

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
	:	CR-1121-2021
vs.	:	
	:	OMNIBUS MOTION
ALEXA MCDEVITT,	:	
Defendant	:	

OPINION

This matter is before the Court on Defendant’s Omnibus Pretrial Motion filed June 7, 2023. For the reasons set forth below, the Motion is Granted in part and Denied in part.

Factual and Procedural Background

On or about August 17, 2021, Alexa McDevitt (“Defendant”) was charged with aggravated assault¹, recklessly endangering another person², and related charges. These charges stem from an incident on the same day where Montoursville Police responded to a call at approximately 7:00 a.m. from a complaining witness who alleged another vehicle was tailgating him on Route 180 near the Walmart exit. The witness alleged the driver of the other vehicle attempted to pass him on the shoulder of the left lane and while doing so, allegedly shot at him twice, breaking his rear window. The complainant provided a description of the actor to be a white male, mid 20s, with long black hair and described the vehicle as a white Toyota Carolla with license plate number JLH-9173. Officers, along with the Pennsylvania State Police, searched the area near Walmart for the vehicle in question.

¹ 18 Pa.C.S. §2701.

² 18 Pa.C.S. §2705.

Troopers identified a vehicle in the Unique Industries employee parking lot. Although the Defendant's vehicle is a silver or gray Toyota Camry with a license plate of JLH-6713 and registered to Timothy McDevitt, Troopers notified the lead investigator Montoursville Chief Gyurina that the same vehicle had been involved in a prior incident and was operated by the Defendant. Chief Gyurina viewed a photo of the Defendant and believed she fit the description provided by the complainant. Chief Gyurina entered Unique Industries and requested the Defendant speak with him in a conference room. A Trooper positioned himself at an exit door at the rear of the building, although it is unknown if the Defendant was aware of this. Upon the Defendant entering the conference room, Chief Gyurina, in uniform, introduced himself and asked her about the incident on her way to work. Defendant instantly answered the questions and made certain statements in response to Chief Gyurina's inquiry.

Defendant's statements were communicated to the Troopers at the business, who went to the Defendant's parked vehicle and allegedly observed in plain view a black handgun sticking out of a bag on the passenger seat. A photograph of the interior of the vehicle was allegedly forwarded from a Trooper's cell phone to Chief Gyurina's cell phone. Chief Gyurina left the conference room to speak to the district attorney regarding obtaining a search warrant. A Trooper remained by the door of the conference room, blocking the Defendant's ability to leave. Upon Chief Gyurina's return, the Defendant denied consent to search her vehicle. The Defendant was then placed under arrest. A search warrant was executed, wherein a black 9mm semi-automatic handgun was recovered. At the police station, a Trooper collected DNA and gunshot residue from the Defendant pursuant to the

search warrant.

A preliminary hearing was scheduled for August 30, 2021, and was waived by the Defendant. The Defendant also waived her arraignment. Defendant had several changes of counsel before her present counsel entered his appearance on February 22, 2023. On June 6, the Defendant filed her Omnibus Pretrial Motion. A conference was held on August 23, 2023, wherein counsel for the Defendant acknowledge the motion was filed well beyond the deadline imposed by Pa.R.Crim.P. 579. As the Commonwealth acknowledged that it had suffered no prejudice by the delayed filing, the Court scheduled a hearing on the merits for October 9, 2023. Following the hearing, a briefing schedule was entered. The Defendant's Brief in Support of the Omnibus Motion was filed on November 10, 2023, and the Commonwealth's Brief in Opposition to the Omnibus Motion was filed on December 1, 2023.

Discussion

The Court will discuss each of the above Motions separately.

I. MOTION TO COMPEL DISCOVERY

Defendant's Omnibus Motion contains a Motion to Compel Discovery, indicating that the Commonwealth had not provided a complete copy of the items listed in Defendant's February 26, 2023, request for discovery. At the hearing on October 9, 2023, counsel agreed that the Commonwealth had provided to Defendant's counsel all that was in its possession at the time. The GSR testing, DNA testing, and latent fingerprint tests were still pending, as they were sent to the lab in June 2023. The Commonwealth indicated that they would timely provide Defendant's counsel the results of those tests when they were received.

Additionally, the Commonwealth indicated that it would provide Defendant's counsel the complaining witness's criminal history within 7 days of the date of the hearing.

Finally, Defendant's counsel requested that the Commonwealth return the Defendant's dash camera. Attorney Welickovitch indicated that the Commonwealth had pulled significant footage from the camera and had provided it to the Defendant's counsel, but that they wished to hold on to the camera itself until the case is disposed of. The Court finds that as long as it has provided copies of the contents to Defendant's counsel, the Commonwealth is entitled to retain possession of the dash camera until after the disposition of the case, at which time it will be expected to be returned to the Defendant unless it has been entered into evidence.

Therefore, the Defendant's Motion to Compel Discovery is **GRANTED in PART and DENIED in PART**. It is **GRANTED** with respect to the request for GSR, DNA, and latent fingerprint tests, which shall be timely provided to the Defendant's counsel upon receipt by the Commonwealth. It is further **GRANTED** with respect to the complaining witness's criminal history, which was to have been provided by the Commonwealth within 7 days of the date of the hearing. The Motion is **DENIED** with respect to the request for the return of the dash camera, possession of which may be retained by the Commonwealth until after disposition of the case.

II. MOTION TO SUPPRESS STATEMENTS

Defendant's Omnibus Motion alleges that on the date of the incident several law enforcement officers arrived at the Defendant's place of work and summoned her to a conference room to discuss the incident. Defendant made certain responses to the questions

asked by Chief Gyurina that were used as significant support for the charges filed against her and the basis for several search warrants. Defendant avers that these questions by Chief Gyurina were done in a custodial setting and that her statements were made in response to questions designed to elicit incriminating responses.

With regard to the statements made to Chief Gyurina, the Defendant was at work when she was called to the conference room by Unique Industries personnel. Chief Gyurina, dressed in full uniform, identified himself immediately, and the Defendant voluntarily entered the room and took a seat. (Com. Ex. 3, at approx. 4:09). Chief Gyurina closed the door behind the Defendant but did not lock it. Initially, Chief Gyurina and the Defendant were the only two individuals in the room. Chief Gyurina first asked the Defendant what time she arrived at work and next asked “[d]id anything happen up on the highway?” The Defendant appeared comfortable and did not hesitate to answer Chief Gyurina’s questions. She instantly and matter-of-factly disclosed that she shot at a car that she described as attempting to run her off the road. The Defendant stated she had a “dash cam” and “wasn’t worried about this happening at all.” When asked why she did not call the police after she shot at someone the Defendant responded that she did not know she needed to.

A little less than one minute into the conversation, Chief Gyurina pauses for a moment and the Defendant looks toward the door/around the room and subsequently picks up her phone. (Com. Ex 3, at approx. 4:46). After this the Defendant begins to look anxious but continued to answer questions from Chief Gyurina, the focus of which at this time appears to have shifted to confirming his suspicion that the Defendant had no justification for shooting at the other car. The Defendant appears distracted by something outside the

closed door at 5:22 on the video, and at 6:38 on the video a Pennsylvania State Trooper in full uniform enters the room, closes the door behind him, and positions himself between Chief Gyurina and the closed door and across from the Defendant. While he does not block the door, he stands in close proximity to it.

The entire initial encounter, from the time the Defendant entered the conference room until the time Chief Gyurina stepped out to contact the District Attorney's office at 8:41 on the video, lasted approximately four and a half minutes. At no time during the initial part of the conversation with Chief Gyurina was the Defendant placed into handcuffs, taken into custody, or told that she could not leave. The Defendant had access to her cell phone the entire time she was speaking with Chief Gyurina and, in fact, felt free and comfortable enough to text with a third party during the latter portion of the conversation. Also of note, at no time during this encounter was the Defendant read warnings pursuant to Miranda v. Arizona, 384 U.S. 436 (1966). As a result, Defendant argues that all the statements she provided to Chief Gyurina on that date were obtained in violation of her Fifth, Sixth, and Fourteenth Amendment rights of the United States Constitution and Article I, Section and Nine of the Pennsylvania Constitution and must be suppressed.³

There are two separate requirements, custody and interrogation, that have to be found in order for Miranda to apply. Miranda applies only to "custodial interrogation," which generates "inherently compelling pressures which work to undermine the individual's

³ Defendant's Omnibus Motion also alleged that officers recorded Defendant's conversation with her father at the MDJ office using body camera technology, but did not inform her that her conversation would be recorded and that she did not consent to any such recording or waive any privacy right. The substance of the telephone conversation included statements concerning the incident beyond a discussion about bail. At the time of the hearing on Defendant's Omnibus Motion, the Commonwealth indicated that it was in agreement that it would not seek to use the body camera footage and audio recording of the Defendant's phone call with her father at the time of trial.

will to resist and to compel him to speak where he does not otherwise do freely.” *Id.* at 467. Custodial interrogation does not require a formal arrest, but rather triggers Miranda “after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” *Id.* at 444. Here, Defendant argues that the totality of the circumstances, including the involuntary detention, the location of the interrogation in the conference room at her place of employment, the number of armed officers present, the isolation, her physical and mental state, and the failure of law enforcement to notify her that she did not have to speak to them, points to the occurrence of a custodial interrogation that should have been preceded by Miranda warnings.

Whether a person is in custody for Miranda purposes depends on whether the person is physically denied of [her] freedom of action in any significant way or is placed in a situation in which [she] reasonably believes that [her] freedom of action or movement is restricted by the interrogation. “Interrogation is police conduct calculated to, expected to, or likely to evoke admission.” Commonwealth v. Johnson, 541 A.2d 332, 336 (Pa. Super. 1988). An interrogation for the purposes of *Miranda* “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 the police should know are reasonably likely to elicit an incriminating response from the suspect.” Commonwealth v. Turner, 772 A.2d 970, 974 (Pa. Super. 2001). 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 [her] freedom of action is being restricted. See Commonwealth v. Mannion, 725 A.2d 196, 202 (Pa. Super. 1999) (en banc). Said

another way, police detentions become custodial when, under the totality of the circumstances, the conditions and/or duration of the detention become so coercive as to constitute the functional equivalent of arrest. Id. at 200.

The Commonwealth argues that the Defendant was not subject to a custodial interrogation and a reading of the Miranda rights prior to the interview was not required. The Commonwealth further asserts that neither the Defendant nor a reasonable person would have felt coerced to speak with Chief Gyurina or not free to leave during the encounter and therefore a reading of the Miranda rights prior to the encounter would not have been required.

It is reasonable that Chief Gyurina, in the early stages of his investigation, needed to ask basic questions of the Defendant to ascertain how, or even if, she was involved in the incident. As previously noted, he and the Defendant were the only two individuals present in the room initially and their initial interaction appeared conversational in nature. The Defendant immediately answered Chief Gyurina's question regarding whether anything happened on the highway that morning and volunteered that she shot at the car. When asked why she did not call the police after doing so, she stated that she did not know she needed to. The Defendant made a statement that her actions were justified based on the other driver's actions. Chief Gyurina asked the Defendant to explain the positioning of the cars during the incident. The Defendant freely described what she recalled to have occurred. At that point, the Chief's suspicions regarding the Defendant's involvement in the incident as the perpetrator of a crime were confirmed and the "investigation" progressed to an "interrogation" where the Defendant was clearly the suspect. The Defendant's completion of

her explanation coincided with a Pennsylvania State Police Trooper entering the room at approximately 6: 35 on the video.

The Court finds that while the interactions of Chief Gyurina with the Defendant did not initially rise to the level of a functional equivalent of a formal arrest, they escalated to that level after the Defendant admitted her involvement in the incident and provided her initial explanation of how the vehicles were traveling up to the incident. At almost the same time the Defendant completed this initial explanation, a uniformed PSP Trooper entered the room and stood in close proximity to the door. At this point, the questioning was likely to elicit incriminating responses, thus satisfying the interrogation prong of the Miranda requirement. While she continued to answer the questions, she was never informed that she was not required to, nor was she advised she was free to leave and the positioning of the PSP Trooper would imply the contrary. This satisfied the “custodial” prong of the Miranda requirement, as “[a] person is considered to be in custody for purposes of Miranda when the officer’s show of authority leads the person to believe that [he] was not free to decline the officer’s request, or otherwise terminate the encounter.” Commonwealth v. Harper, 230 A.3d 1231 (Pa. Super. 2020). As such, any of the statements the Defendant made after the initial conversational exchange with Chief Gyurina were made during a custodial interrogation, prior to which she should have been advised of her right to remain silent and to the presence of an attorney pursuant as required by Miranda.

Accordingly, the Defendant’s Motion to Suppress Statements is **GRANTED IN PART**. The Defendant’s statements, made after the timestamp of 6:35 on the video shall be suppressed and not available for the Commonwealth’s use at trial.

III. MOTION TO SUPPRESS PHYSICAL EVIDENCE

As discussed above, Chief Gyurina arrived at the Defendant's place of employment, asked that she be called to the conference room and, upon her arrival, asked her about the events on her way in to work. Based upon the statements made by the Defendant, the police applied for one search warrant in order to conduct a search of the vehicle allegedly involved in the incident and one search warrant to recover DNA and gunshot residue samples from the Defendant. The Defendant argues that her Fourth and Fourteenth Amendment rights under the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution were violated, as the statements made by the Defendant were illegally obtained and, therefore, the probable cause affidavits were not supported by a sufficient amount of legally obtained facts and failed to establish the probable cause for the issuance of the search warrants. The Defendant requests that all evidence recovered in violation of the illegal search and seizure be suppressed.

The Affidavits of Probable Cause for each of the two search warrants (Com. Ex. 1 and 2) first contain information about the incident obtained directly from the victim. Next, there is a recitation of the investigative steps Chief Gyurina took which ultimately led him to Unique Industries and the Defendant. Finally, the Affidavits contain the following sentences:

"I asked Mcdevitt what happened on her way to work. Mcdevitt stated that the victim cut her off, she has a permit to carry a handgun, she felt threatened, and had a right to shoot at the vehicle. Mcdevitt stated that she fired (3) rounds. The black semi automatic handgun was observed in plain view inside the vehicle on the front seat. I asked Mcdevitt if she would consent to seizing the handgun. Mcdevitt refused to give me consent. Mcdevitt stated that she has dash cam video in her car."

Com. Ex. 1 and 2.

Here, the Court found that a portion of the Defendant's statements were not subject to suppression. Specifically, the Defendant volunteered that she had shot at a car she believed had tried to run her off the road and that she had dash camera footage of the incident. These statements were provided by the Defendant to Chief Gyurina voluntarily, within the first few seconds of their encounter, while he was attempting to determine whether she was involved in the incident in any manner. Her responses, together with the additional information within the four corners of the search warrant, contained information sufficient to persuade a reasonable person that probable cause exists to conduct a search. Commonwealth v. Ryerson, 817 A. 2d 510, 513 (Pa. Super. 2003). Accordingly, this Court finds that the evidence recovered from the search pursuant to the search warrants was not obtained in violation of the Defendant's rights and therefore the Defendant's Motion to Suppress Physical Evidence is **DENIED**.

IV. MOTION TO RESERVE RIGHT

Defendant requests the right to make any additional pre-trial motions as they come to the attention of defense counsel or otherwise. This motion is **GRANTED**, to the limited extent that any motion is based on information or discovery provided by the Commonwealth after October 9, 2023, the date of the last hearing on Defendant's Omnibus Pretrial Motion.

ORDER

AND NOW, this 27th day of **February, 2024**, upon consideration of Defendant's Omnibus Pre-Trial Motions, the argument of counsel on October 9, 2023, and the briefs submitted by each counsel, and for the reasons set forth above, the Court finds the

following:

1. Motion to Compel Discovery is **GRANTED in PART and DENIED in PART** as set forth in Section I above;
2. Motion to Suppress Statements is **GRANTED in PART** as set forth in Section II above;
3. Motion to Suppress Physical Evidence is **DENIED**; and
4. Motion to Reserve Right is **GRANTED** for the limited purpose discussed in Section IV above.

By the Court,

Ryan M. Tira, Judge

RMT/jel

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