

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA	
COMMONWEALTH	: No. CR-1685-2015
	:
vs.	:
	:
	: Omnibus Pretrial Motion
TIFFANY WEEVER,	:
Defendant	:

OPINION AND ORDER

Defendant is charged by Information filed on October 23, 2015, with two counts of driving under the influence of controlled substances and related traffic summaries.

On November 24, 2015, Defendant filed an Omnibus Pretrial Motion consisting of three Motions to Suppress. A hearing on the Omnibus Pretrial Motion was held on February 5, 2016.

Following the hearing, Defendant withdrew two of her suppression motions, acknowledging that there was reasonable suspicion and/or probable cause to initially stop her vehicle and following the stop, there was sufficient probable cause to arrest her for suspicion of driving under the influence of controlled substances. Defendant maintains her claim that, following her stop, she was subjected to custodial interrogation by members of the State Police and was not provided the requisite Miranda warnings. Accordingly, Defendant maintains that her statements made in response to her “unconstitutional interrogation” must be suppressed.

According to the Pennsylvania Supreme Court, “where a motion to suppress has been filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that the challenged evidence is admissible.” *Commonwealth v. Bryant*, 866 A.2d

1143, 1145 (Pa. Super. 2005) (quoting *Commonwealth v. DeWitt*, 608 A.2d 1030, 1031 (Pa. 1992)); see also PA. R. CRIM. P. 581(H) (“The Commonwealth shall have the burden of going forward with the evidence and of establishing that the challenged evidence was not obtained in violation of the defendant’s rights.”).

Miranda warnings must be given when a person is subjected to custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436 (1966); *Beckwith v. United States*, 425 U.S. 341, 344 (1976). “Pennsylvania’s test for custodial interrogation is whether the suspect is physically deprived of his freedom in any significant way or is placed in a situation in which he reasonably believes that his freedom of action of [sic] movement is restricted by such interrogation.” *Commonwealth v. Meyer*, 412 A.2d 517, 521 (Pa. 1980)(citations and internal quotation marks omitted). In other words, “police detentions become custodial when, under the totality of the circumstances, the conditions and/or duration of the detention become so coercive as to constitute the functional equivalent of an arrest.” *Commonwealth v. Mannion*, 725 A.2d 196, 200 (Pa. Super. 1999)(en banc); see also *Commonwealth v. Pakacki*, 587 Pa. 511, 901 A.2d 983, 987 (2006)(the ultimate inquiry for determining whether an individual is in custody for Miranda purpose is whether there was a formal arrest or restraint on movement of the degree associated with a formal arrest); *Commonwealth v. Ellis*, 541 Pa. 285, 662 A.2d 1043, 1047 n.3 (1995)(a custodial detention involves such coercive conditions as to constitute the functional equivalent of an arrest).

In determining whether a detention has become so coercive as to constitute the functional equivalent of an arrest, the court considers the following factors: “the basis for the detention; its length; its location; whether the suspect was transported against his or her

will, how far and why; whether restraints were used; whether the law enforcement officer showed, threatened or used force; and the investigative methods employed to confirm or dispel suspicions.” *Commonwealth v. Levanduski*, 907 A.2d 3, 24 (Pa. Super 2006)(en banc)(quoting *Mannion*, 725 A.2d at 200), appeal denied, 919 A.2d 955 (Pa. 2006).

The term “interrogation” under Miranda refers not only to express questioning, but also to any words or actions on the part of police (other than those normally attendant to arrest and custody) that the police should know are reasonable likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the subject, rather than the intent of the police.

Commonwealth v. DeJesus, 787 A.2d 394, 401 (Pa. 2001)(quoting *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980)).

Miranda rights should be given to a person in custody whenever he or she is “subjected to either express questioning or its functional equivalent.” *Commonwealth v. Williams*, 941 A.2d 14, 30 (Pa. Super. 2008) (quoting *Commonwealth v. Gaul*, 912 A.2d 252, 255 (Pa. 2006)). Therefore, interrogation “occurs where the police should know that their words or actions are reasonably likely to elicit an incriminating response form the suspect.” *Id.* (quoting *Commonwealth v. Ingram*, 814 A.2d 264, 271 (Pa. Super. 2002)).

According to the testimony provided during the suppression hearing, the Pennsylvania State Police were conducting what is known as a “saturation patrol” in the city of Williamsport on June 4, 2015. Sergeant James Warner was patrolling with Lieutenant Todd Weltmer. After noticing suspicious and improper driving by Defendant, they came in contact with her soon after she parked her vehicle in a “private parking lot.”

As Sergeant Warner and Lieutenant Weltmer approached Defendant’s vehicle, she got out of the vehicle and a conversation ensued. The law enforcement officers asked for

her driver's license and registration and talked to her "for quite a while." They ruled out that she was under the influence of alcohol, but her answers to many of the questions that they asked in an attempt to determine a cause for her manner of driving were "very vague" and "very suspicious."

Between five to ten minutes later, Trooper Adam Kirk arrived on the scene. Trooper Kirk has substantial training and experience in driving under the influence offenses.

Upon arriving, he looked into Defendant's vehicle and immediately detected the odor of burnt marijuana. He then approached Defendant who was seated in the front passenger seat with the door opened. He noticed that she had "blood shot and glassy eyes." He asked her when she last smoked marijuana. She replied "a few hours ago."

Defendant contends that at the time she was asked when she last smoked marijuana she was in custody and being interrogated. Defendant claims that she should have been provided Miranda warnings. The Commonwealth contends that Defendant was not in custody for Miranda purposes.

Clearly, Defendant was questioned. As well, Trooper Kirk knew that his question was reasonably likely to elicit an incriminating response from Defendant.

While Defendant was obviously detained, the circumstances of her detention were not so coercive as to constitute the functional equivalent of an arrest. She was not placed in handcuffs or any other types of restraints. She was not transported against her will. The police did not show, threaten or use force against her. Although she had to wait five or ten minutes for Trooper Kirk and his partner to arrive, she was simply asked questions while

she was standing near or seated in her vehicle in a parking lot.¹ Under these circumstances, no Miranda warnings were required.

ORDER

AND NOW, this ___ day of February 2016 following a hearing and argument, the Court DENIES Defendant's Motion to Suppress.

By The Court,

Marc F. Lovecchio, Judge

cc: Anthony Ciuca, Esquire (ADA)
Julian Allatt, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file

¹ With respect to the basis of the detention, the court is not sure why the troopers continued to detain Defendant after they concluded that she was not driving under the influence of alcohol. The court understands that they thought her answers were "vague" and "suspicious" but the court does not know what crime or crimes they thought she was committing to provide reasonable suspicion to continue to detain her until Trooper Kirk arrived. They may have still believed she was driving under the influence of some other substance or that she was having a medical issue, but such is not clear from the record. Nevertheless, the challenges to her detention were withdrawn and the circumstances surrounding her detention did not rise to the level of an arrest or the functional equivalent of an arrest.