

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 02-11,063
	:
	:
vs.	: CRIMINAL DIVISION
	: Motion to Suppress
STEVEN SCOTT,	:
Defendant	:

OPINION AND ORDER

Defendant has been charged with involuntary deviate sexual intercourse and related offenses. In the instant Motion to Suppress, filed August 12, 2002, Defendant seeks to suppress incriminating statements he made to the police after being interviewed regarding the allegations underlying the charges. A hearing on the motion was held October 14, 2002.

According to the testimony of Officer William Weber, a detective with the Williamsport Police Department, the officer contacted Defendant on April 15, 2002 and asked him to come to the officer’s office on the following day to discuss the allegations. Defendant then came with a friend, who was requested to remain outside the interview room. Defendant was told he was not under arrest, that he was free to leave, that the officer was closing the door for privacy, and Defendant indicated that would be okay. The officer related the allegations to Defendant at which time Defendant denied any involvement. Officer Weber told Defendant he would need to set up an interview with Defendant and a caseworker from Children and Youth on the following day. According to Officer Weber’s testimony, on April 17, 2002, Defendant called the Sharwell Building where the interview was to take place and told Officer Weber that he would not be coming to the interview, that he had consulted a lawyer who had told him not to come. Defendant also indicated to Officer Weber that he had an appointment with the lawyer the next day. Officer Weber testified that he told Defendant he should

come down and tell his side of the story and Defendant agreed to do so and in fact did come down to the Sharwell Building. Upon Defendant's arrival, according to Officer Weber's testimony, they went into the caseworker's office at which time Officer Weber told Defendant he was not under arrest and that he was free to go at any time. The interview was conducted mostly by the caseworker from Children and Youth. Officer Weber testified that Defendant gave inconsistent statements concerning the allegations and that he, the officer, pointed out those inconsistencies. Defendant then asked to leave and Officer Weber indicates he told Defendant he could leave but if he did so, they would not find out the truth and Defendant would then have to worry about being arrested. According to Officer Weber's testimony, Defendant then admitted to the allegations. When the interview was concluded, Defendant left the office. He had asked Officer Weber if he would be arrested and Officer Weber told him he would not be arrested that day.

According to Defendant's testimony, when Defendant called Officer Weber on April 17, 2002 and indicated that he was told by his lawyer not to attend the interview and was not going to do so, Officer Weber told him he needed to go to the interview and if he did not there would be a warrant issued for his arrest. Defendant testified that for that reason he went to the Sharwell Building for the interview. Defendant also testified that when he asked to leave, he was told a warrant would be issued for his arrest if he did go and he therefore stayed. Defendant also indicated in his testimony that he did not admit to any allegations.

Defendant raises two (2) issues for the Court's consideration. First, Defendant contends he invoked his Fifth Amendment Right to Counsel when he called Officer Weber and indicated he would not be attending the interview, and therefore any subsequent questioning violates said right to counsel. Second, Defendant contends he was in custody during the interview at the Sharwell Building and he therefore should have been advised of his Miranda rights prior to questioning.

The Court agrees with Defendant that once he invokes his right to counsel, interrogation must cease until an attorney is present. Commonwealth v Steward, 775 A.2d 819 (Pa. Super. 2001). The Court finds, however, that Defendant did not invoke his Fifth Amendment Right to Counsel by simply indicating that he had consulted with a lawyer. Defendant could have indicated that he wished to have the lawyer present with him during the questioning and that he would not attend an interview until such

was possible. He did not do so, however. He simply indicated that he had consulted with a lawyer who told him not to attend the interview, but when Officer Weber asked him to come down for the interview nevertheless, Defendant agreed. This does not constitute invocation of the Fifth Amendment Right to Counsel.

With respect to the contention Defendant was in custody during the interview at the Sharwell Building and therefore should have been read his Miranda rights before questioning, again the Court agrees that if Defendant were indeed “in custody” he would have been entitled to Miranda warnings prior to interrogation. Miranda v Arizona, 384 U.S. 436 (1966); Berkemer v McCarty, 468 U.S. 420 (1984). The test for determining whether a person is being subjected to custodial interrogation so as to necessitate Miranda warnings is whether he is physically deprived of his freedom in any significant way or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by such interrogation. Commonwealth v Meyer, 412 A.2d 517 (Pa. 1980).

Considering the evidence presented in the instant matter, the Court believes Defendant was not in custody such as would require Miranda warnings. Defendant was told at the beginning of the interview that he was free to leave, that he was not under arrest. When he asked to leave he was told he could leave.¹ Furthermore, the interview took place at the Sharwell Building in the Children and Youth Office and not at the Police Station. Under all of these circumstances, the Court finds that a person in Defendant’s situation would not have reasonably believed that his freedom of movement was restricted by the interview. No Miranda warnings were therefore required.

¹ The Court understands Defendant’s testimony is contrary to that of Officer Weber’s with respect to particular statements that were made by Officer Weber but resolves any conflict in the credibility of the witnesses in the Officer’s favor.

ORDER

AND NOW, this 21st day of October, 2002, for the foregoing reasons, Defendant's Motion to Suppress is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley N. Anderson