

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 vs. : No. CR-1000-2018  
 :  
 MICHAEL PUCH, : Motion to Suppress  
 Defendant :

**OPINION AND ORDER**

The defendant is charged by Information filed on July 6, 2018 with criminal use of a communications facility. Before the Court is a motion to suppress filed by the defendant on August 31, 2018. A hearing and argument on the motion were held before the court on October 10, 2018.

The defendant submits that oral and written statements he made to the police after he was detained on April 18, 2018 must be suppressed because Defendant was subjected to custodial interrogation without being read his Miranda warnings.

By way of a factual background, on April 17, 2018, police were dispatched to an alleged robbery that occurred near Bubb's Lane and North Broad Street in Jersey Shore. The female 9-1-1 caller reported that a guy stole her purse, her belongings and \$200 cash and fled up the stairs of a particular residence on Bubb's Lane. Officer Justin Segura of the Tiadaghton Valley Regional Police Department (TRVD) obtained a search warrant for that residence. On April 18, 2018 at approximately 10:41 a.m., law enforcement officers executed a search warrant at 212.5 Bubb's Lane in Jersey Shore, Lycoming County, PA. Upon arriving at the residence, the police announced their presence and intent to enter. The search warrant was authorized based on the alleged robbery the night before. In executing the

search warrant, four to five patrol vehicles were present on the scene as well as six to eight law enforcement officers. Officer Fera of the TVRPD was the first officer to enter the premises. As he proceeded through the front door, the defendant was lying on the floor with an unidentified female. Officer Fera directed the defendant to put his hands behind his back. The defendant was handcuffed and then stood up. While being handcuffed, the defendant stated that he knew why the officers were there. Officer Fera explained to the defendant that he was being detained “because of the search warrant.”

Between five to ten minutes after the entry into the home, the defendant was escorted by Officer Fera outside of the residence, down the front stairs and then “handed off” to Officer Segura. Officer Segura and Chief Deremer were waiting in the street in front of Officer Segura’s patrol unit near the other units. The defendant, along with the unidentified female who was also handcuffed and brought outside, was told by Officer Segura to “wait here.”

Because Officer Segura was told what the defendant allegedly said to Officer Fera about knowing why the police were there, Officer Segura asked the defendant what the defendant knew about what happened last night. According to Officer Segura, he started a conversation with the defendant. The defendant initially responded that there was no robbery, no money and that the incident involved drugs.

Officer Segura followed up noting that he and the defendant were engaged in a conversation. He described the tone of the conversation as normal. Officer Segura noted that he only asked “open-ended questions”, not leading questions. The defendant made

numerous incriminating statements but was very willing to talk.

Officer Segura eventually asked the defendant if the defendant was willing to provide a written statement. The defendant agreed. He was uncuffed from behind his back and cuffed in the front of his body. He provided a written statement incriminating himself. He wrote the statement in the area where he was standing with the officers. He remained handcuffed and with the officers until approximately 12:40 p.m. approximately two hours after the entry into the house, and about one hour and forty-five minutes to one hour and fifty minutes after the defendant was originally handcuffed.

The Commonwealth concedes that the defendant was not Mirandized before the conversation between the defendant and Officer Segura. The Commonwealth argues that the defendant was not in custody, he was simply detained, and even if he was in custody, he was not subject to custodial interrogation.

“Statements made during custodial interrogation are presumptively involuntary unless the accused is first advised of [her] Miranda rights.” *Commonwealth v. (Hope) Williams*, 941 A.2d 14, 29 (Pa. Super. 2008). “Custodial interrogation is questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of [his] freedom of action in any significant way.” *Id.*

Whether a person is in custody for Miranda purposes depends upon whether the person is physically denied 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 the interrogation. Moreover, the test for custodial interrogation does not depend upon the subjective intent of the law enforcement officer interrogator. Rather, the focus is on whether the individual being interrogated reasonably believes his freedom of action is being restricted.

*Commonwealth v. (Clayton) Williams*, 539 Pa. 61, 74, 650 A.2d 420, 427 (1994)(internal citations omitted).

Whether a person is in custody for Miranda purpose depends upon the totality of the circumstances. Among the factors that the courts consider are: “the basis for the detention; the duration; the location; whether the suspect was transferred against his will, how far, and why; whether restraints were used; the show, threat or use of force; and the methods of investigation used to confirm or dispel suspicions.” *Commonwealth v. Peters*, 434 Pa. Super. 268, 642 A.2d 1126, 1130 (1994)(en banc), appeal denied, 538 Pa. 668, 649 A.2d 670 (1994); *Commonwealth v. Levanduski*, 907 A.2d 3, 24 (Pa. Super. 2006)(en banc), appeal denied, 591 Pa. 711, 919 A.2d 955 (2007).

While the defendant argues that being handcuffed is determinative as to the custody issue, the defendant is mistaken. The use of handcuffs to detain an individual does not necessarily escalate the encounter into a custodial arrest. There is no per se rule that an arrest occurs every time a police officer places an individual in handcuffs. *In Re: M. W.*, 2018 PA Super 233, 2018 WL 4060240, \*3 (August 27, 2018); see also *Commonwealth v. Carter*, 537 Pa. 233, 247, 643 A.2d 61, 67, n.2 (1994).

Nonetheless, using the totality of circumstances approach, the court finds that the detention was so coercive as to constitute a formal arrest or restraint on freedom of movement of the degree associated with the formal arrest.

In attempting over the decades, to balance the rights of individuals with the needs of law enforcement to effectively protect the public, the law has developed certain

maxims. Unfortunately, these maxims, while well intended, are not always easily applied in the real world. The parties can argue that their preferred label applies under any set of circumstances. Indeed, the interpretation of these maxims becomes very fact specific. As indicated above in this case, the court agrees with the defendant. The Commonwealth's argument is without merit. Characterizing the interaction between the defendant and the officers as a detention, primarily because Officer Fera told the defendant that he was being detained is similar to calling a horse a cow and then concluding that it is a cow.

The following facts clearly support that the defendant was in custody. Four to five patrol cars with six to eight law enforcement officers descended on the residence, announced their presence and entered (although legally) without consent. The defendant and another individual were lying on the floor when the police entered. The defendant was immediately told to put his hands behind his back. He was handcuffed, stood up and told he was being detained. After the police held the defendant inside the residence for five to ten minutes, he was escorted by one law enforcement officer outside of the residence, down the stairs and outside in the street to where he was "handed off" to two other officers. He was specifically told to wait there. He was waiting in the street, in the middle of the day, along with another handcuffed individual and two officers in front of their patrol car and near three to four other patrol cars. While he was waiting, officers were actively searching the residence. He was then specifically questioned about the incident that happened the prior evening. He was in handcuffs at the scene for almost two hours. While the defendant remained handcuffed in public, it was far from brief and was dominated by a police

atmosphere as a result of the number of police units.

After Officer Fera told the defendant he was being “detained,” the police kept the defendant inside the residence for five to ten minutes while the search was being conducted. Once the defendant was physically removed from the residence and handed off to other officers who were standing next to several squad cars, however, one would not believe that he was merely being “detained.” One would think that something was found during the search and he was being arrested because he was being removed from the residence and taken to the squad cars.

Alternatively, the Commonwealth argues that even if the defendant was in custody, he was not subjected to interrogation. The Commonwealth argues that not every statement made by an individual during a police encounter amounts to an interrogation.

*Miranda* warnings are required whenever a person in custody is subjected to either express questioning or its functional equivalent. *Id.* “Interrogation occurs where the police should know that their words or actions are reasonably likely to illicit an incriminating response from the suspect.” (*Hope*)*Williams*, 941 A.2d at 30 (citing *Commonwealth v. Ingram*, 814 A.2d 264, 261 (Pa. Super. 2002), *appeal denied*, 573 Pa. 671, 821 A.2d 586 (2003)).

The Commonwealth is indeed correct that volunteered or spontaneous utterances by an individual are admissible even without *Miranda* warnings. *Commonwealth v. Gaul*, 590 Pa. 175, 180, 912 A.2d 252, 255 (2006), *cert. denied*, 552 U.S. 939, 128 S. Ct. 43 (2007). However, the record clearly established that the defendant was subjected to

interrogation by Officer Segura, no matter how “conversational” the questioning was.

Officer Segura was told that the defendant claimed to know why the police were there. While the defendant was handcuffed and standing in the presence of at least two police officers and multiple squad cars, Officer Segura asked the defendant what he knew about what happened the prior evening. Regardless of the tone, this question clearly was reasonably likely to illicit an incriminating response from the defendant and Officer Segura should have known such. Continuing the “conversation” with open-ended questions did not negate the fact that the questions that were being asked were intended to illicit incriminating responses. Indeed, the defendant’s first response incriminated himself and the continued dialog continued to incriminate the defendant.

Accordingly, the court finds that the statements made during his custodial interrogation were involuntary because the defendant was not advised of his Miranda Rights.

### **ORDER**

**AND NOW**, this \_\_\_ day of October 2018, following a hearing and argument, Defendant’s Motion to Suppress is **GRANTED IN PART AND DENIED IN PART**. The Court finds that Defendant’s initial statement to Officer Fera to the effect that he knew why the officers were there was a spontaneous utterance that would be admissible even absent *Miranda* warnings. However, all of the other oral and written statements made by the defendant following him being placed in handcuffs are suppressed, as they were the product of custodial interrogation initiated by Officer Segura without first providing *Miranda* warnings.

By The Court,

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Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)  
Public Defender  
Gary Weber, Esquire (Lycoming Reporter)  
Work File