

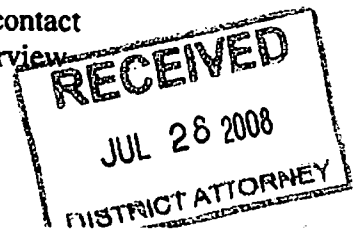
District Court Moffat County, Colorado Court Address: 221 West Victory Way Craig, CO 80625 970-824-8254	▲ COURT USE ONLY ▲
PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. MICHAEL GALLO, Defendant.	
	Case Number: 07CR104 Division 1 Courtroom
ORDER ON MOTION TO SUPPRESS STATEMENTS	

Hearing on Motion to Suppress Statements was held on July 22, 2008. Present for the hearing were Deputy District Attorney Snow and Defendant with his counsel, Shcryn Uhlmann. The court enters the following order:

FINDINGS OF FACT

1. Defendant was interviewed by Officer Carolyn Wade of the Craig Police Department on April 12, 2007 and on April 19, 2007. Both interviews were recorded, and the court has listened to the recordings of both in their entirety. Both interviews were conducted in the interview room of the Public Safety Center. It is a small room—8'x10'—it has one doorway and one one-way window into the room. There is a small, round table and two chairs in the room. At least the April 12, 2007 interview was video recorded, a fact that Officer Wade did not reveal to Defendant.

2. For at least the April 12, 2007 interview, Officer Wade was in civilian clothes. On both occasions, she had telephoned Defendant to see if he would speak with her; he consented and on both occasions made his way to the Public Safety Center on his own, apparently from work. For the April 19, 2007 interview, Officer Wade had volunteered a time later in the day, but Defendant opted for the morning. Defendant accompanied the officer down the hallway and into the interview room. The door was not locked but was closed. In neither interview did Officer Wade make promises or threats to Defendant; the tone was conversational throughout. She did not menace him in any way. Any relevant conversation she had with him is on the CD or the DVD. She had no physical contact with him. Defendant did not leave the room during either interview. Each interview



lasted a bit more than 20 minutes. Officer Wade did not restrain Defendant and she gave to him no directions of any sort. Defendant then left both interviews on his own and went on his way.

3) At the commencement of the April 12, 2008 interview Officer Wade informed Defendant he was not under arrest and indicated the door and told him he could leave at any time. Officer Wade gave Defendant his *Miranda* rights at the commencement of the April 19, 2008 interview, which he waived and consented to speak with her.

4) Investigator Joseph DiAngelo interviewed Defendant on May 25, 2007. The court has viewed the entirety of the video recording. The Investigator had telephoned Defendant to arrange the interview. Defendant came down to the courthouse on his own. The interview occurred in a conference/all-purpose room which is about 15'x15'. There is a window and a kitchen for county employees adjacent. The door to the room and the window were shut but not locked. The door could be opened from inside the room. There was another door to the side of where Defendant sat. There is a large table in the room but the two men sat in chairs, around two to five feet apart, with nothing between them. The investigator was dressed in business attire—slacks, shirt, tie, sport coat. The men did not leave the room during the interview, which lasted approximately 50 minutes. They remained seated at all times. The Investigator used normal hand gestures in the course of the conversation. At no time did the Investigator raise his voice; the tone throughout was conversational. Defendant was alert throughout the interview. Other than possibly shaking hands with Defendant, the two men had no physical contact. Defendant was never restrained. He left the courthouse on his own at the end of the interview.

5) At the beginning of the interview Investigator DiAngelo zipped open his briefcase and took out a *Miranda* form which he read to Defendant. Defendant acknowledged he understood his rights, waived them and agreed to speak with the Investigator. The Investigator stated at the start of the *Miranda* warnings that they were formalities that he had seen on television. Defendant was read the warnings off of a formal statement and he was asked to, and did, acknowledge them by his signature.

6) Investigator DiAngelo used what is known as the Reid technique in the interview process. This is a technique that he was taught in his formal police training. There are several steps to an interview under this technique. Although the Investigator used most of the techniques, he did not use them all.

7) At no time did Investigator DiAngelo make any specific promises or threats to Defendant.

8) Defendant testified that he felt he was not free to leave during the interview and that Investigator DiAngelo intimidated him by his closeness and his hand gestures. He testified that when the Investigator said that cooperating would result in a faster resolution he believed no charges would be filed and he would be reunited with his wife and children. Defendant agreed that the Investigator never actually said that no charges

would be filed and that he would be reunited with his family if he agreed with the statements made by Investigator DiAngelo. At times Investigator DiAngelo asked open questions. Defendant testified that he knew what the Investigator wanted him to say even when the question was open-ended, so he answered accordingly and, the court would note, incriminatingly. Defendant testified that he was truthful in his responses to all questions except those involving the alleged victim.

CONCLUSIONS OF LAW

9) The issues before the court in this motion are the necessity of the giving of *Miranda* rights and the voluntariness of the statements made by Defendant. The burden for the People in both instances is a preponderance of the evidence. *People v. Dracon*, 884 P.2d 712 (Colo. 1994).

10) Defendant was not in custody for purposes of *Miranda* on April 12, 2007. He came to the safety center on his own, was told he was free to leave at any time and the doorway to his exit path was indicated to him by the officer. Although the interview room is small, the tone of the interview was conversational throughout. At the end of the short interview Defendant left on his own. Defendant's freedom of action was not significantly curtailed so as to be tantamount to custody. *People v. Stephenson*, 159 P.3d 617 (Colo. 2007).

11) On both April 19, 2007 and May 25, 2007 Defendant was given *Miranda* rights which he understood and waived. He agreed to talk to the law enforcement official on both occasions, and the totality of the circumstances demonstrates that his waivers were voluntary. *People v. Bostic*, 148 P.3d 250 (Colo. App. 2006). The Investigator's statements at the start of the *Miranda* warnings on May 25, 2007 that they were formalities that he had seen on television did not minimize their significance. The warnings were given from a formal statement and Defendant signed his acknowledgement of understanding. A reasonable person in Defendant's situation would have fully understood his situation. Notwithstanding the waiver of *Miranda* rights the court would also find that on those two occasions Defendant was also not in custody or its equivalent at any rate. On both occasions the officers were in civilian clothes, Defendant came to the place of the interview on his own and left on his own. The tones of the interviews were conversational. The room for the May 25, 2007 interview was large, open and used for non-police activities. A reasonable person in Defendant's shoes would not have believed he was in police custody on either occasion.

12) Defendant placed little emphasis at hearing on the two April interviews by Officer Wade. The court heard no incriminating statements made by Defendant during these interviews. Defendant's main argument is that the method used by Investigator DiAngelo on May 25, 2007 was psychologically coercive.

13) Looking to the voluntariness of the statements, the court acknowledges that it must look to the totality of the circumstances. *People v. Dracon*, 884 P.2d 712 (Colo. 1994). The criteria the court must consider are contained in many cases, but the court refers to *People v. Blessett*, 155 P.3d 388 (Colo. 2006):

- A. “[W]hether the defendant was in custody or was free to leave and was aware of his...situation.” As noted above, Defendant was not in custody or its equivalent for any of the three interviews. For the last two interviews he was given, and waived, his *Miranda* rights and did so voluntarily.
- B. “[W]hether *Miranda* warnings were given.....” As noted, *Miranda* warnings were given for the last two interviews and the waivers of those rights were voluntary.
- C. “[W]hether the defendant had the opportunity to confer with counsel or anyone else prior to the interrogation.” After the first interview of April 12, 2007 Defendant certainly knew what the police were interested in talking with him about. He had ample opportunity to confer with counsel prior to the next police contact.
- D. “[W]hether the challenged [statements were] made during the course of the interrogation.....” They were.
- E. “[W]hether any overt or implied threat was directed at the defendant.” No threats at all were directed at Defendant.
- F. “[T]he method and style [of the] interrogator...and the length and location of the interrogation.” The methods used in all three interviews was calm and the tones were conversational. Investigator DiAngelo was persistent, but not overbearing. He used a technique he learned in his police training, and his use of it followed what the courts have deemed to be permissible. His expressions of appreciation for Defendant having come in for the interview and statements that his honesty would result in a faster resolution were not “rewards” or “promises” frowned on by the courts. He did use evidentiary ploys to elicit incriminating statements, but this technique is not impermissible. *People v. Klausner*, 74 P.3d 421 (Colo. App. 2003). The length and location are covered above. The court does not find Defendant’s testimony that Investigator DiAngelo’s hand gestures and closeness to him were intimidating to be credible. Investigator DiAngelo demonstrated the type of hand gestures he used during the interview and they were normal hand gestures used in an ordinary conversation. “[P]ersuasion is not coercion....” *People v. Matheny*, 46 P.3d 453, 467 (Colo. 2002). What Investigator DiAngelo did was engage in persuasion; nothing more.
- G. “[T]he defendant’s mental and physical condition immediately prior to and during the interrogation.” Although Defendant submitted to the questioning sessions after full work shifts it appears from the recordings that he fully followed the lines of questioning. He was alert and responsive.

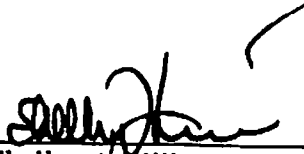
H) "[T]he defendant's educational background, employment status, and prior experience with law enforcement...." The court recalls no evidence presented on these issues.

"To render a statement involuntary, coercive governmental conduct must play a significant role in inducing a confession or inculpatory statement. 'In essence, the question at issue is whether the individual's will has been overcome.' Whether an individual's will has been overcome depends upon the totality of the circumstances surrounding the statements." *People v. Owens*, 97 P.3d 227, 234 (Colo. App. 2004)(citations omitted). Based on a totality of the circumstances, the court concludes that Defendant's waivers of his *Miranda* rights were knowingly and voluntarily made and that his statements made to Officer Wade and Investigator DiAngelo were voluntary.

WHEREFORE, Defendant's Motion to Suppress Statements is denied.

SO ORDERED this 28th day of July 2008.

BY THE COURT:



Shelley A. Hill
District Court Judge