

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

**COMMONWEALTH OF PA** :  
**vs.** : **No. CR-627-2010**  
:  
**ABRAHAM EDWARDS,** :  
**Defendant** :

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**COMMONWEALTH OF PA** :  
**vs.** : **No. CR-723-2010**  
:  
**JEFFREY RAWLS,** :  
**Defendant** :

**OPINION AND ORDER**

Defendant Edwards is charged by Information filed on April 29, 2010 with one count of Rape by Forcible Compulsion, one count of Sexual Assault, two counts of Aggravated Indecent Assault, one count of False Imprisonment and two counts of Criminal Conspiracy. Defendant Rawls is charged by Information filed on May 13, 2010 with one count of Conspiracy, one count of Rape, one count of Sexual Assault, two counts of Aggravated Indecent Assault, one count of False Imprisonment and two counts of Indecent Assault. The Commonwealth alleges that on or about March 6, 2010, Defendants led a female victim into a darkened basement and took turns sexually assaulting her.

Two Motions were brought before the Court. On June 10, 2010, Defendant Edwards filed an Omnibus Pretrial Motion consisting of a Motion for Severance, two Motions to Suppress, a Motion to Require the Commonwealth to Reveal Favorable Agreements with Prosecution Witnesses, a Motion to Preserve Evidence, a Motion for Complete Recordation of All Proceedings and a Motion Reserving the Right to File Additional Motions. On September 9, 2010, the Commonwealth filed a Motion to Consolidate both cases.

A hearing and argument on Defendant Edwards' Omnibus Pretrial Motion was held before the Court on November 8, 2010. Argument on the Motion to Consolidate was held before the Court on December 3, 2010.

The Court will first address Defendant Edwards' Omnibus Pretrial Motion.

Upon stipulation of the parties, the Court will grant Defendant Edwards' Motion to Require the Commonwealth to Reveal any Favorable Agreements with Prosecution Witnesses, Defendant's Motion to Preserve the Evidence, Defendant's Motion for Complete Recordation of All Proceedings and Defendant's Motion Reserving the Right to File Additional Motions. Upon stipulation of the parties, the Court will deny Defendant's Motion to Suppress the items seized from the Defendant at 721 High Street in Williamsport. Defendant's Motion for Severance will be addressed in connection with the Commonwealth's Motion to Consolidate.

The only disputed Motion of Defendant Edwards relates to the Motion to Suppress Defendant's statements made to the police on March 16, 2010. As the Court noted, a hearing was held on this Motion on November 8, 2010. Following the hearing, the Court directed the parties to submit either informal or formal written arguments or legal memoranda by November 22, 2010. Defendant timely submitted a written Memorandum of Law. The Commonwealth failed to provide any written argument or memoranda.

At the suppression hearing, Officer Jason Bolt of the Williamsport Bureau of Police first testified on behalf of the Commonwealth. Officer Bolt has been employed as a School Resource Officer at Williamsport Area High School since December of 2006.

On Friday, March 12, 2010 while working at the school, Officer Bolt was approached by Defendant Edwards. Defendant asked Officer Bolt if Officer Bolt heard anything about Defendant allegedly raping somebody. The Defendant has initiated contact with Officer Bolt by first contacting a School Intervention Specialist who informed Officer Bolt that the Defendant wanted to speak with him.

During the conversation with Officer Bolt, Defendant informed Officer Bolt that there were rumors going around the school about the Defendant raping someone. Defendant informed Officer Bolt that the rumors were not true. Defendant asked Officer Bolt to contact him if Officer Bolt heard anything.

Later that same day, Officer Bolt was contacted by a different intervention specialist who indicated to Officer Bolt that the alleged victim wanted to speak with him. Officer Bolt met with the alleged victim and obtained her statement as to what allegedly occurred.

On Monday, March 15, 2010, Officer Bolt and Captain Raymond Kontz of the Williamsport Bureau of Police went to the high school. They met with House Principal Randy Zangara. They informed Mr. Zangara that they were investigating an allegation of criminal conduct and that if it was okay with the Defendant, they wanted to speak with him in the office.

The Defendant was called to the main office. He met with Officer Bolt, Captain Kontz, Mr. Zangara and Tim Fausnaught, another House Principal.

Officer Bolt was in his uniform, Captain Kontz was in civilian dress and the two principals were in their work attire. The Defendant was asked to come into the Main

Principal's office. The door was closed behind Defendant. Officer Bolt informed the Defendant that he spoke with the alleged victim and that her version was different than the Defendant's version. He asked the Defendant if he wanted to talk with "them" about it. He informed the Defendant that he was not in custody and did not have to talk. Defendant indicated that "sure" he would talk to them. Defendant maintained that he had no contact whatsoever with the alleged victim. He indicated that "everyone else" was lying. The Defendant then left the office.

Subsequently, Officer Bolt and Captain Kontz went to a different part of the building and spoke with Defendant Rawls who was also a student at the high school.

According to Officer Bolt, Defendant Rawls gave a story similar to the alleged victim.

As a result, Defendant Edwards was requested to return to the office. Officer Bolt explained that the purpose in bringing the Defendant back was to determine if the Defendant, in light of these different versions, would still maintain that no contact occurred between he and the alleged victim and if so, to determine why the others were saying something different.

At his second meeting in the principal's office, Defendant Edwards was informed again that he did not have to talk to the law enforcement officers but nonetheless he agreed to do so. Defendant apparently admitted that he had sexual contact with the alleged victim but that it was consensual. During this conversation, one of the principals indicated to the Defendant that perhaps it was a good idea to put his side of the story on video.

Despite the fact that Defendant Edwards was 18 years old, his father was called by Captain Kontz to determine if the father was willing to drive the Defendant down to the police station to provide a videotaped statement. Captain Kontz asked the Defendant if it was

okay if they transported him to the police station. The Defendant agreed. He was not placed in restraints nor was he compelled to go with the police to the station.

Once Defendant Edwards arrived at the station, he was taken to an interview room. The Defendant was told that he was not required to go with the police officers nor was he required to make any statements. It was indicated to the Defendant, however, that the police would like him to make a statement. Defendant then gave an audio video recorded statement that was marked as Commonwealth's Exhibit No. 1 and played for the Court.

During Defendant Edwards' statement, he freely admitted that he understood that he was not in custody, free to leave and did not need to provide any statements. The Defendant verbalized that he was interested in making statements, answering questions and clearing up any confusion.

Principal Randy Zangara also testified on behalf of the Commonwealth. As indicated previously, he is employed by the Williamsport Area School District as one of the principals at Williamsport high School.

He corroborated the version of events regarding the Defendant as testified to by Officer Bolt. Significantly, Mr. Zangara testified that the Defendant was told during the two meetings in the principal's office that he was not under arrest, he did not have to speak with the officers and he could leave at any time. He indicated that the demeanor of the Defendant seemed fine and that there was no look of apprehension.

Mr. Zangara indicated that the procedure for calling a student down to the office consisted of office staff calling the teacher of the class where the individual is present. The teacher is instructed to tell the student to report to the office. The teacher then writes a pass.

The student would then go to the office by themselves.

Mr. Zangara indicated that typically a student could not refuse to come to the office although in this particular case the Defendant was told that he could leave if he wanted and that the school had no reason whatsoever to keep him there.

Defendant argues that when he was questioned by Officer Bolt and Captain Kontz on March 15, 2010, both times at the Williamsport Area High School and at the police station, he was undergoing custodial interrogation, was not advised of his Miranda Rights and accordingly that all statements made by him must be suppressed.

Statements made during custodial interrogation are presumptively involuntary, unless the accused is first advised of his Miranda Rights. Commonwealth v. DiStefano, 783 A.2d 574 (Pa. Super. 2001). Miranda safeguards come into play whenever a person is subjected to either express questioning or its functional equivalent. Commonwealth v. Gaul, 590 Pa. 175, 180; 912 A.2d 252, 255 (2006), cert. denied, 128 S.Ct. 43, 169 L.Ed. 2d 242 (2007).

The test for determining whether a suspect is in custody 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 or movement is restricted. Commonwealth v. Eichinger, 915 A.2d 1122 (Pa. 2007). The standard is an objective one, which takes into consideration the reasonable impression on the person being interrogated. Commonwealth v. McCarthy, 820 A.2d 757 (Pa. Super. 2003). The test “does not depend upon the subjective intent of the law enforcement officer interrogator”, but instead “focuses on whether the individual being interrogated reasonably believes his freedom of choice is being restricted.”

Commonwealth v. Hayes, 755 A.2d 27, 33-34 (Pa. Super. 2000), quoting Commonwealth v. Gibson, 728 A.2d 473, 480 (Pa. 1998). The fact that the police may have “focused” on the individual being questioned or that the interviewer believes the interviewee is a suspect is irrelevant to the issue of custody. Commonwealth v. Smith, 836 A.2d 5 (Pa. 2003). “A person is considered to be in custody for the purposes of Miranda when the officer’s show of authority leads the person to believe that [he] was not free to decline the officer’s request, or otherwise terminate the encounter.” McCarthy, supra. at 760.

In reviewing all of the circumstances, the Court concludes that the Defendant could not and did not reasonably believe that his freedom of choice was being restricted when he spoke to the police officers either at the high school or at the police station. While the interviews were conducted in a closed room with a clear show of authority by not only law enforcement officers but the school personnel, the Defendant was specifically informed that he was free to leave and was under no obligation whatsoever to answer any questions. He was told as well that he was not under arrest. The Defendant clearly expressed his willingness to speak as well as his understanding that he did not need to provide any statements whatsoever. The Defendant’s calm and unworried demeanor reflected the fact that he reasonably believed that his freedom of choice was not restricted in any manner whatsoever.

The Court’s conclusion is also bolstered by the fact that it was the Defendant who initiated the first contact with law enforcement. The Defendant first confronted Officer Bolt and specifically requested that Officer Bolt get back to him if Officer Bolt heard anything. The follow-up with the Defendant essentially occurred at Defendant’s request.

As well, there are other factors that point to the Defendant not being in custody.

He was never placed in restraints, he was never told he was under arrest, he was never instructed that he was unable to leave, his physical ability to leave was never impeded, he was asked specifically at the beginning of each meeting if he wanted to discuss the matter further and none of the interviews were excessively long.

Miranda warnings are required only when a Defendant is subject to custodial interrogation. Commonwealth v. Smith, 836 A.2d 5 (Pa. 2003). Because Defendant was not in custody, Miranda warnings were not required and accordingly, Defendant's Motion to Suppress will be denied.

The next issue before the Court is the Commonwealth's Motion to Consolidate. Consolidation of separate Informations is governed by the Pennsylvania Rules of Criminal Procedure. Defendants charged in separate Informations may be tried together if they are alleged to have participated in the same series of acts or transactions constituting an offense or offenses. Pa. R. Crim. P. 582 (A) (2).

Rule 583 of the Pennsylvania Rules of Criminal Procedure governs severance. The Court may order separate trials of Defendants if it appears that any party may be prejudiced by the Defendants being tried together. Pa. R. Crim. P. 583.

As a general policy, joint trials are encouraged when judicial economy will be promoted by avoiding the expense and time consuming duplication of evidence. Commonwealth v. Jones, 542 Pa. 462, 668 A.2d 491 (1998). In this particular matter, the Defendants are alleged to have participated in the same acts against the alleged victim. As well, they are both charged with a conspiracy to commit rape. As the Commonwealth alleges, the conspiracy counts rest on the allegations that both Defendants conspired to call the alleged



victim, entice her to the house and then sexually assault her. When Defendants have been charged with a conspiracy, a joint trial is preferable. Jones, 668 A.2d at 501, citing Commonwealth v. Jackson, 451 Pa. 462, 303 A.2d 924 (1973).

Defendants assert that they may be prejudiced by a consolidation due to inconsistent defenses or contrary statements they may have made to the police. From what the Court can glean about the Defendants' respective positions, Defendant Edwards is claiming that any contact between he and the alleged victim was consensual and that he was not aware of what may or may not have occurred with respect to Defendant Rawls. Defendant Rawls, however, is claiming that the sexual contact between he and the alleged victim was consensual based upon the information that was related to him by Defendant Edwards.

The fact that Defendants have conflicting versions of what took place, or the extent to which they participated in it, is a reason for, rather than against a joint trial because the truth may be more easily determined if all are tried together. Commonwealth v. Martinelli, 690 A.2d 203, 213 (Pa. 1997), citing Commonwealth v. Chester, 587 A.2d 1367, 1373 (Pa. 1991). Moreover, the fact that one Defendant may try to save himself at the expense of the other constitutes insufficient grounds to require a severance. Martinelli, *supra*.

The Court fails to see how consolidation of the Defendants' cases would cause the Defendants to suffer a specific prejudice greater than the general prejudice any Defendant suffers when the Commonwealth evidence links them to a crime. Commonwealth v. Dozo, 991 A.2d 898, 902 (Pa. Super. 2010), citing Commonwealth v. Lauro, 819 A.2d 100, 107 (Pa. Super. 2003), appeal denied, 574 Pa. 752, 830 A.2d 973 (2003). Accordingly, the Court finds that consolidation is appropriate and will grant the Commonwealth's Motion to Consolidate.

**ORDER**

AND NOW, this \_\_\_\_ day of December 2010 following a hearing and argument, the Court **GRANTS** the Commonwealth's Motion to Consolidate. The Informations set forth at No's. CR-627-2010 and CR-723-2010 shall be tried together.

With respect to Defendant Edwards' Omnibus Pretrial Motion, the Court **DENIES** Defendant's Motion for Severance and Motions to Suppress. The Court **GRANTS** Defendant's remaining Motions.

BY THE COURT,

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Marc F. Lovecchio, Judge

cc: District Attorney (MK)  
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