

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

**COMMONWEALTH**

**v.**

**PAMELA CALDWELL,  
Defendant**

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**No. 1668-2008  
CRIMINAL**

**OPINION AND ORDER**

Defendant, Pamela Caldwell filed a Motion to Suppress on May 21, 2009. A hearing on the Motion was held on October 12, 2009.

***Background***

The following is a summary of the facts presented at the Suppression Hearing. On August 7, 2008, Trooper Jennifer Jackson (Jackson) of the Pennsylvania State Police (PSP) contacted the Defendant to request that she take a polygraph. Jackson testified that the Defendant said she first wanted to consult with an attorney. Around 10:00 a.m., the Defendant arrived at the PSP Barracks and waited in the lobby. At 10:30 a.m., Jackson and Trooper Marcia Barnhart (Barnhart) took the Defendant to a fingerprint room where they executed a body search warrant to obtain photographs of the Defendant's pubic area. Jackson explained that she did not tell the Defendant about the search warrant during their conversation earlier that day.

After execution of the search warrant, Jackson related the Defendant indicated she wanted to get her side of the story straight. Jackson asked the Defendant if she wanted to talk and the Defendant said yes. Jackson testified she told the Defendant that she was free to leave and did not have to speak with her and Barnhart; Defendant was also told she could have an attorney present. Defendant agreed to speak and proceeded out through a locked door with Jackson and

into the lobby of the PSP Barracks. As Defendant gave her coat to her father, Jackson remained to allow her back inside. Defendant followed Jackson upstairs to an interview room where she was asked if she consented to being interviewed. Jackson explained that the Defendant indicated that she wished to talk. The Defendant freely spoke with both Jackson and Barnhart for approximately two hours. Jackson described her demeanor as “a little frustrated and nervous at times,” but not hesitant.

Barnhart testified that she assisted Jackson in execution of the body search warrant. Barnhart explained that after execution of the warrant, the Defendant indicated that she wanted to express her side of the story without an attorney present. Barnhart related that Jackson explained to the Defendant that she was not under arrest and did not have to speak to them without an attorney present. Barnhart testified she also told the Defendant that if she had a side of the story she should tell it. Barnhart testified that she was not in the room when the interview first started but did eventually participate in the interview. Barnhart related the Defendant appeared frustrated throughout the interview as she was having trouble remembering things and even cried at the end of the interview.

Defendant also testified on her own behalf. She stated she received a call from Jackson requesting that she take a polygraph and said she would take a polygraph but would not speak to Jackson regarding the investigation. Defendant went to the Barracks along with her father, on August 7, 2008 around 10:00 a.m. Upon arriving at the Barracks, Defendant explained that she went to a fingerprint room where a body search warrant was executed. The Defendant testified that while in the fingerprint room, but after photos were completed, Jackson asked her to explain

why there would be DNA on J.H.'s<sup>1</sup> underpants. The Defendant explained that she told Jackson she had no idea, to which Jackson responded "you might want to explain yourself." Defendant said that Barnhart told her that "you better get your butt upstairs and start talking." Defendant felt that based upon what the troopers said to her, she did not have a choice but to get "her butt upstairs" and did not feel free to leave.

The Defendant's father, Warren Caldwell testified that he went with the Defendant on August 7, 2008 to the PSP Barracks. He explained that he waited in the lobby while the Defendant was interviewed. Caldwell testified that the Defendant came out in the lobby and told him, "I've gotta go talk to them." He was unsure whether the Defendant volunteered to talk.

Jackson was called in rebuttal to testify regarding the Defendant's assertion that Jackson told her they had DNA evidence on J.H.'s underpants. Jackson related that the lab report regarding the DNA evidence was not received until several months after this interview. Jackson explained that she never told the Defendant that they had DNA evidence on J.H.'s underpants as they would not have had the DNA lab report, but may have told her during the interview that the DNA evidence would not lie.

The Court was also provided with a recording of the interview on August 7, 2008 for its review. On the recording, the Defendant consents to an interview without her attorney present; she is informed that she is not under arrest and is free to leave. Defendant is observed telling the troopers that she came in there willingly and has an attorney but wanted to tell her story without her attorney. During the interview, the Defendant states that she is aware the troopers are using tactics in an attempt to coerce her. Throughout the interview, the troopers inform the Defendant that as a Christian woman she should tell the truth and that the truth would help her.

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<sup>1</sup> J.H. is one of the alleged victim's in this case.

## *Discussion*

Defendant asserts that her statement given to the PSP on August 7, 2008, should be suppressed because she believed that she was not free to leave, felt confined by the police, was pressured or coerced into answering questions, and was not provided Miranda warnings prior to the interview.

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 on August 7, 2008, when she made statements to the police, and therefore, Miranda warnings were not required. The testimony from the Suppression Hearing is that Jackson called the Defendant to request that she take a polygraph and the Defendant said she first had to consult with her attorney. Defendant arrived at the Barracks of her own volition, at which time a search warrant was executed. After the warrant, the Defendant was asked if she wanted to talk and the Defendant did. The interview was recorded and the troopers are heard telling the Defendant that she does not have to talk to them without an attorney present and that she is free to leave. The Defendant responds by telling the troopers that she has an attorney but came here willingly to tell them her side of the story without him present. Based upon the totality of the circumstances presented by the Commonwealth, the Court finds the Defendant was not threatened or pressured into giving her statement to the police. Rather, the Court finds she appeared at the PSP Barracks on her own and willingly spoke to the troopers.

**ORDER**

AND NOW, this \_\_\_\_day of November 2009, based on the foregoing Opinion, it is ORDERED and DIRECTED that Defendant's Suppression Motion is hereby DENIED.

By the Court,

Nancy L. Butts, Judge

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