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Commonwealth v. Furry-Wassil

COMMONWEALTH OF PENNSYLVANIA v. LORI ANN FURRY-WASSIL, Defendant
In the Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action, No. 890-2002

Criminal Law; Miranda Warnings; Suppression of Statements; Custody; Interrogation

1. Where Defendant is in custody at time of interrogation, it is necessary that Miranda warnings be given by the interrogating officer.
2. The test for determining whether a suspect is in custody which necessitates Miranda warnings is whether he is physically deprived of his freedom in any significant manner or is placed in a situation in which he reasonable believes that his freedom of action or movement is restricted by such interrogation.
3. Where Defendant's freedom of movement is restricted due to medical treatment that Defendant sought of her own free will, and not due to an officer's actions, the Defendant is not "in custody" for interrogation purposes.

Appearances:

Nancy H. Meyers, *Assistant District Attorney*

Thomas S. Diehl, Esq., *Counsel for Defendant*

OPINION

Van Horn, J., October 31, 2002

Procedural History

On April 12, 2002, Trooper Michael Taylor of the Pennsylvania State Police charged Defendant with one count of Driving Under the Influence of Alcohol. On June 4, 2002, Defendant waived her preliminary hearing. On July 17, 2002, Defendant waived mandatory arraignment, and Defendant's case is currently listed for the November, 2002, term of Court.

Defendant filed an Omnibus Pretrial Motion seeking suppression of statements she made during an interview with Trooper Taylor while Defendant was in the emergency room of Chambersburg Hospital for treatment of injuries she sustained in the single-vehicle accident which gave rise to the current charge. A hearing was held on October 17, 2002, where Trooper Taylor was the only witness who testified. At the conclusion of the hearing, both parties were directed to submit a brief memorandum of the relative law and its application to the facts of this case.

Factual Background

On March 30, 2002, Trooper Taylor was dispatched to the scene of a one-vehicle accident on White Church Road, Greene Township, Franklin County. At the scene of the accident, Trooper Taylor spoke with an injured individual who stated that he was not the driver of the vehicle involved in the accident, but was a passenger. Although Trooper Taylor located at the accident scene a purse and identification belonging to Defendant, the trooper was unable to locate Defendant in the area. As Trooper Taylor was en route to the

Chambersburg Hospital to speak further with the injured passenger being taken there for treatment, Trooper Taylor was informed that Defendant was also on her way to the Chambersburg Hospital. Pursuant to completing the trooper's accident investigation, Trooper Taylor proceeded to the hospital as he desired to speak with Defendant to ascertain her involvement in the accident in order to complete the trooper's report.

Trooper Taylor, along with Trooper Mitchell^[1], was in the lobby area of the Chambersburg Hospital Emergency Room when Defendant arrived, accompanied by her friend, Ms. Shives. After hospital personnel placed Defendant in a wheelchair, Trooper Taylor asked Defendant if she had been in a motor vehicle accident that evening. Defendant replied, "Yes." Trooper Taylor then asked her if she had been driving the vehicle that was involved in the accident. She again replied, "Yes." When Trooper Taylor further inquired as to whether she had been wearing a seatbelt, Defendant stated that she had been wearing the seatbelt at the time of the accident. At this point, Trooper Taylor noticed an odor of alcohol being emitted from Defendant, and the trooper asked Defendant if she had had anything to drink since the accident, to which Defendant replied, "No." Trooper Taylor then placed Defendant under arrest for DUI, and a subsequent blood alcohol test revealed a blood alcohol content of .16, which was greater than the legal limit. Trooper Taylor testified, and the Commonwealth argues, that Trooper Taylor did not advise Defendant of her Miranda rights at the time of questioning because Defendant was not in police custody. Trooper Taylor testified that he never told Defendant that she was or was not under arrest before questioning her. Conversely, Defendant claims that the questioning rose to the level of custodial interrogation which requires that the defendant be given Miranda warnings, and since none were given, that her statements are a product of an illegal custodial interrogation and should be suppressed.

Discussion

Since the Commonwealth concedes that Defendant was indeed interrogated, the only issue before this Court is whether Defendant was in custody at the time of interrogation, which would necessitate that Miranda warnings be given by the investigating Pennsylvania State Trooper. Both parties cite in their memorandums Commonwealth v. Perry, 710 A.2d 1183 (Pa. Super. 1998) as authority for the test for determining whether a suspect is "in custody" which states as follows:

"The test for determining whether a suspect is 'in custody' which necessitates Miranda warnings is whether he is physically deprived of his freedom in any significant manner or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by such interrogation."

Id. at 1186, quoting Miranda v. Arizona, 384 U.S. 436 (1966).

Like the case at bar, the defendant in the Perry case was questioned in the hospital by a state trooper investigating an automobile accident who then proceeded to the hospital where the defendant was getting medical treatment. Id. at 1185. The Perry Court held that the trial court properly admitted evidence from the questioning at the hospital without Miranda warnings where (1) the defendant did not ask for the questioning to stop; (2) the defendant was not pressured to answer questions; (3) the environment was not conducive to an interrogation; (4) his family was present; (5) medical personnel were present; (6) the questioning was in connection with a routine traffic accident investigation pursuant to standard police procedure; (7) the questioning was not lengthy; and (8) the trooper personally noticed the odor of alcohol on the injured defendant's breath and questioned him in that regard. Commonwealth v. Perry, *supra*. Likewise, Defendant in the instant case did not ask for the questioning to stop and did not indicate that she felt pressured to answer the trooper's questions; Defendant was in the company of her boyfriend as well as another friend, Ms. Shives, and there were medical personnel in the immediate vicinity; Trooper Taylor's questioning was in keeping with standard police procedure as regards a routine traffic accident investigation; and the questioning relative to Defendant's alcohol consumption was in response to Trooper Taylor's personally detecting the odor of alcohol on Defendant's breath as she answered the routine questions. Therefore, this Court holds that the follow up questioning in the hospital emergency room area was not a custodial interrogation which would require Miranda warnings.

Defendant states in her memorandum that since Defendant was seeking medical treatment, she could not realistically leave the hospital, leading her to believe that she was in custody when being questioned by Trooper Taylor. Memorandum of Defendant, p.2. The Pennsylvania Superior Court addressed this precise issue in Commonwealth v. Fento, 363 Pa. Super. 488 (1987). The Fento Court held that the Appellee who was questioned in his hospital room by an investigating trooper while Appellee was being

treated for injuries sustained in a single-car accident was not subject to a custodial interrogation. Id. at 493. The Fento Court reasoned that the restraints placed on the Appellee's freedom to leave were as a result of the accident and not any coercive action on the part of the investigating trooper. Id. at 499. Likewise, the restraints placed on Defendant in the case at bar were for medical treatment and not for investigative purposes by Trooper Taylor. Being placed in a wheelchair by hospital personnel pending medical treatment is not adequate action to reasonably persuade Defendant that she was "in custody" for purposes of police interrogation. Realistically, Defendant could have declined medical treatment and could have left the hospital; therefore, her freedom of movement was not physically prevented by Trooper Taylor, but was of Defendant's own volition.

Defendant cites to Commonwealth v. Whitehead, 427 Pa. Super. 362 (1993) as authority for her position that the facts of this case rise to the level of custodial interrogation. However, Whitehead is distinguished from the case at bar in that Whitehead dealt with the a trooper's questioning of a suspect at the hospital pursuant to a DUI investigation, whereas the case at bar deals with questioning an individual pursuant to a one-vehicle accident where there was no suspicion of DUI or other criminal activity. The trooper in Whitehead gathered evidence at the scene of the accident that led him to suspect the driver of the car had been consuming alcohol, and his questioning was in connection with a criminal investigation. Id. at 369. In the instant case, Trooper Taylor personally detected alcohol on Defendant's breath as he was following up on a routine accident investigation; therefore, Whitehead is not controlling in the instant case.

The Court determines that Defendant's statements to Trooper Taylor were not the product of an illegal custodial interrogation and, therefore, are admissible evidence.

ORDER OF COURT

AND NOW THIS 31st DAY OF OCTOBER, 2002, after considering all testimony presented and Memoranda submitted,

IT IS HEREBY ORDERED THAT Defendant's statements to Trooper Michael Taylor made while Defendant was in a wheelchair pending medical treatment at Chambersburg Hospital Emergency Room were not the product of an illegal custodial interrogation, and the statements are admissible evidence in the above captioned matter. The Defendant's Motion to Suppress is DENIED.

Pursuant to Pa.R.Crim.P. 114, the Clerk of Courts shall immediately docket this Order and record in the docket the date it was made. The Clerk shall forthwith furnish a copy of the Order, by mail or personal delivery, to each party or attorney, and shall record in the docket the time and manner thereof.

^[1] Defendant's memorandum noted that both troopers were in uniform as they questioned Defendant at the hospital. This Court makes no inference from this fact. Memorandum of Defendant, p. 2.