

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)	
)	
)	
v.)	
)	
QUAZIM ISHOLA,)	ID NO. 2110004703
)	
Defendant.)	
)	
)	
)	
)	

Date Submitted: January 9, 2023
Date Decided: January 20, 2023

*Upon the Defendant's Motion to Suppress. **DENIED.***

ORDER

Christina L. Ruggiero, Esquire, Deputy Attorney General, Department of Justice,
Wilmington, Delaware, Attorney for the State of Delaware.

Alanna R. Farber, Esquire, and Monika G. Germono, Wilmington, Delaware,
Attorneys for Defendant.

SCOTT, J

INTRODUCTION

Defendant Quazim Ishola (“Mr. Ishola”) is charged in this Court with one count of Possession of a Firearm During the Commission of a Felony (“PFDCF”) in connection with allegation arising from a shooting in Newark injuring an individual. Mr. Ishola moved to suppress his incriminating statements made to Newark Police because Mr. Ishola asked for an attorney while in custody of the Newport Police. Based on this claim, Mr. Ishola asserts the items seized from 10 W. 20th Street Wilmington, Delaware should also be suppressed because the search warrant for the home was based the incriminating statements made by Mr. Ishola. Because Mr. Ishola was not being interrogated or asked questions likely to produce an incriminating result when he requested a lawyer, the Motion to Suppress is **DENIED.**

STATEMENT OF FACTS

On October 9, 2021, at approximately 2:20 A.M., Newark Police were called to Madison Drive in Newark due to a reported shooting. The victim of the shooting was sitting in a car when she was injured. No arrests were made on scene.

Newark Police investigated the incident. Surveillance footage indicates that a group of people gathered outside of 147 Madison Avenue. Depicted on the surveillance was a physical altercation between two individuals where one individual was thrown to the ground. Surveillance depicts gunshot flashes prior to

and as, a light-colored SUV drove past the scene of the physical altercation and a muzzle flash coming from a weapon being held by an unknown individual standing near Madison Avenue.

Based on surveillance, witness statements and investigative measures, the altercation appeared to have involved someone trying to take a gun away from the individual thrown to the ground, who the police believed to be Mr. Ishola. After Mr. Isohola was thrown to the ground, he is seen trying to walk away as another individual, later identified as William Poore (“Mr. Poore”), held that gun up for protection as he and Mr. Isohola left the area. The gun was returned to Mr. Ishola by the time Mr. Poore and Mr. Ishola returned to the vehicle Mr. Ishola drove. As Mr. Poore and Mr. Ishola left in the car, multiple gunshots were fired from the car and at least one gunshot was fired by an unknown individual. The victim is believed to have been injured while in her car during the exchange of gunfire.

The light-colored SUV was later identified as Mr. Ishola’s car, a beige Infiniti with Delaware License plate PC165XXX. The car was registered to the address of 10 W. 20th St. Wilmington, DE 19802 and an individual living at that residence had the same last name as Mr. Ishola, believed to be Mr. Ishola’s sister-in-law. Of consequence, individuals residing at the residence reported stolen firearms just four days before the shooting. Newark Police put a flag on the Infiniti so other officers in

the State would be on the lookout for the car, as they did not know who was driving it at that time.

On October 10, 2021, around 12:41 P.M., the flagged car was observed by Newport Police Department officers while it travelled on Route 4. A patrolman began pursuit, ultimately concluding when the Infiniti pulled over on Old Baltimore Pike.

Upon being pulled over, Mr. Ishola and Mr. Poore exited the car. At police gunpoint, they were immediately ordered to get on the ground. They complied and officers handcuffed Mr. Ishola. An officer frisked Mr. Ishola and immediately brought him to the police car where he waited by himself in the backseat. Per MVR recording, approximately two minutes after Mr. Ishola was in the backseat, the following exchange occurred between Mr. Ishola and the police officer:

Officer: “How do you spell your first name?”

Mr. Ishola: “First name?”

Officer: “Yeah, spell it for me.”

Mr. Ishola: “Uh, Q-U. Can I – can I speak to a lawyer?”

Officer: “Yeah, yeah we’ll get you that, okay. Alright. Listen, we’re gonna give you a chance to talk. We’re not going to talk now, okay. I just need your name, that’s it.”

Mr. Ishola: “Can I call my mom?”

Officer: “Yeah.”

Mr. Ishola: “Can I talk to my mom?”

Officer: “What’s your first and how do you spell it?”

Mr. Ishola was then left alone in the backseat of the officer’s car. When alone he made the following statements aloud: “Why does this happen to me,” and “I almost got killed, yo. Somebody shot at me and slammed me, yo. I got knocked out for an hour.” After some time, the officer transported Mr. Ishola to the Newport Police Department. During the transport, Mr. Ishola asks several times about his “twin,” his nickname for Mr. Poore, and repeatedly asks the officer why he was pulled over, if he could talk now, gives a fake name to the officer before giving his true identity. The officer responds repeatedly that Mr. Ishola will be told why he is pulled over soon and that he was not going to talk with him.

Detective Keld, the Newark Police Department’s assigned detective to the shooting case met with Mr. Ishola when he arrived at the Newport Police Department. At this time, Detective Keld read Mr. Ishola his Miranda rights and asked for Mr. Ishola understood his rights. After Mr. Ishola asked a question about his rights and Detective Keld clarified, Mr. Ishola waived his rights by making a statement and answering Detective Keld’s questions for approximately an hour. Here, he admitted to involvement in the shooting, stated that after the altercation, he shot a gun out of his window as Mr. Poore drove his car. Defendant stated that he stole a gun from his family’s home and that he had later returned it.

DISCUSSION

I. Mr. Ishola was not subject to a custodial interrogation at the time he asked for counsel, therefore his incriminating statements made after being Mirandized were not made involuntarily.

In order to protect the privilege against self-incrimination,¹ law enforcement officials are constitutionally required to advise citizens of certain rights prior to subjecting them to custodial interrogation.² However, the advisement of these rights, also known as “Miranda warnings,” is not required merely because the person being questioned is suspected by the police of criminal conduct.³ Unless a defendant is both 1) in custody or in a custodial setting and 2) subject to interrogation, he will not be entitled to a reading of Miranda warnings.⁴

For purposes of Miranda, a person is in custody when, under the totality of the circumstances, a reasonable person in the same position would not feel free to leave.⁵ This standard requires the Court to weigh objective circumstances, not the subjective views of the individual or the officers.⁶ Under these facts, the parties have

¹ U.S. Const. Amend. 5; Del. Const., Art. I, § 7.

² *Marine v. State*, 607 A.2d 1185, 1192 (Del.1992)(citing *Miranda v. Arizona*, 384 U.S. 436, 436 (1966)).

³ *State v. Brotman*, 1991 WL 138421, at *4 (Del.Super. July 11, 1991) (citing *Oregon v. Mathiason*, 429 U.S. 492,495 (1977)).

⁴ *Loper v. State*, 8 A.3d 1169, 1176 (Del.2010)(citing *McAllister v. State*, 807 A.2d 1119, 1125–26 (Del.2002)).

⁵ *Id.*

⁶ *State v. Andrus*, 1996 WL 190031, at *5 (Del.Super.Jan. 16, 1996) (quoting *Stansbury v. California*, 114 S.Ct. 1526, 1529 (1994)).

agreed Mr. Ishola was in custody when he was handcuffed and sitting in the officer's car. Therefore, this Court need not address this requirement.

However, this Court must address whether Mr. Ishola was subject to interrogation at the time he asked for an attorney. Interrogation may be "actual questioning" or its "functional equivalent," which

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.' The later part of the definition is concerned with the perspective of the suspect, not the intent of the police.⁷

Mr. Ishola argues his request for an attorney when he was in custody and when custodial interrogation was imminent requires this Court to find his incriminating statements were made involuntarily. Mr. Ishola relies on several cases to bolster his arguments: *Edwards v. Arizona*⁸, *Alston v. Redman*⁹, *State v. Torres*¹⁰, and *United States v. Kelsey*¹¹. This Court is not required to follow some of cited cases. Mr. Ishola would like this Court to adopt the findings of *Kelsey*, a 10th Circuit Court of Appeals case, and *Torres*, a North Carolina Supreme Court case, on the ground it was discussed in *Alston*, a 3rd Circuit Court of Appeals case which is binding.

⁷ *Tolson v. State*, 900 A.2d 639, 643–44 (Del.2006) (quoting *Upshur v. State*, 844 A.2d 991, at *1, n5. (Del.2004)(TABLE)).

⁸ 451 U.S. 477 (1981).

⁹ 34 F.3d 1237 (3d Cir. 1994).

¹⁰ 412 S.E. 20, 24 (N.C. 1992).

¹¹ 951 F.2d 1196 (10th Cir. 1991).

However, *Alston* merely discusses *Kelsey* and *Torres*, and the *Alston* court decision does not follow nor endorse *Kelsey* and *Torres* because “[w]hatever the merits of the position taken in those cases, i.e., an accused may invoke the right to counsel anticipatorily when an interrogation is imminent, the instant case falls outside the ambit of their reasoning.”¹² Simply, *Alston* found the positions of *Kelsey* and *Torres* were not relevant to *Alston*, therefore, this Court is not required to following their conclusions regarding anticipatory invocation of right to counsel.

Edwards, as well as Delaware caselaw referenced in discussing custodial interrogation, is on point under these facts. The Supreme Court has stated that the rule in *Edwards* is triggered by “some statement that can reasonably be construed to be expression of a desire for the assistance of an attorney in dealing with custodial interrogation by the police.”¹³ The key to such analysis is whether Mr. Ishola was subject to custodial interrogation by the officer when he made an expression of desire for assistance of an attorney. This Court finds Mr. Ishola was not subject to custodial interrogation based upon the officer’s interaction with him. When Mr. Ishola asked for counsel, the officer was simply trying to get his name. There is no indication the officer should know asking the name of the individual driving a flagged vehicle

¹² *Alston*, 34 F.3d at 1349.

¹³ *McNeil v. Wisconsin*, 501 U.S. 171, 111 S.Ct. 2204, 2209, 115 L.Ed.2d 158 (1991).

would reasonably be likely to elicit an incriminating response from that individual. For this reason, Mr. Ishola did not properly assert his right to counsel at the time police asked for his name. Therefore, his later incriminating statements after Detective Keld advised him of his rights and he continued to make a statement are admissible.

Additionally, the *Alston* court, recognizing *Michigan v. Jackson*¹⁴, makes clear state actors may not claim ignorance of a defendant's request for counsel to another state actor. Meaning, a Newark Police officer may not claim he did not know Mr. Ishola unequivocally requested counsel to a Newport Police officer if Mr. Ishola had properly asserted his right to counsel. However, "the assertion of the right to counsel must be conveyed to someone, usually an agent of the State, who would otherwise seek to question the suspect in the adversarial or investigative process."¹⁵ Here, the arresting officer knew nothing about the circumstances surrounding the tag put on the vehicle Mr. Ishola drove. Therefore, the arresting officer would not seek to question the suspect in the adversarial or investigative process and did not do so.

¹⁴ 106 S.Ct. at 1410.

¹⁵ *Alston*, 554 A.2d at 310 (Del. 1989).

II. Search warrant for 10 West 20th Street remains valid.

Because the incriminating statements made by Mr. Ishola are admissible, the statements are not excised from the search warrant's affidavit. As such, the warrant's affidavit does not change, and the warrant remains valid.

CONCLUSION

Based on the forgoing reasons, Defendant's Motion to Suppress is **DENIED**.

IT IS SO ORDERED.

/s/ Calvin L. Scott
Judge Calvin L. Scott, Jr.