



IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
CRIMINAL DIVISION

STATE OF OHIO,
Plaintiff,
v.
MICHAEL COLE
Defendant

2017 JAN - 2 A 11: 28
CLERK OF COURTS
CUYAHOGA COUNTY

CASE NO. CR 17-619258-B
JUDGE PAMELA A. BARKER
OPINION AND JOURNAL ENTRY
ON DEFENDANT'S MOTION TO SUPPRESS

This matter is before the Court on the Motion To Suppress filed by Defendant Michael Cole, aka Michyelle Cole ("Defendant")¹ on September 29, 2017 ("Defendant's Motion"), and the State of Ohio's Brief In Opposition to Defendant's Motion, filed on October 6, 2017 ("State's Opposition"). In Defendant's Motion, Defendant argues that the statements given by her to Detective Borden on October 14, 2016, must be suppressed because the questioning of Defendant constituted a custodial interrogation and Defendant was not given *Miranda* warnings prior to questioning. In the State's Opposition, the State argues that the under the "totality of circumstances" the questioning of Defendant by Detective Borden did not constitute a custodial interrogation and therefore, no *Miranda* warnings were required.

On December 11, 2017 a hearing was held on Defendant's Motion. At the hearing, Cleveland Police Detective David Borden and Defendant testified. Three exhibits were offered by the State and admitted into evidence: 1.) the videotaped interview of Defendant conducted by Detective Borden on October 14, 2016; 2.) the "Consent To Obtain Body Specimens" executed by Defendant on October 14, 2016 during the interview; and 3.) the "Consent To

¹ At the hearing, Defendant testified that she is transgender and identifies as a woman and therefore, Defendant will be referred to as "she" or "her" within this Opinion.

Search Electronic Device" executed by Defendant on October 14, 2016 during the interview. The sole exhibit offered by Defendant and admitted into evidence was the Cleveland Police Department Search Warrant Inventory List associated with the search conducted on October 14, 2016 of 6639 Tamarind Drive, Bedford Heights, Ohio.

At the hearing, Detective Borden testified to the following chain of events or facts. On October 8, 2016 he was assigned to investigate the death of an individual, identified through fingerprints on October 11, 2016, as Brandon Bledsoe, aka Brandi Bledsoe. The decedent was found with garbage bags placed around his feet, hands and head, and a single gunshot wound to his chest. Once identified, Detective Borden learned that he lived in an apartment on W. 117th Street south of Lorain Avenue and upon entering the apartment, Detective Borden found no signs of a struggle there. The apartment leasing company provided Detective Borden with the person listed as next of kin. Upon reaching out to the next of kin, Detective Borden learned through the decedent's family and friends that the decedent was transgender and that photographs of the decedent and Defendant had been posted on Facebook on October 7, 2016 at about 9 p.m. showing the two of them together in Akron.

Police from Oakwood Village and the Metro Parks located the decedent's clothing in Bedford Heights. Police went to the home located at 6639 Tamarind Drive in Bedford Heights on October 14, 2016 but were denied entry by Co-Defendant Heidi Krudy ("Ms. Krudy"), who, as Defendant explained during the October 14, 2016 interview, was her girlfriend/fiancé and the mother of her biological child. Detective Borden conferred with the Prosecutor's Office, and then secured a search warrant to search the premises at 6639 Tamarind Drive. In the Affidavit that he executed in support of the search warrant he secured, Detective Borden

averred that evidence related to the murder would be found at the residence. Detective Borden, along with several SWAT officers from Bedford Heights, and other Cleveland Police officers, executed the search warrant between 8:25 p.m. and 11:00 p.m. the night of October 14, 2016. Detective Borden estimated that approximately 12 to 13 police officers were involved in executing the warrant. He testified that the SWAT team had guns drawn when they entered the home. They encountered Defendant, and Ms. Krudy and her children. Defendant was placed in a black and white Bedford Heights police car or unit, and Ms. Krudy was placed in another police car with her children. Detective Borden testified that zip-ties were placed on Defendant's hands inside the home, for the purpose of officer safety, but believed that they were removed before Defendant was placed in the black and white Bedford Heights police car. Defendant and Ms. Krudy remained in the police cars during the entire search of the premises and were not free to move around. Detective Borden did not know if Defendant had been patted down, but testified that she probably had been per police policy. Detective Borden testified that it was cold outside.

As part of the search, photographs were taken, and evidence, including two cell phones, a gun box, white garbage bags similar to those found on the decedent, and a silhouette target "stonewall" were found and seized. Also, a 2004 Chevrolet Trailblazer belonging to Defendant was towed from the scene, after cadaver dogs "hit" on the rear hatch. According to Detective Borden, he asked Defendant and Ms. Krudy to come downtown to be interviewed, and Ms. Krudy's brother arrived either during or after the search had been completed to take care of the children. Detective Borden testified that he explained to Defendant and Ms. Krudy that there was an investigation underway and he had some questions for them. They agreed to

come downtown. Detective Borden testified that he did not offer to interview Defendant and Ms. Krudy at the house or have them come downtown via their own mode of transportation. Ms. Krudy's brother did not offer to drive them downtown. Detective Borden did not remember Defendant's hands being zip-tied at the time he spoke with her about coming downtown to be interviewed. Defendant was transported downtown to the Homicide Unit of the Cleveland Police Department in a black and white Cleveland Police car. Defendant was not placed under arrest and she was not handcuffed.

State's Exhibit 1 or the videotape of the interview that took place in the interview room within the Homicide Unit was played at the hearing. Detective Borden testified that during the interview Defendant was not under arrest and she was told that she was not under arrest during the interview. State's Exhibit 1 demonstrates the following. Defendant was not handcuffed. Detective Borden asked Defendant questions, to include whether or not she would allow a DNA swab to be taken. Defendant agreed and signed the Consent To Obtain Body Specimens, State's Exhibit 2. Defendant had water to drink, and was asked if she wanted coffee but declined that offer. Detective Borden also asked Defendant if she would consent to have her cell phone looked at and she agreed and signed the Consent To Search Electronic Device, State's Exhibit 3. Defendant offered to draw and did draw a small diagram on this Consent form in conjunction with explaining how to unlock the cell phone. Through her later testimony at the hearing, Defendant testified or confirmed that she freely executed the two Consent forms during the interview and drew the diagram or outlined the code to get into her phone on State's Exhibit 3. However, Defendant also testified that she believed she was under arrest at the time of the interview and did not feel free to do anything.

The video demonstrates that Detective Borden asked Defendant open-ended questions and at times, followed up for clarification. Oftentimes in response to a specific question posed to her by Detective Borden during the interview, Defendant volunteered additional details, information, background and/or explanations. Defendant was very conversational and did not appear to be speaking under coercion or duress. According to Detective Borden, during the interview, the door to the interview room was closed.

After Detective Borden stated that "we're almost done here", Defendant asked to use the bathroom, and Detective Borden responded, "yeah, come on." They both exited the interview room. Detective Borden testified that during this time, Defendant was escorted out of the locked homicide unit to allow her to use the restroom down the hallway by the elevators, and Detective Borden did not walk Defendant to the restroom, but waited by the office.

The video demonstrates that from the beginning of the interview through until the time Defendant and Detective Borden reentered the interview room after Defendant had gone to the bathroom,² Detective Borden was sitting with his legs crossed and leaning back in his chair most of the time; he yawned several times; and he never raised his voice or made any kind of physical movement that could be construed as threatening. Detective Borden was just asking questions and taking notes.

Upon reentering the room after the bathroom break, again, Detective Borden did not make any kind of physical movement that could be construed as threatening. However, the tone of Detective Borden's voice and the tone of the interview changed, with Detective Borden stating "we've got problems", explaining to Defendant that blood had been found in her

² Detective Borden and Defendant re-entered the interview room at approximately 1:24:20 on the videotape.

vehicle. Although Detective Borden spoke in a louder voice, he was still sitting back in his chair. Defendant repeatedly denied any involvement in the death of the decedent, but Detective Borden explained that he found that "hard to believe". Detective Borden was emphatic in his statements to Defendant but did not express any anger. Detective Borden did repeatedly express his opinion that he did not believe Defendant and discounted or rejected the idea that it was just a coincidence that the decedent's clothing had been found within a mile of the home on Tamarind where Defendant stayed with Ms. Krudy on weekends and at other times, and that Defendant was the last one seen with the decedent. Detective Borden advised Defendant that she was not under arrest and she was free to go. The total time of the interview was one hour and thirty-seven minutes. During the interview, Defendant did not confess to any crime, and in fact, after being told that blood had been found in her Trailblazer, repeatedly denied any involvement when asked, even after being told by Detective Borden that he did not believe Defendant. According to Detective Borden, after the interview was concluded, he and Defendant left the room and Detective Borden took Defendant to the lobby where Ms. Krudy was waiting. Detective Borden offered them a ride home but they declined. Defendant was arrested on July 10, 2017.

Detective Borden testified that he did not consider Defendant a suspect at any time during his first encounter with Defendant on October 14, 2016, despite knowing the following information when the interview began: the decedent lived on the west side of Cleveland; the decedent's clothing was found a short distance from the Tamarind home; the decedent was found on the east side of Cleveland; photos of Defendant with the decedent had been posted at 9 pm the night before the decedent's body was found; during the search the police had

found blood in Defendant's Trailblazer, garbage bags similar to those found on the decedent, and a gun box; and Ms. Krudy had refused the police entrance to the home earlier that day. Detective Borden testified that he did not consider Defendant a suspect, but acknowledged that in his affidavit submitted to secure the search warrant he had averred that evidence of the murder would be found in the premises. Neither Defendant's counsel nor counsel for the State inquired of Detective Borden as to why he did not consider Defendant a suspect.

Defendant testified that on the day the search warrant was executed he was staying at Ms. Krudy's house. A SWAT team banged on the door and came in the house with guns drawn, and she was thrown on the floor and her hands were zip-tied. According to Defendant, she was placed in a light blue Taurus and her hands remained zip-tied the entire time that she was in the car while the search was being conducted and while she was transported downtown in that same blue Taurus by two African-American police officers. Defendant testified that she had no contact with her family and Ms. Krudy's family was present the entire time of the search. Detectives told her that she was being brought downtown for questioning. She was never given the opportunity to ride downtown separately. She believed that if she would have asked Ms. Krudy's brother to drive her down, he would have done so. According to Defendant's testimony, she was never read her *Miranda* rights, she was never told she was free to leave, she never believed she was free to leave, she had no access to her vehicle to go downtown to the police department, and her phone was seized by the police.

Defendant acknowledged that she was not hand-cuffed during the interview and afterward, was allowed to go home. She testified that she did not feel free to do anything and explained that she did not ask for an attorney until the very end of the interview because she

was nervous and believed she was under arrest. After the interview she left and went back to her residence. Defendant did not testify concerning how she got home.

Defendant did not offer any testimony or evidence that the police questioned her while on scene at the house, while seated in the police car during the search, while being transported downtown, or at any time before the recorded interview was conducted. Defendant did not call any other witnesses, to include Ms. Krudy's brother or any other police officers on scene at the time of the search or the two she testified transported her downtown. Defendant did not introduce any other evidence to attempt to corroborate Defendant's testimony or contradict Detective Borden's testimony concerning what happened at the residence or while being transported downtown, specifically to include their respective testimonies concerning when Defendant's hands were zip-tied and whether Defendant was told she was going to be taken downtown or asked if she would come downtown. Thus, as to the conflicting testimony offered by Defendant and Detective Borden on these issues of fact, the Court must weigh their credibility.

Defendant argues that Detective Borden's questioning of Defendant constituted a "custodial interrogation" because a reasonable person in her position would not have felt at liberty to terminate the interview and leave, and that in evaluating whether or not it constituted a "custodial interrogation" the Court must consider not only what transpired during the interview, but also what happened before the interview. In other words, the interview must be considered or viewed in the context of the events leading up to it. In support of Defendant's position, Defendant's counsel has directed this Court's attention to two Ohio appellate court cases.

The first case is the Second District Court of Appeals' decision in *State v. Sanchez* (12th Dist. No. 970CA-32), 1998 Ohio App. LEXIS 1734, where the Court remanded the case to the trial court because the trial court's decision contained no findings on the issue of custodial interrogation. The appellate court did conclude or advise the trial court that if it accepted the testimony of two of the police officers on scene during the consent search of the defendant's home, which testimony conflicted with the testimony of the third officer, then the statements given by the defendant during the search had to be suppressed. In *Sanchez*, the police had secured the defendant's consent to search the defendant's home. One police officer, Evers, had testified at the suppression hearing that during the walk-through of the home, he had not asked questions of the defendant but the defendant had volunteered statements, and that the other two officers present in the home had asked questions of the defendant. However, the two other police officers who had not testified at the suppression hearing did testify at the trial that Evers had asked the defendant questions during the consent search. The undisputed evidence revealed that the defendant had never been told that he did not have to talk to the police, nor had he been told that the police would leave if requested. A uniformed officer had accompanied the defendant at all times while they had moved through the defendant's house. Evers testified that the officers would have accompanied the defendant outside to ensure that he would not try to free his brother who had been taken into custody and placed in a police cruiser immediately upon arriving at the home, or "get away". *Id.* at *32. No one else was present in the home during the consent search and, importantly, the defendant was handcuffed, placed in a cruiser, and transported to the police station as soon as the search had been completed.

Sanchez is distinguishable from the instant matter in the following important respects. First, in *Sanchez* the statements the defendant made to police occurred at the time that a search of his home was being conducted pursuant to the defendant's consent to search the premises, meaning that the defendant had the right to revoke that consent at any time. However, the court considered the fact that the officer(s) had not advised the defendant of this right to support its conclusion that any questions asked of the defendant during the consent search was a "custodial interrogation". In the instant matter, the police had secured a search warrant giving them authority to search the premises and, for purposes thereof, ensure that the occupants did not move around. Indeed, Detective Borden confirmed that Defendant, Ms. Krudy and the children were not free to move around. When asked to confirm that Defendant was placed or sat in the police car during the entire two and one-half hours between 8:30 p.m. and 11:00 p.m. that the police spent conducting the search, Detective Borden did so, stating or explaining that it was cold outside. See, *State v. Durham*, 2016-Ohio-691 (8th Dist. Cuyahoga Cty. No. 102654), at ¶170. There was no evidence adduced at the hearing that any questions were asked of Defendant during the search of the premises or during the ride downtown.³

Second, whereas in *Sanchez* the defendant was handcuffed immediately upon completion of the consent search during which the defendant had answered questions posed to him by police officer(s), in the instant matter there is no testimony that Defendant was ever placed in handcuffs. Detective Borden did testify that Defendant's hands were zip-tied after

³ This also distinguishes the instant matter from the case of *State v. Steers*, 1991 Ohio App. LEXIS 2361 (May 14, 1991), Greene App. No. 89CA-38, unreported, cited and discussed by the Court in *Sanchez*. In *Steers*, it was during the search of the defendant's dormitory that the police had asked the defendant questions that could elicit incriminating responses, to include the question concerning which areas of the room the defendant had control over. The Court in *Steers* found that the defendant was in custody and should have been given the *Miranda* warnings.

the police entered the house, but also testified that the zip-ties were removed before he entered and sat in the police car. Although this testimony conflicts with Defendant's testimony on this issue, this Court finds Detective Borden's testimony more credible. And, although Defendant testified that she was not given a choice about being transported downtown, this testimony also conflicts with Detective Borden's testimony that she was asked if she wanted to come downtown to answer some questions and voluntarily did so. Again, this Court finds Detective Borden's testimony more credible on this issue.

The second Ohio appellate court case that Defendant's counsel directed this Court's attention to is *State v. Thompson*, 103 Ohio App.3d 498, 659 N.E.2d 1297 (12th Dist., Warren County, No. CA94-12-101) (1995). In that case, the police informed the defendant that he was not under arrest, but that they wanted to talk to him about pills and guns in the vehicles, asked for the defendant's cooperation, said they knew he had health problems, and "didn't want to take him to jail." *Id.* at 501. They searched the defendant and seized his car keys and some cash, including some marked money used by the confidential informant. The defendant was placed in the police cruiser and there, signed a consent to search form for the vehicles, neither of which was registered to the defendant. He was taken to the police station where the interview took place and during which he told the police that he needed an insulin shot. The defendant was dependent upon the police to drive him home, and the police did drive him home. The appellate court affirmed the trial court's decision concluding that the interview was a "custodial interrogation", in that the police officers' actions "ran contrary" to their verbal indications to the defendant that he was not under arrest. *Id.* at 503.

Whereas in *Thompson* the defendant had executed a consent form to allow the police to conduct the search after he had already been placed in the police cruiser, in the instant matter, the search of the premises was made pursuant to a search warrant. Therefore, the procedures and/or events to include the SWAT team entering the premises with guns drawn, probably patting down Defendant, securing her hands with zip-ties, and not allowing any occupants of the premises to leave were followed and/or took place. Whereas in *Thompson* the defendant was told by the officers that they did not want to have to take him to jail, evidence of such a statement or representation by any police officer to Defendant was not elicited at the hearing. Whereas in *Thompson* the defendant was not told that he was free to leave and was dependent upon the police to take him home and they did take him home, in the instant matter, Defendant was told that she could leave, and she was not dependent on the police to take her home and they did not – she declined the offer of a ride.

In effect, the State argued that the videotape of the interview is the best evidence demonstrating that the interview was not a “custodial interrogation”. In its Opposition Brief, the State cited to and discussed more recent Ohio case law – including cases from the Eighth District Court of Appeals - a discussion of which is included in part below, in support of its position that the interview of Defendant was not a “custodial interrogation”.

In *State v. Biros*, 78 Ohio St.3d 426, at 440, 678 N.E.2d 891, 1997 Ohio LEXIS 1037, 1997-Ohio-204, cert. denied, (1998), 522 U.S. 1002, 118 S. Ct. 574, 139 L.Ed.2d 413, the Ohio Supreme Court explained:

Police are not required to administer *Miranda* warnings to everyone whom they question. *Oregon v. Mathiason* (1977), 429 U.S. 492, 97 S.Ct. 711, 714, 50 L.2d. 714, 719. “Nor is the requirement of warnings to be imposed simply because the

questioning takes place in the station house, or because the questioned person is one whom the police suspect." *Id.* Only custodial interrogation triggers the need for *Miranda* warnings. *Id.* at 494, 97 S.Ct. at 713, 50 L.Ed.2d at 719, *See, also, Berkemer v. McCarty* (1984), 468 U.S. 420, 440-442, 104 S.Ct. 3138, 3150-3152, 82 L.Ed.2d 317, 335-336. The determination whether a custodial interrogation has occurred requires an inquiry into "how a reasonable man in the suspect's position would have understood his situation." *Berkemer* at 442, 104 S.Ct. at 3151, 82 L.Ed.2d at 336. "The ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler* (1983), 463 U.S. 1121, 1125, 103 S.Ct. 3517, 3520, 77 L.Ed.2d 1275, 1279. *See, also, State v. Barnes* (1986), 25 Ohio St.3d 203, 207, 25 Ohio B. Rep. 266, 270, 495 N.E.2d 922, 925.

"Further, neither an officer's subjective intent nor the defendant's subjective belief is pertinent to the analysis." *State v. Sanchez, supra*, 1998 Ohio App. LEXIS 1734, at *31, citing *State v. Hopfer* (1996), 112 Ohio App.3d 521, 546, 679 N.E.2d 321, *discretionary appeal not allowed*, 77 Ohio St.3d 1488, 673 N.E.2d 146. "A court must look at the totality of circumstances in order to determine whether an individual is in custody at any given time." *State v. Durham*, 2016-Ohio-691, ¶168, 60 N.E.2d 552, 2016 Ohio App. LEXIS 614, citing *California v. Beheler, supra*, 463 U.S. 1121, at 1125.

A ten-factor test has been utilized by some Ohio appellate courts, including the Eighth District Court of Appeals, in evaluating the "totality of circumstances" to determine whether or not a "custodial interrogation" has occurred. *State v. Martinez*, 2016-Ohio-5515, P20 (8th Dist. Nos. 103572, 103573); and *State v. Gilbert*, 7th Dist. Mahoning No. 08 MA 206, 2012-Ohio-1165. Those ten factors are: 1.) the location of the interview; 2.) whether or not the defendant was a suspect at the time of the interview; 3.) whether or not the defendant's freedom was restricted; 4.) whether or not the defendant was handcuffed or told that he was under arrest;

5.) whether or not threats were made during the interview; 6.) whether or not the defendant was physically intimidated during the questioning; 7.) whether or not the police verbally dominated the interview; 8.) the purpose of questioning the defendant; 9.) whether or not neutral parties were present during the interview; and 10.) whether or not the police took any action to overpower, trick, or coerce the defendant into making a statement.

As to the first factor, i.e., the location of the interview, in this matter the interview that Defendant argues was a "custodial interrogation" took place in the Homicide Unit of the Cleveland Police Department's headquarters located downtown in the Justice Center. But, as explained by the Eighth District Court of Appeals in *State v. Montague*, 2012-Ohio-4285, P9 (8th Dist. No. 97958), "[w]hen the interrogation occurs at a police station, we consider whether the person being interrogated voluntarily went to the police station." Although Defendant testified that she was told she was being taken to the police station, Detective Borden testified that she voluntarily agreed to go to the police station when asked. This Court finds Detective Borden's testimony on this issue to be more credible. Although Defendant testified that she felt she was not free to go, her subjective belief is not pertinent to the analysis. *State v. Sanchez, supra*, 1998 Ohio App. LEXIS 1734, at *31, citing *State v. Hopfer* (1996), *supra*, 112 Ohio App.3d at 546. But more importantly, Defendant's claimed subjective belief is belied by the videotape of the interview that demonstrates that Detective Borden told her she was not under arrest and was free to go. And, most importantly, Defendant's claimed subjective belief is belied by her demeanor and conversational tone and the explanatory remarks and additional information that she volunteered during the interview. Although the door to the interview room was closed during the interview, no evidence was presented as to whether or not it was locked. Defendant

was not subject to any type of deprivation, but was given water, offered coffee and when she needed to do so, went to the restroom unaccompanied by Detective Borden.

As to the second factor, whether or not Defendant was a suspect when the interview began, Detective Borden testified that she was not. Counsel for Defendant argued that Detective Borden's testimony on this issue strains credulity, given his acknowledgment regarding all the information he had learned through his investigation, the items located during the search, and his affidavit testimony given to secure the search warrant. Again, testimony was not elicited from Detective Borden as to why he did not consider Defendant a suspect. Defendant did elicit testimony from Detective Borden that it was Ms. Krudy who had refused the police entry into her home earlier on October 14, 2016, and that Ms. Krudy was also given a ride downtown for questioning. *Assuming arguendo* that Detective Borden had reason to consider, should have considered, or actually did consider Defendant a suspect at the time the interview began, there is no evidence that he told Defendant she was a suspect. And, again, *Miranda* warnings are not required simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. *State v. Biros, supra*, 78 Ohio St.3d at 440, citing *Oregon v. Mathiason*, 429 U.S. 492, 97 S.Ct. 711, 714. If Defendant should have been considered, or as Defendant contends, was actually considered a suspect at the time the interview began, this is but one factor the Court is considering in evaluating the totality of the circumstances.

As to the third factor, i.e, whether or not Defendant's freedom was restricted, the evidence demonstrates to this Court that it was not restricted during the time of the interview. There is a factual dispute as to whether or not it was restricted, i.e., zip-ties were on

Defendant's hands, while the search was being conducted as Defendant sat in the police cruiser and when she was transported downtown. The Court finds Detective Borden's testimony credible that although zip-ties were placed on Defendant's hands in the house, they were removed before she was placed or sat in the cruiser.

As to the fourth factor, i.e., whether Defendant was handcuffed or told that she was under arrest, Defendant admitted she was never handcuffed (although, again, she testified that the zip-ties remained in place during the search and the ride downtown), and she was never told that she was under arrest.

As to the fifth factor, i.e., if threats were made during the interview, it is clear to this Court from the videotape of the interview, that threats were not made.

As to the sixth factor, i.e., whether Defendant was physically intimidated during the questioning, it is clear to this Court from the videotape of the interview that Defendant was not physically intimidated during the questioning.

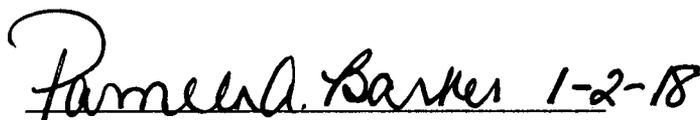
As to the seventh factor, i.e., whether the police verbally dominated the interview, it is clear to this Court from the videotape of the interview that the police did not dominate the interview.

As to the eighth factor, i.e., the purpose for questioning Defendant, although testimony was not elicited from Detective Borden regarding the purpose of the interview, in this Court's opinion, based upon the evidence adduced at the hearing, the purpose was two-fold: 1.) to develop additional information concerning Defendant's relationship with the decedent and where they had been and what they had done, and with whom, the night before the body was found; and 2.) to determine what involvement, if any, Defendant and/or Ms. Krudy may have

had in the death of the decedent. This second purpose dovetails with the second factor evaluated above, i.e., whether or not Defendant was a suspect.

As to the ninth factor, i.e., whether neutral parties were present during the interview, the videotape demonstrates that there were no neutral parties present during the interview. And, as to the tenth factor, i.e., whether the police took any action to overpower, trick, or coerce Defendant into making a statement, the videotape demonstrates that the police did not do so.

Thus, at least seven factors⁴ support the conclusion that the interview was not a custodial interrogation, and at most three factors⁵ support the conclusion that the interview was a custodial interrogation. Under the totality of the circumstances as set forth and evaluated above, this Court finds that the interview was not a custodial interrogation so as to require that Defendant be given *Miranda* warnings. Accordingly, Defendant's Motion to Suppress is **DENIED**.


JUDGE PAMELA A. BARKER 1-2-18
DATED

⁴ To reiterate what is set forth in the body of the Opinion, those seven factors are 1, 3, 4, 5, 6, 7, and 10.

⁵ To reiterate what is set forth in the body of the Opinion, those three factors are 2, 8, and 9.