[J-164-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 86 MAP 2005
	:	
Appellee	:	Appeal from the Order of the Superior
	:	Court entered January 19, 2005 at No.
	:	473 MDA 2004, that vacated and
v.	:	remanded the Order of Court of Common
	:	Pleas of Berks County, Criminal Division,
	:	entered February 25, 2004 at No.
LAWRENCE A. GAUL, JR.,	:	4696/03.
	:	
Appellant	:	
	:	867 A.2d 557 (Pa. Super. Ct. 2005)
	:	
		RESUBMITTED: August 22, 2006

DISSENTING OPINION

MR. JUSTICE EAKIN **DECIDED**: **December 27, 2006**

Because I believe appellant was not subject to interrogation for Miranda[1] purposes, I respectfully dissent.

The majority finds Commonwealth v. DeJesus, 787 A.2d 394 (Pa. 2001), controlling here. See Majority Slip Op., at 5. In that case, the police arrested DeJesus and took him to a police administration building where he was placed in an interview room. There, over about a three-hour period, a detective informed him of the charges against him and told him that others also charged with the crimes made statements

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

incriminating him. DeJesus, at 400-01. DeJesus then made an incriminating statement without Miranda warnings. Id., at 401. This Court determined that when the detective informed DeJesus he had been implicated in the shootings and told him of the content of the co-conspirators' statements concerning his involvement, the detective should have known his comments were reasonably likely to evoke a defensive response from DeJesus in which he would have provided his own version of his involvement in the case. See id., at 403. Thus, providing DeJesus with the implicative statements of the co-conspirators was found to rise to the level of an interrogation, and the detective should have provided Miranda warnings. Id., at 404.

The majority herein applies DeJesus and concludes that, in reading the criminal complaint and the affidavit of probable cause, which included the incriminating statement from Burns, Investigator Shenk knew he would likely elicit an incriminating response. Majority Slip Op., at 6. The facts of the instant case share similarities with DeJesus. Here, Investigator Shenk did not provide appellant with Miranda warnings, and after informing appellant of the charges against him, he proceeded to read the affidavit of probable cause, which contained the incriminating statement by Burns.

However, the present case contains critical distinctions from DeJesus. The police interaction with appellant was not a three-hour "interview," as in DeJesus; Investigator Shenk read appellant the criminal complaint and the affidavit of probable cause, and did so only once. Further, after Investigator Shenk read the complaint and affidavit, he explained that, since appellant was in custody, he would have to read appellant his Miranda rights. Investigator Shenk then merely asked appellant if he wanted to discuss the charges, and again stated he would give appellant Miranda warnings before discussing it further. At that point, appellant made an incriminating statement.

While the affidavit of probable cause informed appellant that Burns gave the police a statement incriminating him, Burns was the victim, not a co-conspirator. Learning the obvious fact that you are under arrest because the victim accuses you is qualitatively different than learning your co-conspirators are shifting blame to you. Unlike DeJesus, appellant did not make his incriminating statement in immediate response to learning Burns incriminated him; appellant made the response after Investigator Shenk informed him he was in custody and asked if he wanted to discuss the charges; if so, he would have to receive his Miranda warnings. This is not conduct that this Court should condemn as unconstitutional. Reading the charging documents, copies of which must be given to the accused anyhow, does not comprise interrogation. Telling the accused that if he wishes to discuss matters, warnings must be given, is not interrogation.

The record does not support a finding that Investigator Shenk knew his statements were reasonably likely to elicit an incriminating response from appellant. There can be no per se rule that informing an accused of the contents of the affidavit, or the existence of witnesses incriminating him, will comprise "interrogation" in every case; this determination is contextual. In this case, there is no reason for this Court to find a constructive interrogation in the neutral, even helpful, behavior of this officer. Thus, I would hold interrogation did not occur, and the absence of Miranda warnings does not render appellant's statement inadmissible. See Commonwealth v. Fisher, 769 A.2d 1116, 1125 (Pa. 2001) (unsolicited, spontaneous, or voluntary remark is not result of custodial interrogation and is not subject to suppression).

Madame Justice Newman joins this dissenting opinion.