

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

JOHN A. PARKINS, JR.
JUDGE

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**Re: State of Delaware v. Charles Burley
I.D. No. 0607023686**

Submitted: April 8, 2009
Decided: April 21, 2009

Upon Defendant's Motion to Suppress
DENIED.

Dear Counsel:

The defendant is charged with murder in the first degree along with related offenses for a shooting occurring on July 28, 2006 at 1222 North Claymont Street in Wilmington. He has moved to suppress a statement to former Wilmington police officer Robert Eno in which he told Officer Eno that he had been shot at 10th

and Spruce Streets. The defendant contends that he was not given his *Miranda* warnings prior to that statement and therefore it should be suppressed. For the reasons which follow, the Court concludes that under the facts of this case no *Miranda* warnings were required prior to the defendant's statement and therefore the motion to suppress is **DENIED**.

The Court conducted an evidentiary hearing on the defendant's motion to suppress on February 5, 2009 at which time former Officer Eno, three current Wilmington police officers and members of the Wilmington Fire Department testified.

Facts

The following constitute the Court's findings of fact:

1. On the night of July 28, 2006 former Officer Eno was assigned to foot patrol on the Market Street Mall in Wilmington. Officer Eno did not have a partner that night.
2. Officer Eno was equipped with a Wilmington Police Department radio manufactured by Motorola. Channel A on that radio is used to speak with, or receive communications from, the Wilmington police dispatcher. Any Wilmington police officer tuned to Channel A can hear all communications from the dispatcher. Channel B is reserved for officers seeking to obtain

information such as outstanding warrants. The remainder of the channels (sometimes referred to as the off channels) is used by officers desiring to communicate directly with another officer. An officer communicating on Channel B or the off channels cannot hear broadcasts from the dispatcher on Channel A.

3. At approximately 1:26am of July 28th, a call went out on Channel A from the dispatcher directing officers to respond to the scene of a shooting at 12th and Claymont Streets. Officer Eno testified he does not recall hearing this call from the dispatcher.
4. Detective Matthew Hall, the chief investigating officer in this matter, testified that although he has no personal knowledge or recollection, there would likely have been other calls on Channel A concerning the Claymont Street shooting after the initial call. The defendant strenuously contends that Officer Eno must have been aware of the Claymont Street incidence because of general police radio broadcasts about it. Because of the Court's resolution of this matter, it need not resolve this dispute.
5. Sometime between 0100 and 0200 Lt. Michael Kane of the Wilmington Fire Department and three Wilmington firefighters were in the Rodney Square area on duties unrelated to police activity. While they were there they were

approached by a man with khaki shorts carrying a red shirt who advised Lt. Kane that he had been shot in the wrist. Lt. Kane did a quick “two second” evaluation and summoned an ambulance and a police officer through the fire board.

6. The fire board relayed Lt. Kane’s request for a police officer to the Wilmington police dispatcher, which in turn directed Officer Eno to respond to 10th and Market Streets.
7. When Officer Eno arrived at the scene he saw the defendant wearing khaki shorts with a red shirt wrapped around his bleeding wrist. At the time Officer Eno believed that the defendant was a victim. Not surprisingly, his first words to the defendant were “what happened?” (or words to that effect). The defendant responded he had been shot at 10th and Spruce Streets. The Court finds that at the time of this exchange Mr. Burley was not in custody. There is no evidence that at this time he was restrained in any manner and the Court credits Mr. Eno’s testimony that in his opinion Mr. Burley was free to go.
8. Wilmington police officer Kevin Backer (who was assigned to patrol duties that night) was at the 12th and Claymont scene when he was directed to respond to 10th and Market. Officer Backer and his partner drove to 10th and

Market. By the time they arrived the ambulance was already there. Officer Backer saw Officer Eno in the vicinity of defendant and assumed the officer may have been talking to the defendant. However, Officer Backer did not hear any conversation and had knowledge that Office Eno was, in fact, talking to the defendant.

9. Once the ambulance arrived the defendant, who was sitting on the sidewalk and leaning against the building at 919 Market Street, was evaluated by emergency medical technicians employed by the Wilmington Fire Department. The defendant, who appeared to be intoxicated, walked with assistance to the ambulance where he was placed, handcuffed, on a stretcher.
10. The defendant was taken to the Christiana Hospital. One Wilmington Fire Department EMT drove the ambulance and another remained in the back with the defendant. They were accompanied by Officer Eno, who also rode in the back with the defendant. The defendant, who was now displaying varying degrees of alertness, was uncooperative during the trip. The driver recalls the defendant being asked “what is your name?” and “how did this happen?” He did not recall any response.

Discussion

In *Miranda v. Arizona*, the United States Supreme Court held that an

individual may not be subjected to custodial interrogation unless that person is advised of specific rights protective of his or her Fifth Amendment privilege against self-incrimination.¹ “However, a law enforcement officer becomes obligated to administer *Miranda* warnings, ‘only where there has been such a restriction on a person’s freedom as to render him in custody.’”² “The mere fact that an investigation has focused on a suspect does not trigger the need for *Miranda* warnings in noncustodial settings.”³ The legal standard used to determine “custody” for *Miranda* purposes is “simply whether there [was] a formal arrest or restraint on freedom of movement of the degree associate with a formal arrest.”⁴ In determining whether the interrogation occurs in a custodial setting, the court must consider the totality of the circumstances from the perspective of an objective reasonable person.⁵

The Court finds that when Officer Eno first approached the defendant and asked him “what happened?” the defendant was not in custody. There was clearly no formal arrest at this point, nor would a reasonable person characterize the restraint on the defendant’s freedom of movement as that associated with a formal

¹ 384 U.S. 436 (1966).

² *State v. Hicks*, 1998 WL 731569 (Del. Super.) (quoting *Stansbury v. California*, 511 U.S. 318, 321 (1994)).

³ *Minnesota v. Murphy*, 465 U.S. 420, 431 (1984).

⁴ *Stansbury*, 511 U.S. at 321.

⁵ *Marine v. State*, 607 A.2d 1185, 1193 (Del. 1992).

arrest. Officer Eno, by himself, with no prior knowledge of the defendant or the shooting on Claymont Street, approached the defendant on foot and asked “what happened?” in response to the defendant’s injury. The defendant volunteered that he had been shot at 10th and Spruce streets. The defendant was not placed in handcuffs until sometime later, after Officer Eno learned about the Claymont Street shooting.⁶

Even if Officer Eno had heard the radio transmission about the shooting at Claymont street, that would not change the Court’s analysis. As stated above, the fact that a defendant is the focus of an investigation does not automatically trigger the need for *Miranda* warnings. Rather, whether a defendant is in custody for purposes of *Miranda* depends on how an objective, reasonable person would view the interrogation. After considering the totality of the circumstances, a reasonable person would conclude that the restraint on the defendant’s freedom of movement at the time Officer Eno first approached him was minimal, if any. Therefore, the defendant was not in custody at the time at the time he made the statement to Officer Eno.

Conclusion

The defendant’s statement to Officer Eno that he was shot at 10th and Spruce

⁶ See *State v. Cloud*, 1999 WL 743582 (Del. Super.) (holding that *Miranda* warnings were not

streets was not obtained in violation of *Miranda* because the defendant was not in custody at the time he made the statement. Accordingly, the defendant's motion to suppress the statement is **DENIED**.

IT IS SO ORDERED.

Very truly yours,

cc: Prothonotary

required where police handcuffed the defendant and then asked "what happened?")