

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : CP-41-CR-324-2020
 v. :
 :
 JASON FORSYTH, :
 Defendant : MOTION TO SUPPRESS
 :

OPINION AND ORDER

Jason Forsyth (Defendant) was charged on January 7, 2020 with Murder of the Third Degree¹, Aggravated Assault², Involuntary Manslaughter³ and other related offenses. The charges arise from the death of 19-month-old, Ky'Mani Moore, whose autopsy reports indicated that the cause of death was blunt force trauma. Defendant filed this timely Omnibus Pretrial Motion on August 31, 2020. This Court held a hearing on the motion on October 12, 2020.

In his Pretrial Motion, Defendant raises two issues for consideration. First, Defendant asserts that the Commonwealth failed to meet the *prima facie* burden for each element of the charges against Defendant at the preliminary hearing and thus, all charges should be dismissed. Second, Defendant was not given his Miranda warnings prior to two (2) interviews with police regarding the deceased child's cause of death and as a result, he argues the statements he made were a violation of his constitutional rights and must be suppressed.

Background and Testimony

Sergeant Chris Kriner (Kriner) of the Old Lycoming Township Police Department testified on behalf of the Commonwealth and video recordings of Defendant's interviews with Kriner were shown. On the morning of December 21, 2018, emergency medical services and

¹ 18 Pa.C.S.A. § 2502.

² 18 Pa.C.S.A. § 2702(A)(9).

³ 18 Pa.C.S.A. § 2504.

police were dispatched to Defendant's residence that he shared with Alyssa Carpenter (Carpenter), his live-in girlfriend, and her son, Ky'Mani Moore (Moore). Carpenter had called 911 after Defendant found Moore unresponsive. Medics attempted to resuscitate Moore upon their arrival and then brought him to Williamsport Regional Hospital. Unfortunately, despite the efforts of emergency services and hospital staff, Moore was pronounced dead several hours later. The following autopsy report indicated that the cause of Moore's death was blunt force trauma, namely to the abdomen and head, with a number of chronic injuries such as two (2) broken ribs and a broken finger.

At the preliminary hearing on February 26, 2020, the Commonwealth presented testimony from Carpenter, Kriner, and Dr. Pat Bruno. Carpenter testified that she and Defendant were the only ones to have contact with the child the day prior to his death and that she had never struck the child. Dr. Bruno's testimony was an interpretation of the autopsy report created by Dr. Bollinger. Dr. Bruno stated that the child's injuries were the result of blunt force trauma or aggressive shaking and that the injuries causing Moore's death would not have occurred more than 12 hours prior to the child's passing. All charges were bound over following the preliminary hearing. Following Moore's death, Kriner conducted two separate interviews with Defendant, one on January 5, 2019, and one on May 28, 2019. At each of these interviews, Defendant was questioned without counsel. On the interview conducted on May 29, 2019, Defendant was Mirandized prior to taking a polygraph examination, but was not given these warnings prior to the initial interview that day or the one conducted in January.

Analysis

The first issue presented is whether the Commonwealth established their *prima facie* burden at the preliminary hearing for each element of the charges listed against Defendant. At

the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. Commonwealth v. McBride, 595 A.2d 589, 591 (Pa. 1991). A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed the offense. Id. Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. Commonwealth v. Marti, 779 A.2d 1177, 1180 (Pa. Super. 2001). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. Commonwealth v. Dantzler, 135 A.3d 1109, 1112 (Pa. Super. 2016). “The Commonwealth may sustain its burden of proving every element of the crime...by means of wholly circumstantial evidence.” Commonwealth v. DiStefano, 782 A.2d 574, 582 (Pa. Super. 2001); *see also* Commonwealth v. Jones, 874 A.2d 108, 120 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. Commonwealth v. Wojdak, 466 A.2d 991, 997 (Pa. 1983); *see also* Commonwealth v. Kohlie, 811 A.2d 1010, 1014 (Pa. Super. 2002). Moreover, “inferences 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.” Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003).

Defendant argues that the Commonwealth did not meet this *prima facie* burden. Defendant claims that the testimony presented at the preliminary hearing by Dr. Bruno failed to show that Moore's death must have occurred by non-accidental means and that, at most, the

Commonwealth was only able to show that the injuries the child sustained could not have occurred “if you pushed a child away from you placidly.” N.T. 2/26/20, at 27. Defendant further avers that the testimony between Dr. Bruno and Carpenter are inconsistent, namely that Dr. Bruno indicated that to cause the injuries found on the child, an adult watching these behaviors would “cringe” but Carpenter testified that she neither heard nor saw Defendant being violent towards the child. N.T. 2/26/20, at 38, 54-55. Defendant argues that suspicion and conjecture are not to be considered proper evidence and believes that this is what the Commonwealth presented at the preliminary hearing. Commonwealth v. Hendricks, 927 A.2d 289, 291 (Pa. Super. 2007). For this reason, Defendant asks that all charges against him be dismissed.

Defendant’s argument is an oversimplification of the evidence presented at the preliminary hearing. Dr. Bruno testified that the child’s autopsy report indicated that he had blood hemorrhaging in his abdomen of approximately one-fifth of the total blood found in the body of a child his age and size and that, as a result of this extensive hemorrhaging, death would have occurred “within hours of the injury.” N.T. 2/26/20, at 27. The injuries causing the deadly swelling in the child’s brain as well as the injuries to the abdomen could have resulted from “shaking, an impact due to a blunt force or both.” Id. at 28. Carpenter testified that she and Defendant were the only ones around the child within twenty-four (24) hours prior to Moore’s death. Id. at 42. Testimony also indicated that Defendant put the child to bed the night before he was found unresponsive and Defendant tended to Moore the morning of the child’s death. Id. at 42, 44, 51. Carpenter testified that Defendant went to bed after her the day before the child’s passing and that she does not often wake up in the middle of the night after she has fallen asleep. Id. at 54, 56-57. Defendant’s assertion that the Commonwealth failed to prove

that the injuries to the child were caused on purpose and his reliance on the fact that Carpenter did not hear or see anything within the window of time the injuries were likely caused do not address the full testimonial evidence presented. It is clear from the autopsy and Dr. Bruno's expert interpretation that the child suffered blunt force trauma or some other form of violence sufficient to cause death. In light of all the evidence presented at the preliminary hearing viewed in the Commonwealth's favor as is required, this Court finds that the Commonwealth satisfied its *prima facie* burden for all charges against Defendant and the charges will not be dismissed.

The second issue presented is whether Defendant was entitled to have a reading of his Miranda rights prior to being interviewed by police on three different occasions. "[P]rosecution may not use statements...stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." Miranda v. Arizona, 384 U.S. 436, 444 (1966). The United States Supreme Court has defined custodial interrogation as "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.; *see also In re C.O.*, 84 A.3d 726, 731-32 (Pa. Super. 2014). "[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). 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). For Miranda

purposes, a person is considered to be in custody when “the officer’s show of authority leads the person to believe that she was not free to decline the officer’s request, or otherwise terminate the encounter.” Commonwealth v. McCarthy, 820 A.2d 757, 760 (Pa. Super. 2003); *see also* Commonwealth v. Witherspoon, 756 A.2d 677 (Pa. Super. 2000). “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). An interrogation occurs, for purposes of Miranda, when officers “should know that their words or actions are reasonably likely to elicit an incriminating response from the suspect.” Commonwealth v. Clinton, 905 A.2d 1026, 1032 (Pa. Super. 2006) (internal emphasis omitted). In contrast, remarks which are spontaneous, unsolicited, and/or voluntary are not subject to suppression for lack of Miranda warnings. Commonwealth v. Fisher, 769 A.2d 1116, 1126 (Pa. 2001).

In both interviews with Defendant, Kriner instructed Defendant that there was audio and visual recording and that the door was shut for privacy reasons. N.T. 1/5/19, at 2; N.T. 5/28/19, at 2. Additionally, Kriner told Defendant that he was to indicate when he did not want to answer a question. N.T. 5/28/19, at 2. Both interviews were relatively similar in that they started with questions about Defendant’s biographical information and a rough timeline of events leading up to the child’s death, then continued on to questions about Defendant’s drug use, which eventually lead to direct questions asking if Defendant had ever abused the child. The Defendant does not argue that the biographical information required Miranda warnings, but does maintain that Defendant was in a custodial interrogation for purposes of Miranda as soon as questions were asked about Defendant’s drug use. In particular, Defendant states that the “confessions” of drug use from Defendant changed the tone of the interview to create a

higher level of compulsion beyond a mere custodial setting and Defendant reasonably felt that he was not able to leave or refuse to answer Kriner's questions. On the other hand, the Commonwealth argues that Defendant voluntarily came to the police station for each interview, Defendant was not handcuffed or restrained, each interview lasted approximately one (1) hour or less, Defendant could have stopped the interview whenever he wanted and left, the conditions of the interview room did not rise to the level of being coercive enough to constitute a formal arrest, and Defendant left of his own accord following each interaction with police. The Commonwealth also asserts that, even though Defendant admitted to drug use, he was not arrested or charged, and because of this, a reasonable person would conclude they were not under arrest. This Court agrees with the Commonwealth on this issue for the following reasons.

It is clear that the Defendant was not in a custodial interrogation during the initial questioning of both interviews where the topics of discussion were the Defendant's biographical information and a general timeline of events. Additionally, this Court agrees with the Commonwealth's argument that a reasonable person under these circumstances would not think they were under arrest or could not terminate the interview at any time. The facts of this case are very similar to those found in Commonwealth v. Witmayer, where the defendant voluntarily went down to the police station for an interview, was instructed he was not under arrest and could leave at any time, and the interview consisted of asking Witmayer direct questions regarding the sexual abuse of a minor. Commonwealth v. Witmayer, 144 A.3d 939, 949 (Pa. Super. 2016). In this case, Defendant faced a similar interviews than the one in Witmayer. Defendant was told at each interview that the only reason the door was closed was to allow for privacy and that he could refuse to answer any question. Defendant was not restrained while in the interview room and each interview did not last more than an hour. While

it may have made Defendant uncomfortable to be asked about his drug use or to discuss the results of Moore's autopsy, Defendant was still free to leave at any time, particularly since he voluntarily came to both interviews, had means to drive himself home, and clearly understood the questions being asked. Therefore, the Defendant was not subject to a custodial interrogation and a reading of his Miranda rights prior to both interviews was not required.

Conclusion

The Court finds that the Commonwealth has satisfied its *prima facie* burden at the preliminary hearing and no charges against Defendant will be dismissed. This Court also finds that at both interviews, the Defendant was not subjected to a custodial interrogation and his Miranda rights were not required. Therefore, none of Defendant's answers from both interviews shall be suppressed following that point in questioning.

ORDER

AND NOW, this 19th day of January, 2021, based upon the foregoing Opinion, both the Defendant's Motion to Dismiss Charges and Motion to Suppress Evidence are **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)
Matthew Welickovitch, Esq.

NLB/jmh