IN THE COURT OF COMMON PLEAS
LYCOMING COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH	:	
	:	
v.	:	**No.: 03-11,060**
	:	
BENTON COLVIN,	:	
Defendant	:	

OPINION AND ORDER

Before the Court is the Defendant's "Pre-Trial Omnibus Motions" filed January 7, 2004, in which he asserts both a Motion to Suppress Evidence and a Habeas Corpus Motion to Dismiss.

The Court begins by noting that the Defendant was scheduled for a preliminary hearing in this matter on July 15, 2003 before District Justice James Carn. He appeared pro se before Mr. Carn on July 14, 2003 and waived hearing on the charges presently pending against him. He cannot now assert through a habeas corpus petition that the Commonwealth has insufficient evidence to have the charges held for court. The Defendant agreed in writing on July 14, 2003 that those charges should be held without a hearing. He explicitly gave up his right to challenge the sufficiency of the evidence which the Commonwealth intended to present against him at that hearing. This Court will not provide him with an opportunity to merely change his mind about his waiver of the preliminary hearing at this late date.

Defendant's Motion to Suppress asserts that on April 26, 2003 three officers of the Williamsport Bureau of Police came to his home and interrogated him on his front porch regarding his alleged "harassing and stalking" of Stephanie Hartsock and her boyfriend. He further asserts that the officers informed him that the District Attorney's Office had approved charges against him and proceeded to question him regarding the acts that led to those charges. The Defendant also asserts that at no time were his rights under Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 695 (1966), explained to him although the officers had effectively detained him on his front porch and therefore issuance of Miranda warnings was Constitutionally required. Defendant asserts that because no Miranda warnings were given, any statements he made must be suppressed. At the time of the hearing on this matter, the Commonwealth agreed that no Miranda warnings were given to the Defendant but argued that these warnings were not necessary because the Defendant was not in a custodial detention and was allowed to go back into his residence once the officers had spoken with him. The Commonwealth therefore argues that any statements made by the Defendant while he was questioned on the porch of his residence should not be suppressed.

Initially, this Court finds that at the time that the Defendant was questioned by the officers, he was the focus of an investigation. Officer Hagan clearly stated to the Defendant that charges against him were already approved by the District Attorney's Office. The Court further finds that the

questions of the officers were designed to elicit incriminating statements from the Defendant regarding those charges. However, a finding that the Defendant was the focus of the officer's investigation does not end the inquiry into whether his rights under Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 695 (1966) have been triggered, although it is a relevant factor for consideration by the Court. See eg. Commonwealth v. Bess, ____ A.2d ____ , (Pa.Super. 2002); Commonwealth v. Smith, 732 A.2d 1226, (Pa.Super. 1999); Commonwealth v. Busch, 713 A.2d 97 (Pa.Super. 1998); Commonwealth v. Peters, 642 A.2d 1126 (Pa.Super. 1994). Instead, the Court must determine whether the Defendant was in custody at the time that he was questioned. This determination rests upon the objective circumstances of the questioning, not on whether the officers or the individual being questioned subjectively believed that the subject of the interrogation was in custody. Beckwith v. United States, 425 U.S. 341, S.Ct. 1612, 48 L.Ed. 2d 1 (1976); Commonwealth v. McLaughlin, 475 Pa. 97, 379 A.2d 1056 (1979).

In Beckwith v. United States, 425 U.S. 341, 96, S. Ct. 1612, 48 L. Ed. 2d 1 (1976), the United States Supreme Court held that it is "the compulsive aspect of custodial interrogation, and not the strength or content of the government's suspicions at the time the questioning was conducted, which led the Court to impose the Miranda requirements with regard to custodial questioning." Beckwith, id., at 346-347, 96 S. Ct. at 1616[]. Later, in Stansbury v. California, 511 U.S. 318, 322-323, 128 L. Ed. 2d 293, 114 S.

Ct. 1526 (1994) (per curiam), the United States Supreme Court listed its numerous decisions reaffirming the conclusion it reached in Beckwith, supra. See Stansbury v. California, 511 U.S. at 323-324, citing Berkemer v. McCarty, 468 U.S. 420, 82 L. Ed. 2d 317, 104 S. Ct. 3138 (1984); Oregon v. Mathiason, 429 U.S. 492, 50 L. Ed. 2d 714, 97 S. Ct. 711 (1977); California v. Beheler, 463 U.S. 1121, 77 L. Ed. 2d 1275, 103 S. Ct. 3517 (1983); Minnesota v. Murphy, 465 U.S. 420, 79 L. Ed. 2d 409, 104 S. Ct. 1136 (1984).

Following the United States Supreme Court decision in Beckwith, supra., the Pennsylvania Supreme Court, in the case of Commonwealth v. McLaughlin, 475 Pa. 97, 379 A.2d 1056 (1979), re-evaluated its position as to when an individual must be read Miranda warnings. The McLaughlin court "recognized that prior Pennsylvania cases might be interpreted as requiring Miranda warnings disjunctively; either when a suspect is taken into custody or when he becomes the focus of the investigation." Commonwealth v. Busch, 713 A.2d 97, 99-100 (Pa. Super. 1998) citing Commonwealth v. McLaughlin, supra, 475 Pa. at 102, 379 A.2d at 1058. The Court then rejected this interpretation, "observing that in each of the earlier cases "there was also present a degree of 'deprivation of liberty' which the Beckwith court found Miranda to require." (McLaughlin, supra.). Thus, the McLaughlin court found Pennsylvania law to be in harmony with Beckwith." Busch, supra., citing McLaughlin, supra. Accord Commonwealth v. Holcomb, 508 Pa. 425, 498 A.2d 833 (1985) (plurality), cert. denied, 475 U.S. 1150, 90 L. Ed. 2d

349, 106 S. Ct. 1804 (1986). See also Commonwealth v. Peters, 434 Pa. Super. 268 at 275-276, 642 A.2d 1126 at 1130. (reaffirming the Pennsylvania Supreme Court's analysis in McLaughlin, and noting that "(t)he fact that a defendant was the focus of the investigation is . . . a relevant factor in determining whether he was 'in custody,' but does not require, per se, Miranda warnings.")

Ultimately, therefore, the inquiry "is simply whether there [was] a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." Commonwealth v. Busch, 713 A.2d 97, 99 (Pa.Super.1998), citing Stansbury v. California, 511 U.S. 318, 322-323, 114 S. Ct. 1526, 128 L. Ed. 2d 293 (1994) (per curiam) (other citations omitted). "(C)ustodial interrogation does not require that the police make a formal arrest, nor that the police intend to make an arrest. Rather, the test of custodial interrogation is whether the individual being interrogated reasonably believes his freedom of action is being restricted." Commonwealth v. Meyer, 488 Pa. 297, ___ A.2d ___ (Pa. 1980).

In this case, the testimony offered at the suppression hearing does not show that the Defendant was restrained or detained in any way other than by the conversation between the Defendant and the officers. Further, Officer Hagan testified that the Defendant was not compelled in any way to answer any question put to him by any of the officers. Instead, the Defendant chose to assert blanket denials to the events about which the officers questioned him. He did not choose to leave the company of the

officers and go back inside his home. He was not arrested on the evening of the questioning. Hagan also testified that he did not detain the Defendant on the porch. The Defendant chose not to offer any testimony at the time of the suppression hearing, and so there is no evidence that the Defendant himself felt restricted or detained in any way. The Court is therefore constrained to reach the conclusion that although the Defendant was clearly the focus of a criminal investigation at the time that he spoke with the officers, no custodial detention occurred and any statements made by the Defendant shall not be suppressed.

ORDER

AND NOW, this ____ day of April, 2004, after a hearing on the Defendant's Pre-Trial Omnibus Motions, and for the reasons set forth above, the Court DENIES Defendant's Motion to Suppress Evidence and the Defendant's Habeas Corpus Motion to Dismiss Charges is DISMISSED.

By the Court,

_____ J.
Nancy L. Butts, Judge

xc: DA
Defendant – Benton Colvin
P.O. Box 1823
Williamsport, PA 17703
Hon. Nancy L. Butts
Diane L. Turner, Esquire
Gary Weber, Esquire