

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

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| COMMONWEALTH | : | |
| | : | |
| v. | : | No. 1079-2008 |
| | : | CRIMINAL |
| GREGORY BARTO, | : | |
| Defendant | : | |

OPINION AND ORDER

On October 17, 2008, Defendant filed a Motion to Suppress. A hearing on the Motion was held on December 18, 2008.

Background

The following is a summary of the facts presented at the Suppression hearing. On June 11, 2008, Corporal Warner and Trooper Douglas Sversko (Sversko) of the Pennsylvania State Police (PSP) went to Barto's Tire & Auto Sales, whereupon they served Gregory Barto (Defendant) with a warrant for his arrest. While the Defendant was being taken into custody, he told the Officers he should call his attorney. The Defendant was placed in the back seat of the PSP cruiser, where Sversko joined him.

While on the way to the police station, without first advising the Defendant of his Miranda¹ rights, Sversko read the Affidavit of Probable Cause and the Criminal Complaint to the Defendant. Sversko testified he read the documents in an informative manner and never questioned the Defendant nor tried to get him to make statements. Following the reading of the documents, the Defendant made incriminating statements. Sversko related that he always reads

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

the Affidavit of Probable Cause and Criminal Complaints to Defendants in order to make things move more quickly for the Magisterial District Judge who might arraign the Defendant. Sversko further related that it was not unusual for a Defendant to respond to the reading of those specific documents.

Discussion

Defendant alleges that he was not advised of his Miranda rights prior to Sversko reading the Affidavit of Probable Cause and the Criminal Complaint to him (Defendant) in a manner in which to elicit a response from him. The Commonwealth asserts in opposition that the Defendant was not subject to interrogation as the reading of those documents was not to obtain an admission from him.

According to the Pennsylvania Supreme Court, ““where a motion to suppress has been filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that the challenged evidence is admissible.”” Commonwealth v. Bryant, 866 A.2d 1143, 1145 (Pa. Super. Ct. 2005) (quoting Commonwealth v. DeWitt, 608 A.2d 1030, 1031 (Pa. 1992)).

Miranda warnings must be given when a person is subjected to custodial interrogation. See Miranda v. Arizona, 384 U.S. 436 (1966) and Beckwith v. United States, 425 U.S. 341, 344 (1976). “Pennsylvania's test for custodial interrogation is ‘whether the suspect 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 of [sic] movement is restricted by such interrogation.’” Commonwealth v. Meyer, 412 A.2d 517, 521 (Pa. 1980) (quoting Commonwealth v. Romberger, 312 A.2d 353, 355 (1973), vacated, 417 U.S. 964 (1974), reinstated on remand, 347 A.2d 460 (1975)).

‘[T]he term ‘interrogation’ under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police.

Commonwealth v. DeJesus, 787 A.2d 394, 401 (Pa. 2001) (quoting Rhode Island v. Innis, 446 U.S. 291 (1980)).

In DeJesus, the Defendant was arrested for one set of charges and given Miranda warnings. 787 A.2d at 400. While still in custody for his first set of charges, the Defendant was taken into an interview room where officers informed him other charges were brought against him. Id. at 400-01. The Defendant then asked why other charges were being brought against him. Id. at 401. The Officers explained to the Defendant the reason for a new set of charges and statements made against him, without first reading him his Miranda rights. Id. The Supreme Court found that the Officers statements while intended as informational were reasonably likely to elicit an incriminating response for the Defendant, thus constituting the functional equivalent of interrogation. Id. at 404.

As it is clear the Defendant was in custody at the time of the incriminating statements, the Court need only address whether the Defendant was subject to interrogation and thus, entitled to Miranda warnings prior to the reading of the Affidavit of Probable Cause and Criminal Complaint. Sversko related that he did not give the Defendant Miranda warnings as the reading of the Affidavit of Probable Cause and Criminal Complaint was for informational purposes. However, he also testified that in his experience after reading these documents to a Defendant, it was not unusual for them to respond to the reading. Therefore, this Court finds as decided in DeJesus, that although the reading of those documents to the Defendant was intended as informational, they were also read knowing that it was reasonably likely to elicit an

incriminating response. As such, the statements made by the Defendant after his arrest shall be suppressed.

ORDER

AND NOW, this ____day of January 2009, based on the foregoing Opinion, Defendant's Motion to Suppress is hereby GRANTED. It is ORDERED and DIRECTED that any statements made by the Defendant following his arrest and after reading of the Affidavit of Probable Cause and the Criminal Complaint are hereby SUPPRESSED.

By the Court,

Nancy L. Butts, Judge

cc. DA
George E. Lepley, Jr., Esq.
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber (LLA)