

IN THE CIRCUIT COURT OF ST. LOUIS CITY
STATE OF MISSOURI

STATE OF MISSOURI)
)
 Plaintiff,) Case No. [REDACTED]
)
 v.) Div. 24
)
 SB)
)
 Defendant.)

ORDER

The parties appeared on February 25, 2014 for a hearing on the Defendant’s Motion to Suppress Statements. The State called Officer H to testify and submitted a video from the patrol support station.

On April 6, 2013, members of the St. Louis Metropolitan Police Department responded to a motor vehicle accident in the 2200 block of Portis. Defendant was at the scene and subsequently arrested for suspicion of Driving While Intoxicated.

Officer H testified that he interviewed the Defendant and “quickly realized that [the Defendant] smelled to be under the influence of alcohol. He had kind of unsteady gait, which means he was a kind of staggering back and forth. I could smell alcohol emanate from his breath. His eyes appeared to be bloodshot and glossed over... [a]t this point I placed him in handcuffs and advised him that he was detained and arrested for DWI...I put him in the back of the cruiser...I did ask if he would succumb to any field sobriety tests. He refused... I read him his *Miranda* rights [off the card]... He just said he understood. I asked, would you like to make any further statements? He said, no, ‘I don’t want to make a statement at this time’... We put him in the back of the cruiser and transported him to the patrol support station.”

At the patrol support station, a video detailed Officer C reading of the Missouri Implied Consent (MIC) and the Defendant's refusal to provide a sample. The officer read the MIC, after which he asked the Defendant if would consent and the defendant stated he would not. After which the Officer C read the Defendant his Miranda rights, and then asked the Defendant if he understood, to which he responded, "yes, but I don't know why I am here." In response, Officer C asked several additional questions, to include, "Mr. SB, were you involved in a motor vehicle crash, yes or no? Do you know when? Where you operating the vehicle at the time? Where you injured in the crash? Have you been drinking? What were you drinking?" Defendant made several incriminating statements which were captured on video.

Defendant states that the Officers failed to "scrupulously honor" the Defendant's invocation of his right to remain silent. The Defendant did not reference *Michigan v. Mosley*, 423 U.S. 96 in his written motion, but did mention *Mosley* in oral arguments, as the basis of his argument. The issue here is whether the conduct of Officer C led to the incriminating statements and did in fact violate *Miranda*, so as to render the statements inadmissible in evidence against Defendant at his trial. Resolution of the question turns on the interpretation of a passage in the *Miranda* opinion:

"Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise.

Without the right to cut off questioning, the setting of in custody interrogation operates

on the individual to overcome free choice in producing a statement after the privilege has been invoked.” 384 U.S., at 473-474, 86 S.Ct., at 1627.

Mosley goes on to say, this passage states that “the interrogation must cease” when the person in custody indicated that “he wishes to remain silent.” It does not state under what circumstances, if any, a resumption of questioning is permissible. The passage could be literally read to mean that a person who has invoked his “right to silence” can never again be subjected to custodial interrogation by any officer at any time or place on any subject. Another possible construction of the passage would characterize “any statement taken after the person invokes his privilege” as the “product of compulsion” and would therefore mandate its exclusion from evidence, even if it were volunteered by the person in custody without any further interrogation whatever. Or the passage could be interpreted to require only the immediate cessation of questioning, and to permit a resumption of interrogation after a momentary respite.

I agree with *Mosley*, in that all three of these “possible literal interpretations would lead to absurd and unintended results. To permit the continuation of custodial interrogation after a momentary cessation would clearly frustrate the purposes of *Miranda* by allowing repeated rounds of questioning to undermine the will of the person being questioned. At the other extreme, a blanket prohibition against the taking of voluntary statements or a permanent immunity from further interrogation, regardless of circumstances, would transform the *Miranda* safeguards into wholly irrational obstacles to legitimate police investigative activity, and deprive suspects of an opportunity to make informed and intelligent assessments of their interests.”

The admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on whether his “right to cut off questioning” was “scrupulously honored.”

A review of the circumstances leading to Defendant’s admissions reveals that his “right to cut off questioning” was fully respected in this case. At the scene, he was advised of his rights and he orally acknowledged that he understood his rights. When he stated he did not want to make a statement, Officer H immediately ceased the interrogation and placed him in the back of the cruiser. After approximately two hours and relocating to the patrol support station, Officer C administered the Missouri Implied Consent and asked if Defendant would consent to providing a breathe sample, to which he said “no.” This did not dishonor his “right to cut off questioning” because being asked to consent to take the test is *not* questioning under *Miranda*.

After his refusal to provide a sample was documented on the DataMaster, the Defendant was again re-read his Miranda rights, this time by Officer C. When asked if he understood, this time the Defendant replied, “Yes, *but* I don’t understand why I am here.” Unlike his first response, the Defendant did not “unambiguously” invoke his right to remain silent. *Davis v. United States*, 512 U.S. 452, 459. “If the accused makes an “ambiguous or equivocal” statement, the police are not required to end the interrogation...or ask questions to clarify the accused’s intent, at 461-462.”

The subsequent questioning did not undercut Defendant's previous decision not to answer Detective H's questions. A significant period of time and a fresh set of warnings were administered. To which the Defendant waived his right to remain silent and he knowingly and voluntarily answered Officer C' questions.

For these reasons, the Motion to Suppress is denied.

SO ORDERED:

Honorable Michael Noble, Division 24