STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: November 7, 2013)

STATE OF RHODE ISLAND	:	
	:	
v.	:	**P1-2012-0704A**
	:	
JUAN HERNANDEZ	:	

DECISION

TAFT-CARTER, J. Before this Court is Defendant's Motion to Suppress Statements (Motion to Suppress) made on August 22, 2011 to Providence Police Department detectives in connection with the death of Santiago Hernandez. Defendant contends that he was (1) the subject of custodial interrogation; and that (2) his Miranda rights were deliberately violated. In opposition to the Motion to Suppress, the State of Rhode Island, by and through its Attorney General, argues that police custody did not occur until Defendant was administered his Miranda rights. For the reasons set forth below, this Court denies Defendant's Motion to Suppress. Jurisdiction is pursuant to G.L. 1956 § 8-2-15 and article I, section 13 of the Rhode Island Constitution.

I

Facts and Travel

In the early morning of August 22, 2011, Providence Police were dispatched to 133 Sterling Street to investigate a possible homicide. Upon their arrival, Providence Police discovered Santiago Hernandez (Decedent)[1] lying motionless on the sidewalk. Decedent was immediately transported by ambulance to Rhode Island Hospital, where he was pronounced dead shortly thereafter. The police ascertained that Decedent was on the sidewalk after having fallen

[1] Juan Hernandez and Decedent share a last name, but are not related.

from a second floor balcony. Detective Maurice Green (Det. Green), assigned to investigate, learned that Defendant Juan Hernandez (Defendant) was with Decedent at some point prior to his fall. Det. Green was not aware of Defendant's role in Decedent's fall and death, if any, but wanted to speak with him for general investigative purposes.

Det. Green sought out Defendant at his place of work, East Side Pockets on Thayer Street in Providence. There, Det. Green and Defendant spoke briefly in English in the restaurant's back room. After the brief conversation, Det. Green explained that he would like to continue their conversation at the Providence Police Department Headquarters (PPD Headquarters). Det. Green asked Defendant to travel with him to PPD Headquarters. The Defendant acquiesced. Det. Green notified Michael Boutros, manager of East Side Pockets, that Defendant needed to leave East Side Pockets. Mr. Boutros agreed to Defendant's leaving, but requested that he return back in thirty minutes.

While Defendant left East Side Pockets by his own volition, he was not permitted to travel separately from Det. Green. Instead, Defendant rode to PPD Headquarters in the rear of Det. Green's unmarked and undivided police vehicle. Prior to entering the vehicle, Defendant was patted down by Det. Green for safety reasons. He was not placed in restraints. During their ride to PPD Headquarters, Det. Green and Defendant conversed in English about subjects including his length of employment at East Side Pockets and how long he lived in Providence.

Upon arriving at PPD Headquarters, Det. Green parked within the station's parking circle and entered with Defendant through its front door at 325 Washington Street, Providence, Rhode Island. Det. Green and Defendant proceeded to the Detective Bureau on the third floor via elevator. When on the third floor, they proceeded through two sets of doors to the Detective Bureau. These doors required proper identification to unlock and enter, but did not lock from the

inside. Individuals were free to exit. Det. Green and Defendant entered a sizable conference room that was equipped with a large table, several chairs, a television, and wall decorations. The conference room was not locked from either the inside or outside. Inside the conference room, Det. Green and Defendant again engaged in friendly conversation in English.

Prior to interviewing Defendant, Det. Green did not read Defendant his Miranda rights. Det. Green did not call for an interpreter because he believed that Defendant had an understanding of English based on their previous conversations at East Side Pockets, while traveling to PPD Headquarters, and inside the Detective Bureau's conference room. After a short period of conversation, Det. Green informed Defendant that he would like to take a formal recorded statement. The interview began and, shortly thereafter, Det. Green sensed that Defendant was "pretending" not to understand English and no longer wished to cooperate. Det. Green grew frustrated as Defendant had previously conversed in English, but nevertheless contacted Detective Sical (Det. Sical) to interpret for Defendant.

After Det. Sical arrived, Det. Green continued to interview Defendant. Det. Sical provided assistance and the interview lasted for approximately twenty minutes. At its conclusion, Det. Green and Det. Sical (Detectives) separated from Defendant to strategize. The Detectives did not consider Defendant a suspect at this point, but believed that he was lying to protect an unknown individual. Specifically, the Detectives took issue with Defendant's statement that Decedent was alone and alive at 4:30 in the morning on August 22, 2011. Defendant's assertion conflicted with a neighbor's statement that three people were looking over the balcony after Decedent's fall. However, in attempting to clarify this inconsistency with the neighbor while away from Defendant, the Detectives found the neighbor to be uncooperative.

The Detectives returned to the conference room after roughly fifteen minutes. The Detectives left the recorder off and confronted Defendant about the factual discrepancy, pushing him to further explain his earlier statements. The Detectives accused Defendant of lying and informed him that they did not believe his story. Det. Green requestioned Defendant about the previously established time frame and addressed the circumstances of Decedent's death based on the scenario described by the uncooperative neighbor.

Approximately one and one-half hours after his initial statements, and approximately two hours after his initial meeting with Det. Green, Defendant provided the Detectives with a different version of Decedent's fall. Defendant told the Detectives, "I want to tell the truth." Det. Green, as a result, immediately administered Defendant's Miranda rights in Spanish. Defendant acknowledged that he understood his Miranda rights and signed the requisite waiver form at 9:32 p.m. Thereafter, the Detectives proceeded with their questioning. Recording again, the Detectives questioned Defendant and elicited a confession. Specifically, Defendant stated that: (1) he was involved in a physical altercation with Decedent; and (2) the physical altercation led to Decedent's fall from a second floor balcony. Notably, throughout the roughly two hours of questioning, Defendant did not request to leave either PPD Headquarters or the Detective Bureau's conference room, and the Detectives did not state that Defendant was unable to leave.

Defendant now moves this Court to suppress his statements from both before and after he received his Miranda warning. Defendant contends that any statements made prior to his Miranda warning should be suppressed because he was subject to custodial interrogation without the protection of the requisite Miranda warning. More specifically, Defendant asserts that custodial interrogation occurred either (1) upon his being escorted to the PPD Headquarters; or (2) after his initial interview in the Detective Bureau's conference room. In each instance,

Defendant believes a reasonable person in similar circumstances would have reached the same conclusion. Defendant further argues that any statements made after his Miranda warning should be suppressed because Det. Green and Det. Sical deliberately withheld his Miranda warning, thus undermining his rights and violating the holding of Missouri v. Seibert, 542 U.S. 600 (2004).

The State, in response, contends that any statements made by Defendant prior to his Miranda warning are admissible because Defendant was not subject to custodial interrogation when they were made; thus, Miranda rights were not due. More specifically, the State asserts that custodial interrogation occurred only upon Defendant's formal arrest. The State further argues that any statements made by Defendant after his Miranda warning are admissible because the required Miranda warning was properly administered and Defendant's due rights were "knowingly, voluntarily, and intelligently" waived.

II

Standard of Review

"Both the United States and the Rhode Island Constitutions forbid the use of a defendant's involuntary confession [or incrimination.]" State v. Monteiro, 924 A.2d 784, 790 (R.I. 2007) (citing State v. Humphrey, 715 A.2d 1265, 1274 (R.I. 1998)). Thus, "'prior to custodial interrogation a suspect must receive explicit [Miranda] warnings concerning his constitutional privilege against self-incrimination and his right to counsel.'" State v. Harrison, 66 A.3d 432, 441 (R.I. 2013) (quoting State v. Amado, 424 A.2d 1057, 1061 (R.I. 1981)); see also Miranda v. Arizona, 384 U.S. 436, 479 (1966). Miranda protections "[s]tem from a concern that the inherently coercive atmosphere of a custodial police interrogation may [weaken] a person's will and [compel] an involuntary confession in violation of the Fifth Amendment." State v. Caruolo, 524 A.2d 575, 579 (R.I. 1987). Absent the required warning, "[t]he Miranda

exclusionary rule places all statements elicited during such interrogation beyond the state's reach at trial." Caruolo, 524 A.2d at 579 (citing Miranda, 384 U.S. at 476). The prosecution must therefore show a "'voluntary, knowing, and intelligent waiver of Miranda rights . . . before comments made by a defendant during custodial interrogation can be admitted into evidence.'" Harrison, 66 A.3d at 441 (quoting State v. Marini, 638 A.2d 507, 511 (R.I. 1994) (emphasis omitted)).

"It is well settled that the requirement of Miranda warnings is triggered only by custodial interrogation." State v. Jimenez, 33 A.3d 724, 732 (R.I. 2011) (citing State v. Hobson, 648 A.2d 1369, 1371 (R.I. 1994)). "By its own terms, [the Miranda rule] applies only when interrogation occurs within the coercive atmosphere of police custody." Caruolo, 524 A.2d at 579 (citing Miranda, 384 U.S. at 444); accord Minnesota v. Murphy, 465 U.S. 420, 430 (1984) (Miranda warnings inapplicable to questioning in noncustodial settings); Beckwith v. United States, 425 U.S. 341, 346 (1976) (custodial nature of interrogation triggers Miranda warnings). Thus, "the special procedural safeguards outlined in Miranda are required not where a suspect is simply taken into [police] custody, but rather where a suspect in [police] custody is subjected to interrogation." Rhode Island v. Innis, 446 U.S. 291, 300 (1980); see also Jimenez, 33 A.3d at 732 (citing Marini, 638 A.2d at 511) ("[t]he invocation of Miranda generally hinges entirely upon whether, at the time of the confession, the accused was [in police custody]").

Interrogation, within the context of Miranda, has been defined as "questioning [or its functional equivalent as] initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." Innis, 446 U.S. at 298. However, a statement or confession "obtained from a suspect while the suspect is in custody [is not necessarily] the product of interrogation." Id. at 300. Rather, "interrogation

must reflect a measure of compulsion above and beyond that inherent in custody itself." Id. That is, interrogation consists of "express questioning" or "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." Jimenez, 33 A.3d at 733 n.11; accord Innis, 446 U.S. at 300-01. Further, while a determination of interrogation "focuses primarily on the perceptions of the suspect rather than the intent of the police[,] [t]he intent of the police . . . may well have a bearing on whether the police should have known that their words or actions were reasonably likely to elicit an incriminating response." Innis, 446 U.S. at 301. In effect, "[w]here a police practice is designed to elicit such a response, it is unlikely that the practice will not also be one which the police should have known was reasonably likely to have that effect." Id.

A determination of police custody "depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." Stansbury v. California, 511 U.S. 318, 323 (1994). The deciding court must examine "all of the circumstances surrounding the interrogation and determine how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her freedom of action." Yarborough v. Alvarado, 541 U.S. 652, 663 (2004) (quoting Stansbury, 511 U.S. at 322, 325) (quotations omitted). However, "the decisive test for determining whether a person is in custody for purposes of receiving Miranda warnings is whether the person is formally arrested or whether the person's freedom of movement is restricted to the degree associated with formal arrest." Caruolo, 524 A.2d at 579 (citing California v. Beheler, 463 U.S. 1121, 1125 (1983)). In following, "[a] person is seized or under arrest . . . if, in view of all the circumstances, a reasonable person would believe that he or she

was not free to leave." State v. Briggs, 756 A.2d 731, 737 (R.I. 2000) (citing State v. Diaz, 654 A.2d 1195, 1204 (R.I. 1995) (citing State v. Griffith, 612 A.2d 21, 23 (R.I.1992))).

Our Supreme Court has explained the contours of police custody as follows:

> "[C]ustody as contemplated by Miranda does not exist merely because the interrogation occurs at a police station or because the interrogated person is suspected of a crime or is the focus of a police investigation. Oregon v. Mathiason, 429 U.S. 492, 495 (1977); Beckwith, 425 U.S. at 347. Nor does it necessarily exist when the interrogating officer consciously seeks incriminating evidence. Murphy, 465 U.S. at 428, 431. . . . Absent a formal arrest the determination of whether a person is subjected to restraints comparable to those associated with a formal arrest turns on how a reasonable person in the suspect's position would understand the situation. Berkemer v. McCarty, 468 U.S. 420, 442 (1984)."

Caruolo, 524 A.2d at 579. Accordingly, "four factors may be considered when making [a] determination [of police custody]: (1) the extent to which the person's freedom [was] curtailed; (2) the degree of force employed by the police; (3) the belief of a reasonable, innocent person in identical circumstances; and (4) whether the person had the option of not accompanying the police." Harrison, 66 A.3d at 442 (citing Jimenez, 33 A.3d at 732). Finally, "custody as contemplated by Miranda does not exist merely because . . . the interrogated person is suspected of a crime or is the focus of a police investigation." Harrison, 66 A.3d at 442.

III

Analysis

At the outset, it is necessary for this Court to establish when Defendant's Miranda rights arose. In this instance, there are five events that may trigger Miranda: (1) Defendant's traveling with Det. Green to PPD Headquarters; (2) Defendant's initially being interviewed in the Detective Bureau's conference room; (3) Defendant's being requestioned by Det. Green; (4) Defendant's Miranda Warning; or (5) Defendant's formal arrest. This Court must now

determine whether any of Defendant's statements require suppression per either the Miranda exclusionary rule or a Seibert violation.

A

Custody

1

Defendant's Traveling to PPD Headquarters

During his investigation, Det. Green learned that Defendant was on the porch near or at the time of Decedent's death. As a result, Det. Green called the Defendant on his cell phone and learned that Defendant was at East Side Pockets. While Defendant was not provided with the option of traveling separately from Det. Green, Defendant's accompaniment was not the product of force or the threat of force, and was free from coercion. The record clearly shows that Defendant was fully complicit with assisting Det. Green in his investigation of Decedent's fall. Further, it was not indicated to Defendant that he was suspected of any criminal wrongdoing. Defendant was never placed in restraints and was patted down merely for precaution. Defendant and Det. Green also engaged in amiable conversation while traveling to PPD Headquarters on subjects including the length of Defendant's employment at East Side Pockets along with his residency in Providence. The trip occurred in an unmarked police vehicle with no cage or division between its front and rear seats.

These facts alone do not indicate Defendant being in police custody. Our Supreme Court has held that substantially more is required. See Caruolo, 524 A.2d at 579 ("the decisive test for determining [police custody] . . . is whether the person is formally arrested or whether the person's freedom of movement is restricted to the degree associated with formal arrest"). For example, a defendant was found not in custody when he voluntarily went to a police station,

upon an invitation to give his "side of the story," and was not restrained. Hobson, 648 A.2d at 1372. Similarly, a suspect questioned in a police station, while handcuffed for officer safety, was not considered to be within police custody. State v. Barros, 24 A.3d 1158, 1179 (R.I. 2011).

Here, Defendant's actions were characteristically voluntary and his freedom of movement was restricted only to the minimal extent inherent in accompanying Det. Green to PPD Headquarters. See id. (listing "the extent to which the person's freedom is curtailed," "the degree of force employed by the police," and "whether the person had the option of not accompanying the police" as factors towards police custody). Additionally, in light of the clear investigatory, and not accusatory, nature of Det. Green's actions, this Court believes a "reasonable, innocent person in identical circumstances" would interpret Defendant's trip to PPD Headquarters as assisting an ongoing investigation, rather than being taken into police custody. See id. (deeming "the belief of a reasonable, innocent person in identical circumstances" as relevant for determining police custody); see also Yarborough, 541 U.S. at 663 (providing that a court must examine "all of the circumstances surrounding the interrogation and determine how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her freedom of action") (quotations omitted).

2

Defendant's Initial Interview

After arriving at PPD Headquarters, Defendant was questioned for between one and one-half hours to two hours in a large conference room furnished with a table, chairs, wall decorations, and a television. To reach the conference room, Defendant was escorted through multiple doors that required identification to pass, but that did not lock from the outside—i.e., any party on the inside was free to leave without encumbrance. Throughout his questioning,

Defendant was unrestrained, free to leave, and not subjected to force or the threat of force. Further, at no point during the questioning did Defendant request to leave or was Defendant informed that he was unable to leave either PPD Headquarters or the Detective Bureau's conference room.

Even when compounded with Defendant's leaving East Side Pockets and accompanying Det. Green to PPD Headquarters, the facts surrounding this initial interview fail to indicate police custody—more is still necessary to replicate arrest. See Caruolo, 524 A.2d at 579 (holding that the "decisive test of police custody is the replication of arrest"). For example, a defendant was found in police custody upon his being questioned for thirteen hours in a small room at a police station. See Barros, 24 A.3d at 1179. Police custody, comparatively, was not found where a defendant voluntarily appeared at the police station for questioning. See Marini, 638 A.2d at 511 ("[a] noncustodial atmosphere [is] not converted into a custodial one simply because the questioning occurred at a police station"); see also Harrison, 66 A.3d at 442 (explaining that "police questioning does not automatically beget custodial interrogation").

Throughout the initial interview, Defendant stayed at PPD Headquarters by his own volition. He was never subjected to force, and his freedom of movement was unrestricted physically, implicitly, or by verbal statement. See Caruolo, 524 A.2d at 579 (stating police custody as having occurred where defendant's being held is equivalent to arrest); Harrison, 66 A.3d at 442 (establishing freedom of movement, subjection to force, and choice of accompaniment as critical to a determination of police custody); see also Stansbury, 511 U.S. at 323 (providing that police custody "depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned"). Furthermore, Defendant was a voluntary participant in Det. Green's initial

questioning. He was also questioned in a non-accusatory manner within an unlocked conference room that was adorned with a television and wall decorations. This Court thus concludes that "a reasonable, innocent person in identical circumstances" would consider himself as still aiding an ongoing investigation; not as in police custody. See Harrison, 66 A.3d at 442; see also Yarborough, 541 U.S. at 663 (considering the circumstances of an interrogation in totality from the viewpoint of a reasonable person in an identical position).

3

Defendant's Requestioning

Defendant was not originally suspected of criminal wrongdoing in relation to Decedent's death. Det. Green interviewed Defendant because he was purportedly with Decedent at some point prior to his fall. Accordingly, Det. Green's questioning of Defendant was exploratory in nature; designed to construct a timeline of events versus elicit a confession of incrimination. However, after Defendant expressly stated that Decedent was alone and alive at 4:30 in the morning, Det. Green "pushed" Defendant for greater explanation because this assertion was directly conflicted by a neighbor's account. Det. Green and Det. Sical consequently theorized that Defendant was protecting an unknown individual. Det. Green thus confronted Defendant over the factual discrepancy and requestioned him in a considerably more aggressive manner for approximately an hour's time.

Again, despite the change in tone and purpose of Det. Green's questioning, a finding of police custody is not yet supported. The test for police custody, even in the presence of suspicion or investigatory interest, remains whether defendant's freedom of movement was restricted in a manner that replicates arrest. See Murphy, 465 U.S. at 428, 431 (custody does not "necessarily exist when the interrogating officer consciously seeks incriminating evidence");

Caruolo, 524 A.2d at 579 ("the decisive test for determining whether a person is in custody . . . [is] whether the person's freedom of movement is restricted to the degree associated with formal arrest"). That is, courts have long held that police custody does not arise solely because a defendant is "suspected of a crime or is the focus of a police investigation." See Caruolo, 524 A.2d at 579; Mathiason, 429 U.S. at 495 ("custody as contemplated by Miranda does not exist merely because the interrogation occurs at a police station or because the interrogated person is suspected of a crime or is the focus of a police investigation").

Here, Det. Green did not fault Defendant for Decedent's fall or suggest that he was partially responsible. Defendant was instead challenged on his proffered factual account and accused of withholding particular information. This bare suspicion does not constitute the circumstances of arrest. See Caruolo, 524 A.2d at 579. A consideration of other influences, circumstances, and factors nonetheless remains necessary. See Harrison, 66 A.3d at 442 (considering a defendant's freedom of movement, subjection to force, and choice of accompaniment in making a determination of police custody); Yarborough, 541 U.S. at 663 (examining an interrogation's circumstances according to "how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her freedom of action") (quotations omitted). In following, Defendant's continued voluntary participation in the interview, lack of physical restraint, and presence in an unlocked conference room all indicate a limited infringement upon his freedom of movement. Defendant was also not subjected to force, threat of force, or an accusation of criminal behavior. Thus, despite the aggressiveness of Det. Green's requestioning of Defendant, this Court believes that a "reasonable, innocent person" would nonetheless process the at issue exchange as indicative of a worrisome investigatory focus, but not arrest. See Harrison, 66 A.3d at 442 (providing the interpretation of a "reasonable,

innocent person" as a factor towards a finding of police custody); Yarborough, 541 U.S. at 663 (considering police custody from the viewpoint of a reasonable person relative to the pertinent and surrounding circumstances).

4

Defendant's Miranda Warning

Approximately one and one-half hours after his original statement, and in consequence of Det. Green's aggressive requestioning, Defendant conveyed a different version of Decedent's fall to Det. Green. More importantly, Defendant expressly stated, "I want to tell the truth" to the Detectives. Det. Green, at this point, contemplated Defendant as a possible suspect and immediately administered a Miranda warning to preserve any subsequent statements.

This Miranda reading, in effect, represents a separation point in the classification of Defendant's presence at PPD Headquarters. Miranda warnings, both in practice and by law, are frequently administered and closely associated with "arrest." See Caruolo, 524 A.2d at 579 ("[b]y its own terms the [Miranda] rule applies only when interrogation occurs within the coercive atmosphere of police custody"); Murphy, 465 U.S. at 430 (Miranda warnings are inapplicable to questioning in noncustodial settings); Beckwith, 425 U.S. at 346 (custodial nature of interrogation triggers the need for Miranda warnings). Thus, while the replication of arrest remains the decisive test for police custody, this determination must be made relative to an objective analysis of defendant's surrounding circumstances. See Caruolo, 524 A.2d at 579 ("the decisive test for determining whether a person is in custody . . . [is] whether the person's freedom of movement is restricted to the degree associated with formal arrest"); see also Yarborough, 541 U.S. at 663 (declaring that a court must evaluate "all of the circumstances surrounding [an] interrogation to determine how a reasonable person in the position of the

individual being questioned would gauge the breadth of his or her freedom of action") (quotations omitted); Briggs, 756 A.2d at 737 ("[a] person is seized or under arrest . . . [if in the] view of all the circumstances, a reasonable person would believe that he or she was not free to leave"). Accordingly, the effect of a Miranda warning on a defendant's reasonable perceptions necessitates a court's consideration when making its determination.

Though Defendant remained a voluntary participant throughout Det. Green's questioning and was never restrained, subjected to force, or explicitly accused of criminal behavior, the Miranda warning alters the character of Defendant's presence at PPD Headquarters. Preceding the Miranda warning, Defendant was approached at his place of work by Det. Green and asked to leave for PPD Headquarters. Defendant was also patted down before traveling to PPD Headquarters in a police vehicle. There, Defendant was taken to a conference room where he was questioned for fifteen to twenty minutes on the events proximate to Decedent's death. Det. Green and Det. Sical then returned to confront and aggressively accused Defendant of lying with respect to a factual inconsistency within his statements. After approximately another hour of re-questioning by Det. Green, Defendant eventually stated, "I want to tell the truth" and was subsequently administered a Miranda warning.

These occurrences alone and in combination—as explained in this Court's prior findings—do not effectuate police custody. See Marini, 638 A.2d at 511 ("[a] noncustodial atmosphere [is] not converted into a custodial one simply because the questioning occurred at a police station"); Harrison, 66 A.3d at 442 (explaining that "police questioning does not automatically beget custodial interrogation"); Mathiason, 429 U.S. at 495 ("custody as contemplated by Miranda does not exist merely because the interrogation occurs at a police station or because the interrogated person is suspected of a crime or is the focus of a police

investigation"); Murphy, 465 U.S. at 428, 431 (custody does not "necessarily exist when the interrogating officer consciously seeks incriminating evidence").

Here, however, Defendant's Miranda warning must be considered in conjunction with its preceding events; the warning is not a discrete analytical event. See Yarborough, 541 U.S. at 663 (instructing a court to conduct a broad examination of "all of the circumstances surrounding [an] interrogation" when evaluating police custody); Briggs, 756 A.2d at 737 (advising a determination of arrest in the "view of all the circumstances"). Thus, when viewed in context, this Court finds that the administered Miranda warning indicates to Defendant that he was no longer free to exit PPD Headquarters or separate from Det. Green. That is, a reasonable person in Defendant's situation—unless particularly informed on the complex delineations of criminal procedure—does not process the language of a Miranda warning to then presume that he or she may leave the presence of police. See Harrison, 66 A.3d at 442 (assessing police custody from the viewpoint of a "reasonable, innocent person in identical circumstances"); Yarborough, 541 U.S. at 663 (gauging police custody according to "how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her freedom of action") (quotations omitted); Briggs, 756 A.2d at 737 (finding arrest where "a reasonable person would believe that he or she was not free to leave"). Rather, that same "reasonable, innocent person" is highly likely to deduce just the opposite: that his or her prior freedom is now effectively curtailed—the hallmark of police custody. See Caruolo, 524 A.2d at 579 ("the decisive test for determining [police custody] . . . [is] whether the person's freedom of movement is restricted to the degree associated with formal arrest"). Therefore, immediately upon being advised of his Miranda rights, Defendant became subject to police custody.

B

Interrogation

With police custody established, this Court now addresses interrogation. See Jimenez, 33 A.3d at 732 ("[i]t is well settled that the requirement of Miranda warnings is triggered only by custodial interrogation"); Caruolo, 524 A.2d at 579 ("[b]y its own terms, [Miranda] applies only when interrogation occurs within the coercive atmosphere of police custody"). Moreover, "[i]nterrogation must reflect a measure of compulsion above and beyond that inherent in custody itself." Innis, 446 U.S. at 300. Interrogation thus consists of "express questioning" or "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." Jimenez, 33 A.3d at 733 n.11; accord Innis, 446 U.S. at 300-01.

Here, before Defendant stated, "I want to tell the truth," in respect to Decedent's fall, Det. Green had no clear basis or reason to conclude that his questions would "elicit an incriminating response." Specifically, Defendant was not initially a suspect and was brought to PPD Headquarters merely for an informational interview. However, considering the underlying homicide investigation and Det. Green and Det. Sical's theorized suspicion that Defendant was lying to protect another individual, Defendant's affirmative statement provided a reasonable basis on which to suspect possible incrimination. This Court thus finds that Det. Green's line of questioning crossed the threshold from information gathering to interrogation once Defendant explicitly expressed his desire to "tell the truth." See Jimenez, 33 A.3d at 733 n.11 (stating that interrogation consists of "express questioning" or "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").

Therefore, Defendant's statements prior to his Miranda warning are ripe for introduction at trial because they did not occur within the inherently coercive atmosphere of police custody. Additionally, Defendant's statements subsequent to his Miranda warning are preserved because Defendant was duly warned in a timely manner and effectuated a knowing, intelligent, and voluntary waiver of his rights. See Harrison, 66 A.3d at 441 ("[t]he prosecution must show a 'voluntary, knowing, and intelligent waiver of Miranda rights . . . before comments made by a defendant during custodial interrogation can be admitted into evidence'").

C

Deliberate Circumvention of the Defendant's Miranda Rights

Defendant alternatively contends that his post-Miranda statements should be suppressed because of Providence Police Detectives' Seibert violation. Defendant believes that Det. Green and Det. Sical deliberately withheld his due Miranda rights in an effort to solicit a confession, as is expressly prohibited in the United States Supreme Court's holding in Missouri v. Seibert, 542 U.S. 600 (2004).

The deliberate undermining of a defendant's Miranda rights in an effort to obtain a confession appears to be a matter of first impression in Rhode Island courts. Accordingly, this Court looks to the United States Supreme Court's seminal decision in Seibert for guidance. 542 U.S. 600. In Seibert, after making an arrest, officers deliberately withheld providing the arrestee a Miranda warning. Id. at 605. The officers then interrogated the arrestee and successfully solicited a confession. At that point, the officers administered the arrestee's Miranda rights and had the arrestee repeat her prior incriminating statement. Id. The interrogating officer explained the process at trial as a purposeful and strategic two-step technique: "question first, then give the [Miranda] warnings, and then repeat the question until

[receiving] the answer [ ] already provided." Id. at 606. Granting certiorari, the United States Supreme Court suppressed the arrestee's post-Miranda statement, effectively barring the deliberate undermining of Miranda rights by police officers in an attempt to solicit incriminating statements. However, while the Court's ruling was clear, the justices divided on the governing method of evaluation.[2]

Thus, as the First Circuit explains, the "Seibert [decision presents] no clear majority" and "[remains] an open question" for resolution by lower courts. United States v. Widi, 684 F.3d 216, 221 (1st Cir. 2012). The First Circuit, however, has yet to articulate its specific Seibert test. When presented with its opportunity, the court declined "a definitive reading" as "the statements at issue pass [various] version[s] of the Seibert test." Id. Still, "[o]ther circuit courts have adopted tests similar to that described by Justice Kennedy." See, e.g., United States v. Capers, 627 F.3d 470, 479 (2d Cir. 2010) (utilizing a "totality of objective and subjective evidence surrounding interrogations . . . to determine deliberateness"); United States v. Williams, 435 F.3d 1148, 1158 (9th Cir. 2006) (asking whether the objective and subjective evidence supported an inference that a two-step interrogation procedure undermined the Miranda warning); United States v. Street, 472 F.3d 1298, 1314 (11th Cir. 2006) (holding that "deliberateness" rests on a

[2] "Justice Souter's plurality opinion garnered four votes [with] Justice Kennedy . . . concur[ing] in the judgment [only], [and] writing separately." United States v. Widi, 684 F.3d 216, 221 (1st Cir. 2012). Writing for the majority, Justice David Souter broadly asked if "the circumstances [of the interrogation] [challenged] the comprehensibility and efficacy of the Miranda Warnings to the point that a reasonable person in the suspect's shoes could have not have understood them." Seibert, 542 U.S. at 616. A bright line rule, however, was put forth and preferred by Justice Stephen Breyer in a concurring opinion: "[c]ourts should exclude the 'fruits of the initial unwarned questioning unless the failure was in good faith.'" Id. at 617 (Breyer, J., concurring). Justice Anthony Kennedy, even still, outlined a two-part test that asked if "[t]he Miranda warning was withheld to obscure both the practical and legal significance of the admonition" and, if so, were "curative measures" then employed. Seibert, 542 U.S. at 620-22 (Kennedy, J., concurring).

totality of the circumstances, including the timing, setting, and completeness of the pre-warning interrogation, continuity of police personnel, and overlapping content of the pre- and post-warning statements).

This Court critically notes that the Seibert case, and each of its related circuit court cases, discusses the circumvention of a defendant's Miranda rights only within the context of custodial interrogation. Each defendant within the said cases was arrested or taken into police custody to then have his or her Miranda warnings deliberately withheld during an interrogation. See, e.g., Street, 472 F.3d at 1298; Williams, 435 F.3d 1148; Capers, 627 F.3d at 470. No "Seibert" case has thus far been adjudicated—similar to the within—where a defendant was not in police custody, i.e., merely a suspect or taking part in an informational interview, when his Miranda rights were, or began to be, undermined.[3]

Here, Miranda rights were not withheld from Defendant while he was in police custody. The facts clearly indicate that police custody was established at the time that Defendant was given his Miranda warning. Since Seibert's differing tests evaluate circumvention and permit suppression only upon a finding of police custody and custodial interrogation, Seibert does not apply. See Seibert, 542 U.S. at 616, 617, 620-622. Thus, under any Seibert test, Defendant's statements would not be suppressed because they occurred outside Seibert's established scope.

Furthermore, Defendant's Miranda rights were never subject to possible circumvention because of their timing. Custodial interrogation of Defendant happened only upon his actual

[3] Since custodial interrogation serves as the well-established catalyst for the invocation of Miranda warnings, circumvention of a Defendant's rights at points prior to a reading is arguably not possible. In effect, rights that do not yet exist cannot be undermined or withheld. See Caruolo, 524 A.2d at 579 ("[Miranda] applies only . . . within the coercive atmosphere of police custody").

Miranda warning and not at any point prior thereto. It thus follows that Defendant did not possess rights to be undermined before his Miranda warning and that Det. Green and Det. Sical had no opportunity to withhold rights afterwards. See Caruolo, 524 A.2d at 579 ("[Miranda] applies only . . . within the coercive atmosphere of police custody"). Thus, on alternative grounds, a Seibert violation did not transpire and Defendant's statements are available for introduction at trial.

IV

Conclusion

After consideration of the law and facts, this Court hereby finds that Defendant's pre-Miranda statements are admissible because they occurred outside the scope of police custody. Specifically, the circumstances surrounding Defendant's extended interview—as reasonably and objectively viewed—did not effectively replicate arrest. Further, Defendant's post-Miranda warning statements escape suppression because the requisite Miranda warnings were lawfully administered plus voluntarily, knowingly, and intelligently waived. Lastly, Defendant's assertion of a Seibert violation fails because the supposed circumvention of Miranda rights occurred before Miranda rights became due. This Court, therefore, denies Defendant's Motion to Suppress.

Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: **State of Rhode Island v. Hernandez**

CASE NO: **P1-2012-0704A**

COURT: **Providence County Superior Court**

DATE DECISION FILED: **November 7, 2013**

JUSTICE/MAGISTRATE: **Taft-Carter, J.**

ATTORNEYS:

For Plaintiff: **Charles C. Calenda, Esq.**

For Defendant: **Collin M. Geiselman, Esq.**