questioning did not rise to the level of a custodial interrogation.

## II. WAIVER OF MIRANDA RIGHTS

Next, Defendant challenges the validity of his waiver of his Miranda rights. A suppression court is required to undertake a two-step inquiry into the validity of a Miranda waiver. Com v. Cephas, 522 A.2d 63, 65 (Pa. Super. Ct. 1987).

The court must first determine whether the waiver was voluntary in the sense of being the result of an intentional choice on the part of a defendant who had not been subject to undue governmental pressure. The court must then focus on cognitive factors to determine if the waiver was knowing and intelligent—i.e. whether the defendant was aware of the nature of the choice that he made by giving up his Miranda rights.

Id. at 65-66.

“[I]f a person in custody is to be subjected to interrogation, he must be informed in clear and unequivocal terms” of his rights. Miranda v.

Arizona, 384 U.S. 436, 467-68 (1966). The Supreme Court also stated “that without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual’s will to resist and to compel him to speak where he would not otherwise do so freely.” Id. at 468. The Court found that the warnings will help make those interrogated aware of the Fifth Amendment privilege, assist those interrogated from succumbing to the pressures in an interrogation atmosphere, and will evidence a willingness on the part of the interrogators of recognizing the Fifth Amendment privilege of the one being interrogated. Id. The Court concluded that “[t]he Fifth Amendment privilege is so fundamental to our system of constitutional rule and the expedient of giving an adequate warning as to the availability of the privilege so simple, we will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given.” Id. at 469. The Supreme Court also required that those being interrogated be “clearly informed” of their right to counsel. Id. at 471. Lastly, the right to remain silent must be accompanied with a warning that what the individual who is subject to interrogation says or does can be used against them in court. Id. at 469. These warnings “are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by a defendant.” Id. at 476.

“Moreover, any evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege. The requirement of warnings and waiver of rights is a fundamental with respect to the Fifth Amendment privilege and not simply a preliminary ritual to existing methods of interrogation.” Id.

Under Pennsylvania Law, “[a]n evaluation seeking to determine whether a confession is voluntary because of psychological coercion must consider those elements impinging upon a defendant’s will such as: the duration and the methods of interrogation, the conditions of detention, the manifest attitude of the police toward the defendant, the defendant’s physical and psychological state and all other conditions present which may serve to drain ones powers of resistance to suggestion and undermine his self-determination.” Com. v. Crosby, 346 A.2d 768, 771 (Pa. 1975) (quoting Com. v. Alston, 317 A.2d 241, 244 (Pa. 1974)). “Although it is clear that ill health may well influence the will to resist, Commonwealth v. Perry, 475 Pa. 1, 379 A.2d 545 (1977) and make an accused prone to overbearing and improper questioning, Commonwealth v. Holton, 432 Pa. 11, 247 A.2d 228 (1968), the issue which causes ill health to be relevant is whether or not the accused’s will was overborne at the time he made the statements.” Com. v. Hernandez, 446 A.2d 1268, 1272 (Pa. 1982).

This Court finds a Pennsylvania Supreme Court juvenile criminal law case to be binding. A juvenile convicted of murder of the first degree, rape, involuntary deviate sexual intercourse, and arson endangering persons and who received a death sentence, challenged the voluntariness of his guilty plea. Com v. Hughes, 555 A.2d 1264, 1267, 1273 (Pa. 1988). The juvenile appellant argued that the conduct of his uncles and the police encroached on his free will and therefore was not voluntary. Id. Specifically, the juvenile claimed, that during the questioning, both uncles stated “if you did it . . ., tell them.” Id. at 1273. In addition, the detective on the case asked the appellant “[h]ow many more little kids are you going to hurt?” Id. Also, an officer told the appellant, “I know you did it, . . . and tell the truth.” Id. “Most importantly, [a]ppellant notes that despite the fact that the results of the polygraph examination were inconclusive, [the detective on the case] testified that [a]ppellant and both uncles were told that [a]ppellant had failed the test.” Id. The appellant also had minimal sleep and nothing to eat during the interrogation. Id.

The Court found that there is no evidence that “the police . . . engage[d] in subterfuge[;]” the polygraphist informed the police that appellant did not pass the polygraph without specifically stating that the results were inconclusive. Id. at 1274. Moreover, appellant did not request food or drink during the interrogation. Id. In addition, the suppression court found that appellant was awake and alert during questioning. Id. Thus, the Supreme Court found that the confession was voluntary.

The appellant also argued that his waiver of his Miranda rights was ineffective. Id. (citing Miranda v. Arizona, 384 U.S. 436 (1966)). According to appellant, he did not have the mental capacity to knowingly, intelligently, and voluntarily waive his Miranda rights, as he was seventeen years old, had an I.Q. of 81, and had a reading and writing ability of a second grader. Id. In addition, appellant asserted that he was mentally ill and that he lacked almost any ability to comprehend his rights. Id. The Court found that the appellant had waived his rights at a previous date when he admitted the rape of another girl. Id. at 1274-75. The Court noted that “[p]rior experience with Miranda warnings suggests that the current waiver was knowing and voluntary.” Id. at 1275 (citing Hernandez, 446 A.2d at 1268 and Com v. Granger, 528 A.2d 244 (Pa. Super. Ct. 1987)). In addition, Defendant admitted that he was able to read and write and was able to advance to the eleventh grade. Id. Moreover, appellant never read the warnings and statements as his uncles read the warnings to him each and every time. Id. The Court stated that, “[i]f the police gave Miranda warnings orally, as here, an illiterate accused can still validly waive his rights.” Id. (citing Com v. Stafford, 301 A.2d 600 (Pa. 1973)).

The Court also found that an appellant’s “low I.Q. does not establish

his inability to comprehend his rights.” Id. (citing Com. v. Whitney, 512 A.2d 1152 (Pa. 1986); Hernandez, supra). Therefore, the Court found “that there [wa]s ample support in the record for the conclusion that [a]ppellant possessed the requisite mental capacity to waive his Miranda rights.” Id.

This Court also finds that Com. v. Glover, 412 A.2d 855 (Pa. 1980) is factually similar to the matter here. The defendant in Glover was found guilty of third-degree murder, criminal conspiracy, two counts of aggravated assault and possessing an instrument of a crime. Glover, 412 A.2d at 856. The defendant argued that due to his “limited reading ability, when combined with evidence of his low intelligence quotient, . . . he was unable to understand the Miranda warnings [given to him] and,” therefore, he was not intellectually capable of knowingly waiving his constitutional rights. Id. at 858. A detective who testified at Defendant’s trial stated that before he read defendant his Miranda rights, he explained them “in laymen’s terms.” Id. The detective determined that defendant understood the laymen’s terms reading of rights and then proceeded to read the standard warnings. Id. Defendant again responded that he understood the rights and still wanted to give a statement; thus, the detective continued with the interrogation. Id. At the end of defendant’s six-page statement, defendant informed the officer that he could not read. Id. Upon hearing defendant could not read, the detective brought defendant’s mother and the mother of a co-defendant into the interrogation room to read the statement to the defendant. Id. The co-defendant’s mother read the statement aloud and then defendant signed each page of the statement. Id. The co-defendant’s mother and the defendant signed each page of the statement. Id. Mother and the co-defendant’s mother signed the statement as witnesses. Id.

Defendant’s counsel presented stipulated evidence that defendant’s public school record indicated that he had received poor grades in high school. Id. In addition, defendant called a psychiatrist that testified that defendant’s I.Q. was around 70. Id. The psychiatrist had stated that defendant had an ability to read and write the English language but he would likely only be able to understand Miranda warnings if they were read “plainly and carefully.” Id.

In finding that the confession was voluntary, the Court noted that “the fact that a defendant could not read or write goes to the weight and not the admissibility of a confession.” Id. at 858-59 (citing Com. v. Harper, 403 A.2d 536, 543 (Pa. 1979)). Also, “the [Supreme] Court has repeatedly held that the fact that a defendant has a low I.Q. is not in itself sufficient to render his confession involuntary.” Id. at 859 (citations omitted). Thus, there was support for a finding that the confession was voluntary. Id.

In addition, the Pennsylvania Superior Court held that a defendant,

who was charged with rape, indecent assault, indecent exposure, unlawful restraint, terroristic threats, and simple assault, did not knowingly waive his privilege against self-incrimination. Com. v. Cephas, 522 A.2d 63, 64 (Pa. Super. Ct. 1987). The Court noted that the defendant “exhibited bizarre and psychotic behavior[,]” including his kicking of walls and the door of a detention room. Id. at 64. He also “kept yelling inane comments.” Id.

The defendant was first “interrogated in an office by a detective who knew that [defendant] suffered from mental illness.” Id. During the interrogation, the Superior Court noted that defendant “acted childishly.” Id. For example, “[h]e refused to sit unless given a cigarette or soda and cookies.” Id. The detective stopped the interrogation and escorted the defendant back to the detention room where he continued to act childishly. Id. The defendant was later interrogated for a second time and continued to act childishly. Id. He had his Miranda warnings read to him and subsequently “made incriminating statements.” Id. The Superior Court stated that the lower court found that the detective knew that one of the statements “was essential to the prosecution of the case[,]” as the victim in the case was not able to make a positive identification of defendant after his arrest. Id. The lower court also held that the “detective skillfully manipulated [defendant] through a process of reward and punishment to make the statements.” Id. The Commonwealth called an expert that stated defendant was capable of understanding the Miranda rights and waiving his Fifth Amendment privilege against self-incrimination. Id. Defendant presented two experts that testified that defendant was not capable of waiving his rights. Id. The suppression court found that the Commonwealth failed to meet its burden of showing defendant made a knowing waiver of his Miranda rights. Id.

The Superior Court affirmed the suppression court as defendant “suffered from chronic undifferentiated schizophrenia and that this mental illness prevented him from understanding the Miranda warnings.” Id. at 65. The suppression court also held that defendant “was incapable of making a knowing and intelligent waiver of his privilege against self-incrimination.” Id. There was enough support in the record for these findings as defendant’s expert’s qualifications were not challenged and the defense expert “based his opinion on a diagnosis of [defendant] after a personal interview and on [defendant’s] previous mental health history.” Id. Thus, the suppression was affirmed as the suppression court had enough evidence in the record to find defendant’s experts more credible than the Commonwealth’s.<sup>1</sup>

Here, this Court cannot find any evidence that defendant “was

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<sup>1</sup> It should be noted that the concurring opinion in Cephas clearly stated that the outcome was limited to the facts of the case and “mental or physical deficiencies of an accused are not conclusive evidence of an accused’s inability to waive his constitutional rights.” Id. at 66 (Olszewski, J. concurring) (citations omitted).

threatened, tricked, or cajoled into a waiver.” Miranda, 384 U.S. at 476. Defendant claims that Trooper Folino used an aggressive tone when questioning him and that his rights were not explained properly to him but does not say how the explanation was erroneous. In addition, Defendant marked “Yes” next to “Do you understand your rights as I have explained them to you?” Pennsylvania State Police Custodial Written Statement, P. 1. Indeed, Defendant marked “Yes” next to a question that asked him if his statement was given of his “own free will and accord, without any promises or threats.” Id. P. 2. In addition, there is nothing in the record to suggest that Defendant did not understand his rights or that he asked for clarification. See Miranda, 384 U.S. at 468 (holding that individual subject to custodial interrogation must receive notice of his rights in “clear and unequivocal terms”). In addition, *assuming arguendo* that Trooper Folino did have an aggressive and demeaning tone, this alone is one factor to consider and is not enough to make a confession involuntary. See Hughes, 555 A.2d at 1273 (finding that waiver of Miranda rights was voluntary when an officer told juvenile “I know you did it” and a detective said “How many more little kids are you going to hurt?”).

In addition, the Commonwealth has met its burden of showing that the Defendant’s waiver was voluntary. Defendant claims that he was physically ill and his Asperger’s syndrome limited his understanding of the Miranda rights. Again, this Court sympathizes with Defendant’s physical and mental complications during the time surrounding his police questioning. However, this Court finds no basis in the record to justify suppression of his confession. Defendant’s medical complications did not appear to have affected his understanding of the rights like the cases where confessions were held to be involuntary, such as Cephas. Moreover, in Cephas, the defendant had experts testify that defendant “was incapable of making a knowing and intelligent waiver of his privilege against self-incrimination.” Cephas, 522 A.2d at 65. In addition, Defendant was free to have prevented the Trooper Folino from entering his residence and questioning him and, even still, could have asked Trooper Folino to leave if he began to feel too uncomfortable or pressured.

Defendant also states that his reading ability is limited and that also affected the voluntariness of his plea. However, Defendant marked “Yes” next to a question asking if he “Can . . . read and write the English language?” Pennsylvania State Police Custodial Written Statement, P. 1. Moreover, a defendant’s ability to read or write goes to the weight of the confession and not the admissibility of the confession. Harper, 403 A.2d at 543 n. 15; Hughes, 555 A.2d at 1275. Since Defendant freely allowed police to enter his house to question him, it is hard for this Court to understand how Defendant now claims that he checked off the “Yes” boxes on the Miranda

waiver form as a result of police pressure.

For the above stated reasons, this Court finds that the Commonwealth has met its burden in showing that Defendant made a knowing, intelligent, and voluntary waiver of his Miranda rights and Defendant was not subjected to undue governmental power.

### **CONCLUSION**

In light of the above, Defendant's statements should not be suppressed.

### **ORDER OF COURT**

**AND NOW**, this 17th day of December, 2014, upon review and consideration of Defendant's Omnibus Motion to Suppress Evidence and Defendant's Letter Brief in support of his Motion to Suppress and after having held a hearing on the Motion;

**IT IS HEREBY ORDERED** that Defendant's Motion is **DENIED** pursuant to the attached opinion.

*Pursuant to the requirements of Pa .R.Crim.P. 114 (B)(1), (2) and (C)(1), (2), the Clerk shall promptly serve this Order or court notice on each party's attorney, or the party if unrepresented; and shall promptly make docket entries containing the date of receipt in the Clerk's office of the Order or court notice; the date appearing on the Order or court notice; and the date and manner of service of the Order or court notice.*