

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)
)
Plaintiff,)
)
v.) **C.A. No.: 0709039603**
)
RYAN M. TIEMAN)
)
Defendant,)

Submitted: June 18, 2008
Decided: July 10, 2008

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MEMORANDUM OPINION

This case is brought by the State of Delaware (hereinafter "State") against Ryan M. Tieman (hereinafter "Defendant") pursuant to Title 16, Section 4771(a) and Section 4754 (b) of the Delaware Code of 1974, as amended. The Defendant is charged by Information filed by the Attorney General with the Clerk of the Court with one Count Possession of Drug Paraphernalia and one Count Possession of Marijuana. Defendant moves this Court for an Order suppressing evidence of any

statement made by the Defendant and the fruits of the search of field testing of the Defendant. This is the Court's Final Decision and Order.¹

(i) The Facts.

On September 29, 2007, Defendant, Ryan Tieman, was confronted by the New Castle County Police Department at 5533 Limerick Circle, Linden Green II Townhouses, Wilmington, Delaware 19808. The location of 5533 Limerick Circle was not Defendant's residence but he was present as a guest at the time of the police entry onto the premises. Police entry was given by consent of one of the residents of the Limerick Circle address. Police had responded to a 911 call reflecting that one of the residents of the Limerick Circle address was suicidal and had threatened to purchase a firearm. Upon entry to the Limerick Circle premises, police noticed Defendant seated at a dining room table on the second floor of the residence.

Immediately after entry, police officers advised both the Defendant and the resident on the second floor of the residence to remain where they were. In the living room on the second floor of the residence, adjacent to the dining room, in plain view, police observed what appeared to be glass pipes used to smoke marijuana and a clear plastic bag containing a green leafy substance which tested positive for marijuana. As police continued to check the residence for the suicidal suspect, they observed, on a balcony off the second floor, in plain view, marijuana plants.

¹ This Court issued an oral bench ruling finding a violation of CCP Cr. R. 16 for failure by the State to produce the Medical Examiner's Report timely to Defendant's counsel pursuant to his written discovery request. No factual basis was asserted by the State in its delay in providing the report.

Officer Chad Carter (hereinafter “Officer Carter”) testified that he asked both individuals in the residence if there was any more marijuana in the residence or if they had anything on their persons. Officer Carter testified that his question was a general question directed towards both individuals present in the residence. Officer Carter testified that a police officer remained with both individuals at all times while the remaining officers secured the residence.

After the police had finished checking the residence for the suicidal suspect with negative results, in response to Officer Carter’s question, Defendant advised that he possessed marijuana in his pants pocket. Officer Carter stated in his testimony that he was unsure if he physically collected the marijuana from the Defendant or if the Defendant handed the marijuana over to him. Officer Carter testified further at the Suppression Hearing that he collected the marijuana from the Defendant. Officer Carter testified that the Defendant was placed into handcuffs within the residence after the Defendant admitted to having marijuana on his person and after Officer Carter collected the marijuana from his person. The Defendant was placed into custody once he was placed into the police car.

On cross-examination, Officer Carter testified that upon entry into the residence, and before speaking with the Defendant, he observed glass pipes and marijuana on the coffee table in the living room. Officer Carter testified that the Defendant was initially not free to leave for reasons of officer safety being there was a threat of a suicidal suspect in the residence. Officer Carter then testified that once he observed the marijuana in the residence that the defendant was also not free to

leave. Defendant argued that the presence of police officers at all times within the residence indicated to him that he was not free to leave the residence even after the investigation ended for the suicidal suspect with no avail. Officer Carter also testified that once he approached the Defendant to speak with him regarding the marijuana within the residence the Defendant was not free to leave.

On redirect by the State, Officer Carter testified that upon entry to the residence, both individuals were asked not to leave for officer safety reasons. Officer Carter testified that prior to the Defendant's admission of possession of marijuana; he had no intention to arrest the Defendant.

On redirect by the Defense, Officer Carter testified the Defendant became a potential suspect in a marijuana case after Officer Carter observed marijuana within the residence. Officer Carter testified that when he observed the marijuana the detention of the Defendant was not only for officer safety but also for the marijuana investigation.

In closing argument by the Defense, defense counsel relied upon *United States v. Russell Freeman*, 325 F. Supp. 2d 463 (D. Del. 2004) in that the test for custody focuses upon 1) whether a reasonable person would feel they are free to leave, and 2) if questioning is involved. Defense counsel argued that the presence of custody, in that the Defendant did not feel free to leave, and the question asked by Officer Carter constitutes a violation of the Defendant's *Miranda* rights.

In closing argument by the State, counsel argued that *Miranda* requires custody and interrogation, which the State argues was not present in the situation involving

the Defendant. The State argues that Defendant was subject to detention, for purposes of officer safety and on-scene crime investigation.

(ii) The Law.

The issue before this Court is whether or not the Defendant was in custody for *Miranda* purposes when he gave incriminating statements about marijuana on his person, and pants pocket, prior to receiving *Miranda* warnings. The Fourth Amendment of the United States Constitution protects individuals from “unreasonable searches and seizures.” *U.S. Const. Amend. IV*. A seizure within the meaning of the Fourth Amendment “requires either physical force or, where that is absent, submission to the assertion of authority.” *Jones v. State*, 745 A.2d at 862.

Custody conceptually involves the deprivation of a person’s freedom. *Chao v. State of Delaware*, 604 A.2d 1351, 1356 (Del. 1992).

The coercive environment which results is simply the by-product of that deprivation. *Id.* Similarly, the creation of a coercive environment is not limited to or unique to custodial settings such as an arrest. *Id.* Noncustodial situations involving criminal investigations are not automatically converted into situations as to which *Miranda* applies simply because questioning takes place in a coercive environment. *Oregon v. Mathiason*, 429 U.S. 492, 495 (1997). Deprivation of freedom has been construed to mean, “that degree (of deprivation) associated with formal arrest to such an extent that the Defendant would not feel free to leave.” *Torres v. State*, Del. Supr., No. 151, 1990 (Order) (Christie, C.J.) (February 7, 1992).

Custodial interrogation is defined 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.” *State of Delaware v. Sumner* 2003 WL 21963008 at 11 (Del. Super.) citing *Miranda v. Arizona* 384 U.S. 436 at 444 (1966). Interrogation includes express questioning as well as “any words or actions on the part of the police that the police should know are reasonable likely to elicit an incriminating response from the suspect.” *Rhode Island v. Innis*, 100 S. Ct. 1682, 1689-90 (1980). The Court defined an “incriminating response” as ‘any response – whether inculpatory or exculpatory – that the prosecution may seek to introduce at trial.’ *Id.* at 1690, n. 5.

Law enforcement officers are obligated to administer *Miranda* warnings only where they restrict a person’s freedom enough to render him “in custody.” *State of Delaware v. Leskovar*, 2001 WL 1555884 (Del. Com. Pl.) citing *DeJesus v. State*, Del. Supr., 655 A.2d 1180, 1190 (1995).

The obligation to afford *Miranda* warnings is not activated merely because a suspect becomes the focus of an investigation. *Minnesota v. Murphy*, 465 U.S. 420, 432 (1984); *California v. Beheler*, 463 U.S. 1121, 1125 (1983). The legal standard accepted by the Delaware Supreme Court for determining “custody” for *Miranda* purposes is “whether there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.” *DeJesus v. State*, Del. Supr., 655 A.2d 1180, 1190 (1995). The Court must review the “totality of the circumstances” that surrounds the interrogation by applying an objective, reasonable person standard to

determine whether the interrogation took place in a custodial setting. *Marine v. State*, 607 A.2d 1185, 1193 (Del. Super. Ct., 1992). A determination of custody “depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned.” *Stansbury v. California*, 114 S. Ct. 1526, 1529 (1994).

When determining whether there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest, the objective reasonable person standard presupposes a reasonable person “innocent of any crime.” *United States v. Patterson*, 648 F.2d 625 (9th Cir. 1981); *Coates v. United States*, 413 F.2d 371 (D.C. Cir. 1969). In *Laury v. State*, the Delaware Supreme Court declined to extend the *Miranda* rules to the “routine, initial, on-scene investigation by the police.” *Laury v. State*, 260 A.2d 907, 908 (Del. 1969). In *Laury*, the defendants were questioned at the scene of a street-corner robbery without *Miranda* warnings. *Id.* The defendants were then taken to the police station where they were questioned again, with *Miranda* warnings. *Id.*

The Court held that the “practicalities of effective police investigation at the scene, immediately after the commission of a crime, require the police to have an unrestricted scope of general interrogation as to those found there.” *Id.* The *Miranda* rules are first applicable at the accusatory stage or during custodial interrogation. *Id.* In the absence of formal arrest, the determination of whether there has been a restraint on the suspect’s freedom of movement equivalent to a formal arrest turns on whether a reasonable person in the suspect’s position would have believed himself

in custody of deprived of his freedom in a significant way. *State of Delaware v. Sumner* 2003 WL 21963008 at 11 (Del. Super.) citing *Berkemer v. McCarthy* 468 U.S. 420, 442 (1984).

In *Conyers v. State of Delaware*, the Supreme Court held that confining a defendant in the living room of a residence to preserve a murder scene, although accompanied by an unarticulated intent of the police to detain the defendant, did not significantly deprive the defendant of his freedom of action and therefore did not constitute “custodial interrogation” under *Miranda*. *Conyers v. State of Delaware* 396 A.2d 157, 158 (Del., 1978). In *Conyers*, the police officer was called to the residence to investigate a possible death at the apartment of the defendant. *Id.* The police officer was admitted to enter the residence by the defendant. *Id.* The police officer ordered the defendant to remain in the living room of the residence to preserve the crime scene in the dining room of the residence while an inspection of the residence was conducted by another police officer. *Id.* The police officer located shells of the same caliber weapon that killed the victim in a bedroom of the residence. *Id.* The police officer asked the defendant whom the bedroom belonged to and the defendant confirmed that it was his bedroom. *Id.*

The police did not restrain the defendant within the apartment (other than a verbal advisement to remain in the living room). However, the police officer testified that if the defendant had attempted to leave, he would have detained him. *Id.* The Court reasoned that the statements in contention in the case fit an exception recognized by *Miranda* for “general on-the-scene questioning as to facts surrounding

a crime or other general questioning of citizens in the fact-finding process.” *Id.* citing *Miranda v. Arizona* 86 S. Ct. at 1629. The Court stated, “the circumstances surrounding the statements in issue, and the atmosphere in which they took place, show that they occurred during the initial on-scene investigatory stage, rather than during the accusatory or custodial stages, of this case.” 396 A.2d at 158.

(iii) Opinion and Order.

“In a Motion to Suppress, the State bears the burden of establishing the challenged search or seizure comported with the rights guaranteed by the United States Constitution, the Delaware Constitution and Delaware statutory law. The burden of proof on a Motion to Suppress is by proof by a preponderance of the evidence.” See *Hunter v. State*, Del. Supr., No. 279, 2000, Steele, J. (August 22, 2001) (Mem. Op. at 5-6); *State v. Bien-Aime*, Del. Supr., Cr.A. No. IK92-08-326, Tolliver, J. (March 17, 1993) (Memo Op.) (citations omitted). The State has not met this burden in the trial record. Applying the totality of circumstances test set forth, the Court finds that the Defendant was in custody and subject to custodial interrogation at the time he was questioned by Officer Carter.

The Court initially believed after listening to the testimony at the Suppression Hearing that this case to be one of general on-scene crime investigatory purposes. However, given Officer Carter’s candid testimony that the Defendant was not free to leave the residence, the Court has no recourse but to follow the law set forth under *Miranda v. Arizona*. Hence, the seizure of the Defendant on the date, time and place charged in the record was unlawful.

The Court finds based upon the testimony at trial that the Defendant was in custody for the purposes of *Miranda* warnings. The police officer testified that the defendant was initially in custody for the purpose of officer safety; however, once Officer Carter observed marijuana and glass pipes, in plain view, within the residence, the Defendant was being detained for a secondary, dual purpose – the investigation of the marijuana. The State did not redirect Officer Carter after he gave testimony that the Defendant was not free to leave the residence, hence allowing the Court to assume that the Defendant was in custody. The critical dispositive issue in this case is Officer Carter’s candid testimony that the Defendant was not free to leave the residence especially after the discovery of marijuana within the residence.

Based upon the case law and testimony of the arresting police officer, the Court finds that the Defendant was in custody and subject to custodial interrogation when questioned by Officer Carter. The Court therefore GRANTS Defendant’s Motion to Suppress. The Criminal Clerk is requested to re-set this matter for trial by summons with notice to be sent to the parties and counsel.

IT IS SO ORDERED this 10th day of July 2008.

John K. Welch
Judge

/jb

cc: Ms. Juanette West, Case Manager
CCP, Criminal Division