IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	**CR-158-2019**
v.	:	
	:	
BRUCE STUART,	:	**OMNIBUS MOTION**
Defendant	:	

OPINION AND ORDER

Under the above docket, Bruce Stuart (Defendant) was arrested and charged on January 10, 2019 with Rape by Forcible Compulsion and a number of related offenses. Defendant filed an Omnibus Pretrial Motion on March 25, 2019 petitioning for Writ of Habeas Corpus on all sixty-six counts, seeking to suppress any statements given by Defendant, requesting additional discovery, and reserving the right to file any additional pretrial motions.[1] Hearings on the Motion were held by Senior Judge Kenneth D. Brown[2] on May 28, 2019 and November 7, 2019. Both the Commonwealth and Defendant were then granted an opportunity to file briefs on the Motion. Defendant filed his brief on March 30, 2020 and the Commonwealth filed its brief on April 15, 2020. Defendant raises a number of issues to be addressed in the present Opinion: Whether the Commonwealth established probable cause of "forcible compulsion" to satisfy a number of the charges; Whether the Commonwealth established probable cause of "lack of consent" to satisfy a number of the charges; Whether the Commonwealth established a *prima facie* case for Strangulation; Whether the Commonwealth established probable cause of "a mental disability" to satisfy a number of the charges; and Whether Defendant was subjected

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[1] Defendant also raised a Motion for Additional Discovery, which the parties have or intend to resolve amongst themselves so there is not an issue for the Court to weigh in on. *See* N.T. 5/28/19, at 3-4.

[2] Senior Judge Brown completed his service as senior judge on December 31, 2019.

to a custodial interrogation requiring the administering of his *Miranda* right and/or Defendant invoked his right to counsel such that the statements must be suppressed.

Background and Testimony

At the first hearing on May 28, 2019, Rebecca Belzer (Belzer), her brother Daniel Belzer (Daniel), her father John Belzer (John), and Trooper Matthew Miller (Miller) of the Pennsylvania State Police (PSP) testified on behalf of the Commonwealth. On November 7, 2019, Miller concluded his testimony and Dr. Scott Scotilla (Scotilla) testified for the Commonwealth. The Commonwealth also provided a copy of the transcript from the preliminary hearing at which Belzer testified, a video recording of the interview of Defendant that occurred on July 8, 2018, a transcript of that interview, and a copy of Scotilla's report as exhibits. Defendant submitted a General Offense Report from Dr. Jeremy Bennett as a defense exhibit. Based on this evidence the following was established.

Preliminary Hearing Testimony

Belzer testified at the preliminary hearing on January 28, 2019, her testimony established the following. Belzer did not attend high school, but finished "BLAST schooling" at the high school. P.H. 1/28/19, at 1, 15. She does not work and is unaware of the last time she had a job. *Id.* at 2. At one point she worked at Hope Enterprises before she was asked to leave. *Id.* at 16. As far as money is concerned, Belzer writes checks, takes them to the bank to cash them, and can keep track of her own money, but she is unaware of where the money comes from. *Id.* at 2, 14. Belzer used to pay rent to her sister and lived with her in Cogan Station for almost ten years. *Id.* at 2-3. Belzer can cook some meals, but not a lot. *Id.* at 14. She knows not to touch a hot stove, when to cross the road, and when to protect herself as well. *Id.* at 14-15. Belzer cannot drive, does not have a driver's license, and has never lived by herself. *Id.* at 19.

Defendant is Belzer's sister's husband and he lived in the residence when Belzer lived with her sister. *Id.* at 3. Belzer stated that her father got her and she moved out of her sister's house in July. *Id.* at 4. This occurred after she told her father that Defendant was having sex with her. *Id.* Belzer described the action Defendant had done to her as putting his penis in her "private part," which is "right in between [her] legs." *Id.* Defendant would also have her turn around and would have anal sex with her. *Id.* at 4-5. This happened on more than one occasion. *Id.* at 10. Sometimes Defendant would make her put his penis in her mouth. *Id.* at 6-7. Defendant would also lick Belzer's chest, despite her telling him not to. *Id.* at 7. Belzer did not want him to do these acts and told him to stop several times. *Id.* at 5. When she would tell him to stop, Defendant would tell her that he would get her out of the house if she did not want to do it. *Id.* On at least one occasion Defendant put his hands over Belzer's mouth. *Id.* at 7. When Defendant did this Belzer could not breathe, despite trying to and was gasping for air. *Id.* at 9. These actions occurred in Defendant's bedroom while Belzer's sister was at work. *Id.* at 7, 10. Belzer had never had someone do these acts to her prior to Defendant. *Id.* at 11.

May 28, 2019 Hearing

Daniel testified that Belzer has not held a job, has not been in a romantic relationship, has never lived on her own, and cannot drive. N.T. 5/28/19, at 5-7. Belzer has been collecting Social Security Income (SSI) since she was eighteen years old. *Id.* at 7-8. Some of the activities Belzer does on her own are laundry, washing the dishes, feeding the dogs, and gardening. *Id.* at 8. Additionally, she can cook thing in the microwave with supervision. *Id.* at 14. Daniel describes her as "fairly self-sufficient." *Id.* at 9. Belzer was in a group home for a period and enrolled in BLAST schooling, which she graduated from when she was twenty-one. *Id.* at 11-12.

John testified that he does not leave Belzer alone very often, as she gets scared if he leave the house for even brief chores. *Id.* at 18. Any shopping Belzer does is done with John, since Belzer cannot go out alone. *Id.* at 19. Belzer attempted living on her own once, but it was unsuccessful. *Id.* at 19-20. During the ten year period that Belzer lived with her sister and Defendant, there were no prior issues. *Id.* at 23.

Belzer testified that she worked a job at Hope Enterprises and that she gets money from SSI, but she does not know how much she has or gets. *Id.* at 25. Defendant would "have sex with [her] all the time and [she] used to tell [her sister]." *Id.* at 28. Belzer believed the first time this occurred would have been shortly after she first moved into the residence in 2008. *Id.* Belzer is currently working on simple math with John, but does not balance her own checkbook. *Id.* at 31. She feeds her dogs, does her own laundry, and she can cook hot dogs in the microwave. *Id.* at 31-33.

Miller testified that he applied for and was granted a search warrant for Defendant's residence on July 8, 2018. *Id.* at 36. Three troopers accompanied Miller to execute the search warrant in three marked police vehicles. *Id.* at 37. Miller and one trooper were in plain clothes, while the other two were in uniform, but all the troopers were armed. *Id.* During the search, Defendant was not placed in handcuffs and waited in the driveway with the two uniformed troopers. *Id.* at 38-39. After the completion of the search warrant, Miller asked Defendant if he was "willing to come down to the police station for an interview." *Id.* at 38. Defendant then drove himself to the police station for the interview. *Id.* at 39. Once he arrived, Defendant was shown from the lobby to the interview room, which is approximately twenty-five to fifty yards apart. *Id.* at 39. Defendant was not threatened or promised anything in return for his interview nor was he physically moved to the interview room, handcuffed, or had any of his property

taken from him. *Id.* at 40. Both Miller and another trooper, PSP Trooper Zach Martin (Martin), conducted the interview. *Id.* After the interview, Defendant was free to leave and he did leave of his own accord. *Id.* at 40-41. Defendant was not arrested until months later. *Id.* at 43.

Interview of Defendant

Commonwealth's Exhibit #2 is a DVD containing the recording of Defendant's interview by Miller and Martin. Additionally, Commonwealth's Exhibit #3 is a transcript of the video interview. At the beginning of the recording Defendant walks in by himself and Martin asks if he wants water. Commonwealth's Exhibit #2 at 0:00-0:12. Defendant is told that is he "not under arrest or anything you're free to leave at any time." Commonwealth's Exhibit #3 at 2. The conversation then goes towards Defendant's attorney:

> **Defendant:** My lawyer said that he'll be available to talk. He's in Scranton right now.
> **Miller:** Okay
> **Defendant:** Robert Hoffa. He says they know you down there. He says they know me down there and blah, blah and he says they'll talk to you when he gets back. He's got something down there. I watch too many cop shows. I'm sorry.
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> **Miller:** Okay. But you didn't talk to him today?
> **Defendant:** Hoffa? Yeah. I called him.
> **Miller:** Oh, okay.
> **Defendant:** And he said he's in Scranton.
> **Miller:** Okay. And what did he tell you on the phone?
> **Defendant:** He told me to tell them down there, he said, don't make a statement till I'm up to talk—to be with you when you talk to them.
> **Martin:** Okay. But that's up to you. If you don't want to—
> **Miller:** Well—
> **Defendant:** I just—I'm a little confused because this isn't the first time she's tried making trouble.
> **Miller:** Well, let me just explain, I mean, just keep in mind that this is your option; but, you know, we also only have one side of the story.
> **Defendant:** I understand that and that's—I don't know. There's so much stuff and it's, like I said, I don't—I don't know what to say any more because it can get twisted around and—

Id. at 2-4.

Defendant says this is not the first time she has accused him and that is why he reached out to his attorney originally. *Id.* at 4-5. In that conversation his attorney told him to "tell [police] to wait until [he] [got] back." *Id.* at 5. Miller asked Defendant if there was anything else he would like to say and he stated: "Nope. That's about it for right now." *Id.* at 6-7. Martin reassured Defendant he is not under arrest, that he is free to leave at any point, he has a right to an attorney, and having an attorney present. *Id.* at 7. Martin then states that

> [i]f that's what you want to do then we're gonna have to escort you out of here and as Trooper Miller said all we have is [Belzer]'s side of the story and if you didn't do anything wrong you shouldn't have any problem sitting here telling us what was going on; but, like I said, if you want a lawyer present then that's absolutely your right.

Id. at 7.

Defendant goes on to state in the morning he did not give Belzer her coffee as a form of punishment, so she got violent and angry. *Id.* at 7-8. Belzer started hitting him so he left and went to the neighbor's barn to help out with chores. *Id.* at 9. Defendant's home phone called him twice, which he figured it was Belzer, so he declined it. *Id.* at 22. When he returned Belzer was gone, so Defendant figured she called her father to get her. *Id.* Defendant washed his comforter last night and the sheets today after he got back from his neighbor's barn because the flea spray was used on it. *Id.* at 21-22. Defendant's wife has been out of town for the week and other than this morning, Belzer had been relatively well-behaved. *Id.* at 11-12.

Belzer has gotten out of control in the past, which is why she has a doctor. *Id.* at 13-14. Defendant stated this includes a history of accusing people of stuff when she gets upset. *Id.* at 14. He does not know where she comes up with the allegations and as far as Defendant knows Belzer has never had a boyfriend. *Id.* at 15-16. Belzer lived at Hope Enterprise, then with her

father, and now has lived with him and his wife for ten years. *Id.* at 16-17. Belzer did sleep in the cellar, until she cracked her pelvis in the past year or two and now she sleeps on the recliner in the living room. *Id.* at 17-18. Defendant and his wife had been sleeping in separate bedrooms since the grandkids moved in approximately two months prior. *Id.* at 19. Belzer did not stay in Defendant's bedroom and did not go in there other than to bring in and fold his laundry. *Id.* at 20-21.

When Defendant brought up his attorney again, Martin stated "[y]ou mentioned the lawyer again, [Defendant]. Did you want to keep talking about this or no?" *Id.* at 24. To which Defendant answered no. *Id.* Martin asked if Defendant would be willing to take a polygraph, which Defendant stated not until he spoke with his attorney. *Id.* Defendant further stated he was nervous and scared of cops. *Id.* at 25-26. Miller showed Defendant the affidavit of probable cause for the search warrant for Defendant to look over. *Id.* at 29. Defendant stated the allegations were ridiculous. *Id.* Defendant said the brush burn on Belzer's knee could be explained because she did fall on her knee. *Id.* He then also said that he did her with a paddle after she started hitting him, but he only hit her once. *Id.* Miller told Defendant that they take cooperation into consideration and that this was his only opportunity for a deal. *Id.* at 31-33. Defendant then terminated the conversation and stated that he wanted to speak with his attorney. *Id.* at 34.

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Miller testified that prior to Defendant's interview a search warrant had been executed, which Defendant was present for. N.T. 11/7/18, at 6-7. Defendant was asked by Miller if he would come down to the station to "give [Miller] his side of the story." *Id.* at 7-8. Miller did not inform Defendant of his right to an attorney and Defendant drove to the station separately. *Id.*

at 8. Miller was made aware that Defendant had spoken with defense counsel at the beginning of the interview. *Id.* at 10-11. The door was open and unimpeded and Defendant was free to leave at any time. *Id.* at 12-13. Defendant was not interviewed after this interaction. *Id.* at 15.

Defense counsel objected to Scotilla's admittance as an expert in the field of psychology, because he was not certified by the American Board of Professional Psychology. *Id.* at 22-23. The objection was overruled by Senior Judge Brown, as Scotilla has done hundreds of competency evaluations, has been certified as an expert in a number of jurisdiction, and has testified as an expert in the field on multiple occasions in Lycoming County. *Id.* at 23. Scotilla testified based upon his the findings, which were detailed in his report. *Id.* at 24; Commonwealth's Exhibit #4. The purpose of the evaluation was determine Belzer ability to consent to sexual intercourse. N.T. 11/7/18, at 24. Belzer's educational background noted a third grade reading level and fourth grade spelling and arithmetic levels with limited social intelligence. *Id.* at 25. Scotilla attempted to evaluate Belzer's IQ, but due to her frustrations was unable to get an accurate evaluation. *Id.* at 28-29. He stated that the original finding of a 70 IQ was deemed accurate based on his observations, although IQ is no longer a dispositive factor in a finding of intellectual disability. *Id.*; Commonwealth's Exhibit #4, at 6. Through review of Belzer's history and his own testing, Scotilla reached the conclusion that Belzer has a moderate intellectual disability and is not capable of consenting to sexual activity or sexual intercourse. *Id.* at 30-31. His opinion includes the span of the allegation from 2009-2018 with a reasonable degree of medical certainty. *Id.* at 33-34. In reviewing the Pennsylvania Suggested Standard Criminal Jury Instructions, Scotilla agrees there is no specific definition for mental disability. *Id.* at 38. Scotilla's conclusion was based on his psychological diagnosis of intellectual disability of a moderate degree, not an applicable legal standard. *Id.* at 38. From the records

there is evidence that Belzer is violent and more aggressive when not on the proper medication. *Id.* at 40-41. Scotilla also admitted that an individual with Belzer's diagnosis would be susceptible to suggestive behavior. *Id.* at 44.

Petition for Writ of Habeas Corpus

Defendant contends that a *prima facie* showing has not been established to demonstrate the element of forcible compulsion for a number of counts, the element of lack of consent for a number of the counts, the charge of strangulation, and the element that Belzer has a mental disability for a number of counts.

At the pretrial stage of a criminal prosecution, the Commonwealth is required to put forth a *prima facie* showing of a defendant's guilt. *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003). A *prima facie* case exists when the Commonwealth "produces evidence of each of the material elements of the crime charged and establishes sufficient probable cause to warrant the belief that the accused committed the offense." *Id.* The evidence presented need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to go to the jury. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2003). When evaluating the evidence "[i]nferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case." *Id.* However, "suspicion and conjecture are not evidence and are unacceptable as such. Where the Commonwealth's case relies solely upon a tenuous inference to establish a material element of the charge, it has failed to meet its burden of showing that the crime charged was committed." *Commonwealth v. Holston*, 211 A.3d 1264, 1269 (Pa. Super. 2019).

Forcible Compulsion

Forcible compulsion is defined as "[c]ompulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied." 18 Pa. C.S. § 3101. To satisfy the element of forcible compulsion there has to be more than a showing of mere lack of consent. *Commonwealth v. Gonzalez*, 109 A.3d 711, 721 (Pa. Super. 2015). The degree of force required is relative and depends upon the facts and particular circumstances of an individual case. *Commonwealth v. Eckrote*, 12 A.3d 383, 387 (Pa. Super. 2010). Forcible compulsion is not limited to physical force and "includes not only physical force or violence but also moral, psychological or intellectual force used to compel a person to engage in" sexual acts. *Commonwealth v. Rhodes*, 510 A.2d 1217, 1226 (Pa. 1986). A list of factors to take into consideration include:

> respective ages of the victim and the accused, the respective mental and physical conditions of the victim and the accused, the atmosphere and physical setting in which the incident was alleged to have taken place, the extent to which the accused may have been in a position of authority, domination or custodial control over the victim, and whether the victim was under duress.

Id.

In the present case, although Defendant and Belzer are of similar age, there is a significant gap in mental capacity. Belzer, who is moderately mentally disabled, cannot live on her own, can only cook food in the microwave, and cannot drive. The allegations occurred in Defendant's reside where Belzer resided for ten years. Based on Belzer's testimony, Defendant threatened to have her kicked out of the house if she did not commit the acts. P.H. 1/28/19, at 5. This came from a person that was in a position of caregiver, who also had the authority to punish Belzer if she did not behave. Defendant was in a position of power over Belzer, who was intellectually deficient, to the extent it created an imbalance, such that telling her he would

have her removed from the house was sufficient to establish a *prima facie* showing of forcible compulsion.

Lack of Consent

Although Defendant seemingly abandons his lack of consent argument in his brief, the Court will address it briefly. Some of the crimes of which Defendant is charged, Aggravated Indecent Assault, Sexual Assault, and Indecent Assault, require the element lack of consent. *See* 18 Pa. C.S. § 3125(a)(1); 18 Pa. C.S. § 3124.1; 18 Pa. C.S. § 3126(a)(1). It is clear from the transcript of the preliminary hearing that the *prima facie* burden establishing lack of consent has been met. Belzer testified that Defendant put his penis in her vagina, anus, and mouth. P.H. 1/28/19, at 5-7. She stated when this occurred she told Defendant she did not want to do these acts and to stop on several occasions. *Id.* Belzer also testified that he would lick her chest, despite her telling him not to. *Id.* at 7.

Strangulation

A person commits the crime of Strangulation "if the person knowingly or intentionally impedes the breathing or circulation of the blood of another person by (1) applying pressure to the throat or neck; or (2) blocking the nose and mouth of the person." 18 Pa. C.S. § 2718(a). Evidence of a physical injury is not required to satisfy the crime. 18 Pa. C.S. § 2718(b). Belzer testified that Defendant covered her mouth. P.H. 1/28/19, at 7. Additionally, she stated that when Defendant covered her mouth she could not breathe and she was gasping for air. *Id.* at 9. Therefore, a *prima facie* case of Strangulation has been established.

Mental Disability

Although a number of charges with which Defendant is charged contain the element mental disability, nowhere in the statutes and chapter did legislators specifically define the

term. That being said, the model jury instructions for all of the charges use a variation of: "so mentally disabled as to be incapable of consent--in other words, so mentally disabled as to be unable to understand the nature of sexual intercourse and to exercise reasonable judgment" to clarify for the jurors what needs to be found. PA-JICRIM 15.3123B (portion of jury instruction for Involuntary Deviate Sexual Intercourse). Courts have found that the evidence does not needs to be demonstrated by an expert to show mental disability. *See Commonwealth v. Provenzano*, 50 A.3d 148, 152 (Pa. Super. 20012) (victim's life skills teacher's testimony was sufficient to satisfy the element of mental disability); *Commonwealth v. Crosby*, 791 A.2d 366, 370 (Pa. Super. 2002) (victim's mother testified as to daughter's brain injury and limited mental capacity to satisfy element of mental disability). When a victim "despite her chronological age, was operating on a grade school level and had a reduced mental capacity" a mental disability to the extent the victim was unable to consent was established. *Provenzano*, 50 A.3d at 152.

This Court finds the Pennsylvania Suggested Jury Instructions informative in its decision. The test this Court is to apply to decide whether the Commonwealth has met its *prima facie* burden is whether enough evidence was submitted such that, if at trial, it would be appropriate to submit it to a jury. *Marti*, 779 A.2d at 1180. Therefore the determination is whether Belzer's mental disability was to such a degree that it rendered her unable to understand the nature of the acts committed and her ability to exercise reasonable judgment. While this Court agrees with Defendant that case law establishes a case-by-case basis, as opposed to a bright line test, it disagrees that the Commonwealth has failed to provide sufficient evidence.

Belzer testified that she attended alternative schooling, she can cook some meals, she knows not to touch the stove, and when to cross the road. P.H. 1/28/19, at 2, 14-15. She also cannot drive and cannot lived by herself. *Id.* at 19. Belzer is currently is working on simple math with John, is not sure how much money she has, and does not balance her checking account. N.T. 5/28/19, at 25, 31. Daniel testified that Belzer has collected SSI since she was eighteen and does some menial tasks such as laundry, dishes, and feeding the animals, but cannot hold a job. *Id.* at 5-8. Although Daniel describes her as "fairly self-sufficient," she can only cook things in the microwave with supervision and her father testified that he cannot leave her alone for extended periods of time. *Id.* at 9, 14, 18. Scotilla testified that Belzer is at a third and fourth grade educational level with an IQ of approximately 70. N.T. 11/7/18, at 25; Commonwealth's Exhibit #4, at 4. Based on Scotilla's evaluation he found that Belzer was moderately intellectually disabled and therefore incapable of consenting to any form of sexual activity and/or sexual intercourse. N.T. 11/7/18, at 30-31. Although Defendant argues that Scotilla's testimony should not be credited as he is not certified by the American Board of Professional Psychology, this Court agrees with Judge Brown's original finding that lack of specific certification goes to the weight of the evidence not its admissibility, which is not at issue in this stage of the proceedings. *See id.* at 23. Based on these facts presented, the Court believes the Commonwealth has presented enough evidence to allow a jury to determine that Belzer is "so mentally disabled as to be incapable of consent--in other words, so mentally disabled as to be unable to understand the nature of sexual intercourse and to exercise reasonable judgment." PA-JICRIM 15.3123B.

Motion to Suppress Evidence

Defendant contends any statements he made should be suppressed as he had invoked his right to counsel and/or the officers did not properly apprise him of his *Miranda* warnings. The right to counsel guaranteed under the Sixth Amendment "attaches at critical stages only after the government initiates adversarial judicial proceedings." *Commonwealth v. Bland*, 115 A.3d 854, 855 (Pa. 2015). Although not specifically indicated in the Constitution, the United States Supreme Court has found a Fifth Amendment right to counsel is impliedly derived from right against self-incrimination. *Id.*; *see also Miranda v. Arizona*, 384 U.S. 436, 444 (1966). Once a defendant invokes such a right to counsel, any interrogation must cease. *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981). The Pennsylvania Supreme Court has held that such a right only attaches in conjunction with a custodial interrogation. *Bland*, 115 A.3d at 863 ("to require a suspension of questioning by law enforcement officials on pain of an exclusionary remedy, an invocation of the *Miranda*-based right to counsel must be made upon or after actual or imminent commencement of in-custody interrogation").

Defendant's contention that he asserted his right to counsel is only relevant if Defendant was subject to a custodial interrogation. As stated above, Defendant is not entitled to invoke a right, which has not yet attached and use such a premature invocation to shield himself from statements he made voluntarily. If Defendant was subject to a custodial interrogation, both his invocation of right to counsel and the fact that officers failed to properly apprise him of his *Miranda* warnings, would entitle him to suppression of his statements.

When an individual is subject to a custodial interrogation, he must be informed of his right to remain silent, that anything he says can be used against him in a court of law, that he has the right to an attorney, and that if he cannot afford an attorney one will be appointed at no

cost to him. *Miranda*, 384 U.S. at 478–79. A custodial interrogation is defined by a two part inquiry, the circumstances surrounding the interrogation and whether, given those circumstances a reasonable person would have felt free to terminate the interaction and leave. *Commonwealth v. Yandamuri*, 159 A.3d 503, 520 (Pa. 2017). Whether an interrogation is custodial must be determined by a totality of the circumstances. *Id.* An officer's statement to a defendant that he is free to leave does not *per se* mean that he is not subject to a custodial interrogation, but it does weigh into the totality of the circumstances. *Id.* at 520-21. Not all interactions with police are custodial in nature, contrary an interaction will be found to be custodial only when it so restricts a defendant's movements such that it is the functional equivalent of an arrest. *Commonwealth v. Pakacki*, 901 A.3d 983, 988 (Pa. 2006) (a defendant being patted down is not subject to a custodial interrogation, as presumably he would be free to leave after the brief detention); *see also Commonwealth v. Coleman*, 204 A.3d 1003, 1008 (Pa. Super. 2019) (the defendant was not in custody when he voluntarily accompanied officers to the station, the officer did not show, use, or threaten force, and the defendant was told he was free to leave at any time).

Defendant contends that because the troopers had already conducted a search of the residence, contacted the District Attorney's office, and Defendant had no prior contact with law enforcement, he was subjected to a custodial interrogation. This Court disagrees with Defendant and finds that he was not subjected to a custodial interrogation. First, Defendant concedes that no physical threats or show of force was used by the troopers. *See* Defendant's Memorandum of Law in Support of Omnibus Pretrial Motion 3/30/20, at 9. Next, Miller testified that during the search of Defendant's residence he was not restrained and at its conclusion he asked Defendant if he was "willing to come down to the police station for an

interview." N.T. 5/28/19, at 38-39. Defendant then drove himself to the station. *Id.* at 39. At the interview, although Defendant told troopers he had spoken to defense counsel, he was informed on several occasions throughout the interview he was free to leave and was not under arrest. *See* Commonwealth's Exhibit #3 at 2, 7, 24. Finally, at the conclusion of the interview Defendant exercised that right and did walk away without being stopped or arrested by officers. *Id.* at 34. Defendant telling troopers that defense counsel advised him not to talk to them, does not transform the interaction into a custodial interrogation. Defendant was free to follow his counsel's advice, he was not restrained, he came and left of his own accord, and he was informed on numerous occasions that he was free to leave. Therefore, there are no facts here to solidify Defendant's contention that he was subjected to a custodial interrogation and his Motion to Suppress will be denied.

Conclusion

The Commonwealth presented sufficient evidence to establish a *prima facie* case for the elements of forcible compulsion, lack of consent, and mental disability to satisfy a number of the charges against Defendant. Additionally, the Commonwealth presented enough evidence to establish a *prima facie* case for the charge of Strangulation. Therefore, Defendant's Petition for Habeas Corpus is denied. Lastly, Defendant's rights to counsel had not yet attached as Defendant was not subject to a custodial interrogation. Likewise, as Defendant was not subject to a custodial interrogation, he was also not entitled to *Miranda* warnings. Therefore, Defendant's statements will not be suppressed.

ORDER

AND NOW, this 5th day of June, 2020, based upon the foregoing Opinion, Defendant's Omnibus Pretrial Motion is hereby **DENIED.**

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)
Robert Hoffa, Esquire

NLB/kp