

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1762-2015
v.	:	
	:	
DONALD JAMES STONE,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

On January 18, 2016 Defendant, Donald Stone filed a Supplemental Omnibus Pretrial Motion in the form of a Motion to Suppress. Defendant seeks to suppress statements made and evidence collected because he did not receive Miranda¹ warnings. After hearing held on April 25, 2016, Counsel requested the opportunity to submit briefs on the issues presented.

Background

Donald Stone (Defendant) is charged with Institutional Sexual Assault², Indecent Assault³, Harassment⁴ and Official Oppression⁵. On June 3, 2015, Defendant, a physician employed by a third party contractor at S.C.I. Muncy (Muncy), was interviewed by Security Captain Shawn Waltman (Waltman) of Muncy and Trooper James Wool (Wool) of the Pennsylvania State Police (PSP) regarding a Prison Rape Elimination Act (PREA) allegation made by an inmate/patient. Defendant give a written statement to Waltman and once Wool arrived at Muncy, gave written consent to search his vehicle. Wool's search discovered a notebook that had been used by both Defendant and the alleged victim.

¹ Miranda v. Arizona, 396 U.S. 868, 90 S. Ct. 140 (U.S. 1969).

² 18 Pa. C.S. § 3124.2(a)

³ 18 Pa. C.S. § 3126(a)(4)

⁴ 18 Pa. C.S. § 2709(a)(1)

⁵ 18 Pa. C.S. § 5301(1)

A. Testimony of Captain Shawn Waltman

Commonwealth's first witness was Waltman. On June 3, 2015, Waltman asked Defendant's supervisor to bring Defendant to the security office to make a Staff Statement regarding a PREA allegation. Waltman testified Defendant was brought to the security office in the early afternoon. N.T., 4/25/16, at 7. Waltman contacted the PSP after he received the report of the allegation stating "that's part of the procedures when we receive an allegation that the PSP is notified as well as our Office of Special Investigation." Id. at 8. Waltman testified that he had not been trained in the proper use of Miranda warnings. Id. at 9. He also explained the reason Defendant was escorted from the infirmary to the security office for his interview was "to make sure there was no chance they [alleged victim and alleged perpetrator] crossed paths." Id. at 26.

Waltman interviewed defendant in the security office of Muncy. He told the Defendant the reason for the investigation and advised him that if he left the interview before its completion he would not be complying with the investigation. Id. at 30-31. Waltman indicated that normally someone who is an employee of the State would be subject to disciplinary action up to and including termination if he or she did not comply with an investigation but since Defendant was a contract physician that rule would not apply to him. Id. at 32.

Waltman testified that Wool ultimately responded to Muncy. When Wool was in the parking lot searching Defendant's car, Defendant asked to add information to his written statement; Waltman stated that page 4 of the statement was the information added after Wool arrived at Muncy. Id. at 10. Waltman testified that Defendant was escorted from the building and asked to return the badge that allowed him access to the institution at 4:15 PM. Id. at 41.

B. Testimony of Trooper James Wool, Pennsylvania State Police

On June 3, 2015, at noon, Wool was contacted by Corporal Joseph Akers of the Pennsylvania State Police Montoursville, Criminal Investigation Unit. Id. at 3. Wool was advised that Waltman contacted the PSP to report an alleged sexual assault that took place with a prison physician and an inmate.

When Wool arrived at Muncy he was met by Waltman in the parking lot who briefed him on the situation. Id. at 56. In Waltman's office he was told "[Stone] wasn't allowed to leave the area until they allowed him to do so. [Stone] wouldn't be allowed to go to his office or his vehicle for any reason." Defense Exhibit 2, PSP Incident Report, 6/9/2015, at 3. When Wool went into the interview room, Waltman explained to Defendant "the reason why he was being held there. He told him that he wasn't allowed to go to his office or leave until they allowed him to." Id. at 4. Wool confirmed on cross examination that it was his understanding that Defendant was not permitted out of the institution until Waltman released him. N.T., 4/25/16, at 54.

Wool testified that he interviewed Defendant for about an hour. Id. at 48. The interview commenced at approximately 1:15 P.M. Id. at 55. He testified that there was a break in the interview while he searched Defendant's vehicle, after Defendant signed a PSP waiver of rights and consent to search form, submitted as Commonwealth's Exhibit 2. Wool testified that it was a form to "conduct a search of Mr. Stone's office and also his vehicle located at S.C.I Muncy". Id. at 49. Wool testified that he did not mirandize Defendant because he was not in custody. Id. at 50. Wool told Defendant that "he was not under arrest....he was probably going to go home today, more than likely to go home." Id. at 51. He also testified that Defendant did

say that if he was going to be accused of sexual assault that he wanted an attorney. Id. at 67-68.

Discussion

Whether the written and oral statements given by Stone to Waltman and Wool should be suppressed, as Stone's statements to both were made while he was in custodial detention and without the required Miranda warnings advising him of his rights.

Defense argues that Defendant was in custody during the time of his interview with Waltman and therefore the statements he made to Waltman, both the interview and the written Staff Statement, should be suppressed as he was not properly mirandized before the interview. He cites Commonwealth v. McGrath, 504 Pa. 103 (Pa. 1983), for the proposition that even those without arresting authority can be required to provide Miranda warnings if they are acting at the behest of the government and the individual is in their custody. McGrath, a military member, was held by his superior officers and questioned before police arrived on the scene. The Trial Court did not find that McGrath was subject to a custodial interrogation; however, the Superior Court reversed McGrath's conviction and remanded for a new trial, holding that the defendant had been ordered to appear before superior officers and was not free to leave or refuse to disobey the orders and from Defendant's reasonable perspective was in custody. The court further held that questioning of the defendant by the military officers was sufficient to require Miranda warnings and in the absence of Miranda warnings the defendant's confession should not have been admitted into evidence.

The Commonwealth distinguishes McGrath from the case at bar, citing Commonwealth v. Ziegler, 470 A.2d 56, 503 Pa. 555 (Pa. 1983). In Ziegler, police initially questioned a fellow police officer regarding an incident where an individual resisting arrest had died. Ziegler moved to have his statements suppressed stating that he was subject to a custodial interrogation;

however, the Supreme Court found that the questioning of Ziegler was pursuant to an internal affairs/administrative proceeding. The intent was not prosecutorial and Ziegler was not in custody.

This Court in the case at bar does not find that Defendant was in the custody of Waltman for Miranda purposes. Rather more like in Ziegler, Defendant was complying with a requirement of his employment and participating in a mandatory incident reporting process, which included both the interview with Waltman and the Staff Statement.⁶ In McGrath, and in cases like it such as Commonwealth v. Ramos, 532 A.2d 465 (Pa. Super 1987), the Defendants who were successful in having statements to state actors suppressed were detained pursuant to a warrant for arrest (McGrath) or in pretrial detention (Ramos). In other words, these Defendants were about to be arrested or under arrest when they made inculpatory statements to state actors. As Defendant was simply making a Staff Statement to Waltman and no arrest was imminent, statements to Waltman, written or oral, will not be suppressed.

Any statements that Defendant made, written or oral, *after* Wool arrived on the scene, will be suppressed, however, as the Court finds that Defendant *was* subject to a custodial detention when Wool arrived and thus, should have been read his Miranda warnings. Wool admitted on the record that the Defendant was subject to a custodial detention. Indeed, the Commonwealth conceded the Court would likely find that Miranda rights did attach as Waltman told Wool in Defendant's presence that Defendant was not free to leave. Comm. Responsive Brief, 5/18/16, at 12.

⁶ Any employee who receives written or verbal notification from an inmate or a third party alleging an incident of abuse, or who is a witness to abuse, is required to complete a DC-121, Part 3, Employee Report of Incident for distribution to his/her supervisor and the facility's Security Office. All reports shall be completed prior to completion of the employee's duty shift. DC-ADM 001, Inmate Abuse Procedures Manual, Eff. 11/24/14.

Whether the search of Stone’s vehicle, from which a notebook was seized, is a product of a consent not freely, knowingly or intelligently given.

The Commonwealth concedes in its brief that the search of Defendant’s vehicle was not voluntary although Defendant did sign a “Waiver of Rights and Consent to Search” form.⁷ Comm. Responsive Brief, 5/18/16, at 12. The executed form established Defendant gave Wool permission to search his vehicle for a “black in color notebook”. Comm. Ex. 2. The notebook was found in Defendant’s vehicle. Had the Commonwealth not conceded this issue, the Court would have found that the consent of the Defendant to search was not valid. It is clear that it was a product of the statements made in violation of Miranda. Defendant was under arrest and without him being advised of that fact, his consent to search can not be treated as voluntary. A consent form does not prove valid consent for a person in custody. Commonwealth v. Newton, 943 A.2d 278 (Pa. Super. 2007).

Though statements, oral and written, made after Wool’s arrival at Muncy, as well as the notebook seized from Defendant’s vehicle will be suppressed, the Commonwealth may use them in rebuttal to any statements Defendant might testify to contradicting such evidence pursuant to Article 9 of the Pennsylvania State Constitution:

9. Rights of accused in criminal prosecutions.

In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land. The use of a suppressed voluntary admission or voluntary confession to impeach the credibility of a person may be permitted and shall not be construed as compelling a person to give evidence against himself. Pa. Const. Art. I, § 9.

⁷ Wool was not questioned regarding, and therefore, did not testify as to whether he read Defendant the form.

ORDER

AND NOW, this _____ day of September, 2016, based upon the foregoing Opinion, the Motion to Suppress Evidence is GRANTED in part and DENIED in part. It is ORDERED and DIRECTED that the statements, oral and written, made after Wool's arrival at S.C.I. Muncy, as well as the notebook seized from Defendant's vehicle, are SUPPRESSED. In all other respects, the Motion is hereby DENIED.

BY THE COURT,

Nancy L. Butts, President Judge

cc: Gregory T. Moro, Esq.
105 E. Market Street
Danville, PA 17821
DA (MW)
Gary Weber, Lycoming Law Reporter