

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

STATE OF DELAWARE,

v.

TYWANA SELBY,

Defendant.

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Case No. 1303022872

Submitted: January 2, 2014

Decided: January 9, 2014

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DECISION AFTER TRIAL

RENNIE, J.

INTRODUCTION

On March 28, 2013, Defendant Tywana Selby (hereinafter “Defendant”), while in the New Castle County Courthouse, allegedly made illegal contact with an individual in violation of an existing no contact order. Defendant was subsequently arrested and charged with Breach of Release pursuant to 11 *Del. C.* § 2113(c)(2).¹ Trial was held on January 2, 2014, and the Court reserved its decision.

FACTUAL BACKGROUND

On March 28, 2013, Defendant was arrested and charged with Breach of Release stemming from a no contact order in place to protect an alleged victim in a pending Assault Third Degree charge.² Corporal Michael Purnell of the Delaware Capitol Police responded to a reported disturbance that had occurred on the Fifth Floor of the New Castle County Courthouse. Upon his arrival, Corporal Purnell made contact with Defendant, who had allegedly made derogatory comments to an individual with whom she was ordered to have no contact (hereinafter “Victim”). Corporal Purnell interviewed multiple witnesses, Victim, and Defendant, and determined that Defendant had made contact with Victim. Corporal Purnell ran a computer check via DELJIS and determined that Defendant had been ordered to have no contact with Victim.

Corporal Purnell took Defendant to the Capitol Police area in the Courthouse, where he proceeded to collect Defendant’s fingerprints. During the fingerprinting process, Defendant, without solicitation, stated that she made prohibited contact with Victim.

¹ “If the accused...knowingly breaches any condition of release, each such failure or breach shall be a separate crime.”

² Under the terms of the no contact order, Defendant was ordered not to “be in the physical presence of the alleged victim.” Defendant also could not “send letters, messages or notes...or communicate...by fax, telephone, or other electronic medium,” or “contact the alleged victim in any way.”

PARTIES' CONTENTIONS

Defendant contends that the statement made to Corporal Purnell should be suppressed, as Defendant was not given *Miranda* warnings prior to her statement. Defendant argues that even though Corporal Purnell never interrogated Defendant while in custody, he should have advised her of her *Miranda* rights. Defendant bases her contention on the fact that Corporal Purnell had prior experience with individuals in custody making unsolicited, incriminating statements.

The State contends that Defendant's statement to Corporal Purnell is admissible and proves that Defendant violated the no contact order. The State asserts that *Miranda* warnings were not required because Defendant made the statement voluntarily, while Corporal Purnell was going through the intake process, and it was not a result of an interrogation.

DISCUSSION

The case dispositive issue before the Court is whether the Defendant's admission should be suppressed because Corporal Purnell did not recite the *Miranda* warnings to Defendant while she was in custody. Officers are required to provide *Miranda* warnings prior to a custodial interrogation.³ *Miranda* "warnings are required only where (1) questioning of a suspect rises to the level of 'interrogation'; and (2) the interrogation occurs while the suspect is either in 'custody' or in a 'custodial setting.'"⁴ A custodial interrogation is "questioning initiated by law enforcement officers after the person has been taken into custody or otherwise deprived of his freedom in any significant way."⁵ Custodial situations occur when an objectively reasonable

³ See *Tolson v. State*, 900 A.2d 639, 643 (Del. 2006); *Marine v. State*, 607 A.2d 1185, 1192 (Del. 1992); *Laury v. State*, 260 A.2d 907, 908 (Del. 1969).

⁴ *Marine*, 607 A.2d at 1192, citing *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) (emphasis original).

⁵ *Miranda*, 384 U.S. at 444.

man would not feel as though he was free to leave a particular area,⁶ and when the police officer knows or should know that in such a situation, certain words or actions “(other than those normally attendant to arrest and custody) ... are reasonably likely to elicit an incriminating response from the suspect.”⁷

An officer’s inquiry into “biographical data necessary to complete booking or pretrial services” falls under the “routine booking question” exemption and thus *Miranda* warnings are not required.⁸ Additionally, law enforcement officers are not required to issue *Miranda* warnings while participating in “routine, initial, on-scene investigation[s],” as this would prevent effective crime scene investigations.⁹

Corporal Purnell testified that he first encountered Defendant when he was investigating a reported disturbance on the Fifth Floor of the Courthouse. In order to understand the situation, Corporal Purnell needed to quickly gather witness statements, which included a statement by the Defendant. As this quick investigation falls under the “initial, on-scene investigation” outlined in *Laury*,¹⁰ Corporal Purnell was not required to issue *Miranda* warnings to any of the individuals from whom he gathered information at the scene.

Corporal Purnell further testified that after he determined that Defendant had violated a court order, he took her to the Capitol Police booking area and proceeded to engage in typical intake procedures. Purnell testified that during the fingerprinting process, Defendant, without any questioning, admitted to making contact with the Victim. Although Defendant was in custody at this time, Corporal Purnell was not interrogating Defendant, nor was he making

⁶ *Marine*, 607 A.2d at 1193, citing *Torres v. State*, 608 A.2d 731 (Del. Super. 1992) (quoting *United States v. Phillips*, 812 F.2d 1355, 1360 (11th Cir. 1987)).

⁷ *Tolson*, 900 A.2d at 644, quoting *Rhode Island v. Innis*, 446 U.S. 291, 302, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980).

⁸ *Pennsylvania v. Muniz*, 496 U.S. 582, 601, 110 S.Ct. 2638, 110 L.Ed.2d 528 (1990) (stating that the “[r]outine booking question” exception exempts from *Miranda*’s coverage questions to secure the ‘biographical data necessary to complete booking or pretrial services’”) (citations omitted); see also *Tolson*, 900 A.2d at 644.

⁹ *Laury* 260 A.2d at 908.

¹⁰ *Id.*

statements that he knew or should have known would elicit an incriminating response from Defendant. Instead, Corporal Purnell was engaged in standard intake procedures. Purnell testified at trial that during his time on the force there had been instances where individuals made incriminating statements during the intake process without any prompting or form of interrogation.

At trial, Defendant's counsel argued that because Defendant was in a custodial situation and not free to leave, Corporal Purnell was required to provide Defendant with *Miranda* warnings before beginning any investigative processes. Defendant's counsel also argued that because Corporal Purnell had prior knowledge that some individuals make unsolicited, incriminating statements while in custody, he should have immediately issued the *Miranda* warnings. While this argument may be the subject of best practices protocol for law enforcement officers, it does not comport with the established requirements of *Miranda* or its progeny. It is undisputed that Defendant was in custody at the time she made the incriminating statement, but *Miranda* warnings are required when a defendant is in custody *and* subject to interrogation.¹¹ Corporal Purnell did not engage in any interrogation of Defendant while she was in custody, but instead engaged in standard, routine intake procedures, "normally attendant to arrest and custody,"¹² such as fingerprinting. Therefore, Corporal Purnell was not required to issue *Miranda* warnings to Defendant prior to gathering her fingerprints, and Defendant's unsolicited statement that she did have the prohibited contact with Victim is admissible to prove Defendant's guilt.

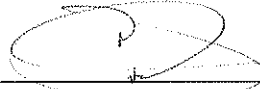
¹¹ *Marine*, 607 A.2d at 1192.

¹² *Tolson*, 900 A.2d at 644, quoting *Rhode Island v. Innis*, 446 U.S. 291, 302, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980).

CONCLUSION

The evidence in the record adduced at trial is that Defendant voluntarily admitted that she violated the no contact order set by the Court. The State has therefore met its burden to prove beyond a reasonable doubt that Defendant committed a Breach of Release pursuant to 11 *Del. C.* § 2113(c)(2). Thus, the Court finds Defendant Tywana Selby **GUILTY**. This Judicial Officer shall retain jurisdiction of this case and will schedule it forthwith for sentencing.

IT IS SO ORDERED THIS 9TH DAY OF JANUARY 2014.

A handwritten signature in black ink, appearing to read 'Sheldon K. Rennie', is written over a horizontal line.

The Honorable Sheldon K. Rennie,
Judge