

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

**COMMONWEALTH OF PA** :  
**vs.** : **No. CR-32-2011**  
 :  
**HEATHER MUTCHLER,** :  
**Defendant** :

**OPINION AND ORDER**

By Information filed on February 17, 2011, Defendant is charged with Possession with Intent to Deliver Marijuana, Possession of Marijuana, Possession of Drug Paraphernalia, and Conspiracy to Possess with Intent to Deliver Marijuana.

According to the Affidavit of Probable Cause that was filed with the Criminal Complaint, a resident of 1510 Scott Street called 911 on or about June 14, 2010 and reported that a burglar was in their home. The caller was subsequently identified as the Defendant.

Apparently an individual later identified as Abdul Miller had broken into the home and was armed with a semi-automatic pistol. Defendant's then boyfriend, Neil Felver confronted Mr. Miller. While the 911 dispatcher was on the phone with the Defendant, shots were fired that could be heard by the dispatcher. Apparently, a gun battle broke out with both Mr. Miller and Mr. Felver exchanging gunfire.

The police soon arrived and located Mr. Miller. He was injured by gunshot wounds and immediately transported to the hospital where he subsequently died.

In the course of investigating the incident, a consent search was obtained from both the Defendant and Mr. Felver for the 1510 Scott Street residence. Two handguns were located in the house. Those handguns were believed to be used during the gun battle.

It was determined that Mr. Felver had a previous conviction which precluded him from possessing firearms.

A further search of the residence uncovered marijuana which was located in a corrugated box located in the basement floor joist, stuffed in insulation. When the box was located, it fell to the basement floor and opened up, revealing numerous plastic bags containing suspected marijuana. Packaging material and other paraphernalia was also located in the residence.

According to the Affidavit, the Defendant was interviewed at City Hall on June 24, 2010. During the interview she related that she purchased the marijuana with "their income tax money." She related further that she would sell the marijuana to her friends not intending to make a profit, but to essentially break even. The Defendant indicated that she bought the marijuana at the end of February or early March of 2010.

The criminal charges were filed against the Defendant on December 7, 2010 approximately six months following the alleged burglary and shooting incident.

An Omnibus Pretrial Motion was filed on behalf of the Defendant on April 15, 2011. The Omnibus Motion consists of three Motions to Suppress and one Motion to Dismiss.

The first Motion requests that certain answers to questions asked of the Defendant during booking following her arrest, be suppressed in that she was not advised of her Miranda warnings. The second Motion to Suppress contends that when the Defendant was interviewed on June 14 and June 24 by Agent Dincher of the Williamsport Bureau of Police, such interview constituted custodial interrogation thus requiring Miranda Warnings which were not given. The third Motion to Suppress contends that all of the evidence obtained following the K-9 sniff in the basement of 1510 Scott Street should be suppressed as there was

no reasonable suspicion to support the K-9 search/sniff. Finally, Defendant requests that all of the charges be dismissed because of prosecutorial vindictiveness.

The hearing in this matter was held on May 9, 2011. At the hearing it was clarified that on June 14, 2010 the Defendant was actually interviewed by Agent Mayes of the Williamsport Bureau of Police and not Agent Dincher.

The Commonwealth introduced as evidence the tape recordings of the interviews on both June 14, 2010 and June 24, 2010, as Commonwealth Exhibit 1 and Commonwealth Exhibit 2, respectively. A portion of the videotape was viewed at the hearing but it was stipulated by the parties that the Court would review the entire videotape in connection with determining Defendant's Motion.

The Court did, in fact, review the videotapes and the Court's observations will follow.

The Court first reviewed Commonwealth Exhibit 1 which is a recording of the June 14, 2010 interview between the Defendant and Agent Mayes. The Defendant was sitting in a chair in an interview room with the door open apparently waiting for Agent Mayes to enter.

Agent Mayes soon entered and informed the Defendant that she was not under arrest and was free to leave whenever she wanted. He indicated that he was only shutting the door for privacy.

Agent Mayes also testified on behalf of the Commonwealth. He was interviewing the Defendant, because a third party had been shot and eventually killed in her

house. He indicated that the Defendant was not a suspect at the time and that his focus was on what led up to the shooting.

There was nothing about how the Defendant acted that led him to believe that she was under the influence of alcohol or drugs. Furthermore, he made no observations which would lead him to conclude such.

He confirmed that the Defendant was not under arrest, that he closed the door for privacy, and that the Defendant was free to leave or stop the interview at any time whatsoever.

The Court also reviewed the videotape of Defendant's June 24, 2010 interview with Agent Leonard Dincher also of the Williamsport Bureau of Police.

The interview occurred in the same room as the interview with Agent Mayes. Agent Dincher asked the Defendant whether she was there voluntarily, to which she answered "yes." The Defendant specifically confirmed that she did not believe she was in custody and that she understood she could leave at any time. Agent Dincher confirmed that the interview room was in a very busy portion of the police station. It was next to the detention room as well as other busy areas. He further indicated that the door was not locked from the inside; rather, locking it would only prevent individuals outside the room from entering. Accordingly, the Defendant could have left at anytime she wanted.

Defendant submits that at the time Agent Mayes and Agent Dincher questioned the Defendant on June 14 and June 24, 2010, she was undergoing custodial interrogation and accordingly was entitled to **Miranda** warnings. Defendant further argues that on both occasions her statements were involuntary. Defendant submits, as well, that her answers to the

Williamsport Bureau of Police booking questions should also be suppressed because Defendant invoked her right to remain silent but was interrogated nonetheless.

Statements made during custodial interrogation are presumptively involuntary, unless the accused is first advised of his or her **Miranda** rights. Commonwealth v. DiStefano, 782 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 (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 reasonable 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 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, 720 A.2d 473, 480 (Pa. 1998). “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 she was not free to decline the officer’s request, or otherwise terminate the encounter.” McCarthy, supra. at 760. Indeed, police detentions only become "custodial" when under the totality of circumstances the conditions of the detention become so coercive as to constitute the functional equivalent of a formal arrest. Commonwealth v. Ellis, 379 Pa.

Super. 337, 356, 549 A.2d 1323, 1332 (Pa. Super. 1988)(citations omitted). “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.” Id. at 356-357, 549 A.2d at 1332. The key difference between an investigative detention and a custodial one is that the latter involves such coercive conditions as to constitute the functional equivalent of an arrest. Commonwealth v. Pakacki, 587 Pa. 511, 519, 901 A.2d 983, 987 (Pa. 2006).

Based on the totality of the circumstances in this case, the Court concludes that the Defendant was not in custody on either occasion when she was questioned by the police on June 14 and June 24. The Defendant was clearly told, and acknowledged, that she was voluntarily present, did not need to answer any questions, was free to terminate the encounter whenever she wished and was free to leave whenever she wished.

While the location of the interview was in the police station, the Defendant was not locked in, she was closest to the door, she was not transported against her will, she was not detained through the use of restraints and the police interviewers did not show, threaten, or use force. There was nothing about the interviews upon which one could conclude that they constituted the functional equivalent of an arrest. Therefore, the Defendant was not in custody and **Miranda** warnings were not required.

The circumstances with respect to the Williamsport Bureau of Police booking questions, however, were entirely different. Defendant turned herself in to Agent Dincher on December 10, 2010 following the filing of the charges against her. Clearly, she was in police custody and was not free to leave. She specifically advised Agent Dincher that she did not wish to speak without an attorney present.

The Commonwealth argues that she was not being interrogated when she was asked if she used narcotics or was addicted to narcotics and accordingly, Miranda warnings were not required. Agent Dincher asked Defendant routine questions which the Commonwealth contends were not designed to illicit incriminating information.

The Court disagrees with respect to the questions about narcotics use or addiction. Certainly, an affirmative answer to such questions would incriminate a Defendant in numerous ways. Moreover, in this case the questions went beyond biographical data necessary to complete booking. An affirmative answer could support all of the drug related charges while a negative response could be used to impeach the Defendant's credibility.

Because Defendant invoked her rights not to incriminate herself but was interrogated nonetheless, her answer to the questions regarding narcotics use or addiction shall be suppressed.

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

There is nothing at all to suggest that, under the totality of the circumstances, the Defendant's statements were not voluntary. Nothing was said by the police officers which would have indicated to a reasonable person that the Defendant was forced to answer questions; the Defendant did not state anything upon which the Court could conclude that she felt she was being pressured, coerced or forced into giving statements; there was absolutely no show of force whatsoever by the interviewing police officers; and there was nothing to indicate that the Defendant was under the influence of any substance or any mental, emotional or physical condition that would cause her not to understand what was going on. It appears that the Defendant clearly understood the questions posed to her and responded accordingly. While the Defendant appeared to be somewhat nervous, her demeanor on the videotape was not such that the Court could conclude that she was not being truthful when she clearly indicated that she was voluntarily there and voluntarily participating in the interview.

In her third Motion to Suppress, the Defendant contends the marijuana found in the basement must be suppressed because the police did not have reasonable suspicion to conduct a canine sniff. Notably, neither party briefed this issue. Thus, the Court is unsure whether the Defendant is still pursuing this issue. Nevertheless, the Court finds based on the testimony of Agent Dincher and Officer Snyder that the canine sniff/search in this case was not unlawful.

When the police responded to the 911 call concerning the shooting at 1510 Scott Street, one of the officers smelled the odor of burnt marijuana in the house. The police were also concerned about the reason why Mr. Miller was at that residence. Agent Dincher



spoke to Mrs. Miller about this and she indicated Mr. Miller was probably there to sell drugs. Agent Dincher also was aware of both Mr. Miller and Mr. Felver through previous contacts.

As part of their investigation into the shooting, the police spoke to the Defendant and Neil Felver concerning the events leading up to the shooting. The police also requested consent to search the house. Both the Defendant and Mr. Felver consented to a search of the house. After both consented, Agent Dincher asked for a canine to be brought to the house.

Officer Snyder took his dog, Boss, through the house. The dog alerted at a cabinet below the sink in the kitchen. Narcotics and/or paraphernalia were found in the cabinet. In a smaller room in the basement, the dog turned his nose upward and began circling in the middle of the room, indicating he smelled something at the ceiling level. Officer Snyder looked and noticed a box stuffed up in the insulation between the floor joists. When he touched the corner of the box to confirm it was a box, the box fell to the ground and several clear plastic baggies of marijuana fell out onto the floor.

The Court finds the police did not need reasonable suspicion to utilize the drug dog in the residence, because the Defendant gave the police written consent to search the house.

Even if reasonable suspicion were necessary, the Court finds such was present in this case. One of the officers smelled the odor of burnt marijuana in the residence. Agent Dincher knew both Mr. Miller and Mr. Felver from previous contacts. Mrs. Miller indicated the deceased was probably at the Scott Street residence to sell drugs. Based on the totality of

the circumstances, the Court finds the police had reasonable suspicion to conduct a canine sniff/search in the residence.

Defendant also argues that the charges must be dismissed because the Defendant was charged only after she would not assist in the prosecution of her husband. Defendant submits that she is being treated more harshly, because she has exercised her constitutional right not to testify against her husband. Defendant relies on the case of Commonwealth v. Butler, 529 Pa. 7, 601 A.2d 268 (Pa. 1991).

The incident leading to the charges occurred on June 14, 2010. The Defendant initially cooperated with the Commonwealth and in exchange for the Commonwealth not filing charges against her, Defendant agreed to testify against Mr. Felver. Mr. Felver waived his preliminary hearing and arraignment, and initially agreed to plead guilty. Mr. Felver subsequently changed his mind and so did the Defendant. Mr. Felver and the Defendant married each other in November of 2010, and Defendant informed the Commonwealth that she would not testify against her husband. Subsequently, the Commonwealth filed the charges against Defendant.

While Defendant argues that the decision to charge her was based upon her exercising her right not to testify and/or Mr. Felver's exercise of his right to proceed to a jury trial, the evidence is lacking that the prosecution of Defendant was in fact motivated by vindictiveness rather than for some other legitimate cause.

Indeed, it is clear that Defendant initially negotiated an agreement with which she no longer wishes to comply. Defendant understood that if she cooperated against Mr.

Felver, she would not be charged. Defendant's choice not to cooperate cannot shield her from prosecution because she and Mr. Felver are now married. To permit such would be nothing short of a perversion of plea negotiations by allowing a Defendant to manipulate facts to avoid prosecution. Defendant's plea bargain was based on her choice to cooperate regardless of her marital status and regardless of Mr. Felver's choice to proceed to trial.

Accordingly, the Court concludes that Defendant has not established prosecutorial vindictiveness and Defendant's Motion to Dismiss on said grounds will be denied.

**ORDER**

AND NOW, this \_\_\_\_ day of August 2011 following a hearing and argument, Defendant's Motion to Suppress her responses to the questions about narcotics use or addiction is **GRANTED**. Defendant's remaining Omnibus Pretrial Motion is **DENIED**.

BY THE COURT,

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Marc F. Lovecchio, Judge

cc: A. Melissa Kalas, Esquire (ADA)  
Nicole Spring, Esquire (APD)  
Gary Weber, Esquire (Lycoming Reporter)  
Work File