IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	:	CR-1792-2012; OTN: T238428-1
	:	
vs.	:	CRIMINAL DIVISION
	:	
AARON MORRISON.	:	MOTION TO SUPPRESS

O P I N I O N AND O R D E R

By criminal information filed November 8, 2012, the Commonwealth charged Defendant with kidnapping[1], false imprisonment[2], terroristic threats[3], simple assault by physical menace[4], and harassment by physical contact[5], for actions that Defendant allegedly took on September 26, 2012, against his ex-girlfriend Keshia Trimble (Trimble). Pending before the Court is Defendant's March 20, 2013 Motion to Suppress Evidence. Instantly, Defendant requests the suppression of two (2) statements that he made to the police on September 26, 2012, the date of his arrest. The Commonwealth alleges that Defendant made an incriminating statement at both the scene of his arrest and in the police station while being processed. Defendant argues that these statements should be suppressed because they were the fruits of an illegal arrest, based upon lack of probable cause. Alternatively, Defendant argues that the statements should be suppressed because he did not knowingly, intelligently, or voluntarily waive his *Miranda*[6] rights. On the other hand, the Commonwealth argues that the time frame in which Defendant alleges he was illegally arrested was instead a period of investigative detention; the Commonwealth provides that the arresting officer had reasonable suspicion to place Defendant in investigative detention based upon the totality of the circumstances. Additionally, the Commonwealth provides that Defendant knowingly, intelligently, and voluntarily waived his *Miranda* rights prior to making any incriminating statements to the police.

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[1] 18 Pa. C.S. § 2901(a)(3).
[2] 18 Pa. C.S. § 2903.
[3] 18 Pa. C.S. § 2706(a).
[4] 18 Pa. C.S. § 2701(a)(3).
[5] 18 Pa. C.S. § 2709(a)(1).
[6] *Miranda v. Arizona*, 384 U.S. 436 (1966).

On May 17, 2013, this Court held a hearing on Defendant's motion. At the time of the hearing, the only witness who testified was Affiant, Chief McKibben (McKibben) of the Muncy Township Police Department. The Court specifically finds the testimony of McKibben to be credible. Based upon the totality of the circumstances and this credibility finding, the Court will not suppress either of Defendant's statements.

I. Factual Background

A brief factual background of this matter is as follows. On September 26, 2012, around 11:00 a.m., McKibben responded to a report made by Marlee Roles (Roles) of Hoopla's Family Fun & Grill (Hoopla's). On that date, Roles reported to the police that she believed one of her employees, Trimble, was in trouble. Specifically, Roles reported that Trimble recently called Roles to advise Roles that Trimble would not be able to work that afternoon; Roles told McKibben that Trimble was both short and upset on the phone. Roles also reported that another employee informed Roles that the employee saw Trimble drive into Hoopla's parking lot, as if Trimble was coming into work. Lastly, Roles reported that Trimble's locked car was parked behind the building, with her keys still in the ignition.

McKibben responded to Hoopla's; he witnessed Trimble's car parked behind Hoopla's; as Roles reported, the car was locked and still had its keys in the ignition. Also, Trimble's lunch bag appeared to be in the front passenger seat of the car. McKibben testified that the hood of Trimble's car was still warm to the touch, leading McKibben to believe that it had recently been driven. However, McKibben could not find Trimble on the business premises. McKibben testified that he also checked a vacant home near the establishment to no avail. While McKibben was investigating, either Roles or one of Trimble's co-workers informed McKibben that Trimble had a protection from abuse order (PFA) against an ex-boyfriend.

While inside Hoopla's, McKibben received a call from Lycoming County Control (County Control) informing him that a young woman who described herself as Trimble recently

called 911 asking for help.[7] When County Control triangulated this phone call, the triangulation indicated that the phone that called 911 was located at the end of Peter Gray Road. At that time, McKibben was five (5) to six (6) minutes away from Peter Gray Road; after checking for closer police units and finding none available, McKibben responded to Peter Gray Road

a. <u>Peter Gray Road Statement</u>

McKibben arrived at Peter Gray Road at approximately 11:20-11:30 a.m. McKibben testified that Peter Gray Road is one (1) mile long and has no outlet signs post at its entrance. The road is isolated and has overgrowth. A few cabins are present along the route. When he arrived at the no outlet end of the road, he witnessed Defendant's car backed into the brush; Defendant parked his car in such a manner that when approaching Defendant's car McKibben's vehicle was facing the front of the Defendant's vehicle. McKibben was the only police officer present on scene, and the other individuals on scene were Defendant and Trimble. McKibben testified that when he approached the car in his marked patrol unit, he saw Defendant and Trimble in the backseat of the car. McKibben testified that Trimble appeared to be very upset. When McKibben exited his patrol unit, he pointed his service revolver at Defendant and ordered him out of the car. McKibben placed Defendant on the ground and put handcuffs on him. McKibben testified he did this for Trimble and his protection. McKibben then removed Trimble from Defendant's vehicle. When McKibben removed Trimble from the vehicle, he testified that she was crying and had makeup running down her face, leading McKibben to believe that Trimble was crying for a while; additionally, McKibben provided that Trimble was flushed and that her clothes were disheveled. McKibben then interviewed Trimble, who reported to McKibben that Defendant forcefully removed Trimble from Hoopla's. After hearing Trimble's account of Defendant's actions, McKibben re-approached Defendant, who was still on the ground, placed Defendant under arrest, and advised Defendant of his *Miranda* rights. McKibben

[7] Specifically, the woman identified herself as "Keshia" to the 911 operator.

testified that it was a matter of minutes between the time he initially placed Defendant in handcuffs, secured Trimble, and arrested Defendant.

McKibben then testified that the first statement Defendant made was after he received his *Miranda* rights. McKibben testified that after he advised Defendant of his *Miranda* rights, Defendant acknowledged he understood those rights. McKibben then testified that he asked Defendant if he knew why he was being arrested. McKibben testified that Defendant responded "yeah, because I kidnapped her, but I was not going to hurt her." This is the first statement Defendant requests to be suppressed.

b. Police Station Statement

McKibben then testified that Defendant made a second incriminating statement while he was being processed at the Muncy Township Police Station. McKibben arrived at the Muncy Township Police Station with Defendant around 12:01 p.m. While at the station, Defendant did not execute a written waiver of his rights nor did McKibben *Mirandize* Defendant for a second time. At approximately 12:02-12:04 p.m., Defendant refused to make a written statement. As a result of this refusal, McKibben testified that Defendant was not questioned. McKibben testified that Defendant sat at a chair in the corner of in McKibben's office while McKibben was processing Defendant's paperwork. At approximately 1:30 p.m., while Defendant was still sitting in McKibben's office, Corporal Ottaviano came into McKibben's office. Ottaviano asked Defendant "what did you get caught stealing?" McKibben testified that Ottaviano asked this question because most of the Township's arrests stem from thefts occurring at the Lycoming Mall. McKibben testified that after Ottaviano asked Defendant this question, McKibben then told Defendant to tell Ottaviano what "he did." McKibben testified that Defendant responded to Ottaviano that Defendant "kidnapped a girl." This is the second statement Defendant requests to be suppressed.

II. Defendant's Argument

Instantly, Defendant argues that the Court should suppress the statements that he made to McKibben and Ottaviano because they were obtained in violation of Defendant's rights under Article 1 Section 8 and Section 9 of the Pennsylvania Constitution and under the Fourth, Fifth and Sixth Amendments of the United States Constitution. Motion, ¶ 5. Specifically, Defendant alleges that McKibben unlawfully arrested him prior to making these statements because McKibben had no probable cause to believe that Defendant had committed a crime. Therefore, Defendant argues that his statements must be suppressed as fruits of this illegal arrest. Motion, ¶ 6. Defendant argues that he was placed under arrest when McKibben handcuffed Defendant. Alternatively, Defendant alleges that he did not knowingly, intelligently, or voluntarily waive his right to counsel or his right to remain silent prior to making the incriminating statements. Motion, ¶ 7. On these grounds, Defendant argues that the statements should be suppressed as they were taken in violation of his constitutional rights. Motion, ¶ 8. The Court does not agree.

III. Discussion

a. Investigative verses Custodial Detention

Our Supreme Court has outlined three types of encounters that an individual may have with the police: a mere encounter, an investigative detention, and an arrest, i.e. custodial detention. *Comm. v. McClease*, 750 A.2d 320, 324 (Pa. Super. Ct. 2000) (citing *In the Interest of S.J.*, 713 A.2d 45, 47 (Pa. 1998)). *See also Comm. v. Charleston*, 16 A.3d 505, 514 (Pa. Super. Ct. 2011), *appeal denied*, 30 A.3d 486 (Pa. 2011); *Comm. v. Blair*, 860 A.2d 567, 572 (Pa. Super. Ct. 2004). A mere encounter need not be supported by any suspicion, while an investigative detention must be supported by reasonable suspicion and an arrest must be supported by probable cause. *Id*. The level of intrusion into one's liberty may change during the course of an encounter. *Blair*, 860 A.2d at 572. Therefore, the inquiry into whether an encounter, investigatory detention, or arrest has occurred is fact-intensive. *Id*.

At issue in this case are the differences between an investigative and custodial detention. When an individual is placed in investigatory detention, the prerequisites of *Terry v. Ohio*, 392 U.S. 1 (1968), must be met, i.e. reasonable suspicion. *Comm. v. Cauley*, 10 A.3d 321, 326 (Pa. Super. Ct. 2010). In order to meet the standard for reasonable suspicion, the officer must be able to point to specific, articulable facts that criminal activity is afoot. *Id*. Yet,

> [a]n encounter becomes an arrest when, under the totality of the circumstances, a police detention becomes so coercive that it functions as an arrest. The numerous factors used to determine whether a detention has become an arrest are the cause for the detention, the detention's length, the detention's location, whether the suspect was transported against his or her will, whether physical restraints were used, whether the police used or threatened force, and the character of the investigative methods used to confirm or dispel suspicions.

Charleston, 16 A.3d at 515 (citing *Comm. v. Stevenson*, 894 A.2d 759, 770 (Pa. Super. Ct. 2006), *appeal denied*, 917 A.2d 846 (Pa. 2007)).

When determining whether an encounter became an arrest, the Court should consider totality of the circumstances objectively. *Comm. v. Hayes*, 898 A.2d 1089, 1093 (Pa. Super. Ct. 2006); *Comm. v. Sands*, 887 A.2d 261, 272 (Pa. Super. Ct. 2005). The Court must view the circumstances "through the eyes of a trained police officer, not an ordinary citizen, and a combination of circumstances may justify a stop where each circumstance standing alone would not do so." *Hayes*, 898 A.2d at 1093. The Court "must accord due weight 'to the specific reasonable inferences [the police officer] is entitled to draw from the facts in light of his experience.'" *Sands*, 887 A.2d at 272.

When analyzing law enforcement's infringement on individual liberties, the courts have long recognized that they must delicately balance the constitutional right that individuals have to be free from unreasonable searches and seizures with the need to allow police officers to make limited intrusions on these liberties while conducting an investigation in order to protect the

safety of our citizens and police officers. *Stevenson,* 894 A.2d at 771. When balancing these interests,

> the court must be guided by common sense concerns that ***give preference to the safety*** of the police officer during an encounter with a suspect where circumstances indicate that a suspect may have… a weapon…. we emphasize that police safety, and the safety of other citizens, must always be afforded ***great weight*** when balanced against the privacy rights of an individual during an investigatory detention and pat down or frisk for weapons when the police have reasonable suspicion that an individual is armed.

Id. at 772 (emphasis in original). With these standards in mind, the Court turns to the facts of this matter.

Presently at issue is whether McKibben placed Defendant in either investigative or custodial detention when McKibben briefly handcuffed Defendant and placed him on the ground. McKibben testified that he placed handcuffs on Defendant and required him to lie on the ground for not only his protection, but for the protection of Trimble; McKibben testified that after placing Defendant in that position, he could safely remove Trimble to his police cruiser, in order to ensure that she did not need medical attention and to confirm the facts of the underlying situation before taking any further action. McKibben testified that Defendant was in handcuffs for a matter of minutes before McKibben placed Defendant under arrest. Under the totality of these circumstances, the Court finds that for those minutes an investigative detention occurred. Defendant was not placed in custodial detention until McKibben spoke with Trimble, approached Defendant for a second time, and informed Defendant that he was arrested. After confirming Defendant's actions with Trimble, the Court finds that McKibben had the probable cause to arrest Defendant.

The Court finds the instant matter comparable to *Comm. v. Blair,* 860 A.2d 567 (Pa. Super. Ct. 2004), and *Comm. v. White,* 516 A.2d 1211 (Pa. Super. Ct. 1986). The Court believes

these precedents support the Commonwealth's position that McKibben had reasonable suspicion to conduct an investigatory detention and that McKibben's investigatory detention did not escalate into an arrest until McKibben *Mirandized* Defendant.

In *Blair*, an officer was directed by county dispatch to investigate a reported domestic disturbance; when the officer arrived at the scene, he viewed Blair and another individual parked in a car in front of the residence, attempting to hide themselves from the officer. *Id*. at 569-70. The officer testified that he had responded to the residence in question before on numerous complaints alleging domestic disputes, fights, and illegal drug activity. The officer also testified that domestic disturbances are volatile situations that involve high tensions, and officer safety is always a high priority in these instances. Considering the totality of the officer's prior experiences with the residence, he testified that he "anticipated a potentially dangerous situation." *Id*. at 570. Therefore, when the officer viewed Blair and his passenger acting in a furtive manner, the officer requested the individuals to show the officer their hands; when the individuals disregarded this request, the officer told the individuals, a number of times, to remain in their vehicle. Disobeying the officer's commands, Blair opened the door of the car and threw a baggie of a white substance underneath his vehicle; the baggie was later determined to contain 12.8 grams of crack cocaine. Minutes after the officer initially arrived on scene, a second officer arrived, seizing the contraband and arresting Blair and his passenger. *Id*.

In *Blair,* the Court determined that Blair was in investigatory detention when the officer commanded him to stay in his vehicle. Also, the Court determined that the officer's seizure of Blair was justified by reasonable suspicion. When holding that the totality of the circumstances supported a finding of reasonable suspicion, the Court considered: 1) that the officer was alone responding to a domestic disturbance at the exact address where Blair's vehicle was parked; 2) that the officer had experienced prior disturbances at that address; 3) that the officer's prior experiences with domestic disputes showed them to be volatile and potentially dangerous

situations, and 4) that the officer testified that he was concerned about his safety because he would have to turn his back to Blair and his passenger in order to respond to the disturbance. *Id*. at 573-74. When considering all of these factors, the Court held that the officer's limited seizure of Blair was justified because the officer had reasonable suspicion that criminal activity was afoot. Since Blair's investigatory detention was justified, the Court found that the contraband seized was not the fruit of an illegal detention. *Id*. at 575.

In *White*, two officers were dispatched to investigate males removing property from a home. Within two minutes of receiving the report, the officers observed the defendants walking with four formica sheets. When the officers approached the defendants and asked them about the sheets, the defendants responded that they got the sheets from an individual who lived in the direction toward which they were walking. *Id.* at 1213. The officers placed the defendants in the back of the police car so that one of the officers could safely remove himself from the scene and investigate the premises from which the property was reportedly stolen. *Id*. at 1213 and 1216. Within five (5) minutes, the investigating officer contacted the victim who identified the sheets as being stolen from her home. Upon the victim's confirmation, the officers arrested the defendants. *Id*. at 1213.

Initially, the trial court held that the *White* defendants were arrested without probable cause. *Id*. at 1213. The trial court held that the defendants were arrested when they were placed in the back of the police car and that this arrest was performed without probable cause. *Id*. at 1214. However, on appeal, our Superior Court reversed. *Id*. at 1212. Our Superior Court concluded that the defendants were in investigative detention when they were placed in the back of the police unit. *See id.* at 1216. Our Superior Court provided that the police obtained the probable cause needed to arrest the defendants after the investigating officer confirmed with the victim that the defendants were in possession of the victim's property. *Id*. at 1216. In support of the Court's conclusion that the placement of the defendants in the police car constituted an

investigative detention and not an arrest, the Court noted the brevity of the detention (less than five (5) minutes), the occurrence of the detention at the site of the initial encounter, and the noted concern for officer safety. *Id*. at 1215-16.

Turning back to the instant matter, the most potentially troubling fact of this case is that when McKibben initially approached Defendant's car, the officer drew his weapon. Yet, under the circumstances, the Court cannot find McKibben's actions to be unreasonable. McKibben responded to a suspected kidnapping, at the dead end of a mile long road, without backup, after investigating a scene that suggested a woman was taken against her free will and receiving a report of a 911 call from the victim. McKibben was also aware that the victim had a PFA against a former boyfriend.[8] McKibben had every reason to believe that Defendant was armed and dangerous. The Court believes McKibben took the necessary precautions to protect both the victim and his lives.

Thus, the Court finds that McKibben's investigatory detention of Defendant was supported by reasonable suspicion and that his custodial detention of Defendant was supported by probable cause. The Court will not suppress Defendant's incriminating statements as fruits of an illegal arrest.

b. *Miranda* Warnings and Waiver

The second issue arising in this matter is custodial interrogation. In his Motion to Suppress Evidence, Defendant alleges that he did not knowingly, intelligently, or voluntarily waive his right to counsel or to remain silent prior to making the incriminating statements at issue. Motion, ¶ 7. Based upon this argument, Defendant alleges that these statements were made in violation of his constitutional rights and should be suppressed. This Court does not agree.

[8] McKibben did not know that the PFA was against another one of Trimble's ex-boyfriends, and not Defendant, until McKibben spoke with Trimble at the scene of the arrest.

Pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), when an individual undergoes custodial interrogation, he must be afforded his *Miranda* warnings, i.e. his right to remain silent and to be afforded counsel. *Comm. v. Turner*, 772A.2d 970 (Pa. Super. Ct. 2001). In order to be afforded *Miranda* protections, two findings are required: custody and interrogation. *Id*. at 973.

> Police detentions in Pennsylvania become custodial when, under the totality of the circumstances, the conditions and/or duration of the detention become so coercive as to become the function equivalent of an arrest. Arrest is an act that indicates an intention to take a person into custody or that subjects the person to the will and control of the person making the arrest. Interrogation is police conduct calculated to, expected to or likely to evoke an admission.

Id. (citations omitted). With these standards in mind, the Court turns to the instant matter.

As previously provided, the Court finds that McKibben did not arrest Defendant until the second time McKibben approached Defendant. McKibben testified that when he approached Defendant for a second time, McKibben advised Defendant that he was arrested and provided Defendant with his *Miranda* warnings. *Chief* McKibben testified that he is a veteran of the police force, that he knows the *Miranda* warnings by memory, and that he adequately provided Defendant with these warnings *prior to* asking Defendant any questions regarding the incident. The Court finds McKibben's testimony to be credible. Therefore, the Court finds that Defendant was advised of his *Miranda* warnings prior to being questioned by McKibben and prior to making any statements to the officer.

When an accused's statement is made after *Miranda* warnings are provided and offered by the Commonwealth as an admission, the Commonwealth must prove that the accused's statements were knowingly, intelligently and voluntarily made. *Comm. v. Baez*, 21 A.3d 1280, 1283 (Pa. Super. Ct. 2011), *appeal denied*, 37 A.3d 1193 (Pa. 2012); *Charleston*, 16 A.2d at 520. To fulfill its burden, the Commonwealth "must demonstrate that the proper warnings were given, and that the accused manifested an understanding of these warnings." *Baez*, 21 A.3d at 1283

(citations omitted). Addressing the manifestation aspect of the Commonwealth's burden, our Superior Court has provided:

> after a defendant is given his or her Miranda rights, a statement by the defendant that he understands those rights followed by the answering of questions posed by the interrogating officer constitutes a sufficient manifestation of a defendant's intent to waive those rights so as to satisfy state constitutional protections.

Baez, 21 A.3d at 1286. When determining if an accused's statements is voluntarily made, the Court should

> examine the surrounding circumstances and the entire course of police conduct with respect to the suspect in evaluating the voluntariness of his statements. The fact that a suspect chooses to speak after being informed of his rights is, of course, highly probative.

Charleston, 16 A.2d at 521. With these standards in mind, the Court turns to Defendant's claims.

As previously held, the Court finds that McKibben gave Defendant proper *Miranda* warnings. In this matter, McKibben testified that he advised Defendant of his *Miranda* rights after placing him under arrest. McKibben acknowledged that he did not read the *Miranda* warnings, but instead he recited them from memory due to the circumstances of Defendant's arrest. However, McKibben also testified that as a veteran of the police force, he knows the *Miranda* warnings and properly provided them to Defendant. The Court finds McKibben's testimony to be credible and that Defendant received proper *Miranda* warnings.

Additionally, based upon McKibben's testimony, the Court finds that Defendant acknowledged his understanding of these rights. McKibben testified that Defendant acknowledge his understanding prior to making any statement. Thus, Defendant's later statements to McKibben illustrate his intent to waive his *Miranda* rights. Therefore, the Court finds that no constitutional violation has occurred, and it will not suppress these statements.

During the hearing, Defendant made issue of the fact that his *Miranda* warnings were not renewed prior to McKibben's question that resulted in Defendant's second incriminating statement. Renewed *Miranda* warnings need not be issued every time a custodial interrogation is recommenced. *Commonwealth v. Scott*, 752 A.2d 871, 875 (Pa. 2000). *See also Baez*, 21 A.3d at 1286 n.2. The Court must take into account the totality of the circumstances to determine if a subsequent set of *Miranda* warnings should have been issued prior to the commencement of a subsequent custodial interrogation; specifically, the Court should consider the following factors:

> [t]he length of time between the warnings and the challenged interrogation, whether the interrogation was conducted at the same place where the warnings were given, whether the officer who gave the warnings also conducted the questioning, and whether the statements obtained are materially different from other statements that may have been made at the time of the warnings.

Scott, 752 A.2d at 875. Ultimately, the Court should consider whether a "clear continuity of interrogation" existed. *Id.*

The Court notes that McKibben arrested Defendant around 11:30 a.m. When McKibben and Defendant reached the police station, the time was approximately 12:00 noon. A few minutes after noon, Defendant told McKibben that Defendant did not wish to make a written statement. McKibben testified that after Defendant refused to make a statement, McKibben did not question Defendant about the incident. McKibben testified that Defendant sat on a chair in McKibben's office for the next hour and a half while McKibben was processing Defendant. Corporal Ottaviano entered McKibben's office around 1:30 p.m. It was at this point, when Ottaviano asked Defendant "what did you steal?" and McKibben told Defendant to "tell him what you did," that Defendant responded he "kidnapped a girl." McKibben testified that neither he nor Ottaviano asked Defendant any subsequent questions.

Considering the totality of these circumstances, the Court finds that McKibben was not required to give Defendant renewed *Miranda* warnings. Defendant made the same statement to Ottaviano and McKibben in the police station that Defendant made to McKibben an hour and a half earlier. Also, the manner in which Defendant's second statement was made, in response to Ottaviano's arguably joking question, does not warrant re-advising Defendant of his *Miranda* warnings. Therefore, the Court finds no constitutional violation has occurred, and it will not suppress the second statement based upon a failure to re-*Mirandize*.

c. Conclusion

Based upon the reasonableness of McKibben's actions and the adequacy of his *Miranda* warnings, the Court finds no violation of Defendant's state or federal constitutional rights occurred. Therefore, there is no reason to suppress the statements in question.

The Court enters the following Order.

O R D E R

AND NOW, this 7th day of June, 2013, for the reasons stated above, it is hereby ORDERED and DIRECTED that Defendant's Motion to Suppress Evidence is DENIED.

BY THE COURT,

_____ _____

Date Richard A. Gray, J.

cc: District Attorney's Office (NI)
Peter Campana, Esq.
Gary L. Weber, Esq. – Lycoming County Reporter