



and Robbery<sup>10</sup>. The charges arise from a shooting that occurred on October 13, 2015, in the 400 block of Brandon Avenue in Williamsport, PA.

### **Testimony of Agent Peacock**

Agent Trent Peacock (Peacock) of the Williamsport Bureau of Police testified on behalf of the Commonwealth. Peacock has been a Williamsport Bureau of Police officer for 29 years, the last ten as an agent.

On October 13, 2015, Peacock received a call at home regarding a homicide at the 400 block of Brandon Avenue. Peacock went to the scene. Two victims were at the hospital and the female victim was deceased. Williamsport Regional Medical Center (WRMC) was treating Defendant, at the time considered a victim, for a gunshot wound to the lower abdomen. Peacock had no other information regarding the events surrounding the shooting before going to the hospital.

At WRMC, Peacock first visited the trauma room and confirmed the death of the female victim. Then Peacock went to Defendant's room at 10:30 pm. Officer Schon and Cummings were in Defendant's room conducting a gunshot residue test on Defendant's hands. Peacock testified that he did not speak to Schon or Cummings regarding the shooting.

Peacock identified himself to Defendant and asked him what happened. Defendant said he was walking through the area coming from Montoursville and heard a gunshot and then felt the pain. Defendant said he was on his way to the hospital to meet his girlfriend because her child was being treated in the hospital.

---

<sup>10</sup> 18 Pa.C.S. § 3701(a)(1)(i) and (ii).

Peacock asked Defendant if he had fired a gun. Defendant said he wanted a lawyer and there were no further questions asked.

In May of 2016, Peacock obtained an arrest warrant for Defendant charging the crimes listed above. Peacock knew Defendant at that time was housed in a halfway house in Harrisburg as a result of a parole violation. Agents Kontz and Peacock went to serve the arrest warrant on Defendant on the morning of May 16, 2016. While there, the agents stopped by the local state police barracks for assistance since they were outside their jurisdiction. Kontz and Peacock went to the halfway house with the warrant and explained it was for a felony one offense. While serving Defendant, the state troopers were stationed at all exits of the building. Halfway house staff brought Defendant down and into a conference room. Peacock informed Defendant that he had a warrant for his arrest for his actions on the night he was shot. Peacock did not explain the specific charges other than that they were felonies and told Defendant “we would talk about it when we got back to the city”. Peacock testified that Defendant did not request an attorney at that time and did not indicate that he did not want to talk. Peacock told him he did not want to talk until they got back to city.<sup>11</sup>

Defendant was asked to sign a Waiver of a Right to Post Bail<sup>12</sup>, which he did. Peacock explained in Court that criminal homicide is a nonbailable offense<sup>13</sup>;

---

<sup>11</sup> Defendant averred in Paragraph 5 of his Supplemental Pretrial Motion, 1/23/2017 that at the time of his arrest he requested to speak to an attorney. Defendant did not testify at the suppression hearing. The Court finds Peacock credible in his statement that Defendant did not request to speak to an attorney at the halfway house.

<sup>12</sup> (A) When a defendant has been arrested in a court case, with a warrant, outside the judicial district where the warrant of arrest was issued, the defendant shall be taken without unnecessary delay to the proper issuing authority in the judicial district of arrest for the purpose of posting bail, as permitted by law. Pa.R.Crim.P. 517

however, Peacock did not tell Defendant that he was being arrested for a nonbailable offense i.e. criminal homicide. The form Defendant signed, Defense Exhibit 1, also says

I also understand that I voluntarily waive this right, and I will be taken, without unnecessary delay, before the issuing authority in the judicial district where the warrant was issued for purposes of preliminary arraignment.

The form is signed by Defendant, and Kontz and Peacock [illegible], at 08:45 am. Defendant was not brought before a MDJ for preliminary arraignment, rather he was brought to City Hall for questioning.

At the time questioning began, Defendant was asked to sign a "Miranda Waiver"; while not titled as such, it does advise Defendant of his 5th Amendment rights:

I wish to advise you that you have an absolute right to remain silent. Anything you say can and will be used against you in a court of law; you have the right to talk to an attorney before and have an attorney present with you during questioning; If you cannot afford to hire an attorney, one will be appointed for you, without charge, before any questioning if you so decide; If you decide to answer any questions, you may stop at any time you wish.

Commonwealth's Exhibit 3, 5/16/16, 11:04 am.

---

(Procedure in Court Cases When Warrant of Arrest is Executed Outside Judicial District of Issuance).

<sup>13</sup> All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great; and the privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it. Pa. Const. Art. I, § 14. and See Footnote 11. Comm. v. Dixon, 907 A2d 468, 477 (2006).

Peacock testified that he did not talk to Defendant during the two hour drive from Harrisburg to Williamsport (two hours based upon the time signatures on the Waiver of Right to Post Bail and Miranda Waiver: To Wit 8:45 am and 11:04 am) and based on Peacock's own testimony. Peacock denied ever getting into the back seat with Defendant or telling him that the female victim was a well-known figure in the community.

Peacock testified that during the interview, Defendant appeared alert and not under the influence of alcohol or drugs. He was not talkative and did not appear tired.

### **Testimony of Agent Kontz**

Retired Agent Raymond Kontz (Kontz) of the Williamsport Bureau of Police testified on behalf of the Commonwealth. He retired in January of 2017, but had been with the Williamsport Bureau Police for twenty-two years, the last twelve as an investigator. He also testified that Defendant did not request an attorney when they arrested Defendant at the halfway house in Harrisburg. He also testified that they did not speak to the Defendant during the two hour drive from Harrisburg to Williamsport. He testified that they kept the partition closed between Defendant and themselves and did not discuss the criminal charges. Kontz testified that he also did not believe Defendant was tired during the video and that he did not believe Defendant was being truthful in his statements to police during the interview. Kontz testified that the agents had no conversation with Defendant other than that shown on the video. Kontz testified that the Defendant, after requesting a lawyer and while being processed and fingerprinted, said to Kontz "the only way I could get less time for this is if I tell you

who sent me to that house”. Kontz specifically denied having any conversation about less time other when Defendant brought it up.

The Court watched the video submitted to the Court as Commonwealth’s Exhibits 2 and 2A. Defendant’s interview lasted approximately 55 minutes and 25 seconds.

## **Discussion**

### ***1. Whether request for lawyer at the hospital in October of 2015 extended to the arrest date of May 2016?***

The Court finds that the request for the lawyer at the hospital in October of 2015 did not extend to his police interrogation in May of 2016. Prior to the Supreme Court decision in Maryland v. Shatzer, a waiver of Defendant’s right to counsel when being interrogated by police was not sufficient to protect a suspect’s right to have counsel present at a subsequent interrogation if he had previously requested counsel: “additional safeguards” were necessary. Maryland v. Shatzer, 559 U.S. 98, 104 (2010). In Shatzer, the Supreme Court of the United States said that the judicially created presumption in Edwards<sup>14</sup>, did not extend to requests for counsel between breaks in custody. In the particular facts underlying Shatzer, Shatzer was incarcerated when he was questioned in 2003 regarding sexual abuse allegations. At that time, he declined to speak without an attorney. Two and half years later an investigation continued and Shatzer was still incarcerated. He did not request counsel when law enforcement requested to interview him again. The Maryland Appellate Court upheld the trial court’s decision to suppress Shatzer’s statements at the second interview

---

<sup>14</sup> Edwards v. Arizona, 451 U.S. 477 (1981).

finding that because a request for counsel was made two years prior, additional safeguards were required in securing a second interview that the court would deem not coerced. The Supreme Court of the United States found that incarceration i.e. lawful imprisonment imposed upon conviction of crime does not create coercive conditions identified in Miranda. Id. at 113. Ultimately, the High Court held that

Because Shatzer experienced a break in Miranda custody lasting more than two weeks between the first and second attempts at interrogation, Edwards does not mandate suppression of his March 2006 statements.

Id. at 117.

In the case at bar, when Defendant first expressed desire for an attorney he was not subject to a custodial interrogation, so the Edwards presumption would not apply at the current determination of whether his waiver of Miranda rights required heightened scrutiny. Even if the Edwards presumption applied, the Court would find that a sufficient break in custody had occurred between the original request for a lawyer and the decision to proceed with an uncounseled police interrogation. The Defendant's detention at the halfway house was unrelated to the charges for which Peacock had a warrant for so the Court finds it could not be considered to be an unbroken chain of custody regarding the current crimes charged.

## ***2. Whether statement at City Hall was given after undue influence.***

Having an opportunity to view the video, the Court finds that the Defendant did appear tired during the police interrogation. He is rubbing his eyes throughout the interview, and propping his head up alternatively with his left hand and right hand. Rubbing one's eyes and being unable to support one's head weight without the support of one's hands can be considered indicia of tiredness. Moreover, the

Defendant's scratching of himself is audible on the video recording. Whether the Defendant was indeed under the influence of controlled substances as argued by Defense Counsel in its Second Supplemental Motion, to wit: Percocet, the Court finds that such influence did not appear to render Defendant's waiver of Miranda rights involuntary. Being under the influence of opioids does not automatically disable one's ability to consent to interrogation. The Court finds the substance of the interview to be an attempt by the Defendant to learn more information about the charges as Defendant said "what has been brought upon me". He asks the officers specifically about the charges, in the form of a request for legal advice. Minute 31:15. Peacock explains criminal homicide to the Defendant and Defendant spends 15 minutes reading the arrest warrant and affidavit of probable cause. Minute 32:44 through 47:50. The Defendant's ability to read and understand English is clear from his behavior and words on the video and the fact that he had requested an attorney in the past, bolsters the Court's finding that his waiver of Miranda rights was knowing and voluntary.

The Court finds the agents' testimony that they had no conversation with Defendant regarding the criminal charges other than they were felonies and that they involved the night of the shooting in the two hour of period of time they transported Defendant to be credible. There is no other evidence of record, other than averments made by Defense Counsel to support a different finding.



**3. *Whether the Commonwealth may introduce any statements of Defendant made while being fingerprinted and processed by Agent Kontz.***

In Miranda, the United States Supreme Court determined that in order to protect the Fifth Amendment privilege against self-incrimination from the inherently compelling pressures of custodial interrogation, "[i]f an individual states that he wants an attorney, the interrogation must cease until an attorney is present." 384 U.S. at 474. In Edwards, the Court determined that additional safeguards for the Miranda right to counsel were necessary and held that once a suspect asserts the right, he may not be further interrogated "until counsel has been made available to him..." 451 U.S. at 484...in Minnick, the Court clarified the Edwards rule by holding that "when counsel is requested, interrogation must cease, and officials may not reinitiate interrogation without counsel present, whether or not the accused has consulted with his attorney." 111 S.Ct. at 490.

Commonwealth v. Santiago, 599 A.2d 200, 201 (1991).

The Supreme Court of Pennsylvania defines interrogation as "questioning initiated by law enforcement officials" and that the "functional equivalent" of interrogation includes "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." Commonwealth v. Gaul, 912 A.2d 252, 255 (2006). The interrogation of the Defendant had ended when Kontz processed him. The Court finds that the statement "the only way I could get less time for this is if I tell you who sent me to that house" was made voluntarily by Defendant after interrogation had ceased. Even if it were inculpatory, "a confession given after a defendant invokes his right to counsel need not be suppressed where the defendant: (1) initiated further communication, exchanges, or conversations with the police, and (2) knowingly and intelligently waived the right to counsel." Commonwealth v. Martin, 5 A.3d 177, 187-88 (2010). The Court finds Kontz credible that Defendant volunteered that statement and that it was not in response to police questioning and thus it will not be suppressed.

**ORDER**

**AND NOW**, this 28th day of July, 2017, based upon the foregoing Opinion, the Motion to Suppress Statements made in Defendant's Police Interview is DENIED.

BY THE COURT,

---

Nancy L. Butts, P.J.

cc: DA (MK, KO)  
Rob Hoffa, Esq.  
Gary Weber, Esq.