

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**DENNIS R. STEELE,
Defendant**

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**CR: 308-2012
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed a Motion to Suppress Evidence on July 16, 2012. A hearing on the motion was held September 20, 2012.

Background

On February 20, 2012, Dennis Steele (Defendant) voluntarily arrived at Pennsylvania State Police Montoursville at the request of Trooper Tyson Havens (Havens). The entire interview with the Defendant was videotaped and recorded. The Defendant was placed in a small interview room that had one (1) table, two (2) chairs, and what appeared to be a two-way mirror. The door to the interview room was propped so that it was open a few inches. The Defendant was asked whether the interview could be videotaped and he agreed. Havens told the Defendant that he was not under arrest and that he could leave at any time. Specifically, Havens stated to the Defendant:

Just to cover a few things first, you are not under arrest, you do not have to talk to me, and you are free to leave at any time. It's important that you understand that, that if you do not want to talk to me, if--. Obviously you are here because you want to tell me your side of the story but at some point during our conversation you decide that you do not like what is going on here, nobody is keeping you here. You can walk out this door, turn right and leave the same way you came in and nobody is going to stop you.

The interview began with Havens asking the Defendant if he knew why he was at the police station. The Defendant indicated that he was accused of something with his

granddaughter and sex. Havens then continued by asking about how he knew about the accusations and generally about the alleged victim and the kind of relationship the Defendant had with her. Havens then asked about the day the alleged crime occurred, in which the Defendant did not make any incriminating statements. During the interview, Havens stated that he could tell by the way the Defendant was acting that he did something and the Defendant responded that he was “nervous” and “scared shitless.” Havens then moved his chair about a foot closer to the Defendant and asked the Defendant to be honest, tell the whole story, and to seek help/forgiveness. During the entire interview Havens moved his chair slightly closer to the Defendant on three (3) separate occasions. Havens, however, never impeded the Defendant’s access to the open door and he was still approximately two (2) arm lengths away from the Defendant.

Approximately fourteen (14) to fifteen (15) minutes from the start of the interview the Defendant confessed to going into the room of his granddaughter and touching and licking her breasts. The Defendant then stated that he engaged in similar behavior with his granddaughter’s vagina. The Defendant made the incriminating statements as a result of Havens stating that his granddaughter would not have to take the witness stand against him if he told the truth. At twenty four (24) minutes and forty-five (45) seconds into the video, Havens stated that the Defendant would be charged for the crimes to which he had previously confessed. The entire interview lasted approximately thirty-four (34) minutes and the Defendant left the police station immediately afterwards.

On September 20, 2012, during the hearing on the Motion to Suppress Evidence, the Defendant testified regarding his confession. The Defendant stated that he believed he was in

custody and that he was restricted in movement. The Commonwealth argued that the circumstances of the interview and the interview itself established that it was non-custodial.

Motion to Suppress

The Defendant contends that the interview with Havens began as non-custodial but then became custodial and therefore the Defendant should have been advised of his rights prior to making incriminating statements. A law enforcement officer must administer Miranda warnings prior to custodial interrogation.¹ When a court determines whether a defendant is in custody they must be objective and consider whether the person being interrogated reasonably believed that his freedom of action or movement was restricted by the interrogation. Commonwealth v. Edmiston, 634 A.2d 1078, 1085-86 (Pa. 1993). The reasonable belief of the defendant is determined by the totality of the circumstances. Id.

A person is in custody for *Miranda* purposes only when he “is physically denied his freedom of action in any significant way or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by the interrogation.” Commonwealth v. Johnson, 727 A.2d 1089, 1100 (Pa. 1999). The U.S. Supreme Court has elaborated that, in determining whether an individual was in custody, the “ultimate inquiry is . . . is whether there [was] a ‘formal arrest or restraint on freedom of movement’ of the degree associated with a formal arrest.” Stansbury v. California, 511 U.S. 318, 322 (1994).

Commonwealth v. Sherwood, 982 A.2d 483, 499 (Pa. Super. 2009). Elements that courts look at to determine whether the defendant’s will has been impinged include: 1) the duration and method of interrogation; 2) the conditions of detention; 3) the manifest attitude of the police toward the defendant; 4) the defendant’s physical and psychological state; and 5) all other conditions present which may serve to drain one’s power of resistance to suggestion and undermine his self-determination. Commonwealth v. Watson, 360 A.2d 710, 713 (Pa. Super. 1976) (citing Commonwealth v. Alston, 317 A.2d 241, 244 (Pa. 1974).

¹ Miranda v. Arizona, 384 U.S. 436 (1966) (outlining a defendant’s Fifth Amendment rights).

In Schwing, the defendant was called by police to discuss an alleged sexual assault of a thirteen (13) year old female. Commonwealth v. Schwing, 964 A.2d 8, 10 (Pa. Super. 2008). The defendant voluntarily went to the police station and was placed in an interview room. Id. The room was eight-by-eight with windows and had an interview table, and chairs. Id. The door was left open and the defendant agreed to videotape the interview. Id. The defendant was advised that he was free to leave at any time and that he was not under arrest. Id. In addition, the defendant even left the interview room to go use the restroom and make a phone call. Id. The interview lasted one hour and twenty (20) minutes and eventually the defendant made incriminating statements. Shortly after the statements were made the Defendant asked to leave to eat dinner, in which the officer refused.

The defendant in Schwing alleged that the officer preventing him from leaving raised the interview into a custodial interrogation. The Pennsylvania Superior Court stated that police never verbally or physically prevented the defendant from leaving *prior* to him confessing to the crime. Id. at 12. In addition, the Superior Court found that the interview was not custodial because the defendant voluntarily went to the police station, the defendant was told he could leave at any point, the interview room's door was open, and the defendant in fact left the room on various occasions. Id.

Here, the Defendant voluntarily arrived at the police station and was clearly informed that he was not under arrest and that he could leave at any time. The door to the interview room was propped open and the Defendant always had a clear path to the door. The interview was relatively short lasting approximately thirty-four (34) minutes. In addition, the Defendant made incriminating statements fifteen (15) minutes from the beginning of the interview. The Defendant left the police station after the interview was conducted and was not placed in a secure

waiting area, was not frisked, and was not placed in handcuffs. The Defendant never asked if he could leave during the interview and was not forced or threatened to stay in the conference room.

The Court finds that the facts in this case are similar to Schwing, in which the defendant arrived at the police station, was interviewed in a small conference room, and told that he could leave the interview at any time. Further, as in Schwing, the defendant stated at a pre-trial hearing that he believed that he could not terminate the interview. Schwing, 964 A.2d 12. The Superior Court, however, ruled that because the defendant was informed that he could leave the interview at anytime there was no custodial interrogation and it was a meritless claim. Id. (stating that inexperience with police stations and procedures is meritless in showing a subjective feeling of not being able to leave). The Defendant in this case was also informed that he could leave and placed in a similar situation and therefore his testimony that his movements were restricted and that he felt as though he was in custody are also without merit.

The Court finds, under the totality of the circumstances, that the interview was not custodial. While the Defendant stated he was scared during the interview he appeared rational and composed. Further, the Defendant appeared in good physical condition and there were no apparent conditions that would drain his resistance to suggestion or undermine his self-determination. When Havens told the Defendant he was going to be charged for a crime he had by that time already made the incriminating statements. Finally, the interview was very short in duration and the conditions of the interview made it clear that the Defendant was free to leave, which the Defendant did in fact do after the close of the interview.

ORDER

AND NOW, this _____ day of October, 2012, based upon the foregoing Opinion, the Court finds that the incriminating statements made by the Defendant were done during a non-custodial interview with police. Therefore, the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA (AB)
Pete Campana, Esq.
Eileen Dgien, Dep. CA
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