

FILED
Clerk Superior Ct., Gordon County

**IN THE SUPERIOR COURT OF
GORDON COUNTY
STATE OF GEORGIA**

SEP 11 2006
Brian Brannon
Clerk

STATE OF GEORGIA : **CRIMINAL ACTION**
: :
VS. : **FILE NUMBER 04-CR-16471**
: :
JERRY WILLIAM JONES, : :
: :
DEFENDANT :

**ORDER ON DEFENDANT'S MOTION #89
TO SUPPRESS DEFENDANT'S STATEMENTS**

The above and foregoing motion having come on regularly to be heard on August 21, 2006, with counsel for the State and Defense, and the Defendant being present and after hearing evidence and argument of counsel as provided by law, the Court enters the following order:

BACKGROUND

Following a police chase, Defendant was hospitalized at Erlanger Hospital on June 8, 2004, suffering from a self-inflicted gunshot wound to the face.

On the evening of the 8th of January, upon admission to Erlanger he underwent surgery for a tracheostomy placement and insertion of PEG and PEJ tubes and was placed in ICU around 11:30 to 11:45 a.m. On January 10, 2006, Defendant was placed in a private room under guard by officers of the East Ridge Police Department.

G.B.I. Special Agent James Harris arrived at the Defendant's hospital room around 4:10 p.m. January 10, 2004, to conduct an interview of the Defendant, who was under arrest at the time. After consulting with a nurse about the Defendant's condition, Agent Harris entered Defendant's room and identified himself, at which time the Defendant requested a pad and pen. Defendant then proceeded

to write the name "Det. Rick Hickmam [sic] Gordon County." (S-1) When Agent Harris stated he did not know who that was, Defendant wrote, "He is 'lead det.'" (S-2) When Agent Harris advised Defendant he wished to ask the Defendant some questions, Defendant indicated he would answer if the Agent would answer questions for him. (S-4). After the Defendant indicated he could understand the Agent's questions, Defendant wrote, "I need nurse when you are done." (D-1, p. 6)

Following this, the Defendant was read his "Miranda rights" and on the paper on which the agent had written "Miranda" and after asking the Defendant if he understood what was going on in reference to what he had read to the Defendant, the Defendant wrote "yes." (S-5) (S-6)

The Agent then asked the Defendant if he was tired, to which the Defendant wrote "big case, go slow, not tired."

After asking the Defendant a series of questions concerning the events surrounding the murders and before the agent could ask another question, the Defendant wrote "You know all this shit." (S-16) Later on near the end of the interview at 5:29 p.m., the Defendant wrote "Mouth hurts, need meds, stomach hurt, haven't sat up in bed in a week." (D-1 pp. 23, 24) After a few more questions, the interview was terminated at approximately 5:47 p.m., at which time the Defendant confirmed he understood all of the questions. (S-27)

DISCUSSION

Special Agent Harris testified the Defendant appeared coherent and responsive and immediately asked for pen and paper when the agent identified himself. Special Agent Harris also testified that he repeatedly asked throughout the interview if the Defendant wanted to stop or wanted the nurse. The Defendant never asked for the interview to be terminated. According to Special Agent Harris, the Defendant was alert throughout the interview.

According to Defendant's medical records (D-5) the Defendant was given Loratab 7.5 at 3:30 p.m. on the 10th with the nurse's observation of no obvious signs of distress. At 4:00 p.m. upon feeding, the nurse again noted no signs of distress.

The Defendant was in four point "soft restraints" preceding, during and following the interview, not by law enforcement but by the hospital because of the Defendant removing tubes and "thrashing about" with his hands. Although the restraint log refers to the Defendant as "unable to comprehend," the statement clearly references the Defendant not comprehending the medical necessity to not remove the tubes and dressing, not his inability to comprehend his surroundings or his situation. (Officer Chadwick, East Ridge P.D., testified at least one hand of the Defendant was handcuffed, but there is no mention of handcuffs in the nurse's notes.)

After a careful review of the Defendant's medical record, there is no indication that the Defendant was under the influence of pain medication that caused the Defendant to be incoherent or disoriented in any way; nor is there any indication in the medical records or in the testimony of the witnesses that give any indication that the mind of the Defendant was substantially impaired to make the individual unconscious of the meaning of the questions asked or his responses. *Larry v. State*, 266 Ga. 284, 466 SE2d 850 (1996)

Considering the totality of the circumstances, the Court finds that the Defendant knew of his circumstances, was alert and coherent, understood the purpose of the interview, and freely and voluntarily responded to the Agent's questions after being fully advised of his rights.

JUDGMENT

Based upon all of the foregoing and the totality of the circumstances, the Court finds, by a preponderance of the evidence, that the statements in question were custodial, in response to

questioning by law enforcement; that the Defendant was advised of his Miranda rights and understood such rights; and that the Defendant voluntarily waived such rights. Thereafter, the Defendant gave the statements in question freely and voluntarily without any hope of benefit nor fear of injury. The Court further finds the Defendant did not at any time invoke his right to counsel and did not at any time invoke his right to remain silent.

WHEREFORE, the Court hereby finds the statements of the Defendant are admissible.

SO ORDERED this 8th day of September, 2006.



G. CAREY NELSON, JUDGE
SUPERIOR COURT OF GORDON COUNTY, GEORGIA