

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 01-10,442

VS. :

GLOVER M. COLBERT, SR. :

OPINION AND ORDER

Before the Court is Defendant's Motion to Suppress Statements made to Agent Bowers of the Williamsport Bureau of Police. The Defendant is charged with endangering the welfare of children, simple assault, and harassment as a result of an incident that occurred on February 26, 2001. On that date, it is alleged that the Defendant struck his 14 year-old son, causing a swollen and split lip, facial swelling, and bruising and tenderness to his chest and forearms. Agent Keith Bowers, (Bowers) with the Williamsport Bureau of Police, began investigating the incident on February 27, 2001 after receiving a report of the incident from Lycoming County Children and Youth. Bowers testified that he interviewed the Defendant's son on two occasions that day, but did not interview the Defendant. The following day, Bowers received two phone messages from the Defendant. Bowers went to the Defendant's residence to speak with him, but the Defendant was not at home. Bowers left his business card for the Defendant to return his call.

Later the same day, the Defendant, accompanied by his wife, visited Bowers at his office in City Hall. The Defendant was offered a seat by the door, next to Bowers' desk. His wife sat nearby. Bowers testified that he opened the conversation by stating to the Defendant "is there anything you want to tell me?" The Defendant admitted to striking his son. The Defendant stated that he did not know how many times, he struck him more times than he could recall. Bowers noted that the Defendant was visibly

upset, and cried during the conversation. The Defendant told Bowers that he had set up an appointment with a counselor. The conversation lasted approximately 15-20 minutes. At the conclusion of the conversation, Bowers thanked the Defendant, and led him and his wife to the door. The Defendant was charged with the offenses, and arrested on March 3, 2001.

Defendant argues that the statements made to Bowers in his office should be suppressed, as they were elicited by Bowers without the benefit of a Miranda warning. Miranda warnings need to be given only when one is subjected to custodial interrogation. [Miranda v. Arizona](#), 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966); [Berkemer v. McCarty](#), 468 U.S. 420, 428- 29, 104 S.Ct. 3138, 3144, 82 L.Ed.2d 317 (1984). The test for determining whether a suspect is being subjected to custodial interrogation so as to necessitate [Miranda](#) warnings is whether he is physically deprived of his freedom in any significant way or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by such interrogation. [Commonwealth v. Meyer](#), 488 Pa. 297, 412 A.2d 517 (1980); [Commonwealth v. Brown](#), 473 Pa. 562, 375 A.2d 1260 (1977).

After a careful review of the testimony presented at Defendant's suppression hearing, the Court finds that the circumstances did not suggest that the Defendant was physically deprived of his freedom or that the Defendant reasonably believed that his freedom of movement was restricted during the meeting at Bowers' office. The Court found the most compelling evidence of this: the fact that Defendant initiated the meeting, and voluntarily came to Bowers' office; the fact that his wife accompanied him during the meeting; the fact that the meeting took place in an open office, and the

Defendant was seated next to the door; the fact that the Defendant was not placed under arrest, or told that he would be arrested; and the fact that the conversation was brief, after which the Defendant was free to leave. Although the Defendant argued that the circumstances were custodial since the Defendant was the sole suspect and focus of the investigation, the Court finds that factor, without more, would not make the meeting custodial. See [Commonwealth v. Perry](#), 710 A.2d 1183 (Pa.Super. 1998), *citing* [Beckwith v. United States](#), 425 U.S. 341, 347-48, 96 S.Ct. 1612, 1616-17, 48 L.Ed.2d 1 (1976) (The fact that a defendant is the focus of an investigation is a relevant factor in determining whether he was "in custody." However, the fact that a police investigation has focused on a particular person no longer automatically requires [Miranda](#) warnings.) The Court therefore denies the Defendant's Motion to Suppress the statements.

ORDER

AND NOW, this \_\_\_\_\_ day of July 2001, based upon the foregoing opinion, it is ORDERED and DIRECTED that the Defendant's Motion to Suppress Statements made to Agent Bowers' is DENIED.

BY THE COURT,

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Nancy L. Butts, Judge

xc: Diane Turner, Esquire  
E.J. Rymsza, Esquire  
CA  
Honorable Nancy L. Butts  
Judges  
Law Clerk  
Gary Weber, Esquire