

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

LUKEEN GERALD

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CRIMINAL ACTION

NO. 15-246

MEMORANDUM¹

Tucker, J.

October 29, 2018

Before the Court is Defendant’s Motion to Suppress Statements (“Motion to Suppress”) (ECF No. 73) and the Government’s Response in Opposition to Defendant’s Motion to Suppress Statements (ECF No. 74). Upon consideration of the foregoing submissions and upon consideration of the evidentiary hearing held before the Court on August 14, 2018 and August 29, 2018, Defendant’s Motion to Suppress is DENIED.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Defendant Lukeen Gerald was indicted for, among other crimes, seven armed robberies that Defendant allegedly committed in Philadelphia. *See generally* Indictment, ECF No. 1. On February 18, 2015, the Philadelphia Police Department arrested Defendant for robbing a 7-Eleven convenience store at gun point. That day, while Defendant was in police custody, Philadelphia police officers questioned Defendant over the course of two separate interrogation sessions. Before questioning Defendant, the officers provided oral and written *Miranda* warnings to Defendant. Indeed, Defendant acknowledged the *Miranda* warnings and signed and initialed waiver forms memorializing that he was informed of his rights. Among other things, Defendant acknowledged, in writing, that he had the “right to keep quiet, and” that he did “not

¹ The following Memorandum Opinion shall constitute the Court’s findings of fact and conclusions of law under Fed. R. Crim. P. 12(d) (providing that “[w]hen factual issues are involved in deciding a motion, the court must state its essential findings on the record.”).

have to say anything at all.” Mot. to Suppress Ex. 1, at 1 of 8, ECF No. 74-1; Aug. 14, 2018 Hr’g Tr. 12:2–4.² Defendant also acknowledged that he understood he had “a right to talk with a lawyer before” the police asked Defendant “any questions.” See Aug. 14, 2018 Hr’g Tr. 12:14–17. Defendant declined to remain silent or consult with an attorney, and instead, proceeded with the interrogation. See Mot. to Suppress Ex. 1, at 1–2 of 8 (showing that Defendant answered each question on the waiver form and then signed the bottom of the form). During his first interrogation, Defendant admitted that he “robbed the 7-11 . . . at gunpoint.” Mot. to Suppress Ex. 1, at 3 of 8. After asking Defendant for additional details about his armed robbery of the 7-Eleven convenience store, the officers asked Defendant whether he had information about any other robberies. The officers asked:

Q57. What information can you provide about additional robberies in recent days and weeks?

Defendant responded:

A57. This is what I’m feesin’ up to; this is what I’m caught for.
This is all what I am saying.

Mot. to Suppress Ex. 1 at 7 of 8. The officers prepared a written statement memorializing the relevant matters discussed during the interrogation. Defendant initialed each line of each page of the written statement and signed the bottom of each page indicating that the written statement was, by Defendant’s reading, true and accurate. See generally Mot. to Suppress Ex. 1; Aug. 14, 2018 Hr’g Tr. 24:21–23 (testifying that officers asked Defendant to “. . . please review your interview. When it is true and accurate, please initial and sign each page.”).

² At the evidentiary hearing, the Government prompted its witnesses to read each of Defendant’s three statements into the record verbatim. Accordingly, the following citations to Defendant’s written statements are made for ease of reference and for readability purposes with the understanding that each of Defendant’s written statements is part of the record because each was presented at the evidentiary hearing.

Approximately one hour and forty-five minutes³ after Defendant signed and acknowledged his first written statement, two officers from a different police division, Detectives Coulter and Wolkiewicz, arrived to see whether Defendant would agree to answer questions relating to robberies that the detectives were investigating as members of a police squad tasked with investigating robbery patterns. Aug. 14, 2018 Hr'g Tr. 34:2–9. Just as the other officers had done in connection with Defendant's first interrogation, and before questioning Defendant, the new officers advised Defendant of his rights and provided him with a fresh set of *Miranda* warnings. Defendant acknowledged his rights in writing, executed another *Miranda* waiver form, declined to remain silent or to consult with an attorney, and proceeded with the interrogation. *See generally* Mot. to Suppress Ex. 2, ECF No. 74-2.

Defendant then admitted that he had committed four other armed robberies. *See* Mot. to Suppress Ex. 2, at 5 of 17 (admitting that on February 6, 2015, Defendant robbed a corner store on Nedro Avenue); Mot. to Suppress Ex. 2, at 6 of 17 (admitting that on February 9, 2015, Defendant robbed a Dun[kin] Donuts on North 5th Street); Mot. to Suppress Ex. 2, at 8 of 17 (admitting that on February 16, 2015, Defendant robbed a 7-Eleven on East Champlost Street); Mot. to Suppress Ex. 2, at 10 of 17 (admitting that in January 2015, Defendant robbed the “Urban Inn” on Fairmount Avenue). Later, just as Defendant did in connection with his first statement, Defendant reviewed the second written statement that officers prepared based on information gathered during the interrogation. Defendant signed the bottom of each page of his second written statement indicating that he had reviewed the second statement and that it was, by

³ *Compare* Mot. to Suppress Ex. 1, at 8 of 8, ECF No. 74-1 (showing that Defendant's first interrogation concluded at 9:16 p.m. on February 18, 2015) *with* Mot. to Suppress Ex. 2, at 1 of 17, ECF No. 74-2 (showing that Defendant's second interrogation began at 10:55 p.m. on February 18, 2015).

Defendant's reading, true and accurate. *See generally* Mot. to Suppress Ex. 2 (showing Defendant's signature at the bottom of each page of his second statement).

Thirteen days later, on March 3, 2015, Detectives Coulter and Wolkiewicz visited Defendant again to question Defendant about other robberies. Consistent with the procedure followed in connection with the two earlier interrogations, the officers provided Defendant with a set of *Miranda* warnings before questioning Defendant. Defendant again acknowledged his rights in writing, as he had done on the two earlier occasions, executed a *Miranda* waiver, and proceeded with the interrogation. *See* Mot. to Suppress Ex. 3, at 1–2 of 10, ECF No. 74-3 (showing that Defendant initialed next to each line advising Defendant of his rights under *Miranda* and showing that Defendant signed the bottom of each page indicating that he had been advised of those rights, had read his rights, understood his rights, and still wished to talk with the police without an attorney present).

Defendant then admitted to having committed two other armed robberies. *See* Mot. to Suppress Ex. 3, at 5 of 10 (admitting that Defendant robbed “19 degrees Café” on 18th and Christian Street); Mot. to Suppress Ex. 3, at 7 of 10, (admitting that Defendant robbed “Basilio Food Market” on Van Kirk Street). As they had after the two earlier interrogations, the officers prepared a written statement based on their discussions with Defendant. Defendant reviewed each page of his third written statement and signed and dated the bottom of each page of the statement. *See generally* Mot. to Suppress Ex. 3.

Despite having initialed and/or signed each page of the three written statements that Defendant provided to the police, Defendant filed the present Motion to Suppress seeking to exclude his second and third written statements on grounds that his second and third statements were the product of police coercion. As his statements were purportedly coerced, Defendant's

logic continues, his second and third statements were involuntary. Mot. to Suppress 4, ECF No. 74. Since his second and third statements were involuntary, Defendant contends that the statements were taken in violation of his right against self-incrimination under the Fifth Amendment and should be suppressed.⁴

II. STANDARD OF REVIEW

The right against self-incrimination is enshrined in the Fifth Amendment to the United States Constitution, which provides that no person “shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amend. V. The Supreme Court in *Miranda v. Arizona*, held that in the case of custodial interrogations of criminal suspects, the Fifth Amendment requires the government to give the suspect specific warnings. 384 U.S. 436, 467 (1966). These warnings are frequently referred to as “*Miranda* warnings.” Under *Miranda*, a criminal suspect must be advised that “he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.” *Id.* at 479.

In the years since its decision in *Miranda*, the Supreme Court has acknowledged that cases “in which a defendant can make a colorable argument that a self-incriminating statement was ‘compelled’ despite the fact that the law enforcement authorities adhered to the dictates of *Miranda* are rare.” *Berkemer v. McCarty*, 468 U.S. 433 n.20 (1984). Indeed, where “a defendant moves to suppress a statement on the basis that it was obtained in violation of the

⁴ Defendant does not appear to contest the validity or voluntariness of his first statement. See Mot. to Suppress 1 (arguing only that Defendant’s second and third post-arrest statements are subject to suppression); Aug. 29, 2018 Hr’g Tr. 5:13–20 (arguing that it is the “position of the defense [] that Mr. Gerald was coerced into making statements at the second and third interrogations”).

Miranda doctrine, the government bears the burden of proving by a preponderance of the evidence that defendant was properly advised of [his] *Miranda* rights, that [h]e voluntarily, knowingly, and intelligently waived such rights and that [his] statement was voluntary.” *United States v. Tian Xue*, Cr. No. 16-022-4, 2018 WL 3328165, at *3 (E.D. Pa. July 6, 2018) (citing *Colorado v. Connelly*, 479 U.S. 157, 168–69 (1986)).

III. DISCUSSION

To determine whether a defendant’s “waiver of his *Miranda* rights was voluntary, knowing, and intelligent, we must first ask whether the waiver was voluntary ‘in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception.’” *United States v. Patrick*, 119 F. App’x 385, 390 (3d Cir. 2005) (not precedential) (citing *United States v. Velasquez*, 885 F.2d 1076, 1084 (3d Cir. 1989)). In evaluating voluntariness, the Court must “examine the totality of the circumstances.” *Id.* (citing *United States v. Dickens*, 695 F.2d 765, 778 (3d Cir. 1982)). Factors relevant to determining whether a statement is voluntary include: “whether the police engaged in coercive activity; the length, location, and continuity of the interrogation; the age, education, physical and mental condition of the defendant; and whether *Miranda* rights were given.” *United States v. Kellam*, No. 1:14-CR-323, 2015 WL 6560637, at *7 (M.D. Pa. Oct. 29, 2015) (citing *Withrow v. Williams*, 507 U.S. 680, 693 (1993)).

While the fact that *Miranda* warnings have been given, standing alone, “does not, of course, dispense with the voluntariness inquiry,” a defendant’s execution of a written *Miranda* waiver is a recognized, strong indicator that a defendant’s statements were voluntary. *See, e.g., United States v. Green*, 516 F. App’x 113, 127 (3d Cir. 2013) (not precedential) (affirming the district court’s decision to deny a motion to suppress statements where defendant was advised of his rights and where he signed a *Miranda* waiver form before making statements to the police);

United States v. Bronson, 141 F. App'x 78, 80 (3d Cir. 2005) (not precedential) (affirming the district court's decision to deny a motion to suppress statements where defendant signed "detailed and thorough waivers"); *United States v. Hayes*, No. 11-CR-69, 2012 U.S. Dist. LEXIS 170915, at *43–44 (W.D. Pa. Dec. 3, 2012) (denying a motion to suppress where the defendant signed a *Miranda* waiver before making incriminating statements); *United States v. Barefoot*, No. 07-CR-405, 2008 U.S. Dist. LEXIS 59797, at *35–36 (W.D. Pa. Aug. 5, 2008) (concluding that a defendant's statements were voluntary because he signed a *Miranda* waiver); *United States v. Foster*, 287 F. Supp. 2d 527, 531 (D. Del. Oct. 21, 2003) (holding same on similar facts).

In this case, the Court concludes, based on the totality of the circumstances, that Defendant's execution of his second and third *Miranda* waivers was voluntary and that both his second and third statements were voluntary. This conclusion is consistent with the fact that there is no evidence in the record to suggest that Defendant's statements were the product of police coercion or that Defendant was unaware of the consequences of answering questions as part of a custodial interrogation. Indeed, the record reflects that the police scrupulously honored Defendant's rights by ensuring that Defendant was properly apprised of his rights and that Defendant remained willing to answer questions throughout each interrogation and even after obtaining Defendant's signed *Miranda* waivers. The Court reviews the voluntariness of each *Miranda* waiver that Defendant executed before his second and third interrogations, as well as the voluntariness of Defendant's second and third statements in turn.

A. Defendant's *Miranda* Waiver Before Defendant's Second Interrogation Was Voluntarily Executed

Detective Coulter testified competently and credibly about the Philadelphia Police Department's procedure for taking statements from defendants. *See generally* Aug. 14, 2018 Hr'g Tr. 34:25–35:23. Detective Coulter testified that he followed these procedures in

connection with his interrogation of Defendant and that he provided Defendant with all required *Miranda* warnings. Indeed, Detective Coulter witnessed Defendant initial each line of Defendant's *Miranda* waiver and witnessed Defendant sign the bottom of each page of the waiver. Aug. 14, 2018 Hr'g Tr. 37:11–40:17. Defendant offered no evidence during the evidentiary hearing to suggest that Defendant was coerced or deceived into signing the waiver. Accordingly, the Court concludes based on Detective Coulter's credible testimony that Defendant voluntarily executed his second *Miranda* waiver before he was questioned and that Defendant was properly advised of his rights.

Even after Defendant executed the *Miranda* waiver, the officers followed up during the interrogation on a number of occasions to ensure that Defendant was informed of his rights and that Defendant wanted to proceed with the interrogation. At the outset of the interrogation, for example, the officers asked and Defendant answered as follows:

Q. I explained your rights. Is that correct?

A. Yes.

Q. You read the document [the *Miranda* waiver], initialed, signed and dated it. Is that correct?

A. Yes.

Q. Two other detectives interrogated you earlier about the robbery for which you're charged. Is that right?

A. Yes. I told them and they typed it up. I read my rights earlier too.

Q. You are not charged with any other crime as of now. Do you understand?

A. Yes.

Q. If you admit to committing any other crime, you're going to be investigated and arrested do you understand?

A. Yes.

Q. Do you wish to continue with this interrogation?

A. Yes.

Mot. to Suppress, Ex. 2, at 4 of 17. This exchange between the officers and Defendant further supports the conclusion that Defendant had been properly advised of his rights, had been provided with the required *Miranda* warnings, that Defendant had voluntarily waived his rights, and that Defendant voluntarily gave his statement.

B. Defendant's Second Statement Was Voluntary

Although Defendant's execution of a valid and voluntary *Miranda* waiver is particularly persuasive evidence that Defendant's second statement was voluntary, the Court further concludes that Defendant's second statement was actually voluntary because there is no evidence in the record to suggest that Defendant was coerced or deceived into speaking with the police. Indeed, the officers appeared to take great care to ensure that Defendant understood his rights and, that despite understanding his rights, Defendant still wished to proceed with the interrogation even after Defendant executed his *Miranda* waiver.

Over the course of Defendant's interrogation, officers stopped to confirm that Defendant wished to continue the interrogation and that Defendant understood the consequences of continuing to speak with the police. For example, the officers asked and Defendant answered:

Q. We're going to investigate that incident and you'll probably be arrested. Do you understand?

A. Yes.

Q. Do you want to continue with this interrogation?

A. Yes.

Mot. to Suppress Ex. 2, at 8 of 17.

In addition to the fact that Defendant consistently voiced his willingness to continue with the interrogation, Defendant's stated motivations for speaking with the police belie his contention that he was coerced by the police. After confessing to his commission of three additional armed robberies, the police asked Defendant why he decided to confess. Defendant explained that he hoped that his candidness would result in leniency from the District Attorney. The police officers' and Defendant's discussion on his motivations included the following:

Q. You just confessed to committing three armed robberies. Is that right?

A. Yes.

Q. Why did you decide to tell us about them?

A. To be honest, to get the best deal for myself with the DA.

Mot. to Suppress Ex. 2, at 9 of 17. In response to Defendant's candid explanation for why he decided to confess to the three additional armed robberies, the officers reiterated that they could not promise leniency stating:

Q. We have no authority to make any type of deal with you. That's a matter between you, your lawyer and the District Attorney's Office. Do you understand?

A. I know. I was trying to say when I get my lawyer. The PD is a bunch of assholes. They all friends with the DA.

Mot. to Suppress Ex. 2, at 9 of 17. Apart from his desire for leniency, Defendant's statement to the police suggests that his confession was also motivated by a desire to apologize for his crimes and to explain the unfortunate and tragic circumstances that led Defendant to commit armed robbery. Defendant explained:

A. I'm really sorry for what I did. Nobody got hurt. I was broke. I needed money for my wife, girlfriend and kids. I was fired

from my janitorial job, my mom got cancer. We both got evicted. She had to take a medical leave. My deepest sympathy for them. I just want to get back and help my family the right way.

Mot. to Suppress Ex. 2, at 11 of 17. Defendant's words, at that time, did not appear coerced or prompted by police deception, but rather, appeared to be rooted in a desire to express contrition for his crimes.

Finally, the Court's conclusion that Defendant's second statement was voluntary is fully supported by Detective Coulter credible testimony that at the conclusion of the second interrogation, he witnessed Defendant sign and initial the second statement. *See, e.g.*, Aug. 14, 2018 Hr'g Tr. 45:16–17; Hr'g Tr. 47:10–13; Hr'g Tr. 50:17–19. Detective Coulter observed that at no time during his second custodial interrogation did Defendant invoke his right to counsel or attempt to stop the interrogation. Aug. 14, 2018 Hr'g Tr. 54:14–21. Indeed, Detective Coulter swore, under oath, and in direct response to Defendant's allegation of coercion, that he did not urge Defendant to make any confessions, but that Defendant voluntarily provided all information to the police after having waived his *Miranda* rights. Aug. 14, 2018 Hr'g Tr. 55:12–14.

C. Defendant's *Miranda* Waiver Before Defendant's Third Interrogation Was Voluntarily Executed

The Court also concludes that Defendant's *Miranda* waiver, executed in advance of his third interrogation, was also voluntary in view of the totality of the circumstances. Detective Coulter testified, as he had with respect to Defendant's second statement, that he and Detective Wolkiewicz followed the Philadelphia Police Department's procedure for taking Defendant's third statement. Aug. 14, 2018 Hr'g Tr. 56:12–59:6. Detective Coulter advised Defendant of his rights, provided the requisite *Miranda* warnings, and witnessed Defendant initial each line and sign the bottom of each page of the *Miranda* waiver form. Aug. 14, 2018 Hr'g Tr. 56:12–59:8

(testifying that he witnessed Defendant initial each line and sign each page of the *Miranda* waiver form). At the outset of Defendant's third interrogation, officers confirmed that Defendant had been advised of his rights, that Defendant had signed the *Miranda* waiver form, and that he still wished to proceed with the interrogation in the following exchange:

Q. You read your rights aloud to us. Is that correct?

A. Yes.

Q. You signed and initialed that document. Is that correct?

A. Yes.

Q. You also read the document with the seven questions about your rights. You also signed, initialed and dated that document. Is that correct?

A. Yes.

Mot. to Suppress Ex. 3, at 4 of 10. Defendant has offered no evidence to suggest that his *Miranda* waiver was not executed voluntarily. The Court concludes, based on the credible testimony of the officers at the evidentiary hearing, that Defendant voluntarily executed his third *Miranda* waiver.

D. Defendant's Third Statement Was Voluntary

Again, while Defendant's execution of his third voluntary *Miranda* waiver strongly supports the conclusion that Defendant's third statement was also voluntary, the Court concludes that Defendant's third statement was, in fact, voluntarily given because there is no evidence in the record to suggest that Defendant was coerced or deceived into speaking with the police. Indeed, at the outset of Defendant's third interrogation and after Defendant executed his *Miranda* waiver, the police reiterated that they had no authority to promise Defendant anything in return for his candid answers to their questions. The police and Defendant exchanged the following:

Q. Lukeen, before we go any further, I want you to understand that we cannot make any kind of deal with you about any time you have to do. That is something you have to take up with your attorney. That will be between the attorney and the District Attorney's Office. Do you understand?

A. Yes. You told me before.

Mot. to Suppress Ex. 3, at 4 of 10. Defendant, thus, was fully aware that the police were not offering anything in return for his statement because the police had no authority to make such plea deals with Defendant.

Just as Defendant's own stated motivations for speaking with the police in connection with his second statement belie his contention that he was coerced or deceived into making his second statement, so too do his stated motivations for speaking with the police during the course of his third statement belie his contention that his third statement was coerced. During his interrogation, police asked and Defendant exchanged the following about his reasons for talking with the police:

Q. You just admitted to two armed robberies. You were wearing a mask in both incidents. Why did you admit to committing these[]?

A. Because I just want it to end. I need to start my life over again. I'm hoping they give me leniency.

Q. I want to tell you again, we cannot guarantee leniency in any case. That is for your lawyer to work out. Do you understand?

A. Yes sir[]. I do.

Mot. to Suppress Ex. 3, at 9 of 10. Defendant stated that while he understood that the police could not promise him leniency, Defendant nevertheless wished to talk with the police in the hopes that his candidness would curry favor with the District Attorney. There is nothing in the record to suggest that the police led Defendant to believe that his truthful answers to the police

would result in his favorable treatment by prosecutors. In fact, the police, on multiple occasions, confirmed that Defendant understood that they had no such authority. In addition to his stated desire for leniency, Defendant's statement also suggests another reason for his candidness. When asked whether "there [is] anything else [Defendant] want[ed] to add" Defendant volunteered that:

A. It [the commission of the robberies] was to support my family. I want to truly apologize to all the victims I hurt. I think I was crazy. I was driven to do it because of money. At first it was because I was broke, then it became greed. I was not all there. It was from smoking too much weed. I didn't see any other options. I didn't want to make a profession from it. I had to pay my mom[']s car insurance. Everybody was looking towards me.

Mot. to Suppress Ex. 3, at 9 of 10. At the time of his statement, Defendant also sought to express his regret for his crimes. There is no record evidence to suggest that the police coerced or deceived Defendant into making such a statement of regret.

Finally, Detective Coulter credibly testified that at no time did Defendant request counsel or request that the interrogation end. Aug. 14, 2018 Hr'g Tr. 70:5–16 (testifying that Defendant did not verbally indicate a desire for an attorney or to end interrogation and nothing about Defendant's body language or behavior suggested that Defendant wanted to end the interrogation). This too supports the conclusion that Defendant's statement was voluntary.

E. Other Factors Supporting The Conclusion That Defendant Voluntarily Gave His Second And Third Statements

There are no other factors present in this case that would suggest that Defendant's statements were involuntary.⁵ Among other things, Defendant was an adult at the time he was

⁵ See *Sklar v. Ryan*, 752 F. Supp. 1252, 1263 (E.D. Pa. 1990) (enumerating a slew of factors that would suggest that a defendant's statement may not have been voluntary including: "petitioner's youth; his lack of education or his low intelligence; the lack of any advice to the accused of his

interrogated; Defendant is a high school graduate;⁶ Defendant was properly advised of his rights before each interrogation session;⁷ and Defendant was not unduly deprived of food or water.⁸ Defendant has also produced no evidence that the police physically or violently coerced Defendant into making any statements.

F. Defendant Provides No Evidence Of Coercion

Finally, the Court specifically rejects three of Defendant's arguments: (1) that Defendant's second and third statements must be excluded because Defendant exhibited an "obvious lack of understanding"; (2) that Defendant's second and third statements should be excluded because his statement "This is what I am fessing up to. This is what I am caught for. This is all what I am saying" constituted the "functional equivalent of invoking his *Miranda* rights," such that other police officers could not ask him any new questions relating to other robberies; and (3) that the discrepancy between the time it took to read Defendant's second and third written statements in Court and the recorded durations of the interrogations constitutes evidence of police coercion sufficient to warrant suppression of Defendant's statements as involuntary.

constitutional rights; the length of detention; the repeated and prolonged nature of questioning; and the use of physical punishment such as the deprivation of food or sleep").

⁶ Aug. 14, 2018 Hr'g Tr. 14:7–8 (indicating that Defendant had graduated from high school from Summit Academy).

⁷ See Sections III.A and III.C, above, for a discussion of the validity and voluntariness of Defendant's *Miranda* waivers.

⁸ See, e.g., Aug. 14, 2018 Hr'g Tr. 23:11 (testifying that the police provided a bottle of water to Defendant during his interrogation); Aug. 14, 2018 Hr'g Tr. 62:15–17 (testifying that the police provided food, soda, and cigarettes to Defendant during his interrogation); Aug. 14, 2018 Hr'g Tr. 75:20–23 (testifying that Defendant agreed that he had been treated with respect during his interrogation).

First, the Court rejects Defendant’s contention that he exhibited any “obvious lack of understanding”⁹ during any of his interrogations or that he otherwise exhibited any “[in]ability to comprehend and negotiate the circumstances surrounding his statements and the effect his statements would have.”¹⁰ In fact, at the evidentiary hearing, Philadelphia Police Detectives Corrigan, Coulter, and Wolkiewicz testified credibly that at no time did Defendant appear to misunderstand or fail to comprehend the consequences of his decision to speak with the police. *See, e.g.*, Aug. 14, 2018 Hr’g Tr. 70:5–16 (testifying that Defendant did not verbally indicate a desire for an attorney or to end the interrogation and nothing about Defendant’s body language or behavior suggested that Defendant wanted to end the interrogation).

Second, the Court rejects Defendant’s contention that his second and third statements should be suppressed because he had invoked his right to silence by saying “This is what I am fessing up to. This is what I am caught for. This is all what I am saying.” The Court’s position is that Defendant’s words would not qualify as an “unambiguous” and “unequivocal” invocation of his right to remain silent under the Supreme Court’s decision in *Berghuis v. Thompkins*, 560 U.S. 370 (2010).

Third, the Court rejects Defendant’s attempt to prove coercion by pointing to a purported discrepancy between the length of time it took to read Defendant’s statements in open court as compared to the length of time it took to interrogate Defendant as recorded on Defendant’s statements. In the face of overwhelming evidence that his *Miranda* waiver and statements were voluntary, Defendant urges the Court to infer that his statements were coerced based on the fact that it took less time to read Defendant’s statements in Court than it took police to take the statements in the first instance.

⁹ Mot. to Suppress 1.

¹⁰ Mot. to Suppress 5.

At the evidentiary hearing, it took the Government's witnesses approximately a half an hour each to read each of Defendant's written statements into the record. However, the length of each interrogation itself was longer. Defendant's first statement lasted approximately one hour and ten minutes and resulted in an eight-page-long written statement. Defendant's second statement lasted two and a half hours and resulted in a nine-page-long written statement. Defendant's third statement lasted three hours and ten minutes and resulted in a seven-page-long written statement. Defendant contends that the only explanation for the time differential between the time it took to read his statements in court and the time it took to interrogate is that the police coerced his statements.

Ultimately, the time differentials are not persuasive in showing that any police coercion occurred because (1) there is no other evidence to undermine the voluntariness of the statements, (2) the fact that Defendant is contesting the validity of his second and third statements while conceding the validity of his first, which lasted approximately one hour and ten minutes and resulted in a nine-page statement, does not withstand logical scrutiny, and (3) there are other adequate alternative reasons that account for the time differentials that have nothing to do with coercion. *See, e.g.*, Aug. 14, 2018 Hr'g Tr. 85:1–8 (testifying that during an actual interrogation there are stoppages, time to research, time lost due to a defendant's stopping to think about answers, and testifying that it may be the case that not all stoppages are recorded in a statement); Aug. 14, 2018 Hr'g Tr. 86:8–9 (testifying that not every word is recorded when taking a statement and that there are "back and forth conversations going on for clarification"); Aug. 14, 2018 Hr'g Tr. 92:16–18 (testifying that bathroom breaks may not be recorded, and that conversations that do not pertain to the crime at issue may not be recorded). In short, Defendant's arguments are rejected as speculative.

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion to Suppress Statements (ECF No. 73) is DENIED.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

LUKEEN GERALD

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CRIMINAL ACTION

NO. 15-246

ORDER

AND NOW, this __29th__ day of October, 2018, upon consideration of Defendant’s Motion to Suppress Statements (“Motion to Suppress”) (ECF No. 73), the Government’s Response in Opposition to Defendant’s Motion to Suppress Statements (ECF No. 74), and the evidentiary hearing held before the Court on August 14, 2018 and August 29, 2018, Defendant’s Motion to Suppress is **DENIED**.¹

BY THE COURT:

/s/ **Petrese B. Tucker**

Hon. Petrese B. Tucker, U.S.D.J.

¹ This Order accompanies the Court’s Memorandum Opinion dated October 29, 2018.