

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
 :
 vs. : No. CR-1197-2020
 :
 ERNEST LEONARD, SR. :
 :
 Defendant : Pretrial Omnibus Motion

OPINION AND ORDER

Defendant is charged by Information filed on September 25, 2020 with rape and related charges arising out of his alleged sexual assault of A.W., an individual who suffers from Down Syndrome.

Before the court is Defendant's "Pretrial Omnibus Motion" filed on December 11, 2020. A hearing was held on March 12, 2021. This Opinion and Order shall only address Defendant's Motion to Suppress. Specifically, Defendant submits that his statements made to Agents Alexander and Bolt on November 14, 2019 should be suppressed because his waiver of his Miranda rights was not knowing or intelligent. Alternatively, he argues that during the interview, he unequivocally invoked his right to counsel, yet the questioning continued.

In connection with the interview, the court reviewed Commonwealth's Exhibit 1 which is a DVD audio/video recording of Defendant's interview with Agents Bolt and Alexander of the Williamsport Bureau of Police on November 14, 2019. As well, the Commonwealth presented testimony of Agent Alexander at the March 12, 2021 hearing.

On November 14, 2019, Defendant met with Agents Bolt and Alexander at City Hall in Williamsport. The interview was part of the ongoing investigation into the allegations by A.W.

Defendant arrived at City Hall on his own. Upon arriving, he and the agents went to an interview room. The agents were in plain clothes although Agent Alexander's weapon was visibly holstered on her hip. They sat down in the interview room with the door closed. Defendant was seated in a chair closest to the door. The agents were seated across the table.

Defendant was not restrained nor was he handcuffed in any way. He was told by Agent Bolt that they appreciated him coming in. He was told that he was not under arrest, he could leave at any time, and he didn't have to answer any questions.

The initial questions related to biographical information and contact information. Before proceeding further, Agent Alexander began to read and explain to Defendant his Miranda rights. Defendant asked why the Miranda rights were being read to him. Agent Alexander explained that he was part of the investigation and Agent Bolt further explained that they asked him to come in, he did, and that because this could "end up in court", the District Attorney asked them to do it "this way." It was further explained that while Defendant was not in custody at that point, it could change if Defendant admitted to a criminal offense.

Further, Agent Bolt told Defendant that reading the Miranda rights did not mean that he was under arrest and that he could "walk at any time" and that he didn't have to talk with them. Agent Alexander added that she just wanted to cover her bases and that if Defendant did not want to talk with them, he didn't have to and that if he wanted to stop to just say so and that she would escort him out.

Defendant signed his Miranda waiver form and the interview continued.

Defendant appeared very aware of his rights and the implications of what the agents were saying, suggesting or even inferring. He was very aware of what he was saying and if it could affect or implicate him. Among his comments reflecting such were the following: “That’s what she says...[but] I didn’t have sex with her”; “Regardless, it’s consensual”; “I’m not going to crucify myself by saying I did it”; “You’re trying to say it happened when it didn’t happen”; and “If consensual, why am I sitting here.”

The tone of the interview changed, however, when Agent Alexander suggested that the alleged sexual interaction between the two may have been non-consensual or by force. Defendant conceded that if the alleged victim told him to stop and he didn’t, it would be “rape.” After Agent Alexander stated that the alleged victim was alleging such, Defendant stated “that’s not true” and asked incredulously “she said I raped her?” and then said “now, I do think I need an attorney.”

Agent Alexander paused to allow him to “process” the allegation but continued with the questioning. She did not interpret his statement as an unequivocal decision to speak with an attorney but as a statement that he “may need” an attorney “in the future.”

Agent Alexander testified as well that while Defendant was more distraught, his demeanor did not substantially change and he did not appear confused. Yet, following his statement regarding an attorney, Defendant stated: “I’m so confused, my anxiety is high enough as it is.”

“Statements made during custodial interrogation are presumptively involuntary unless the accused is first advised of [his] *Miranda* rights.” *Commonwealth v. (Hope) Williams*, 941 A.2d 14, 29 (Pa. Super. 2008). The United States Supreme Court in *Miranda* observed that an individual who is taken into custody by police is held in isolation and cutoff from all contact from the outside world, and that this deprivation of contact with traditional sources of support, such as family, friends, and community, makes the individual more susceptible to a variety of psychologically coercive interrogation techniques. *Miranda v. Arizona*, 384 U.S. 436, 445, 448-58 (1996).

“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.” *(Hope)Williams, id.* at 29.

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 test focuses on whether the individual being interrogated reasonably believes his freedom of action is being restricted.

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

Whether a person is in custody for *Miranda* purposes depends upon the totality of the circumstances. Among the factors that the court considers 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*, 642 A.2d 1126, 1130 (Pa. Super. 1994) (en banc), *appeal denied*, 649 A.2d 670 (Pa. 1994); *Commonwealth v. Levanduski*, 907 A.2d 3, 24 (Pa. Super. 2006) (en banc), *appeal denied*, 919 A.2d 955 (Pa. 2007).

Utilizing this totality of the circumstances approach, the court cannot find that Defendant’s detention, if at all, was so coercive as to constitute a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.

Agents were investigating a claim that Defendant had prior sexual encounters with an individual who may have been mentally incapable of consenting or with force. These allegations had previously been investigated by law enforcement as well as different agencies. Defendant had previously been questioned by different law enforcement representatives or agency representatives. Being familiar with the process, Defendant was asked to come to the station to be interviewed yet again. He was not taken into custody and transferred against his will to the station. He was driven to the station by a third party, dropped off and willingly entered the station to be interviewed. He was never placed in custody, nor was he handcuffed or restrained in any way.

While he was in a room with two law enforcement officers with the door closed, they did not utilize any show of force. He was thanked for appearing voluntarily and reminded on numerous occasions that he was not under arrest, he could leave at any time, and he did not have to answer any questions whatsoever. Indeed, at more than one point during the interview, he was told that no matter what he said, he would be going home that

day and would not be taken into custody.

The interview lasted approximately an hour if not slightly more. At no time did the agents threaten Defendant, intimidate him or try to coerce him. The agents were forthright with Defendant. The tone of the entire interview was conversational, and the court cannot conclude that there was any undue pressure put on Defendant.

The court cannot conclude that Defendant reasonably believed his freedom of action was being restricted. Because *Miranda* warnings are required only when a person is in custody and is subjected to express questioning or its functional equivalent, Defendant's claim with respect to *Miranda* fails. *Miranda* warnings were not required because Defendant was not in custody.

"Custody" is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion. *Howes v. Fields*, 565 U.S. 499, 508-09 (2012). In light of the objective circumstances of the interrogation, a reasonable person would certainly have felt that he was at liberty to terminate the interrogation at any time and to leave. *Thompson v. Keohane*, 516 U.S. 99, 112 (1995); *Commonwealth v. Yandamuri*, 159 A.3d 503, 520 (Pa. 2017).

Defendant next claims that he invoked his right to counsel and the invocation of that right was not scrupulously honored. Accordingly, Defendant argues that any of his statements made after his request for counsel should be suppressed. The Commonwealth contends that because he was not in custody at the time, the police were not required to honor his right to counsel and could continue to question him.

There is no doubt that police may not interrogate an individual being held in custody who has requested the assistance of counsel, until and unless counsel is provided to that individual. *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981).

Any statements by an individual who is in custody, made in response to police questioning after the individual has requested the assistance of an attorney and before counsel is made available, are not admissible as evidence in a criminal trial unless it is clear that the detained individual, and not the police, voluntarily initiated the discussion. *Id.* at 485-87.

In distinguishing one's request for counsel in custody situations versus non-custodial situations, the courts have noted that an individual who is in custody is subject to the inherently coercive pressures attendant to that situation and its concomitant deleterious effect on the individual's ability to exercise free will and to make truly voluntary decisions. *Commonwealth v. Bland*, 115 A.3d 854, 865 (Pa. 2015)(Todd, J. dissenting). By contrast, in non-custodial situations, there is no danger that, in responding to police questioning, the compulsive pressure created by the circumstances of detention will lead to an involuntary waiver by the individual of his Fifth Amendment rights. *Id.* at 869. An individual who is not in custody possesses the freedom to terminate police questioning at any time and thus, can avoid the type of police badgering the court is concerned with through the *Miranda-Edwards* line of cases. *Id.*; *Montejo v. Louisiana*, 556 U.S. 778, 795 (2009) ("When a defendant is not in custody, he is in control, and need only shut his door or walk away to avoid police badgering.").

The question becomes whether once Defendant was told of the allegations of force, did the interview become custodial? If so, Defendant's invocation of his right to counsel should have been honored.

The court cannot conclude that the interview became custodial such that Defendant's invocation of his right to counsel should have been honored. While certainly it became more confrontational in light of the allegation that Defendant had forced himself upon the alleged victim, there was no indication that the circumstances constituted the functional equivalent of an arrest. Defendant was clearly more emotional, distraught and confused. He was disturbed by the allegations. He became more adamant in his denials. He became more confrontational with the agents questioning their tactics in delaying telling him about the alleged force and expressing their belief in him. Certainly, the agents asked more pointed and direct questions.

Nonetheless, Defendant was still free to leave, there was no evidence of increased threats or coercion or pressure and Defendant admitted that he was treated properly. He agreed to continue to cooperate and come back in for a lie detector test.

Accordingly, the court enters the following Order.

ORDER

AND NOW, this ____ day of April 2021 for the reasons as set forth above, Motion to Suppress is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Matthew Welickovitch, Esquire, (APD)
Judge Marc F. Lovecchio
Gary Weber, Esquire