IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

THE STATE OF OHIO,	)	**CASE NO. CR 16 605330**
	)	
Plaintiff,	)	**JUDGE JOHN P. O'DONNELL**
	)	
-vs-	)	**JUDGMENT ENTRY DENYING**
	)	**THE DEFENDANT'S**
JAMES SPARKS-HENDERSON,	)	**MOTION TO SUPPRESS HIS**
	)	**MAY 6 AND 7, 2015,**
Defendant.	)	**STATEMENTS TO POLICE**

The indictment

Defendant James Sparks-Henderson is charged with the November 21, 2014, aggravated murders of Lemon S. Bryant, Sherita L. Johnson, Ja'Rio Taylor, Shaylona Williams and Sherita Johnson's unborn child, named in count five of the indictment as Baby Boy John Doe/Juwan Johnson. All of those charges include capital specifications. The defendant is also accused of the attempted aggravated murders of nine-year-old Janiyah Johnson and two-year-old Jamarian Johnson.

The indictment includes 39 other counts in connection with the killings.

The motion to suppress and the hearing exhibits

Sparks-Henderson made statements to Cleveland police detectives on May 6 and 7, 2015. On April 27, 2016, he filed a motion to suppress those statements from admission into evidence at trial. The prosecution opposed the motion on June 5 and the defendant filed a reply brief on June 30. Because that reply brief raised a new argument, the state supplemented its opposition with a brief filed on July 18.

The pending capital case is the second indictment against Sparks-Henderson for these

crimes. He was first indicted on May 14, 2015, in case number 595659. That indictment contained the same charges as in this case but without capital specifications. The capital indictment was returned on April 14, 2016, and the first case has since been dismissed. But the defendant did move in the first case to suppress the May 6 and 7 interviews and, on April 2, 2016, in the first case, the state filed a notice informing the defendant and the court that it will seek to offer into evidence at trial only the first approximately 48 minutes of the May 6 interview, plus two conversations between the defendant and his girlfriend, Tatyana Drake,[1] that took place in the interview room while the detectives were not present, and one spontaneous remark made by the defendant while he was alone in the interview room.

That promise to offer into evidence no more than those parts of the defendant's statements has been incorporated into the capital case through the state's June 5 brief in opposition.[2]

A hearing on the motion to suppress was held on June 23, 2016, and this entry follows.

The evidence admitted at the hearing includes five digital video discs marked as Joint Exhibits 1 through 5. Joint Exhibit 1 is part one of a May 6, 2015, police interrogation of the defendant. Joint Exhibit 2 is part two of that same interview. Joint Exhibit 3 is part one of a May 7 police interview of the defendant, and Joint Exhibits 4 and 5 are parts two and three, respectively, of the May 7 interview. State's Exhibit 1, admitted over the defendant's objection, is a compilation of three excerpts from Joint Exhibits 1 through 5. State's Exhibit 2, also admitted over the defendant's objection, is a court reporter's transcript of the excerpts contained on State's Exhibit 1. State's Exhibit 1 contains the entirety of the material from both of Sparks–Henderson's statements, i.e. all of Joint Exhibits 1 through 5, which the prosecutor intends to

[1] It is not clear from the record whether her first name is correctly spelled as Tatyana, Tatiana or something else. I will use Tatyana.
[2] See the prosecutor's June 5 brief in opposition, pages 1-2.

proffer as evidence at trial. Accordingly, only the contents of State's Exhibits 1 and 2 are at issue on the motion to suppress.

The statements

The May 6 interview begins at the 0:14 mark of Joint Exhibit 1. Sparks-Henderson is alone in a police interrogation room facing the camera, which is mounted on the wall across from him, with a microphone on the table to his right in front of him. Detectives Raymond Diaz and Kathy Cruz enter the room, remove the defendant's handcuffs, and take seats across the table from him, their backs to the camera. The defendant acknowledges knowing why he is in custody, then the following exchange takes place beginning at the one-minute, two-second mark:

Diaz: All right. My partner already advised you of your rights back at the scene?

Sparks-Henderson: Uh-huh.

Diaz: Okay. You do understand those rights? That you have a right to remain silent, anything you say can and will be used against you in a court of law. You have a right to an attorney. If you can't afford one, one will be appointed for you. Do you understand that?

Sparks-Henderson: Uh-huh.

The interview then progresses for about 47 minutes until the following colloquy starts at the 47:05 mark:

Cruz: I mean for once in this humor me. Just for once at least tell me that Tatyana's not telling me the -- not lying, because if you're saying she's lying, then I can go arrest her too. Is that what you want me to do?

Sparks-Henderson: I'm not saying nothing.

Cruz: So Tatyana saw you with a gun months ago, or she's seen you with it consistently since January, right?

Sparks-Henderson: I'm not -- I'm not saying that. So I don't know. I don't know (inaudible) -

Cruz: So you don't want to tell – you don't even want to tell me that Tatyana's telling me the truth? You don't even want to say that?

Sparks-Henderson: What is you – what is you talking about? I'm not – I'm just – what we about to do? Y'all about to book me or something? I'm just ready to go because I'm getting tired.

The state does not seek to admit any part of the interview past that point. The interview did continue, however, with the defendant occasionally left alone in the room. After he is left alone for nearly 20 minutes, his girlfriend, Drake, is brought into the room and allowed to speak to him without a detective present. Their conversation begins at the 2:09:05 mark of part one and lasts for just over 12 minutes.

After Drake leaves, part one of the May 6 interview continues until the 3:14:47 mark. The last hour or so of questioning includes more questions from Cruz and then a meeting with two prosecutors. The May 6 interview continues on to Joint Exhibit 2, which begins with an interview by Diaz and another detective. That interview goes for almost two hours, at which time Sparks-Henderson is left alone again. At that point – marked at 1:55:50 of part two of the May 6 interview – the defendant, unbidden and aloud, says:

Sparks-Henderson: I'm sorry Tatyana. I fucked up. I love you. I love you so much care bear.

This is the third part of the May 6 statement the prosecution intends to offer as evidence.

The final portion of the defendant's own statements that the prosecution seeks to get into evidence is another talk with Drake that took place on May 7. The entire May 7 statement begins with another interview by Diaz and Cruz that lasts for about 1:32:12 and is contained on the first of three digital video discs covering the May 7 statement. Part two is mostly a polygraph examination and lasts for 2:15:09. Joint Exhibit 5 (part three) is a total of 29:12, where the conversation with Drake begins at 10:25 and ends at 20:32. The state wants to admit only the portion through 19:05.

The defendant's argument in support of suppression

Sparks-Henderson argues that every statement of his contained on all five digital video discs comprising Joint Exhibits 1 through 5 must be excluded from evidence because they were procured in violation of his constitutional rights to counsel and against self-incrimination.

First, the defendant argues that "at the outset [of the interrogation] he requested the presence of counsel,"[3] and "asked for his lawyer eight separate times after he was read his *Miranda* rights."[4] Second, he claims that his statement was not voluntary because law enforcement agents used "coercion, threat and intimidation for the purpose of compelling him to make a statement against his will."[5] Third, he asserts that the police used Drake to interrogate him after he unambiguously invoked his right to remain silent.

Miranda v. Arizona

The Fifth Amendment to the United States Constitution provides that no person shall be compelled in any criminal case to be a witness against himself, and the Sixth Amendment guarantees to a criminal defendant the right to assistance of counsel for his defense.[6] In 1966,

[3] Defendant's June 30 reply brief, p. 2.
[4] Defendant's April 27 motion, p. 5.
[5] *Id.* p. 6.
[6] These same rights are also provided by Article 1, §10 of the Ohio Constitution.

The United States Supreme Court, in *Miranda v. Arizona*, 384 U.S. 436, held that a criminal suspect in custody must be told that he has a right to remain silent, that anything said can and will be used against him in court, that he has a right to consult with an attorney and that if he is indigent a lawyer will be appointed to represent him.

The purpose of requiring the warnings is to guard against statements compelled in violation of the Fifth Amendment. As the court put it:

> We have concluded 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. In order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored. *Id.*, 467.

In short, the purpose of requiring the warnings is to make sure a person is aware of the options to not answer questions posed by agents of law enforcement and to request an attorney. But like most other constitutional rights, the right to remain silent and the right to the assistance of counsel before making a statement can be waived, and the waiver need not be express. *North Carolina v. Butler*, 441 U.S. 369, 375-376 (1979). A court may infer a waiver from the suspect's behavior, viewed in light of all the surrounding circumstances. *State v. Murphy*, 91 Ohio St. 3d 516, 518 (2001). Where a suspect speaks freely to police after acknowledging that he understands his rights, a court may infer that the suspect implicitly waived his rights. *Id.*, 519.

The first 48 minutes of the defendant's May 6 statement

The May 6 statement begins with Sparks-Henderson's affirmative acknowledgment that

he understands his rights. The statement then proceeds for almost another 47 minutes with no express request to end the questioning or to provide a lawyer. The words "silent," "silence," "lawyer" and "attorney" are never mentioned again by either the defendant or his interrogators. Moreover, at no time does Sparks-Henderson utter anything that might be inferred as an invocation of either his right to cut off the questioning or to have a lawyer. At the same time, his attitude and demeanor do not bespeak an intention to exercise his rights. Although his manner can politely be best described as insolent, there is nothing about his body language that suggests he is under compulsion to speak or that he wants an attorney.

To the contrary, he demonstrated a full awareness of his rights when he told the interviewers that they could not search his phone.[7]

Thus the evidence clearly demonstrates that the defendant understood and waived his rights to remain silent and to counsel for at least the first 48 minutes of the May 6 statement. Contrary to Sparks-Henderson's claim in his motion to suppress, he did not ask for a lawyer once, much less eight times, during the first 48 minutes of the interview. The evidentiary record – which consists only of the recorded statements and is bare of testimony or other evidence about things that happened between the arrest and the time the camera was turned on – is bare of any evidence of compulsion, other than that which is already "inherent in custodial surroundings"[8] and can be dispelled by the *Miranda* warnings.

Insofar as the defendant's motion to suppress is directed at the first 48 minutes of his recorded statement on May 6, 2015, the motion is denied.

Sparks-Henderson's conversations with Drake and his spontaneous remark

For the purpose of this motion it is assumed that the defendant invoked his right to

[7] See Joint Exhibit 1, from 41:48 through 42:22.
[8] *Miranda*, supra, 458.

remain silent before his recorded conversations with Drake. The *Miranda* court sought only to guard against the government's temptation to procure evidence against an accused through "the cruel, simple expedient of compelling it from his own mouth." *Miranda*, supra, 460. Sparks-Henderson has proffered no evidence to show that whatever he said during the conversations with Drake was directly compelled in violation of the Fifth Amendment. Instead, he argues that by "sending [Drake] into the interrogation room to talk with him, police engaged in an activity that was the functional equivalent of an interrogation."[9]

The United States Supreme Court has expanded on *Miranda* to hold that interrogation does not mean only express questioning, but may also include its "functional equiavalent," that is to say any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980).

The defendant in *Innis* was an arrested armed robbery suspect who was being driven to the police station after invoking his right to counsel and declining to answer questions. During the ride, two officers discussed with each other – but within earshot of the suspect – the possibility that a student at a school for handicapped children near the scene of the arrest would find the gun used in the armed robberies and get hurt or killed. Overhearing this, Innis told the police to turn around and he would show them where the gun was. The Supreme Court held that the police conduct did not constitute express interrogation or its functional equivalent because there was no evidence to suggest that the officers should have known that their conversation was reasonably likely to elicit an incriminating response from the suspect, in part because there was no evidence that they knew he was particularly susceptible to an appeal to his conscience, or that he was unusually disoriented or upset at the time.

[9] Defendant's June 30 reply brief, p. 2.

But Sparks-Henderson points to *Arizona v. Mauro*, 481 U.S. 520 (1987), in support of his claim that sending Drake into talk to him was the functional equivalent of custodial interrogation. Mauro was arrested after he called the police to say he had killed his son. He invoked his right to remain silent and was held at the police station without being questioned. Meanwhile, his wife was questioned and told police she wanted to speak to her husband. The meeting was arranged, but on the conditions that a detective was present for the conversation and that it was recorded. The Supreme Court held that Mauro's statement under those circumstances should not be suppressed as the product of an unlawful interrogation because there was no evidence that that the officers sent Mrs. Mauro in to see her husband for the purpose of eliciting incriminating statements.

That holding was buttressed by the following observation in the majority opinion:

> In deciding whether particular police conduct is interrogation, we must remember the purpose behind our decisions in *Miranda* and *Edwards*: preventing government officials from using the coercive nature of confinement to extract confessions that would not be given in an unrestrained environment. *Mauro*, supra, 529-530.

Yet Sparks-Henderson relies on the dissent in *Mauro* because the dissenting justices found that the police engaged in a "psychological ploy" by confronting Mauro with an angry wife when they knew he didn't want to talk to her. The dissent found evidence to support this conclusion in the admission by one of the investigating officers that a reason the police allowed the conversation and made sure to be present with a tape recorder while it took place was because "any statements that she made or he made could shed light on our case." *Id.*, 535.

In the end, the justices siding with the majority in *Mauro* and those siding with the dissent used the same test – the one articulated in *Innis* – to reach differing conclusions on the

facts. In other words, the inquiry here is whether the evidence shows that the police sent Drake as their agent to speak to the defendant knowing that it was reasonably likely to elicit an incriminating statement by him.

Sparks-Henderson's argument is simply unsupported by any evidence. For example, the recording shows that at 1:38:11 of the May 6 interview Sparks-Henderson asked if he could see Drake and also requested her phone number. Diaz then left the interview room to get the phone number and find out where Drake was. When he returned, he confirmed, at 1:40:18, that Sparks-Henderson wanted to speak to Drake before being booked. There is no evidence that the police forced Drake on Sparks-Henderson. There is no evidence that Sparks-Henderson was unaware he was still being recorded. There is no evidence, from the content of his ensuing conversations with Drake, that the "police used [Drake] as their agent"[10] to trick him into uttering damaging statements. This is true even though it is clear that a police officer told Drake about the seriousness of Sparks-Henderson's predicament.

Another thing worth observing about Sparks-Henderson's claim that it was unconstitutional for the state to let Drake talk to him is its irony. One of the primary psychological law enforcement ploys decried in *Miranda* is the "practice of incommunicado interrogation." *Id.*, 457. It is thus peculiar to see the detectives criticized for allowing Sparks-Henderson to have contact with others outside of law enforcement by meeting with Drake.

Just as Sparks-Henderson was not under compulsion when speaking to Drake, the spontaneous remark aloud to himself that he "fucked up" was not extracted by law enforcement agents in violation of his Fifth Amendment right to remain silent.

Right to counsel

The defendant's other argument is that all of his statements were procured in violation of

[10] *Id.*, p. 5.

his right to counsel since his lawyer showed up at the offices of the homicide unit of the Cleveland police department around 10:30 a.m. on May 6 but was not allowed to see Sparks-Henderson until about 5:00.[11]

The Sixth Amendment's guarantee of the right to the assistance of counsel applies when a person accused of a crime is questioned in custody, and an accused's request to consult with an attorney must be honored and a subsequent uncounseled statement is not admissible in evidence. *Escobedo v. Illinois*, 378 U.S. 478, 490-491 (1964). Once a suspect has invoked his right to counsel and told the police he will deal with them only through an attorney, all questioning must cease until an attorney is present. *Edwards v. Arizona*, 451 U.S. 477, 484-485 (1981). But this rule applies only where the accused unambiguously requests counsel. *Davis v. United States*, 512 U.S. 452, 459 (1994). It does not apply, at the criminal investigation stage, where an attorney, whose involvement is not known to, and was not sought by, the accused, demands access to a suspect who is unaware of the lawyer's existence. *Moran v. Burbine*, 475 U.S. 412 (1986).

Sparks-Henderson was made aware of his right to counsel in accordance with *Miranda*. He then proceeded to make a voluntary statement for at least 48 minutes without even implying, much less unambiguously saying, that he wanted to exercise his right to a lawyer. As long as that decision was made with full knowledge of the right to counsel – and the evidence demonstrates that it was – then counsel's own attempts to insert himself between the police and the accused are irrelevant to the constitutional inquiry.

[11] See, generally, the April 27 motion to suppress, pages 2-4. Although there is no evidence of record about when counsel arrived, who he spoke to, and when he ultimately spoke to Sparks-Henderson, I will accept the motion's factual assertions as true only for the purpose of deciding this motion.

Conclusion

For all of the reasons given here, defendant James Sparks-Henderson's April 27, 2016, motion to suppress his statements to police is denied insofar as it applies to 1) the first 48 minutes of the May 6 interrogation, 2) the defendant's recorded conversations with Tatyana Drake on May 6 and May 7 and 3) the defendant's spontaneous utterance when he was alone in the police interview room on May 6. Otherwise, the motion is not justiciable for lack of a controversy because it seeks to suppress statements that the prosecution does not intend to proffer as evidence at trial.

IT IS SO ORDERED:

Judge John P. O'Donnell

8/8/2016

SERVICE

A copy of this journal entry was sent by email, this 3d day of August 2016, to the following:

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