

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

LYNN DISTRICT COURT
DOCKET NO. 2013CR000423

_____)
COMMONWEALTH OF)
MASSACHUSETTS,)
)
vs.)
)
LEANDRO B. NEVES,)
Defendant)
_____)

DEFENDANT’S MOTION TO SUPPRESS ALLEGED STATEMENTS

THE FACTS

Now comes the defendant, Leandro B. Neves, and pursuant to Mass. R. Cr. P. 13(A)(1) and Mass. R. Cr. P. 13(C)(1), hereby, moves this Honorable Court to suppress evidence of any alleged statements made by the defendant, while hanging upside down in the backseat of his “turned over” car at this accident scene and any alleged statements supposedly made moments later, while being treated for a ruptured spleen and punctured lung in the ambulance.

In summary, Saugus Police Officer Cash confirms that the defendant “was being treated in the ambulance.” The defendant supposedly blurted out to Cash that he had consumed 5 beers, prior to driving that evening. According to Saugus Police Officer Cooper, she came upon the scene on 12/20/2019 to find Leandro’s 2019 Nissan Altima flipped over, with Neves “trapped inside.” Certainly, being trapped inside an overturned vehicle would be a harrowing experience for any driver. Compounding matters, is that the defendant was suffering from a ruptured spleen and punctured lung.

Undeterred by the defendant’s dire physical condition, Officer Cash actually initiated questioning of the “upside down,” Leandro, who professed to having no knowledge of any accident, given his head injury and his grievous injuries. While the fire department was attempting to extricate Leandro with the Jaws of Life, Officer Cash persisted and asked him if he knew which way he had been heading. The defendant responded in the negative. Despite the fact that defendant was hanging upside down, Officer Cash supposedly could determine

that Leandro's eyes were "red and bloodshot." It is important to note that not only was the vehicle completely overturned on its roof, but that "all airbags were deployed" (See Police Report of Officer Cooper, **Exhibit A**).

Despite the near cataclysmic motor vehicle accident and the grievous injuries suffered by Leandro Neves, Officer Cash persisted in improper, custodial questioning of the defendant, unaffected by Miranda warnings. As the EMTs tried to save his life, Officer Cash persisted and says that the badly injured defendant purportedly told him about having 5 beers earlier that evening.

It is exactly this alleged statement and any collateral statements, which should be precluded by this Honorable Court, pursuant to Defendant's Motion to Suppress, for the following reasons.

THE LAW

In his zeal to prosecute the injured Leandro, Officer Cash engaged in custodial interrogation, without issuing prophylactic Miranda warnings, in patent violation of the defendant's rights under the Fifth Amendment of the United States Constitution and Article XII of the Massachusetts Declaration of Rights. See Commonwealth v. McGrail, 80 Mass. App. Ct. 339 (2011). Furthermore, the fact that Leandro Neves almost died in the subject accident, due to the spleen rupture engenders a macabre scene, wholly inconsistent with constitutionally approved questioning.

Undeniably, Miranda warnings are required "whenever a reasonable person in the defendant's position would have believed he was in custody." See Commonwealth v. Groome, 435 Mass. 201, 211, 755 N.E.2d 1224 (2001). The four custodial factors assessed in determining whether an interrogation is custodial are as follows:

1. The place of interrogation;
2. Whether the officers have conveyed to the person being questioned any belief or opinion that he is a suspect;
3. The nature of the interrogation;
4. Whether at the time the incriminating statement was made the person was free to end the interview or leave.

Applying the Groome factors to the case at bar, condemns the police questioning as egregiously improper and unfair. Rather than inquire into his welfare, the police sought to build their potential "OUIL" case on alleged statements extracted from a grievously wounded defendant (ruptured spleen and

punctured lung). There can be no doubt, in these circumstances, that Leandro Neves was clearly in custody while trapped, upside down in the backseat of his car, as his spleen bled profusely, according to his own medical records. Rather than allow the EMTs and fire department to do their life-saving work unimpeded, the Saugus Police decided to pursue aggressive questioning of the defendant, while he is hanging upside down and has nowhere to go. Poignantly, Officer Cooper is keen to cite the fact that the defendant was found upside down in the backseat and that “no one else could have entered the vehicle.” That statement cuts both ways, since it clearly demonstrates that even the officer admits that the questioning was custodial. Nowhere in the Saugus Police Report is there any recognition of the existence of Miranda warnings.

In determining whether an individual is in custody, this Honorable Court must assess how a reasonable person in defendant’s position would have understood the situation, taking into consideration “whether the interrogation took place in a police dominated atmosphere.” See Commonwealth v. Lafleur, 58 Mass. App. Ct. 546, 549, 791 N.E.2d 38 (2003), quoting from Miranda, 384 US at 445, 86 S. Ct. 1600 (1962). In the case at bar, it would strain credulity for the Government to suggest that the Leandro Neves was not “in custody,” both while trapped in the backseat and while being treated emergently by the EMTs in the ambulance. Clearly, his grievous injuries, including a ruptured spleen and a concussion, would vitiate the reliability of any alleged statements, which Leandro Neves does not remember making and which the police did not record, nor attempt to prophylactically protect by issuing a Miranda warning. Unlike the defendant in McGrail, Leandro Neves was not in a hospital setting in an unsecured area where he was free to roam about and then suddenly blurt out statements. Instead, Leandro Neves was both hanging upside down with a ruptured spleen and then painfully removed by the Jaws of Life by the fire department and transported to the ambulance, where Officer Cash continued his incessant questioning. Ultimately, the question is whether there was a restraint on freedom of movement of a degree associated with a formal arrest. California v. Beheler, 463 U.S. 1121, 1125, 103 S. Ct. 3517, 77 L. Ed. 2d 1275(1983)(citing Oregon v. Mathiason, 429 U.S. 492, 495, 97 S. Ct. 711, 50 L. Ed. 2d 714 (1977)). Clearly, there was.

The weight of the credible evidence adduced in this case clearly demonstrates that the police took advantage of the defendant’s grievously injured status to attempt to elicit “statements” from him, which were neither recorded, nor independently proven. One would suppose that the body camera video would confirm if these statements were actually made. Yet, none exists based on the absence of production of same, in response to Defendant’s several discovery motions.

These purported statements (which the defendant denies making) are also inherently unreliable given Officer Cooper's report that the defendant was apparently so stunned that he did not recall where he was coming from or whether he was driving.

Additionally, a defendant in Leandro Neves' grievously injured condition, could hypothesize that he "must" answer Officer Cash's inquisition, while he is being treated in the ambulance, or the treatment might be interrupted.

Finally, nothing prevented the Saugus Police from simply waiting until the defendant was treated at Massachusetts General Hospital, before initiating further custodial questioning.

DEFENDANT WAS GRIEVOUSLY INJURED

The defendant was emergently treated at MGH Boston, which is a high-level trauma hospital, after being rushed there from the accident scene. An incisive CT scan of the chest revealed complete "Atelectasis of the bilateral lower lobes and subsegmental Atelectasis of the right upper and middle lobe which demonstrates Heterogeneous enhancement concerning force superimposed aspiration." By medical definition, Atelectasis is defined as the collapse or shrinkage of a lung usually caused by a puncture. Leandro was also under hemorrhagic shock, with declining blood pressure, so his case was referred to "trauma surgical senior Dr. Rabi" for emergency attendance. At the hospital, he had a cardiac event of Bradycardia and his condition became hypotensive (low blood pressure). Therefore, he was brought immediately to the operating room for the removal of his spleen (splenectomy).

Thus, the Government cannot deny that the credible medical evidence proves that the defendant was grievously injured and had already suffered a ruptured spleen, by the time the police were questioning him at the scene and in the ambulance. Under these circumstances, the non-Mirandized custodial questioning must clearly be stricken from the record and suppressed, as a matter of law. See Commonwealth v. McGrail, 80 Mass. App. Ct. 339 (2011); see also U.S. v. Mahmood, 415 F. Supp. 2d 13 (2006); see further Commonwealth v. Tejada, 484 Mass. 1 (2020), citing to Commonwealth v. Jung, 420 Mass. 675, 688, 651 N.E. 2d 1211 (1995), holding that "custodial interrogations are 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 a significant way."

CONCLUSION

Collectively, the indisputable facts reveal that the defendant was hanging upside down in the car; was removed by the Jaws of Life; was placed upon a stretcher while suffering from a punctured lung and a ruptured spleen; and then was questioned, without Miranda warnings, while being transported in the ambulance. This set of circumstances constitutionally creates “custodial interrogation,” warranting Miranda rights. In fact, the grievous nature of the defendant’s injuries should have dissuaded the police from any type of questioning at the scene of this accident, lest the defendant expire at the scene.

In further support hereof, the defendant refers to his Affidavit annexed hereto as **Exhibit B**.

WHEREFORE, the defendant respectfully request that his motion to suppress the alleged statements be allowed.

Respectfully Submitted,
The Defendant,
LEANDRO B. NEVES
By His Attorney,

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