

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

**COMMONWEALTH OF PA**

**vs.**

**JEFFREY RAWLS,  
Defendant**

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**: No. CR-723-2010**

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**OPINION AND ORDER**

Defendant is charged by Information filed on May 13, 2010 with one count of Criminal Conspiracy to Commit Rape, one count of Rape by Forcible Compulsion, one count of Sexual Assault, one count of Aggravated Indecent Assault without Consent, one count of Aggravated Indecent Assault by Forcible Compulsion, one count of False Imprisonment and two counts of Indecent Assault.

The Commonwealth alleges that on or about March 6, 2010, Defendant who was 17 years old at the time, along with Abraham Edwards agreed with each other and did in fact lure a female victim into a darkened basement and then took turns sexually assaulting her.

A Petition to Declare the Defendant Delinquent on the basis of the alleged criminal misconduct was originally filed in Juvenile Court under No. JV-81-2010. The Petition to Transfer the Charges to Adult Court was filed on April 1, 2010. By Order of Court dated April 29, 2010, the Court granted the Petition concluding that the transfer was not only indicated but “compelling.”

Following the filing of the charges against the Defendant, Defendant was represented by William Miele, Esquire of the Lycoming County Public Defender’s Office. The Defendant’s arraignment was May 17, 2010. On June 15, 2010, Attorney William Miele filed a Motion to Extend Time to File Omnibus Pre-trial Motion in which he asserted that he requested discovery on May 17 but had not yet received it; therefore he was requesting a thirty

day period after the receipt of discovery within which to file any omnibus pre-trial motion. The Court summarily granted the motion and gave the Defendant 30 days from the receipt of discovery to file any omnibus pre-trial motion.

On September 9, 2010, the Commonwealth filed a Motion to Consolidate Defendant's case with that of Mr. Edwards. By Order of Court dated December 30, 2010, the Court granted the Commonwealth's Motion to Consolidate.

On December 10, 2010, Mr. Miele made an oral Motion before the Court to withdraw as a counsel due to a breakdown of the attorney/client relationship. Among other things, the breakdown consisted of Mr. Miele's alleged failure to file a Motion to Suppress Defendant's statements to police when he was initially interviewed at the Williamsport High School and later that day at police headquarters. The Court granted Mr. Miele's Motion and by Order of Court dated December 10, 2010 appointed Donald Martino, Esquire to represent the Defendant.

On January 4, 2011, Mr. Martino filed a Motion to Suppress on behalf of the Defendant. Defendant requests that his statements to police on March 15, 2010 be suppressed as they were obtained in violation of his State and Federal Constitutional rights.

A hearing was held on February 10, 2011. The Commonwealth orally moved for the dismissal of Defendant's Motion as untimely in violation of the Pennsylvania Rules of Criminal Procedure.

The Pennsylvania Rules of Criminal Procedure provide that a Motion to Suppress must be filed within thirty (30) days of the date of arraignment unless the interests of justice otherwise require. The Court concludes that the interests of justice in this case merit the

untimely filing of the Suppression Motion.

While discovery was provided to Mr. Miele in May and June of 2010, Mr. Martino was not appointed as counsel until December 10, 2010. The reason Mr. Miele was replaced as attorney was due, in part, to his apparent decision not to file any motions on behalf of the Defendant. Mr. Martino did not receive any discovery from Mr. Miele until after that time. Furthermore, by Order of Court dated December 15, 2010, the Commonwealth was directed to provide discovery to Mr. Martino “as soon as possible or provide an explanation as to why none had been provided.” On December 21, 2010, the Commonwealth provided discovery to Mr. Martino and on January 4, 2011, the Commonwealth provided to Mr. Martino a videotape of Defendant’s March 15, 2010 interview with law enforcement.

Mr. Martino filed his Motion on January 4, 2011 well within 30 days of the date he was appointed. The Motion alleges a substantial violation of Defendant’s rights and is certainly not frivolous.

Finally, there is no prejudice to the Commonwealth in connection with the litigation of this Motion at this time.

At the Suppression Hearing in this matter, Jeffrey Robbins first testified on behalf of the Commonwealth. Mr. Robbins is employed by the Williamsport Area School District as the principal of its Alternative Education Program. The Defendant was a former student in alternative education. He was placed in the program on February 24, 2010 from another program.

On March 15, 2010, Officer Jason Bolt of the Williamsport Bureau of Police and Agent Raymond Kontz also of the Williamsport Bureau of Police visited with Mr. Robbins

and asked if they could speak with the Defendant.

Mr. Robbins went to the Defendant's classroom, retrieved him from class and "transported" him to his office. Mr. Robbins testified that all AEP students are transported from class, which the Court understood as AEP students cannot leave the classroom with a hall pass like other students, but must be escorted by a teacher or other school staff member. As the Defendant and Mr. Robbins walked back to Mr. Robbins' office, Mr. Robbins explained to the Defendant that: two gentlemen wanted to talk with him; the Defendant did not need to speak with them if he did not want to; and if, during the conversation, the Defendant was uncomfortable, he should let Mr. Robbins know and he would stop the conversation.

When they arrived at Mr. Robbins' office, Mr. Robbins informed the Defendant that the two gentlemen were police officers. Officer Bolt who was in uniform and Agent Kontz who was in civilian clothes were seated at a table in Mr. Robbins office. It was explained to the Defendant that he did not need to speak with the officers and that he was not under arrest. The Defendant did not ask to call anyone. He sat at the table in a relaxed demeanor and spoke with the officers.

Mr. Robbins indicated that in his position as the principal, he was "in effect" the parent of the Defendant and acted in his best interest. Mr. Robbins indicated that no attempt was made by the school or the police officers to contact the Defendant's foster parents or guardian.

Later in the day, Officer Bolt returned and asked for a second time to speak with the Defendant. Mr. Robbins again contacted the Defendant in his classroom and escorted the Defendant to the office where the officer initially spoke with the Defendant. Officer Bolt and

the Defendant then traveled to the Williamsport police station.

Officer Jason Bolt also testified on behalf of the Commonwealth. He has been a School Resource Officer since December of 2006.

On March 15, 2010, Officer Bolt and Captain Kontz went to the AEP portion of the school to speak with the Defendant. They contacted Principal Robbins who escorted the Defendant from his classroom to the office.

Upon the entering the office, Defendant was informed that he was not under arrest, did not have to speak to the officers and that they wanted to talk with him regarding an incident that he was allegedly involved in. The Defendant indicated that he had nothing to hide and was willing to talk with the officers. The interview lasted approximately 15 minutes. At the conclusion of the interview, Defendant was told that if anything developed, the officers would “get back” to him.

The officers returned a few hours later to speak with the Defendant. When the Defendant arrived at the office, they asked him if he would be willing to go to City Hall to put his statements on videotape. The Defendant indicated that he was willing to do so.

The Defendant and Officer Bolt traveled to the police station in Officer Bolt’s police cruiser. Although the Defendant rode in the back of the police cruiser, he was not placed in handcuffs or restraints at any time. The Defendant was escorted to an interview room at the police station where the Defendant again was told that he was under no obligation to speak with the officers. Defendant agreed to speak with the officers and placed his statement on a videotape.

On cross-examination, Officer Bolt conceded that, while the Defendant did not

ask to speak in private with Mr. Robbins or to his foster parents or any guardian, neither the police officers nor Mr. Robbins offered to contact anyone on the Defendant's behalf. Agent Kontz specifically told Defendant that he was not under arrest and that he did not have to speak with any of them. Defendant was not read his rights.

When the police returned on the second occasion, again the Defendant did not ask for any parents, guardian or foster parents. He was not advised of his Miranda rights and not advised of any right to talk with his foster parents or an attorney. Agent Kontz did in fact tell him that he was not in custody, not under arrest and was under no obligation to talk.

The Defendant testified as well. He indicated that Curly Jett, an Intervention Specialist at the school came to his foster parents' home that morning and took him to school. He indicated that this had never happened previously.

He further indicated that Principal Robbins called his classroom and asked to speak with him. Defendant indicated that he was escorted from his classroom by Officer Bolt to Mr. Robbins' office.

Upon arriving at the office, Mr. Robbins indicated to him that the police needed to speak with him. Officer Bolt indicated that the Defendant was accused of having sex with a student and that they wanted to ask questions as to what occurred.

Then Defendant indicated that on numerous times during the interview he asked Mr. Robbins if he could call his foster parents or if he could talk with his foster parents. Defendant indicated that both the officers and Mr. Robbins denied his request.

On the second occasion, Defendant's teacher informed him that Mr. Robbins "needs" him at the principal's office. When Defendant arrived, Officer Bolt told him that they

needed to take him to City Hall to get his statement on tape.

Defendant indicated that he was escorted from the school by Officer Bolt and once out of the school, he was placed in handcuffs and then in the police cruiser. He indicated that he was taken to the police station in handcuffs and once he arrived at the station he was handcuffed to a bench in a hallway.

Defendant indicated that during this time he had asked for “someone to call somebody for” him but that such request were either ignored or denied.

He was eventually taken into a room where he placed his statement on tape.

On cross-examination, Defendant indicated that Mr. Robbins directed the Defendant to tell the officers what happened. At the interview at the police station, Defendant indicated that despite his requests, he was denied the opportunity to speak with anyone.

Officer Bolt testified on behalf of the Commonwealth on rebuttal. He indicated that at the first interview contrary to what the Defendant testified to, he waited in the office while Mr. Robbins escorted the Defendant from his classroom. Officer Bolt further indicated that in connection with the second interview he walked outside with the Defendant, told Defendant he was still not under arrest, never handcuffed the Defendant and never chained the Defendant to any bench. Indeed, Officer Bolt surmised the Defendant confused this incident with the incident in which the Defendant was actually arrested after the charges were filed.

Statements made during custodial interrogation are presumptively involuntary, unless accused is first advised of his Miranda Rights. Commonwealth Destefano, 783 A.2d 574 (Pa. Super. 2001). Miranda safeguards apply whenever a person in custody 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 342 (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, 591 Pa. 1, 21, 915 A.2d 1122, 1133-1134 (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, 760 (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. 2007), 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 is not determinative, and the fact that the interviewer believes the interviewee is a suspect is irrelevant to the issue of custody, if that fact has not been communicated to the individual. Commonwealth v. Smith, 575 Pa. 203, 224, 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.” McCarthy, supra. at 760 (emphasis added).

At a suppression hearing, the Commonwealth bears the burden of proof. Pa.R.Cr.P. 581(G). When a defendant is in custody at the time his confession is given, the Commonwealth must establish by a preponderance of evidence that a Defendant’s confession was the product of a knowing, intelligent and voluntary waiver of the Defendant’s Miranda



rights, and not the product of coercion. In Re: C.L., supra.

To decide the suppression motion in this case, the Court must first decide whether the Defendant was “in custody” at any of the times he gave statements to the police. “Among the factors which may be considered in determining whether a detention is custodial are: the basis for the detention (the crime suspected and the grounds for suspicion); the duration of the detention; the location of the detention (public or private); whether the suspect was transported against his will (how far, why); the method of the detention (restraints utilized); the show, threat or use of force; and the investigative methods used to confirm or dispel suspicions.” Commonwealth v. Ellis, 379 Pa. Super. 337, 356-57, 549 A.2d 1323, 1332 (Pa. Super. 1988)(citations omitted).

Based on the totality of the circumstances in this case, the Court does not believe the Defendant was in custody when he was questioned by the police. The Defendant first gave statements to the police in the principal’s office at the Williamsport High School. The Court finds Mr. Robbins and Officer Bolt’s testimony credible that the Defendant was escorted to the office by Mr. Robbins, not by Officer Bolt. The Court also finds credible Mr. Robbins testimony that all AEP students are transported from class. On their way to the office, Mr. Robbins told the Defendant he did not have to speak to the gentlemen if he did not want to and the Defendant could let him know if he became uncomfortable and wanted to stop.

The police were seated in the principal’s office when the Defendant entered. There is no evidence in this case that the police even got up out of their seats, let alone restrained the Defendant in any way or drew their weapons when the Defendant was in the principal’s office. As soon as the Defendant entered the room, the police told him he was not

under arrest and he did not have to speak to them if he did not want to. The Defendant indicated he had nothing to hide and he was willing to speak with them. The Defendant then sat down in a chair in a slouched, comfortable manner. The Defendant appeared relaxed and almost cocky. The Court notes that this description of the Defendant's demeanor by Mr. Robbins and Officer Bolt is corroborated by the same posture and demeanor in the Defendant's videotaped statement. The police spoke to the Defendant for about 15 minutes, and then the Defendant was returned to his classroom.<sup>1</sup> In sum, there was no show of authority by the police, let alone one that would be the functional equivalent of an arrest. Ellis, supra. ("police detentions only become 'custodial' when under the totality of the circumstances the conditions and/or duration of the detention become so coercive as to constitute the functional equivalent of a formal arrest"). Therefore, the Defendant was not in custody and Miranda warnings were not required when the police spoke to the Defendant in the principal's office.

Later in the day, Officer Bolt asked Mr. Robbins to again bring the Defendant to the office so he could ask him if he would be willing to go to the police station and put his statements on videotape. As before, Mr. Robbins escorted the Defendant to his office. Officer Bolt asked the Defendant if he would be willing to go to the police station and put his statements on videotape. The Defendant agreed, and he and Officer Bolt walked out to Officer Bolt's police vehicle. The Defendant got into the back seat and was not restrained in any way.

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<sup>1</sup> The Court does not find credible the Defendant's claim that he repeatedly asked to speak with his foster parents. Generally speaking, the Defendant was not a good witness. He would not make eye contact and his testimony at the suppression hearing was not consistent with his statements and demeanor on the videotape, which was admitted as an exhibit. For example, the Defendant testified that he was handcuffed before being placed in the police vehicle and was handcuffed to a bench at the police station prior to his statement being videotaped. On the videotape, however, the Defendant indicated he had not been handcuffed or restrained in any way and that he voluntarily agreed to come to the station to put his statements on video. His demeanor on the videotape also was consistent with the way Mr. Robbins and Officer Bolt described the Defendant's demeanor throughout their

At the police station, the Defendant was in an interview room that has audio and video capabilities. Officer Bolt and the Defendant were seated at a table when the videotape begins. Captain Kontz then walked into the room. The Defendant acknowledged on the videotape that he had not been handcuffed or restrained in any way. The police again told the Defendant he was not under arrest and did not have to speak with them. The Defendant then proceeded to answer police questions on videotape. As before, Officer Bolt was in uniform and Captain Kontz was in street clothes. Neither officer ever drew their weapon. When the interview was finished, the police drove the Defendant home.

Again, the Court finds the Defendant was not in custody. Although the Defendant was transported in the back of a police vehicle and the interview took place at the police station, the Defendant was never placed in restraints and he was consistently told that he was not under arrest, he did not have to speak with the officers, and he could terminate the interview at any time. The Defendant appeared relaxed and comfortable. He never asked that an attorney or other interested adult be present during the interview, and he never indicated that he did not want to talk or that he wanted the interview to cease. Since the Defendant was not in custody, he was not entitled to Miranda warnings. Therefore, there was no violation of the Defendant's constitutional right to counsel or right to remain silent.

The next inquiry is whether the statements are subject to suppression because they were not freely given. In determining the validity of a juvenile's confession, all of the attending facts and circumstances must be considered and weighed in determining whether juvenile's confession was knowingly and freely given. Among those factors are the juvenile's

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contacts with him.

youth, experience, comprehension and the presence of an interested adult. In Re: C.L., 714 A.2d 1074 (Pa. Super. 1998), citing Commonwealth v. Williams, 504 Pa. 511, 475 A.2d 1283 (1984).

It is undisputed that the minor Defendant did not have an opportunity to consult with an interested adult prior to speaking with the police officers either at the school or at the police station.<sup>2</sup> While this is an important factor among the totality of circumstances in determining if the statement was voluntary, see Commonwealth v. Bebout, 335 Pa. Super. 275, 487 A.2d 130 (1984), Pennsylvania no longer has a per se rule or even a presumption that the absence of an interested adult renders a statement involuntary. Commonwealth v. Williams, 504 Pa. 511, 521, 475 A.2d 1283, 1287-1288 (1984).

While, quite candidly, the Commonwealth failed to create a detailed record regarding the Defendant's age, experience and comprehension, there is some evidence of these factors in the record. The Defendant testified that his date of birth is June 21, 1992. Therefore, at the time of the interviews in this case, which occurred on March 15, 2010, the Defendant was approximately three months away from his eighteenth birthday. The record also reflects that this was not the Defendant's first contact with the criminal justice system. The Defendant's juvenile record included a 2003 aggravated assault and simple assault, a 2006 indecent assault, a 2007 possession of a controlled substance, a 2008 simple robbery, a 2009 possession of a small amount of marijuana, and a 2009 inappropriate sexual contact with staff.

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<sup>2</sup> The Court rejects Mr. Robbins testimony that he was an interested adult in this case. While Mr. Robbins has the right to exercise the same authority as a parent or guardian over a pupil's conduct or behavior during school, including the time the pupils are going to and from their homes, see 24 P.S. §13-1317, such does not render him an interested adult in the child's welfare for potential criminal charges, especially when those potential charges do not arise from activities that occurred on school property or when a student was coming to or going home from school.

Although there was no testimony regarding the Defendant's grades, intelligence, reading ability, or the like, when the Defendant testified he seemed to be of average intelligence, as he understood the questions posed to him and responded appropriately. The Court also notes that the Defendant's demeanor in court and on the videotape was that of a relaxed, seemingly normal seventeen year old.

Under the totality of the circumstances including, but not limited to the Defendant's proximity to age eighteen, his prior contacts with the criminal justice system, his relaxed demeanor, and his appearance of normal intelligence, the Court finds that the statements in this case were freely and voluntarily given. While this ruling will result in the denial of the Defendant's motion to suppress evidence, it does not in any way limit his ability to challenge the voluntariness of his statements at trial or to request jury instructions regarding the voluntariness of his statements.

**ORDER**

AND NOW, this \_\_\_\_ day of March 2011 following a hearing and argument, Defendant's Motion to Suppress is **DENIED**.

BY THE COURT,

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Marc F. Lovecchio, Judge

cc: Mary Kilgus, Esquire (ADA)  
Don Martino, Esquire  
Gary Weber, Esquire (Lycoming Reporter)

Work File