

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 03-11,859

VS :

ROBERT BOYLES :

OPINION AND ORDER

Before the Court is Defendant's Omnibus Pretrial Motion filed February 18, 2004. Defendant's issues are twofold: one, the arresting trooper violated Defendant's constitutional rights by questioning him regarding the motor vehicle accident without "Mirandizing" him and, two, the criminal charges filed November 23, 2003 must be dismissed as they violate Double Jeopardy provisions of both the US and PA Constitutions. The pertinent facts as presented at the omnibus pretrial hearing follow.

On November 23, 2003, the Defendant was involved in a two-vehicle traffic accident in which his estranged wife was driver of the other car. Both vehicles were damaged. Pennsylvania State Police were called to the scene and, upon arrival, Trooper Paul McGee spoke with the Defendant as he was seated in his vehicle, at which time the Defendant told the Trooper that he was driving behind Heather Boyles when she slammed on her brakes, causing him to crash into the rear of her vehicle. The Trooper then interviewed Mrs. Boyles, who related that after the initial impact she had pulled to the side of the road to call for help when the Defendant slammed into her car again. The Trooper investigated the physical evidence at the scene, finding that it supported Heather Boyles' version of the facts, and went to speak again with the Defendant. At that point, the Trooper thought that

it was possible that a crime had been committed, but was not certain. He asked the Defendant if he could explain the second impact evidence. The Defendant mumbled an answer which the Trooper could not understand and indicated that he did not want to discuss the accident any further. The Trooper then placed the Defendant under arrest and transported him to the State Police barracks. During the ride, the Defendant complained that he could not understand why he was being arrested when the incident was the fault of his estranged wife. The Trooper did not ask the Defendant any questions during the trip to the barracks. The Trooper did not explain the Defendant's Miranda warnings to him until after they had arrived at the barracks.

On November 23, 2003, a contempt petition was filed against Defendant under Lycoming County case number 03-21,628, alleging that the Defendant had violated a Protection From Abuse Order under that number which had been obtained by Heather Boyles against the Defendant on November 3, 2003. The contempt petition was based upon an allegation that at the time of the accident earlier that day, the Defendant created contact between himself and the protected person. After a hearing on January 21, 2004, the Defendant was found guilty of indirect criminal contempt and sentenced to serve 4 months incarceration in the Lycoming County Prison. The Defendant now asserts that the criminal case filed against him on November 23, 2003 should be dismissed because he has already been held in contempt and sentenced for his actions in this case as a result of the contempt petition filed against him under 03-21,628. He argues that because of the finding of contempt, the criminal case is barred under the Double Jeopardy

provisions of the United States and Pennsylvania Constitutions. The Defendant further maintains that any statements he made at the scene of the accident should be suppressed because the Trooper did not provide him with Miranda warnings prior to discussing the accident with him.

In Pennsylvania, the law controlling whether a criminal prosecution is barred because of a previous finding of contempt under a Protection From Abuse Order is set forth in the case of Commonwealth v. Yerby, 544 Pa. 578, 679 A.2d 217 (Pa. 1996), which overruled previous Pennsylvania law and for the first time provided for Double Jeopardy protections for a Defendant charged with both a criminal offense and an indirect criminal contempt arising from the same set of facts. In that case, the Pennsylvania Supreme Court held that

“(i)n determining whether a prosecution is barred by double jeopardy, we apply the "same elements" test set forth in Blockburger v. United States, 284 U.S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932). Under that test, if prosecution of each offense requires proof of an element the other does not, the offenses are separate and double jeopardy does not apply. However, if the offenses have identical elements, or if one offense is a lesser included offense of the other, the second prosecution is barred.

Commonwealth v. Yerby, 544 Pa. 578, 679 A.2d 217, 219 (Pa. 1996) (citing Blockburger, *supra*, at 304, 52 S. Ct. at 182, 76 L. Ed. at 309). See also Commonwealth v. Townley, ___ Pa.Super. ___, 722 A.2d 1098 (Pa.Super. 1998). Pennsylvania law under Yerby compares “the actual offenses committed in the contempt proceeding against the elements of the substantive criminal offense charged.” Commonwealth v. Majeed, 548 Pa. 48, ___ A.2d ___ (Pa. 1997), instead of comparing the general elements of contempt (ie. 1.) whether a properly served previous order exists and 2.) whether a Defendant’s conduct is in violation of

that order) with those of the substantive criminal offense. Therefore, Yerby requires the Court to examine whether the Defendant's conduct constituted contempt of court and also met at least one additional element to also constitute a substantive criminal offense.

In his Order of January 21, 2004 finding the Defendant in contempt of the prior PFA order, Judge Dudley Anderson made no findings of fact and did not explain the basis of his decision to find the Defendant in contempt of court. However, a transcript of the proceedings held at that time was subsequently made part of the court record. The transcript shows that Judge Anderson made findings on the record at that hearing that "everything she (Heather Boyles) did was consistent with trying to avoid contact with him (the Defendant), everything that he did seemed to promote the contact, which eventually happened." N.T. January 21, 2004, p. 31. Judge Anderson then acknowledges that the parties gave different versions of the facts in this matter and finds that "whichever version you take, we're talking about intent to intimidate and it seems to me that it is clear that if this incident was to be avoided, it was to be avoided by Mr. Boyles and I find that that he is in contempt for failure to abide by the PFA, that at the very minimum, at the very minimum his actions amount to harassment that is prohibited by the PFA." Id. at p. 32. The elements of the conduct for which Judge Anderson held the Defendant in contempt are therefore that the Defendant was aware of a valid Protection From Abuse Order and that in violation of that order he promoted contact with the Plaintiff and intended to intimidate her and harass her.

In the case at hand, the Defendant is charged with Aggravated Assault, Simple Assault, Recklessly Endangering Another Person, Endangering the Welfare of Children, Stalking, and two traffic offenses. Each of these substantive offenses contains at least one element that is different from the elements of the conduct for which Judge Anderson held the Defendant in contempt and requires more than a mere promotion of contact or harassment by the Defendant. Also significantly, the Aggravated Assault, Simple Assault and Recklessly Endangering Another Person charges list Heather Boyles and four juvenile children as the alleged victims, while the Endangering the Welfare of Children charge lists three juvenile children as the alleged victims. Judge Anderson's findings of fact at the time of the contempt proceeding clearly pertain to Heather Boyles only. For these reasons, the Court finds that the criminal prosecution of this matter is not barred by the Double Jeopardy clauses of the United States or Pennsylvania Constitutions.

The Defendant also contends that any statements he made to Trooper McGee regarding the accident prior to the time he was read his Miranda warnings at the Pennsylvania State Police barracks must be suppressed. The decision of the United States Supreme Court in Miranda v. Arizona, 384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1602 (1966), established that a person must be warned of his Fifth Amendment rights before any "custodial interrogation" takes place, and that "custodial interrogation" means "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." Miranda, *id.* "In Pennsylvania "custodial interrogation" has been interpreted to mean either questioning . . . 'while in

custody or while the object of an investigation of which he is the focus, . . .”

Commonwealth v. McLaughlin, 475 Pa. 97, 379 A.2d 1056 (1977), citing Commonwealth v. D’Nicuola, 448 Pa. 54, 57, 292 A.2d 333, 335 (1972), and Commonwealth v. Feldman, *rew* Pa. 428, 432 – 33, 258 A.2d 1, 3 (1968). (Emphasis added in McLaughlin). The test for determining whether a suspect 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. In the interest of V.H., a minor, 788 A.2d 976 (Pa.Super. 2001). "Indeed, police detentions only become 'custodial' when under the totality of circumstances the conditions and/or duration of the detention become so coercive as to constitute the functional equivalent of formal arrest." V.H., supra., citing Commonwealth v. Ellis, 549 A.2d 1323 (Pa.Super. 1988) appeal denied, 522 Pa. 601, 562 A.2d 824 (1989). Among the factors the court utilizes in determining, under the totality of the circumstances, whether the detention became so coercive as to constitute the functional equivalent of a formal arrest are: “the basis for the detention; the duration; the location; whether the suspect was transferred against his will, how far, and why; whether restraints were used; the show, threat or use of force; and the methods of investigation used to confirm or dispel suspicions.” V.H., supra.

In this case, the accident between the two vehicles had been reported to the Pennsylvania State Police and the Defendant was still at the scene when the police arrived. See 75 Pa.C.S. § 3746. Upon arrival, the immediate duty of the

Trooper was to be certain that no one was in need of emergency medical care and then to investigate the accident. The Trooper did this and chose to begin his investigation by talking to the Defendant. At that time, the Court finds that the Defendant was not detained or in custody for purposes of Miranda. The Trooper was merely investigating a traffic accident, not considering whether anyone at the scene might be criminally responsible for the incident. The Court therefore rules that any statements made by the Defendant during his initial conversation with the Trooper will not be suppressed. The Trooper then went to discuss the accident with Heather Boyles. It was during this conversation that the Trooper began to suspect that the Defendant may have intentionally caused the accident and intentionally neglected to tell the Trooper about the second impact between the vehicles. The Trooper then conducted a quick investigation for physical evidence and when that evidence supported Heather Boyles' version of the facts, he approached the Defendant for a second time to discuss the discrepancies with him. At that time, the Trooper believed that criminal activity may have occurred and he had focused on the Defendant as the suspect. The Trooper testified at the suppression hearing, however, that during this second conversation, the Defendant did not say anything at all that the Trooper was able to understand. The Court finds that although the Trooper should have explained the Defendant's Miranda warnings to him before beginning the second conversation, no statement was made by the Defendant. Therefore, there is no statement to suppress. If, however, the Defendant had made any statements to the Trooper during this second conversation, they would be ordered suppressed by the Court. The Court also finds that the statements made

by the Defendant during his transportation to the State Police barracks were not made in response to any questions posed to him by the Trooper but instead were spontaneous statements made by the Defendant. Those statements will not be suppressed.

The Court notes that at the time of the contempt proceeding held before Judge Anderson on January 21, 2004, Trooper McGee testified that the Defendant told him during the investigation of the accident that he “did know that the white Durango traveling ahead of him was his estranged wife, Heather Boyles. He did know that. He did admit that.” N.T. January 21, 2004, p. 19. The Trooper testified at the suppression hearing that he could not recall any statements made by the Defendant, and there is no indication in the transcript of the PFA hearing whether that admission was made during the first or second conversation that the Trooper had with the Defendant. The Court is therefore unable to make a ruling as to whether this statement should be suppressed. If it was made during the Trooper’s initial conversation with the Defendant, it would not be suppressed. If it was made during the Trooper’s subsequent conversation with the Defendant, and not while being transported to the State Police barracks, then it would be suppressed.

ORDER

AND NOW, this ____ day of July, 2004, upon consideration of Defendant's Omnibus Pretrial Motion, it is ORDERED and DIRECTED that the Motion is DENIED in its entirety.

By The Court,

Nancy L. Butts, Judge

cc: CA
DA
George Lepley, Esquire
Bruce Manchester, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire