

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 01-11,955
	:
	:
vs.	: CRIMINAL DIVISION
	: Omnibus Pre-Trial Motions
STEVEN E. WELCH,	:
Defendant	:

OPINION AND ORDER

Defendant has been charged with criminal mischief, false alarms to agencies of public safety, false reports to law enforcement authorities, and tampering with or fabricating physical evidence, all in connection with statements made by Defendant that on October 16, 2001, when he opened an envelope from the Internal Revenue Service containing his income tax refund, a white powder fell out onto his hands. Considering the atmosphere of the country at that time, following the terrorist attacks on September 11, 2001 and the anthrax scare which followed, Defendant’s statements brought about a full emergency response. In charging Defendant with these crimes, the Commonwealth is alleging that the statements made by Defendant regarding the white powder falling out of the envelope were false. Defendant has filed the instant Omnibus Pre-Trial Motion, seeking a Writ of Habeas Corpus, suppression of certain statements by Defendant after questioning by the police, the filing of a Bill of Particulars, and the return of certain property (the refund check). A hearing on the Motion was held March 19, 2002. The requests for a Bill of Particulars and for the return of property were resolved at the time of the hearing by stipulation and will be the subject of a separate Order. The Petition for Writ of Habeas Corpus and the Motion for Suppression will be addressed herein.

In the Petition for Writ of Habeas Corpus, Defendant contends the Commonwealth has failed to establish a prima facie case with respect to any of the charges, inasmuch as the giving of a false

report is an element of each offense and, according to Defendant, the Commonwealth presented nothing to show the statement was false other than statements made by Defendant after police questioning, indicating his original statements were indeed false. Defendant is thus alleging a violation of the Corpus Delicti Rule, contending the District Justice based his ruling holding the matters for Court on only Defendant's admissions.

The Corpus Delicti Rule prohibits admission into evidence of confessions or admissions of a defendant without proof by a preponderance of the evidence that a crime has been committed. Commonwealth v Friend, 717 A.2d 568 (Pa. Super. 1998). In the instant case, the Court believes the Commonwealth did present sufficient evidence to establish a prima facie case of a false report. The evidence presented indicated that Defendant apparently opened the envelope on October 16, 2001 but did not make a report until October 17, 2001, in spite of the potential severity of the situation. Further, it appears Defendant did not take any steps to protect either himself or his children from any potential danger. In addition, the vice-president of Team Environmental Services, Inc., a hazardous materials response team, who responded to Defendant's residence upon the request of the Lycoming County Department of Public Safety, testified to having retrieved the envelope and the check, but having failed to see any substance in the envelope or on the check. He also testified to seeing a powder on the floor in the room where the check was found which was visually consistent with the Cascade dishwashing detergent found under Defendant's kitchen sink. The Court acknowledges that all of this evidence is circumstantial but that does not prevent it from establishing a corpus. See Commonwealth v Friend, supra. Further, the Commonwealth need not prove the crimes beyond a reasonable doubt at this stage, only that a crime probably occurred. Since the Court finds that such was established in the instant case, the Petition for Writ of Habeas Corpus will be denied.

In his Suppression Motion, Defendant seeks to suppress the statements he gave to officers at approximately 4:30-5:00 a.m. on October 18, 2001, after having been questioned for approximately three hours, indicating that his original report was false. Defendant contends he was in custody at the time, was interrogated by the police, and therefore should have been given Miranda warnings prior to the questioning. The Commonwealth does not dispute that Miranda warnings were not given. They further do not dispute that Defendant was subject to interrogation, that is, questions or statements by

the police intended to elicit an admission. The sole issue is whether Defendant was in custody at the time of the questioning. Considering all of the circumstances, the Court finds that although he may not have been initially, by the time he gave the statements at issue, he was.

According to the testimony of Agent Sorage of the Williamsport Bureau of Police, after Defendant went through a decontamination process in front of his residence, he was asked by Agent Sorage and Agent Weber to accompany the officers to City Hall to discuss the matter. According to Agent Sorage, Defendant indicated that he would accompany the officers, and they drove him to City Hall at approximately 1:00 a.m. on October 18, 2001. According to Agent Sorage, Defendant was very cooperative. The officers took Defendant into a conference room and initially asked him to draw a layout of his house in order that the hazardous materials team, which was on the way, would be able to find the envelope and check. Defendant made the drawing and Agent Sorage took it upstairs to await arrival of the hazardous materials team. Defendant was then given a Consent to Search form in order to allow the team to search his home for the envelope and check and he signed that form. Defendant indicates in his testimony that when he went to City Hall with the officers he had no reason to decline the request, as he had nothing to hide. He also testified that his goal was to help with the investigation. He said the officers indicated they needed information for the hazardous materials team and that he felt he had no choice but to go, but it appears that such a feeling came from a sense of duty to community, not from any pressure by police. The Court believes that the initial trip to City Hall and provision by Defendant of a map and the signing by him of a consent to search his home was made freely and voluntarily and cannot be classified as a custodial situation, in which a reasonable person would not feel free to leave.

The Court also believes, however, that at some point after Defendant signed the Consent to Search form the situation developed into a custodial interrogation. The testimony indicates Agent Sorage and Agent Weber questioned Defendant for approximately three hours, from approximately 1:45 a.m. until 4:30-5:00 a.m. It appears that very shortly after beginning the questioning, Agent Sorage let Defendant know that he did not believe Defendant's claim that powder fell out of the envelope, and insinuated that he was making it up. According to Defendant's testimony, Agent Sorage went over the same matter 15 times. Considering the length of the questioning, the Court

believes it was revisited many times and while perhaps not 15, numerous in any event. At approximately 3:30 a.m., it appears Defendant said something to Agent Weber about going back to work but was told, “that isn’t going to happen”. The Court believes that statement would have conveyed to Defendant that he was no longer free to leave. The testimony also indicates that neither Agent Sorage nor Agent Weber ever specifically told Defendant he was free to leave. The questioning ended only when Defendant finally made a statement indicating that he lied about the powder falling out of the envelope. At that point he was asked to make a written or taped statement and he asked to speak with an attorney. The agents called an attorney for him and then after Defendant spoke to that attorney, he indicated that he would not make such a statement. He was then arrested, and arraigned at approximately 8:30 a.m. Finally, Defendant indicated in his testimony that he felt that he was not free to leave and therefore it never occurred to him that he could ask to leave, explaining why he did not ask to leave.

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 Busch, 713 A.2d 97 (Pa. Super. 1998). Further, police detentions become custodial only when under the totality of circumstances the conditions and/or duration of the detention becomes so coercive as to constitute the functional equivalent of a formal arrest. Id. Among the factors the Court utilizes in determining, under the totality of the circumstances, whether the detention became so coercive as to constitute the functional equivalent of a formal arrest are: the basis for the detention, the duration, the location, whether the suspect was transferred against his will, how far, and why, whether restraints were used, the show, threat or use of force, and the methods of investigation used to confirm or dispel suspicions. Id. In the instant case, although the initial detention cannot be found to have been custodial, the basis for such having been to gain background information to assist the hazardous materials team, considering all of the circumstances, the Court finds that such did become custodial. After Defendant signed the Consent to Search and provided a layout of his home, the basis for the detention no longer was to provide background information, but, rather, to allow the police to question Defendant regarding their

suspicion that he was making the story up. The questioning continued for approximately three hours. Their questioning took place in a conference room at City Hall in the middle of the night, with, presumably, no one else around. Defendant was wearing only a pair of coveralls and some slippers obtained from the hospital, after having gone through a decontamination process, which removed all of his usual clothing. While the officers neither showed, threatened nor used any force, the method of investigation, asking the same questions repeatedly, suggest coercion.

The Commonwealth argues that Defendant was not in a custodial situation, citing, Commonwealth v Williams, 650 A.2d 420 (Pa. 1994). Like Defendant in the instant case, Mr. Williams was asked by police to accompany them to City Hall to be interviewed as a witness. He was driven to City Hall in a marked patrol car, was not frisked or handcuffed and when he arrived at City Hall, was asked to wait in an unlocked office for the arrival of another detective. Unlike Defendant in the instant matter, Mr. Williams was told twice that he could leave if he so wished. Once the investigating officer suspected Mr. Williams was not telling the truth, he asked Mr. Williams to take a polygraph test and Mr. Williams then asked whether he could call his father. He was told he could call anyone he wished and when the detective overheard Defendant mention the word lawyer in speaking with his father, the detective indicated to Mr. Williams that he would help him contact a lawyer if he so wished. Apparently, Mr. Williams indicated that he did not wish to speak with a lawyer but instead indicated that he would take the polygraph test. The detective then told Mr. Williams again that he was free to leave but Mr. Williams indicated that he would rather stay to straighten out the situation. Prior to the beginning of the polygraph test, the officer who administered the test read Mr. Williams his Miranda warnings and Mr. Williams waived those warnings. The Court sees the situation presented in Williams in a much different light than that presented in the instant case.

Finding that Defendant was subjected to custodial interrogation at the time he made the statements regarding lying about the powder falling out of the envelope, and that Defendant was not provided his Miranda warnings prior to making that statements, those statements must be suppressed as having violated Defendant's constitutional rights.

ORDER

AND NOW, this 27th day of March, 2002, for the foregoing reasons, Defendant's Petition for Writ of Habeas Corpus is hereby denied and his Motion to Suppress is hereby granted in part. The admissions by Defendant made at approximately 4:30-5:00 a.m. indicating that he made up the story about the white powder falling out of the envelope are hereby suppressed and shall not be admissible at trial.

By the Court,

Dudley N. Anderson, Judge

cc: DA
Peter Campana, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson