

**IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH</b>	:	
	:	
v.	:	<b>No. 1997-2008; 2072-2008</b>
	:	<b>CRIMINAL</b>
<b>LEON BODLE,</b>	:	
<b>Defendant</b>	:	

**OPINION AND ORDER**

Defendant, Leon Bodle filed an Omnibus Pre-Trial Motion on March 27, 2009. A hearing on the Motion was held on July 28, 2009.

***Background***

The following is a summary of the facts presented during an interview of the Defendant by Sergeant Christopher Kriner (Kriner) and Officer Michael Samar (Samar) of the Old Lycoming Township Police Department and the Suppression Hearing.

At the Suppression Hearing, Kriner testified that he is in charge of criminal investigations in Old Lycoming Township. He explained that he has received training interviewing criminal suspects and child sexual abuse. Kriner testified that in April of 2008, he received a complaint from the parents of a juvenile female who received emails from the Defendant, who as her former substitute teacher when she was in elementary school.

In July of 2008, Kriner spoke with the Defendant about the incident while at his house on New Lawn Ave. Kriner showed the Defendant a picture and asked if he would come down to the police station to talk. About ten minutes later the Defendant arrived at the police station. Kriner explained to the Defendant that he was not under arrest and was free to go. Kriner and the

Defendant went into a conference room and closed the door for privacy, but did not lock the door. Kriner explained that he spoke with the Defendant for about one hour to one hour and twenty minutes. He related that he spoke with the Defendant about the Defendant's job and his MySpace account. Kriner explained that during the conversation the Defendant's demeanor was calm. Kriner related that throughout the interview he repeatedly informed the Defendant that he was free to leave at any time and that the Defendant never said he wanted to leave or ask for an attorney. During the interview, Kriner asked the Defendant if the police could search for and seize his computers. Kriner informed the Defendant that he did not have to consent to such a search, however, the Defendant gave permission. After that the Defendant left and went home.

At around 4:30 p.m. that same day, Kriner and Samar went to the Defendant's house on New Lawn Ave in Old Lycoming Township and the Defendant invited them into his house. The Defendant escorted them to the bedroom where the computer was located and the officers again asked the Defendant "if he was sure it was okay" for them to search the computers. The Defendant consented once more. Following the seizure of his computer, the officers went to the Defendant's grandfather and uncle's residence on Princeton Ave (also in Old Lycoming Township), also a part time residence of Defendant, to seize that computer as well. The Defendant's uncle, to whom the computer belonged, consented to the seizure of that computer.

While at the grandfather's residence, the officers asked the Defendant if he wished to continue to speak with police and the Defendant said he wanted to talk about his neighbors. About one and a half hours later, the Defendant returned to the police station. Samar interviewed the Defendant alone for about one hour and then Kriner joined the interview for approximately one hour more. The Defendant was told if he was cooperative, the officers would speak to the Judge and District Attorney. They also told the Defendant that they would let the Judge and DA

know if he was uncooperative and if he was uncooperative the case could be referred to Federal Law Enforcement Officials. Kriner then told Defendant about another Defendant who received a sentence of ten years because he did not cooperate with law enforcement, and that the federal officials are investigating him as well. During this second interview, the Defendant was again told by both officers that he was free to leave. Kriner testified he believed the Defendant understood everything they spoke about, remained calm, and was talkative. Kriner explained that the Defendant did stutter when he was questioned about lying. Kriner stated the Defendant never requested an attorney, or to stop the interview and leave. Furthermore, Kriner explained the Defendant is a school teacher. While in college, he read textbooks from cover to cover, took exams and passed them without attending class. The Defendant pointed out to Kriner, he received his Bachelor's degree in education in three years.

### ***Discussion***

#### ***Motion to Suppress the Statement of the Defendant***

Defendant alleges in his Motion to Suppress that any statements he made to the police during his recorded interview should be suppressed as he was threatened into making those statements.

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 “The question of custody is an objective one, focusing on the totality of the circumstances, with due consideration given to the reasonable impression conveyed upon the person being questioned.” Commonwealth v. Boczkowski, 846 A.2d 75, 90 (Pa. 2004) (citing Commonwealth v. Gwynn, 723 A.2d 143, 148 (Pa. 1998)). When assessing the totality of the circumstances, the Court should consider the “following factors: the duration and means of the interrogation; the physical and psychological state of the accused; the conditions attendant to the detention; the attitude of the interrogator; and any and all other factors that could drain a person's ability to withstand suggestion and coercion.” Commonwealth v. Nester, 709 A.2d 879, 882 (Pa. 1998) (and cases cited therein).

Using the above standard, the Court finds the Defendant was not subject to custodial interrogation at the time he made statements to the police, and therefore, Miranda warnings were not required. When asked if he would come to the police station to talk to the officers, the Defendant agreed and drove himself to the station. At the police station, the Defendant was never placed under arrest and repeatedly told he was free to leave. The Defendant willingly spoke to the police for approximately one hour and twenty minutes. During that initial conversation, the Defendant consented to a search and seizure of his computers. While in the field, the Defendant agreed to return to the police department and speak with the police again. Defendant drove himself to the police station for at least another hour of questioning. During this second

conversation with the police, the Defendant was again repeatedly informed that he was not under arrest and free to leave. Although the interviewing officers told the Defendant that they would contact the Judge and DA and let them know if he cooperated, along with mentioning that Federal Law Enforcement Officials could become involved, these were statements of fact, not threats designed to coerce an uncooperative individual.

The Defendant was not only told he was not under arrest, but also told he was free to leave. Furthermore, the Defendant has a college degree and essentially bragged about his intellect to the officers. Based upon the totality of the circumstances presented by the Commonwealth, the Court finds the Defendant was not threatened or pressured into giving his statement to the police. Rather, the Court finds he willingly appeared at the police station on two separate occasions to speak with the officers.

### ***Motion in Limine***

Defendant also asserts that the statements he made during the interview do not pertain to the charges which are pending against him under the above-captioned case numbers.

It is within the discretion of the trial court to admit or exclude evidence and “will not be overturned on appeal absent an abuse of that discretion.” Commonwealth v. DeJesus, 808 A.2d 608, 614 (Pa. 2005). According the Pennsylvania Rules of Evidence, “[r]elevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Pa.R.Evid. 401. However, evidence which is relevant “may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation

of cumulative evidence.” Pa.R.Evid. 403. “Unfair prejudice” means a tendency to suggest decision on an improper basis or to divert the jury’s attention away from its duty of weighing the evidence impartially.” Id., Official Comment.

According to the Pennsylvania Supreme Court, “[i]t is essential, both to the accused and to our system of criminal justice, that an accused obtain a trial on the specific charges against him and that he not be convicted on grounds that he possesses a criminal nature.”

Commonwealth v. Cousar, 928 A.2d 1025, 1045 (Pa. 2007) (quoting Commonwealth v. Seiders, 614 A.2d 689, 691 (1992)). Courts have also “recognized that juries are likely to consider evidence of unrelated criminal activity as supporting a finding of guilt.” 808 A.2d at 614. For instance in Commonwealth v. Harris, the Superior Court noted that

The law is well settled in Pennsylvania that the prosecution may not introduce evidence of defendant's prior criminal conduct as substantive evidence of his guilt of the present charge. The purpose of this rule is ‘to prevent the conviction of an accused for one crime by the use of evidence that he has committed other unrelated crimes, and to preclude the inference that because he has committed other crimes he was more liable to commit the crime for which he is being tried. The presumed effect of such evidence is to predispose the minds of the jurors to believe the accused guilty and thus effectively to strip him of the presumption of innocence.’

Cousar, 928 A.2d at 1045 (quoting Commonwealth v. Harris, 397 A.2d 424, 427-28 (Pa. Super. Ct. 1979).

Here, the Court finds the probative value of the statements made by the Defendant would be outweighed by the danger of unfair prejudice. The statements the Defendant provided related to talking to young female former students on the internet and downloading revealing or naked pictures of some of those young females. The above-captioned cases relate to the Defendant’s personal contact with young males in his neighborhood. Therefore, the Court finds that the admittance of statements made by the Defendant would only cause the jury to consider those

statements on unrelated charges as evidence of guilt. Since, the statements are not related to the cases at hand and would cause unfair prejudice, they shall not be admitted.

**ORDER**

AND NOW, this \_\_\_\_ day of September 2009, based on the foregoing Opinion, it is ORDERED and DIRECTED as follows:

1. Defendant's Motion to Suppress the statement of the Defendant is hereby DENIED.
2. The Defendant's Motion in Limine to preclude the introduction of at trial of any statement made by the Defendant on unrelated charges is hereby GRANTED. It is ORDERED and DIRECTED that any statements made by the Defendant relating to charges involving females are precluded from being presented by the Commonwealth in its case in chief.

By the Court,

Nancy L. Butts, Judge

xc: DA (MK)  
James R. Protasio, Esq.  
Trisha D. Hoover, Esq. (Law Clerk)  
Gary L. Weber, Esq. (LLA)