

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

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CP-41-CR-1293-2021**  
 v. :  
 :  
 **DUSTIN ASKEY,** : **OMNIBUS MOTION**  
 **Defendant** :

**OPINION AND ORDER**

Dustin Askey (Defendant) was charged with Person Not To Possess Firearm<sup>1</sup>, Firearms Not To Be Carried Without License<sup>2</sup>, Possession with Intent to Deliver<sup>3</sup>, two (2) counts of Possession of a Controlled Substance<sup>4</sup>, and Possession of Drug Paraphernalia<sup>5</sup>. The charges arise from the execution of an arrest warrant for Defendant. Defendant filed this Omnibus Pretrial Motion on February 8, 2022. A hearing was held on the Defendant's motion on September 1, 2022. In his Omnibus Pretrial Motion, Defendant argues that statements he made to the arresting officers were in violation of his constitutional rights and his statements as well as evidence obtained as a result of his statements must be suppressed as fruit of the poisonous tree.

**Background and Testimony**

Officer Jeff Kriner (Kriner) of the Pennsylvania College of Technology testified on behalf of the Commonwealth. On September 29, 2021, Kriner was on duty and called to assist the Williamsport Police on the corner of Vine Avenue and Park Street. Kriner was informed they were attempting to apprehend a wanted individual who was in a woman's apartment. The woman, Stephanie Mann (Mann), had conveyed to police that he was no longer welcome in her

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<sup>1</sup> 18 Pa.C.S. § 6105(a)(1).

<sup>2</sup> 18 Pa.C.S. § 6106(a)(1).

<sup>3</sup> 35 Pa.C.S. § 780-113(a)(30).

<sup>4</sup> 35 Pa.C.S. § 780-113(a)(16).

<sup>5</sup> 35 Pa.C.S. § 780-113(a)(32).

home after he threatened to knock her out and restrain her with duct tape. She also stated that the man had asked her if she wanted to do drugs. Upon Kriner's arrival at the scene, an officer was speaking to Mann and she let Kriner into the apartment building. Mann told Kriner that Defendant had a bag and other stuff in the house before Defendant was arrested. Kriner stated that he was behind the officer and they were supposed to enter the first apartment on the right. The door to this apartment was already open. Kriner and the other officer made their way through the apartment until they reached the kitchen where they turned a corner and saw a man, later identified as Defendant, standing at the sink about to inject something into his arm. Kriner noticed a white substance and a spoon on the counter. Defendant told them the substance was a pill that is supposed to be ingested orally.

Kriner further testified that after learning Defendant's name they ran it through the system and discovered there was an active warrant for his arrest. Defendant was detained and Kriner took him into the living room. Defendant denied having any items in the apartment and initially denied owning a bag located on the floor, but eventually admitted to owning this bag. Kriner found Defendant's shoes for him and Defendant was escorted to the station. Before leaving, Defendant asked the officers to locate his wallet that he believed to be inside the apartment. Kriner went back inside to search for the wallet but could not find it. During his search for the wallet, Kriner looked in Defendant's bag on the floor and saw three (3) mason jars of a green substance as well as Defendant's wallet and a firearm. Kriner removed the firearm from the bag and cleared it before running a check on the weapon. Kriner replaced everything in the bag and Mann confirmed the bag belonged to Defendant.

Kriner stated that there was no indication Defendant lived there or was allowed to keep things in that apartment. Mann had invited Defendant to stay the night and when she asked him

to leave in the morning he refused to do so. Kriner testified was not going to leave Defendant's belongings in someone else's home and the narcotics would not be returned to Defendant. Kriner said that Defendant was initially detained on the active warrant but then was discovered to be in the possession of drug paraphernalia as well. Kriner denied advising Defendant of his Miranda rights.

Officer Tyson Minnier (Minnier) of the Williamsport Police Department also testified on behalf of the Commonwealth. On September 29, 2021, Minnier was summoned to Vine Avenue for an individual who refused to leave and had threatened the caller, a woman named Stephanie Mann (Mann). Dispatch informed Minnier that Defendant had stated he had a bag with drugs in it. Minnier asked Mann if Defendant resided there and she said no. Minnier also stated that he knew about the presence of drugs in a bag prior to arriving on scene and planned on taking the bag with him, but had not been previously alerted to marijuana in Defendant's possessions. Minnier further testified that he wanted to know what belonged to Defendant because he was excluded from the residence. Minnier also said that he wanted to ascertain what was in the bag before placing it in his patrol car. Minnier did not advise Defendant of his Miranda rights on scene but did so at the police station.

Kriner was wearing a body camera during the interaction and the Commonwealth presented the footage, marked as Commonwealth's Exhibit 1. The footage from Kriner's body camera shows the following. Mann lets Minnier and Kriner into the building. The men ascend a set of stairs and enter an apartment on the right with Minnier in the lead and Kriner following. They walk through a crowded living room and into the kitchen. After rounding the corner, Defendant is standing at the kitchen sink. Minnier approaches immediately, orders Defendant to drop what he is holding, and handcuffs Defendant. There is drug paraphernalia on the

counter in front of Defendant. Minnier asks Defendant if there's anything on his person that will poke him and Defendant denies it. Defendant asks why he is being detained. While Minnier puts gloves on, Minnier questions Defendant about the items on the kitchen counter. Defendant claims they are Subutex and Minnier asks if the legal way to ingest this drug is with a syringe and Defendant acknowledges it is not. Minnier informs Defendant he is being arrested for the possession of the drug paraphernalia and active warrants for Defendant.

Minnier pats Defendant down, puts a cigarette in Defendant's mouth and lights it for him. Minnier writes down Defendant's biographical information and the group moves into the living room. Minnier asks Defendant if a bag on the floor belongs to him and Defendant says no. Minnier asks again and Defendant claims ownership of the bag. Minnier inquires if Defendant has additional drugs in the bag and Defendant confirms there is marijuana. The officers locate Defendant's shoes and Defendant claims Mann put things in his bag but does not specify. While off-screen Defendant asks for Minnier to locate his wallet. Kriner escorts Defendant down the stairs, out of the building, and into a patrol unit. After a few minutes, Kriner re-enters the building and Minnier says he is still searching for Defendant's wallet. Minnier holds up a jar full of what appears to be marijuana and indicates there is another jar in the bag. Kriner walks into the kitchen to film the drugs and paraphernalia on the counter. Then Kriner films the open bag and both men attempt to locate Defendant's wallet around the apartment. Kriner starts searching the bag for the wallet and finds another jar of marijuana in the process as well as a wallet containing only cash. Kriner also discovers a firearm in the bag, clears the firearm of ammunition, radios for the serial number to be checked, and places everything back in the bag.

## **Discussion**

Defendant believes that the statements he made to law enforcement during his arrest require suppression for a violation of his constitutional rights pursuant to the Fifth Amendment of the United States Constitution. The Fifth Amendment provides the accused the right against self-incrimination and the right to counsel during a custodial interrogation. U.S. Const. amend. V; Miranda v. Arizona, 384 U.S. 436 (1966). A 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.” Id. at 444. “Interrogation is police conduct calculated to, expected to or likely to evoke admission.” Commonwealth v. Johnson, 541 A.2d 332, 336 (Pa. Super. 1988). A Miranda interrogation “refers not only to express questioning, but also to any words or actions on the part of police (other than normally attendant to arrest and custody) that police should know are reasonably likely to elicit an incriminating response from the suspect.” Commonwealth v. Whitehead, 629 A.2d 142, 145 (Pa. Super. 1993). “The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police.” Commonwealth v. DeJesus, 787 A.2d 394, 401-02 (Pa. 2001). The intent in Miranda was to “spare the accused from having to reveal, directly or indirectly, his knowledge of facts relating him to the offense or from having to share his thoughts and beliefs with the Government.” Pennsylvania v. Muniz, 496 U.S. 582, 596 (1990).

In the instant case before this Court, Defendant argues that he was clearly in custody on the aforementioned charges at the time he was being arrested. Defendant is also of the position that the questions asked were investigatory and likely to elicit incriminating responses and Defendant should have been advised of his rights under Miranda. Defendant asserts that the statements he made as well as the firearm must be suppressed for failure to provide Miranda warnings prior to questioning.

The Commonwealth argues that the officers were aware of physical evidence prior to their arrival on scene and believes that the contested bag would have been discovered regardless of Defendant's statements. Furthermore, the Commonwealth contends that even if this was considered a Miranda violation, only the statements should be suppressed, not the bag and the additional evidence. The Commonwealth cited to United States v. Patane 542 U.S. 630 (2004), which held that the failure to give Miranda warnings requires the suppression of the statements made in violation of Miranda and not suppression of any physical evidence discovered as a result. Id. at 635; *See* Commonwealth v. Abbas, 862 A.2d 606 (Pa. Super. 2004) (holding photographs of victim were admissible despite defendant providing them to police during unlawful interrogation and fruit of poisonous tree doctrine did not apply).

This Court agrees with the Commonwealth. In this particular instance, law enforcement was notified that Defendant was refusing to leave another individual's home and knew that he had brought a bag that contained drugs with him. While this Court acknowledges Defendant was in custody at the time of this interaction, we do not believe that the questions asked were enough to qualify as an interrogation. The officers testified that they were not going to leave any of Defendant's possessions in Mann's apartment and asked questions during the normal course of his arrest to decipher what was his in order to remove it. Additionally, Defendant himself asked Minnier to locate his wallet. Moreover, Mann repeatedly denied owning the contested bag and communicated to the officers on more than one occasion that the bag belonged to Defendant.

It is also the opinion of this Court that most of the marijuana was in plain sight and the remaining evidence is not subject to suppression even if Defendant's statements were unlawfully coerced. However, this Court finds that the questions Defendant was subjected to

arose during the normal course of his arrest and not meant to elicit incriminating information, but instead were to ensure none of his possessions remained in a home that did not belong to him and in which he was no longer welcome. Therefore, Defendant's statements and the physical evidence seized will not be suppressed on these grounds.

**Conclusion**

This Court finds that Defendant's constitutional rights pursuant to the Fifth Amendment were not violated during Defendant's arrest. Therefore, the statements and firearm shall not be suppressed.

**ORDER**

**AND NOW**, this 6th day of October, 2022, based upon the foregoing Opinion, the Defendant's Motion to Suppress is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (M. Welickovitch)  
PD (TC)  
Law Clerk (JMH)

NLB/jmh