

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CP-41-CR-118-2021**  
 v. :  
 :  
 **TYREE HOLLY,** : **OMNIBUS MOTION**  
 **Defendant** :

**OPINION AND ORDER**

Tyree Holly (Defendant) was charged with Statutory Sexual Assault<sup>1</sup>, Indecent Assault<sup>2</sup>, Corruption of Minors<sup>3</sup>, Terroristic Threats<sup>4</sup>, Endangering Welfare of Children<sup>5</sup>, and Involuntary Deviate Sexual Intercourse<sup>6</sup>. The charges arise from a report to police that a fifteen-year-old minor, A.H., had become pregnant after allegedly having sexual intercourse with the Defendant. Defendant filed a timely Omnibus Pretrial Motion on April 28, 2021. This Court held a hearing on the motion on June 6, 2021. In his Omnibus motion, Defendant first argues that the police violated his asserted right to counsel during an interview conducted on January 14, 2021 and that all statements from the interview should be suppressed. Defendant further avers that his eventual waiver of his *Miranda* rights at said interview was not voluntary and therefore not a valid waiver so all statements from the interview should be suppressed. Finally, Defendant asserts that his statements during the interview were also involuntary and should be suppressed.

**Background and Testimony**

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<sup>1</sup> 18 Pa.C.S. § 3122.1(a)(2).

<sup>2</sup> 18 Pa.C.S. § 3126(a)(8).

<sup>3</sup> 18 Pa.C.S. § 6301(a)(1).

<sup>4</sup> 18 Pa.C.S. § 2706(a)(1).

<sup>5</sup> 18 Pa.C.S. § 4304(a)(1).

<sup>6</sup> 18 Pa.C.S. § 3123(a)(7).

Detective William Weber (Weber) and Detective Loretta Clark (Clark) of the Lycoming County District Attorney's Office testified on behalf of the Commonwealth at the hearing on this motion. Weber and Clark both testified that they were involved in an investigation into a sexual assault regarding the allegations from A.H., a minor, that she had sexual intercourse with Defendant and subsequently gotten pregnant. An interview took place with Defendant on January 14, 2021. At the time of the interview, Weber and Clark did not believe that Defendant was under the influence of alcohol or illegal substances. They also testified that Defendant was cooperative and seemed to comprehend what was happening because his responses to questions were appropriate.

The Commonwealth presented video footage of the interview conducted between law enforcement and Defendant on January 14, 2021, marked as Commonwealth's Exhibit 1. This video establishes the following. Defendant enters an interview room followed by Weber and Clark. Weber introduces himself and Clark to Defendant and informs him that everything is being recorded. Weber talks about the bench warrant issued for Defendant from probation. Weber then informs Defendant of the arrest warrant for the charges in the above captioned case. Defendant asks, "I have a warrant for that?" Weber says he wants to talk to Defendant about it but before he can do so, Defendant has to be advised of his *Miranda* rights. Clark proceeds to read the Defendant his rights and afterwards, Defendant indicates he understands these rights.

Then, Clark asks, "With these rights in mind, do you wish to talk to us without having an attorney present?" Defendant responds, "I need an attorney." Clark asks for clarification by saying, "I'm sorry?" and Defendant once more says, "I need an attorney." Clark says, "Ok." However, Weber interjects, "We're not gonna bring one up here. We're not gonna go get one

right now. So we're just gonna, we want to hear your story." There is a pause in the conversation until Clark inquires, "So are you telling me you do not wish to talk to me about anything without an attorney?" Defendant says, "I mean, it depends on what ya'll are gonna ask me. I really don't care, I really don't, but I do want an attorney though." Clark clarifies, "Do you want one now while you're being questioned about the charges that were brought against you?" Defendant asks, "Do I want one right now?" Clark says, "Yea" to which Defendant responds "No." Clark says, "No?" and Defendant reiterates, "No." Weber says, "Just so you know, you'll talk to us without having an attorney right now but down the road you'll definitely have an attorney for court hearings or anything like that. Cause what we're gonna do, we're gonna question you about the baby you're gonna have, your child and how that whole situation happened." At that time, Clark told Defendant he needed to sign and initial the *Miranda* waiver form, which he did. Defendant then proceeds to answer questions regarding the circumstances surrounding the previously mentioned charges for approximately one (1) hour following the waiver of his rights.

At the hearing on the motion, Weber testified that his intention in telling Defendant that an attorney would not be brought to him right away was to convey to Defendant that their interview would stop if Defendant wanted an attorney. However, Weber conceded that he may not have said it properly to convey what he meant. Weber indicated that he had told Defendant he could have an attorney down the line and reminded Defendant that he did not have to answer questions if he did not want to. Weber believed Defendant's waiver of his *Miranda* rights was voluntary and Clark noted that she witnessed Defendant initial and sign the *Miranda* waiver form.

## **Discussion**

### *Asserted Right to Counsel and Miranda Waiver*

Defendant argues that he clearly and unequivocally asserted his right to counsel on January 14<sup>th</sup> prior to being questioned. Accordingly, Defendant believes his rights were violated when Weber and Clark continued the interview without providing Defendant with counsel as requested. Defendant also contends that any waiver of his *Miranda* rights at this interview was not voluntary and therefore invalid. “[A]n individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during the interrogation....” Miranda v. Arizona, 384 U.S. 436, 471 (1966). If someone requests counsel during an interview, the questioning must stop immediately until an attorney is present. Edwards v. Arizona, 451 U.S. 477, 482 (1981). “Invocation of the *Miranda* right to counsel ‘requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.’” Davis v. United States, 512 U.S. 452, 459 (1994) (citing McNeil v. Wisconsin, 501 U.S. 171, 178 (1991)). An individual who has invoked their right to counsel “is not subject to further interrogation until counsel has been made available to him, unless the accused has himself initiated further communication, exchanges, or conversations with the police.” Edwards, 451 U.S. at 477.

However, “if a reference is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel,” the officer is not required to cease questioning that individual. Davis v. United States, 512 U.S. 452, 459 (1994). Any waiver of the presence of counsel “must not only be voluntary, but must also constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege....” Id. at 482. To determine if a waiver of the right to counsel is valid, the court must look to each specific case at the “particular facts and circumstance

surrounding that case, including the background, experience, and conduct of the accused.”

Johnson v. Zerbst, 304 U.S. 458, 464 (1938).

Defendant avers that he clearly asserted his right to counsel when asked if he wanted to speak with law enforcement without an attorney. He argues that a reasonable officer would understand that his response, “I need an attorney” constitutes the right to have counsel now, not the right to have one later on in the criminal process. Defendant argues that he did not reinitiate contact with the police after clearly stating that he needed an attorney, and only when Weber said that they were not going to get him counsel for the interview did Defendant waive his right to have an attorney present. Defendant cites to Commonwealth v. Lukach in support of his argument that he unmistakably asserted his right to counsel. Commonwealth v. Lukach, 195 A.3d 176 (Pa. 2018). In Lukach, the defendant was interviewed regarding a homicide that had occurred. Id. at 179. In the beginning stages of the interview, the defendant said, “I don’t know just, I’m done talking. I don’t have nothing to talk about.” Id. The Court stated that the United States Supreme Court requires courts to make an “objective inquiry” into determining whether an invocation for the right to counsel during a custodial interrogation was unambiguous. Id. at 185. The Court goes on to say that “if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning.” Id. (citing Davis v. United States, 512 U.S. 452, 459 (1994)). The Court ultimately held that there could be “no doubt” that police understood the defendant’s statement to be an invocation of his rights. Id. at 189.

Alternatively, the Commonwealth argues that, under the totality of the circumstances, Defendant made an unambiguous waiver of his *Miranda* rights. The Commonwealth states that

Weber was communicating that pursuing the interview with an attorney was not an option; either the interview occurred without an attorney present or it did not happen at all. This Court agrees with Defendant for the following reasons on both issues. Defendant undoubtedly requested an attorney as soon as Clark asked if he wanted to speak to them without counsel. Defendant's language is vastly more concrete than the invocation in Lukach that was still deemed to be an unequivocal invocation and he requested an attorney multiple times. It is apparent from the video that Clark understood Defendant's words to be such an invocation because she hesitated and appeared to back down from talking to the Defendant.

However, despite the Commonwealth's assertions and Weber's testimony that Weber was merely trying to convey that the interview would not occur if Defendant asked for an attorney, this was not the message conveyed to the Defendant. Weber makes it quite apparent that neither he nor Clark were going to get an attorney for Defendant for the interview in question. Whatever his intentions may have been, the unmistakable implication Weber conveys to Defendant is that Defendant has to talk to them without an attorney because one was not going to be provided for him at that time.

[T]he Court has strongly indicated that additional safeguards are necessary when the accused asks for counsel; and we now hold that when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights.

Edwards v. Arizona, 451 U.S. 477, 484 (1981). Though Weber reminds Defendant that he does not have to answer questions he does not want to and that he can have access to an attorney later, the damage was done when Weber plainly said they wanted to hear Defendant's story and no efforts were made to obtain an attorney for Defendant. Before Weber applied pressure to

Defendant's clear choice to have an attorney, Defendant had been unambiguous in his intention to have an attorney present. Defendant was explicit in his request for an attorney two (2), if not three (3) separate times and it appears from the video that both Weber and Clark understood this to be so but convinced Defendant to waive his rights anyway under the guise of wanting to hear Defendant's side of the story. Additionally, this Court must also necessarily find that Defendant's waiver of his right to counsel was not voluntary because of the reasons stated above and undue governmental pressure. *See Commonwealth v. DiStefano*, 782 A.2d 574, 581, n.2 (Pa. Super. 2001). Therefore, the Defendant's statements in the interview on January 14, 2021 shall be suppressed.

### ***Involuntary Statements***

Defendant believes that his statements during the interview were also involuntary. He argues that, because the statements made during the interview were in violation of his rights, they were not voluntary. "If police conduct further interrogations outside the presence of counsel, 'the suspect's statements are presumed involuntary and therefore inadmissible as substantive evidence at trial, even where the suspect executes a waiver and his statements would be considered voluntary under traditional standards.'" *Commonwealth v. Champney*, 161 A.3d 265, 272 (Pa. Super. 2017) (citing *McNeil v. Wisconsin*, 501 U.S. 171, 177 (1991)). The Commonwealth has not addressed this issue specifically and this Court presumes their argument remains that Defendant waived his *Miranda* rights under a totality of the circumstances assessment. However, as this Court has already deemed Defendant's waiver as involuntary due to repeated manipulation by police to be interviewed without an attorney, Defendant's subsequent statements must necessarily be found involuntary.

### **Conclusion**

The Court finds that Defendant unequivocally asserted his right to have counsel present at the interview conducted on January 14th. The Court also finds that Defendant's waiver of his *Miranda* rights was not voluntary because of undue pressure from law enforcement conducting the interview. Lastly, this Court finds that Defendant's statements were involuntary. As a result, any statements Defendant uttered in the interview conducted on January 14 shall be suppressed.

**ORDER**

**AND NOW**, this 11th day of August, 2021, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Motion to Suppress is **GRANTED**. The statements Defendant made to police during the interview conducted on January 14, 2021 shall be suppressed.

By the Court,

Nancy L. Butts, President Judge

cc: DA (JR)  
PD (HG)  
Law Clerk (JMH)