

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

: No. CP-41-CR-1762-2015

vs.

DONALD STONE,  
Defendant

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**ORDER**

AND NOW, this \_\_\_\_\_ day of September, 2016, upon consideration of the Commonwealth's Motion to Reconsider this Court's decision of September 13, 2016, and after consideration of the issue raised, the Motion is hereby DENIED.

The Commonwealth requests that the Court issue an order that statements Defendant made to Waltman after Wool arrived are not suppressed. Commonwealth argues that when a Defendant is subject to a custodial detention and not a custodial interrogation that statements are voluntarily given and cites Commonwealth v. Bracy, 461 A.2d 775, 501 Pa. 356 (Pa. 1983), and Commonwealth v. Yount, 314 A.2d 242, 455 Pa. 303 (Pa. 1974) for its position. In Bracy, the utterances of a schizophrenic woman to police before she was taken into custody were admissible into evidence. In Yount, statements Defendant made to police when he arrived at police station to admit to the crime were admissible. Neither of these two factual circumstances suggest Defendants were in custody at the time they made inculpatory statements.

Here, Defendant was detained by his employer to make a written statement, which he did.

At the conclusion of that interview the police arrived and Defendant continued to be interviewed/held in interview room while a search of his vehicle took place by PSP.

Before an individual is subjected to custodial interrogation, he must make a knowing and intelligent waiver of his privilege against self-incrimination and right to counsel after adequate warning as to those rights. Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966); Commonwealth v. Brown, 473 Pa. 562, 375 A.2d 1260 (1977).

The test for determining whether or not a person is in custody for Miranda purposes is whether he ". . . is physically deprived of 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 such interrogation." Commonwealth v. O'Shea, 456 Pa. 288, 292, 318 A.2d 713, 715 (1974), cert. denied 419 U.S. 1092, 95 S.Ct. 686, 42 L.Ed.2d 685 (1974). The test for custodial interrogation does not depend upon the subjective intent of the law enforcement officer interrogator.

It is of no significance that the Appellant was not arrested until [future date not date of interrogation]. [C]ustodial interrogation does not require that the police make a formal arrest, nor that the police intend to make an arrest. Rather, the test of custodial interrogation is whether the individual being interrogated reasonably believes his freedom of action is being restricted." Commonwealth v. Brown, 473 Pa. at 570, 375 A.2d at 1264 (citations omitted.)

Commonwealth v. Medley, 531 Pa. 279, 285-286 (Pa. 1992).

Defendant was interviewed for 4.25 hours. Defendant was interviewed in security room and escorted to bathroom and escorted off of property. Defendant was not at liberty to leave of his own volition. Not only would a reasonable person in that factual situation believe he/she were not free to go, the testimony and factual record corroborate Waltman's belief and Wool's testimony that Defendant was not free to go.

Defendant asserted his right to counsel if he were being accused of sexual abuse. The Court finds that the Defendant was subject to a custodial interrogation at the time Wool arrived on the scene and any statements he made written or oral to Waltman or Wool will be suppressed in accordance with this Court's Order of September 13, 2016.

BY THE COURT,

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Nancy L. Butts, P.J.

cc: Greg Moro, Esq. Defendant's Counsel  
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