

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
vs. : **No. CR-1844-2009**
:
KHALEEF THOMAS-SMITH, :
Defendant :

OPINION AND ORDER

Defendant is charged by Information filed on December 3, 2009 with one count of Persons not to Possess, Use, Manufacture, Control, Sell or Transfer Firearms, one count of Firearms not to be Carried without a License and one count of Possession of Firearm by a Minor. The charges arose out of an incident that occurred when the Defendant allegedly shot himself in the foot with a gun.

On February 1, 2010, Defendant filed a Motion to Suppress arguing that the Defendant's alleged confession to the police should be suppressed because the Defendant should have been advised of his Miranda warnings prior to undergoing custodial interrogation at the Williamsport Hospital.

The hearing on the Motion to Suppress was held on April 13, 2010. The affiant, Marvin L. Smith, II, a police officer with the Williamsport Bureau of Police testified first on behalf of the Commonwealth. Officer Smith testified that on September 12, 2009 upon receiving a report of a shooting victim, he responded to the Williamsport Hospital Emergency Room. He made contact with the Defendant who was being medically treated by staff in a curtained-in cubicle within the emergency room.

Officer Smith along with Officer Brian Aldinger, also of the Williamsport Bureau of Police, asked the Defendant what occurred. Defendant initially indicated that he,

while walking along the street, heard some “loud booms”, realized he had a gun shot wound in his foot, didn’t see anyone and walked to the hospital.

While the officers were speaking with the Defendant, one of their supervisors Captain Raymond Kontz was contacted and asked to report to the hospital as well. Prior to Captain Kontz arriving, the officers obtained relevant biographical information from the Defendant including his name, age, address and contact information. Significantly, the officers learned that the Defendant was 17 years of age and resided with his mother.

The officers suspected that the Defendant was not telling the truth because the physical evidence, including the angle of the bullet hole in Defendant’s sneaker, residue on Defendant’s pants and the trajectory of the wound in Defendant’s foot were inconsistent with the Defendant’s claim that he was shot by a third party.

Once Captain Kontz arrived, Officer Smith met with him outside of the cubicle. Officer Smith advised Captain Kontz of his suspicions regarding the Defendant’s claimed version of the events. Captain Kontz then took over the questioning of the Defendant. For approximately five minutes, Captain Kontz questioned the Defendant regarding Defendant’s version of the event. Captain Kontz did not Mirandize the Defendant prior to questioning him. During the five minutes, the questioning became more accusatory and more confrontational. Captain Kontz advised the Defendant that Captain Kontz did not believe him and that the Defendant needed to tell police officers the truth in order that the police officers could ascertain what actually happened and respond accordingly.

While Captain Kontz was questioning the Defendant, medical personnel were continuing to work on him within the draped cubicle. Officer Smith remained inside the

cubicle area fully uniformed and armed. Captain Kontz was not in uniform. From the moment the police arrived at the hospital until the time that the Defendant was arrested there was at least one police officers with the Defendant at all times.

Prior to Captain Kontz questioning the Defendant, the Defendant indicated to Officer Smith that he was fine and just wanted to leave the hospital. Officer Smith advised the Defendant that he was still being medically treated and that the hospital personnel needed to make that decision.

Captain Kontz also testified on behalf of the Commonwealth. He was working on a special assignment at the DUI Center. When he arrived at the emergency room, he was met by Officer Smith outside of the draped cubicle. He spoke with Officer Smith and obtained information regarding the Defendant including the Defendant's age. As well, he spoke with Officer Smith concerning Officer Smith's suspicion that the Defendant's version was not consistent with Defendant's story. At the time Captain Kontz entered the room, he had questions regarding the Defendant being truthful. He had suspicions that the Defendant had a gun in his possession and perhaps shot himself.

When Captain Kontz went into the treatment room, he had a conversation with the Defendant. He asked the Defendant what took place and eventually pressured the Defendant to "be truthful" with him. Captain Kontz specifically told the Defendant that he was not in custody but that the captain needed to know what happened. The captain told the Defendant that he did not believe the Defendant's story and that he needed to know the truth in order that he could properly allocate police resources and decide how to respond.

After approximately five minutes of questioning, the Defendant confessed to Captain Kontz that his previous version of events was not true and that the Defendant had in fact shot himself. Prior to Defendant's confession, Captain Kontz testified that the Defendant was not under arrest, that he was free to leave and that the investigation "mode" was that the Defendant was the victim of a crime. Once the Defendant confessed, however, the Defendant was no longer free to leave in particular because law enforcement needed to find the location of the gun.

The Defendant testified as well at the Suppression Hearing. He indicated that when he was first confronted by Captain Kontz he was told that what the Defendant was saying with respect to how the incident occurred was not true. He indicated that Captain Kontz told him that Captain Kontz already knew what happened and that he needed to tell Captain Kontz the truth. He testified that Captain Kontz indicated that the police would help him out if he told the truth and that Defendant would get a lighter sentence. He indicated further that he asked for a lawyer after which Captain Kontz told him that he did not need a lawyer and that the only person he had to speak with was Captain Kontz. Further, the Defendant testified that he indicated he wanted to talk to his parents after which Captain Kontz told him again that he did not need to speak with anybody. According to the Defendant, Captain Kontz indicated to the Defendant that they could do it two ways; the easy way with Defendant telling him the truth or the hard way in which the Defendant would get the mandatory maximum.

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 in custody

is subjected to either expressed questioning or its functional equivalent. Commonwealth v. Gaul, 912 A.2d 252 (Pa. 2006), cert. denied, 128 S. Ct. 43 (2007). Interrogation occurs “where the police should know that their words or actions are reasonably likely illicit an incriminating response from the suspect”. Commonwealth v. Ingram, 814 A.2d 264 (Pa. Super. 2002). In determining whether the police words and conduct are the functional equivalent of interrogation, the inquiry must look to the suspect’s perceptions rather than the intent of the police. Gaul, supra.

In discussing when an individual is “in custody” for Miranda purposes, the Pennsylvania Superior Court recently stated the following:

‘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 (Pa. 2007); Commonwealth v. McCarthy, 2003 PA Super 115, 820 A.2d 757, 759-760 (Pa. Super. 2003). The standard is an objective one, which takes into consideration the reasonable impression on the person being interrogated. McCarthy, 820 A.2d at 759-760(citations omitted). 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, 2000 PA Super 173, 755 A.2d 27, 33-34 (Pa. Super. 2000), quoting Commonwealth v. Gibson, 553 Pa. 648, 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, 575 Pa. 203, 836 A.2d 5, 18 (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.’ Hayes, 755 A.2d at 33-34.

Commonwealth v. Page, 965 A.2d 1212, 1217-1218 (Pa. Super. 2009).

The Court concludes that under all of the circumstances, the Defendant was placed in a situation in which he reasonably believed that his freedom of action or movement was restricted. When Defendant was initially interviewed by Officer Smith, he indicated on more than one occasion that he was fine and just wanted to leave the hospital. Officer Smith gave the Defendant no indication whatsoever that he was free to leave. Defendant also asked on more than one occasion if he could see his mother. Again, Officer Smith gave him no indication as to whether the Defendant could see his mother. Defendant was being treated in a closed-in draped cubicle in the presence of, at all times, at least one law enforcement officer. At the time the questioning began by Captain Kontz, Officer Smith was present in full uniform and armed. Captain Kontz' questioning became accusatory and confrontational. Defendant was specifically told by Captain Kontz that Captain Kontz did not believe his story and that the Defendant needed to tell Captain Kontz what actually happened. Defendant was specifically told by Captain Kontz that the physical evidence was not consistent with Defendant's story. Moreover, the Defendant was a minor who, according to Officer Smith acted his age. Despite knowing the Defendant's age and not believing his story, the police did not even attempt to contact his mother until after the Defendant admitted that he possessed a weapon and shot himself in the foot. Finally, while all of this was occurring, the Defendant was being actively treated by hospital personnel for a serious gunshot wound to his foot.

The Court concludes that under all of these circumstances, the Defendant reasonably believed that he was not free to leave, decline Captain Kontz' request or otherwise terminate the encounter.

The fact that Captain Kontz legitimately focused on the Defendant for the purpose of determining what occurred in order to protect the public from potential danger, while admirable and indeed proper from a law enforcement standpoint, is irrelevant to the issue of custody.

Moreover, the circumstances were not similar to those found in other cases where the Court concluded that the Defendant was not in custody. For example, the interview was not conducted in an open room, there were no other patients present, there was no indication as to whether the officers received permission from hospital staff before conducting the questioning, the Defendant was not informed that he was free to decline to speak with the officers, the Defendant's family members were not present, and the uniformed Officer Smith had a weapon in his possession. Commonwealth v. Johnson, 556 Pa. 216, 727 A.2d 1089 (1999); Commonwealth v. Perry, 710 A.2d 1183 (Pa. Super. 1998); Commonwealth v. Smith, 382 Pa. Super. 288, 555 A.2d 185 (1989); Commonwealth v. Fento, 363 Pa. Super. 488, 526 A.2d 784 (1987).

Based on the foregoing, the Court finds the Defendant was subjected to custodial interrogation without being given Miranda warnings. Accordingly, the following order is entered:

ORDER

AND NOW, this ____ day of May 2010, the Court GRANTS the Defendant's Motion to Suppress Evidence and PRECLUDES the Commonwealth from utilizing in its case-in-chief any statements the Defendant made at the hospital in response to police questioning.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: William Miele, Esquire (PD)
Paul Petcavage, Esquire (ADA)
Gary Weber, Esquire (Lycoming Reporter)
Work File