

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-185-2019**
 : **CR-223-2019**
 v. :
 :
 :
 NOAH SNYDER, : **MOTION TO SUPPRESS**
 Defendant :

OPINION AND ORDER

Under the above two dockets, Noah Snyder (Defendant) was charged on January 31, 2018 with three counts of Aggravated Assault,¹ two counts of Simple Assault,² two counts of Involuntary Deviate Sexual Intercourse,³ two counts of Aggravated Indecent Assault,⁴ one count of Sexual Assault,⁵ one count of Recklessly Endangering Another Person,⁶ one count of Terroristic Threats,⁷ and one count of Possessing an Instrument of a Crime.⁸ Defendant filed an Omnibus Pretrial Motion on May 2, 2019 requesting additional discovery,⁹ seeking to suppress any statements given by Defendant at an interview conducted on January 28, 2019, and reserving the right to file any additional pretrial motions. A hearing on the Motion was held by this Court on July 29, 2019. Both the Commonwealth and Defendant were then granted an opportunity to file briefs on the Motion and Defendant was additionally granted the opportunity to file a reply brief. Defendant filed his brief on August 7, 2019 and the Commonwealth filed its brief on August 22, 2019. Defendant filed his reply brief on August 29, 2019. Defendant

¹ 18 Pa. C.S. § 2702(a)(1), (4).

² 18 Pa. C.S. § 2701(a)(1), (3).

³ 18 Pa. C.S. § 3123(a)(1), (2).

⁴ 18 Pa. C.S. § 3125(a)(2), (3).

⁵ 18 Pa. C.S. § 3124.1.

⁶ 18 Pa. C.S. § 2705.

⁷ 18 Pa. C.S. § 2706(a).

⁸ 18 Pa. C.S. § 907(a).

⁹ The issue of discovery has since been resolved between the parties, so only the Motion to Suppress remains unresolved.

raises two issues in his Motion: whether Defendant was subject to a custodial interrogation and whether Defendant invoked his right to remain silent therefore requiring the interrogation to cease. Based on the following opinion this Court denies Defendant's Motion to Suppress Evidence in his Omnibus Pretrial Motion.

Background and Testimony¹⁰

Detective Raymond Kontz, III (Kontz) of the Muncy Borough of Police testified on behalf of the Commonwealth. The Commonwealth also submitted a video recording of the interview that occurred on January 28, 2019, as an exhibit. Based on this evidence the following was established.

After speaking with the alleged victim in this case and conferring with District Attorney Kenneth Osokow, Kontz on January 28, 2019 went to Muncy High School with the intention of interviewing Defendant regarding the allegations that make up the current charges in Defendant's cases. Defendant was called to the principal's office where Kontz and Officer Ernest Delp (Delp) were waiting. Defendant was then asked if he would come to the station and talk with the officers, but that he was not required to do so. Kontz also assured Defendant that it had nothing to do with his brother's ongoing matter. Defendant agreed and elected to ride over with the officers, but was given the option to walk to the station.¹¹ He was not patted down, searched, or handcuffed and upon arriving at the Muncy Police Station, Defendant, Kontz, Delp and Officer Brandy Perchinski (Perchinski) went into an empty interview room. All three officers were in plain clothes. Prior to beginning the interview none of the officer spoke with Defendant regarding the allegations. At the beginning of the interview Kontz informed

¹⁰ As the alleged facts supporting the underlying charges are irrelevant to the present Motion, those facts have not been included in this Opinion and Order.

¹¹ The police station is approximately a half mile from the school.

Defendant that if he was uncomfortable with Parchinski's presence she would be asked to leave and that she was strictly observing as a new officer. Commonwealth's Exhibit 1, Video 1 at :32. Defendant was informed that the door was unlocked. *Id.* at :37. Kontz stated

I didn't bring you here in a pair of handcuffs. Correct? I told you didn't have to come? You were free to leave at any time. Even after we start this conversation if at any time you decide you don't want to answer any more questions. All you got to say is I don't want to talk to you anymore and we will stop the interview. OK?

Id. at :39-:57.

Kontz again asked "you understand you are free to leave at any time?" which Defendant answered "absolutely." *Id.* at 1:11. Kontz then began interviewing Defendant regarding the allegations. At a point in the interview Defendant states "I'm just uncomfortable right now. Is it OK if I can just go home?" *Id.* at 27:55. Kontz then shuts off the camera. He testified at the hearing on the Motion that while the camera was off he told Defendant he did not believe him, a young girl should not be able to explain what she is explaining with that kind of detail, and that Kontz would be contacting the District Attorney's office. Kontz testified that he did not encroach, threaten, or show any use of force to Defendant during the time that the camera was off. Kontz stated that he opened the door for Defendant to leave and Defendant began to cry and stated that he changed his mind and wanted to talk further to Kontz. Kontz then turns the camera back on eleven minutes later. Commonwealth's Exhibit 2, Video 1 at :04. Kontz asked Defendant "Did I threaten you? Did I say I was going to beat your ass or you know do physical harm to you?" which Defendant responded "no you never threatened me." *Id.* at :30-:37. Kontz then asked "and this decision is being made by you?" and Defendant responded "OK." *Id.* at :38. Kontz explained to Defendant "you have to explain it to the camera. Last thing they heard was you didn't think you wanted to talk to me anymore. This is by your choice right? You want

to talk to me now. You want to clear those items up.” *Id.* at :57. Defendant stated “absolutely sir.” *Id.* at 1:08. Defendant then continues telling Kontz what happened in regards to the alleged victim. The interview lasted approximately an hour and a half and at the end Defendant was permitted to leave and go home.

Whether Defendant was Subject to Custodial Interrogation and Asserted his Right to Remain Silent

Defendant alleges that he was subject to a custodial interrogation and therefore Kontz was required to instruct him of his *Miranda* rights. Additionally, Defendant contends he invoked his right to remain silent and therefore Kontz was required to cease his interrogation. For an individual to be considered subject to a custodial interrogation he/she must be both in custody and subjected to an interrogation. *In re C.O.*, 84 A.3d 726, 731-32 (Pa. Super. 2014). Statements made during custodial interrogation are presumptively involuntary unless given *Miranda* warnings prior. *Commonwealth v. Williams*, 941 A.2d 14, 30 (Pa. Super. 2008). “[I]n evaluating whether *Miranda* warnings were necessary, a court must consider the totality of the circumstances.” *Commonwealth v. Gaul*, 912 A.2d 252, 255 (Pa. 2006).

When evaluating whether a defendant is in custody there are three categories of interactions between citizens and the police to consider:

The first is a “mere encounter” (or request for information) which need not be supported by any level of suspicions, but carries no official compulsion to stop or respond. The second, an “investigative detention,” must be supported by a reasonable suspicion; it subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute the functional equivalent of an arrest. Finally, an arrest or “custodial detention” must be supported by probable cause.

Commonwealth v. Gutierrez, 36 A.3d 1104, 1107 (Pa. Super. 2012).

The typical factors considered in determining whether an encounter is custodial are (1) the crime suspected and the grounds for suspicion, (2) the duration of the detention, (3) the location

and time of the detention, (4) whether the suspect was transported against his will and how far and why, (5) the method of detention, (6) the show, threat or use of force, and (7) the investigative methods used to confirm or dispel suspicions. *In Interest of S.J.*, 713 A.2d 45, 47 (Pa. 1998). “The fact that a police investigation has focused on a particular individual does not automatically trigger ‘custody,’ thus requiring Miranda warnings.” *Commonwealth v. Witmayer*, 144 A.3d 939, 948 (Pa. Super. 2016). Moreover the issuance of *Miranda* warnings does not automatically create a custodial detention. *Commonwealth v. Yandamuri*, 159 A.3d 503, 522 (Pa. 2017).

If a defendant is in custody he/she is not *per se* entitled to *Miranda* warning absent being subjected to an interrogation, which would then trigger the need for the warnings. An interrogation or its functional equivalent triggers *Miranda* warnings, which the Pennsylvania Supreme Court has defined as “questioning initiated by law enforcement officials . . . [or] any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” *Gaul*, 912 A.2d at 255 (internal citations omitted). “[T]he definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response.” *Rhode Island v. Innis*, 446 U.S. 291, 302 (1980) (emphasis in original). “Statements not made in response to custodial interrogation are classified as gratuitous and not subject to suppression for lack of *Miranda* warnings.” *Yandamuri*, 159 A.3d at 520 (citations omitted).

The Pennsylvania Superior Court recently decided the issue of custodial interrogation in a similar factual situation. *See Commonwealth v. Coleman*, 204 A.3d 1003 (Pa. Super. 2019). In *Coleman*, officers were investigating an arson and suspected the defendant. *Id.* at 1005.

Officers went to the defendant's house in plain clothes, identified themselves, and asked the defendant if he could go to the nearby police station to talk with the officers. *Id.* Officers offered the defendant a ride, which the defendant accepted. *Id.* The defendant was brought to the police station, but was not patted down, searched or handcuffed. *Id.* Upon arriving at the police station, the defendant was taken to an interview room and informed that he was free to leave at any time. *Id.* Officers activated a video recorder and read the defendant his *Miranda* warnings. *Id.* After about a minute of the officers questioning the defendant with regards to the arson he "explicitly, clearly, and unequivocally said he did not want to talk to the police." *Id.* The officers ignored his statement and continued speaking with him again explaining he was not in custody and was free to leave at any time. *Id.* at 1005-06. At the end of the interview officers arrested the defendant. *Id.* at 1006. The Pennsylvania Superior Court found based on these facts that the defendant was not in custody for *Miranda* purposes. *Id.* at 1008 ("Because he was essentially free to leave, chose not to leave, and continued to listen and then speak with the officers, notwithstanding his initial silence and invocation of his right to remain silent, Appellee's statements were 'gratuitous' under *Yandamuri*."). Additionally, the officers instructing the defendant of his *Miranda* rights did not automatically afford him those protections. *Id.*

Defendant argues that because Kontz had contacted the District Attorney prior to the interview, was focusing solely on Defendant's involvement, and interviewed the alleged victim prior to the interview, that this amounted to a custodial interrogation. Although those facts would be important when determining whether Defendant was being interrogated or not, it has little to no bearing on whether Defendant was actually in custody. *See Commonwealth v. Witmayer*, 144 A.3d 939, 948 (Pa. Super. 2016) ("The fact that a police investigation has

focused on a particular individual does not automatically trigger ‘custody,’ thus requiring Miranda warnings.”). When evaluating whether Defendant was subjected to a custodial interrogation in this case, the determinative issue is clearly whether Defendant was actually in custody. Defendant argues that the presence of three officers in a small interview room with the door closed, asking questions and making statements “clearly indicat[ing] that this Defendant [was] going to be arrested at some point” created a custodial interrogation. Defendant’s Memorandum of Law in Support of Omnibus Pretrial Motion 8/7/19, at 4-5. This Court disagrees and finds that Defendant was at no point in custody and the factual situation in the present case is almost indistinguishable from the facts presented in *Coleman*. At the outset Defendant was informed that the officers wished to speak with him at the police station, but told him that he was not required to do so. Defendant elected to ride with officers to the police station instead of walking as in *Coleman*. See *Coleman*, 204 A.3d at 1005. Additionally, as was pertinent to the Superior Court’s decision in *Coleman*, officers were in plain clothes, they did not show, use, or threaten force, Defendant was not patted down or searched, and Defendant was not restrained or handcuffed. *Id.* at 1008. At the beginning of the interview Defendant was informed the door was unlocked, he was free to leave at any time, and if he was uncomfortable with the female officer being present, due to the nature of the allegations, she would be asked to leave. Commonwealth’s Exhibit 2, Video 1 at :32-1:11. It was made abundantly clear to Defendant that he was not in custody and was free to leave, which during the interview Defendant exercised by stating that he no longer wished to speak with the officers and wanted to go home. *Id.* at 27:55.

Defendant contends at this point the interrogation was required to be terminated, but as in *Coleman* this contention is incorrect. Kontz turned off the camera and turned it back on

eleven minutes later. At the hearing on the Motion, Kontz explained that during that time he told Defendant he did not believe him, a young girl the alleged victim's age would not be able to explain the things that she did, and that he would be contacting the District Attorney's office. Kontz testified at this time Defendant stated that he wanted to continue speaking with him to clear things up. Before asking Defendant additional questions, Kontz asked Defendant if he was threatened by Kontz, if he was making this decision himself, and if he wanted to clear things up, which Defendant answered in the affirmative. Commonwealth's Exhibit 2, Video 1 at :04-1:08. As the Pennsylvania Superior Court determined in *Coleman*, Defendant was "free to leave, chose not to leave, and continued to listen and then speak with the officers, notwithstanding his initial silence and invocation of his right to remain silent." *Coleman*, 204 A.3d at 1008.

Conclusion

Defendant was not subjected to a custodial interrogation at any time since he was not in custody. Because Defendant was not subject to a custodial interrogation his invocation of his right to remain silent pursuant to *Miranda* was ineffective as his *Miranda* protections had not yet attached. All statements given by Defendant were gratuitous pursuant to *Yandamuri* and *Coleman* and therefore, Defendant's Motion to Suppress Evidence shall be denied.

ORDER

AND NOW, this 13th day of September, 2019, based upon the foregoing Opinion, Defendant's Omnibus Pretrial Motion to Suppress Evidence is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)
Robert Hoffa, Esquire

NLB/kp