IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
	:	CRIMINAL ACTION
v.	:	
	:	NO. 16-218-8
HOSEA HARVEY	:	

MEMORANDUM

SURRICK, J. **AUGUST 11, 2017**

Presently before the Court is Defendant's Motion to Suppress Statements. (ECF No. 264.) For the following reasons, Defendant's Motion will be denied.

I. BACKGROUND

On June 22, 2016, a grand jury returned a Superseding Indictment charging Defendant Hosea Harvey with conspiracy to distribute 1000 kilograms or more of marijuana, in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(A) (Count One); and attempted possession of 100 kilograms or more of marijuana with intent to distribute, and aiding and abetting, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B), and 18 U.S.C. § 2 (Count Nine). Eight other Defendants were charged in the Superseding Indictment. Five of those eight Defendants have entered into plea arrangements with the Government. The Government alleges that Defendant was involved in a conspiracy to transport bulk quantities of marijuana from the west coast of the United States to various locations on the east coast. In the instant Motion, Defendant seeks to suppress statements that he made to FBI Special Agent Kevin Lewis during a traffic stop. Defendant contends that Agent Lewis elicited the statements in violation of the Fifth Amendment because he was not advised of his *Miranda* rights.

A. Factual Background

At the time of the traffic stop, Agent Lewis had been conducting an investigation for an extended period of time into a marijuana trafficking organization involving Defendant and other co-conspirators. As part of that investigation, on May 28, 2016, Agent Lewis began a surveillance of Defendant around the Mississippi-Alabama state line. (July 31 Hr'g Tr. 6.) Agent Lewis was driving in an unmarked car following Defendant, who was driving a tractor trailer. (*Id.*) Agent Lewis had learned from Defendant's employer that Defendant was scheduled to deliver a load of household goods in Climax, North Carolina, on the morning of May 29th. (*Id.*) Initially, Agent Lewis intended to meet Defendant in North Carolina and talk with him there. (*Id.* at 14.) However, when Defendant took a route that was away from Climax, North Carolina, Agent Lewis suspected that Defendant may be delivering a truck-load of marijuana elsewhere. (*Id.*) Agent Lewis believed that Defendant was aware he was being followed because he noticed that Defendant was engaging in acts of counter-surveillance. (*Id.* at 6-7.) For example, Defendant would drive his tractor-trailer off of an exit ramp, but then immediately return to the highway by way of the highway on-ramp. (*Id.* at 7.)

Agent Lewis testified that after he observed Defendant's counter-surveillance maneuvers, he contacted the Georgia State Police. (*Id.* at 7-8.) For a number of reasons, Agent Lewis did not believe that he should stop Defendant's vehicle himself. Agent Lewis told the Georgia State Police that he believed that Defendant was involved in a drug-trafficking organization, and that there may be large amounts of marijuana in Defendant's tractor trailer. (*Id.* at 23-24.) Agent Lewis requested that the Georgia State Police conduct a traffic stop of Defendant based upon their observations of the vehicle. (*Id.* at 27.) Approximately thirty to forty minutes later, the Georgia State Police caught up to Agent Lewis and Defendant. (*Id.* at 8.) They drove around

Defendant's tractor trailer and discovered that there was a door on the passenger side of the trailer that was not secured. (*Id.*) Based on this, they conducted a traffic stop of Defendant. (*Id.* at 8-9.) The traffic stop was initiated at approximately 3:15 a.m. (*Id.* at 37.)

At the time of the traffic stop, Agent Lewis's vehicle was behind a line of two or three Georgia State Police cars. (*Id.* at 9.) One of the state troopers approached Defendant at the front of the tractor-trailer. (*Id.* at 31.) Defendant explained to the state trooper that the trailer door was ajar because there was a dog inside the trailer. He told the trooper that the dog had been in the cab of the vehicle, but had gotten sick. (*Id.* at 9.) There were two passengers in the cab of the trailer. (*Id.* at 39.) The State Troopers talked to them about arrangements for their getting home. (*Id.*)

Defendant proceeded to walk towards the trailer to show the state trooper the side door and the dog. (*Id.* at 32.) Approximately five to ten minutes after the initiation of the traffic stop, the Georgia State Police completed their investigation. (*Id.* at 10.) A state trooper brought Defendant to the rear of his tractor trailer. (*Id.*) There, Agent Lewis, who was dressed in plain clothes, approached Defendant. (*Id.* at 10, 11.) Defendant was not in handcuffs. (*Id.*) Agent Lewis told Defendant that he wanted to talk to him about individuals that Defendant may know in Philadelphia. (*Id.* at 10.) Defendant responded that he did not know anybody in Philadelphia. (*Id.*) Agent Lewis then listed the names of the other individuals named in the Indictment. (*Id.* at 50.) Defendant responded that he did not know any of the individuals. (*Id.* at 10.)

Agent Lewis then went to his car to retrieve his laptop computer, which contained pictures of the co-Defendants. (*Id.* at 10, 48.) Agent Lewis showed a picture of each of the co-Defendants to Defendant. (*Id.* at 48.) Defendant stated that he did not know the individuals, except for Vernon Addison, who he stated was also a tractor-trailer driver. (*Id.* at 10.) Agent

Lewis and Defendant briefly discussed where Defendant was supposed to deliver the tractor-trailer load. (*Id.* at 11.) The entire conversation lasted approximately ten to fifteen minutes. (*Id.* at 12.) At no point during Agent Lewis's questioning were *Miranda* warnings given to Defendant. (*Id.* at 51.) After the conversation concluded, Defendant and Agent Lewis sat and waited for the arrival of drug-sniffing dogs. (*Id.* at 12.) When Agent Lewis initially contacted the Georgia State Police, he requested that drug-sniffing dogs be used as part of the traffic stop of Defendant. (*Id.* at 42, 47.)

Two drug-sniffing dogs arrived to the scene of the traffic stop. (*Id.* at 12.) Both dogs made positive alerts on Defendant's trailer and cab. (*Id.*) Based on this, Agent Lewis decided to impound the tractor trailer since a search of it on the highway would have been impractical. (*Id.*) Agent Lewis arrested Defendant based on probable cause to believe that he was involved in the Jerome Woods drug trafficking organization that transported marijuana from the west coast to the east coast of the United States. (*Id.* at 13.) Defendant was arrested at 4 a.m., which was approximately forty-five minutes after the traffic stop was initiated. (*Id.* at 37.) One of the state troopers placed Defendant in his vehicle and took him to the nearest detention center. (*Id.* at 61.)

The next morning, Agent Lewis obtained an arrest warrant from Magistrate Judge Richard Lloret, in the Eastern District of Pennsylvania. (*Id.* at 13.) The search of the tractor trailer occurred a few days after the initial traffic stop. Neither marijuana nor any other drugs were found in the tractor trailer. (*Id.* at 14.) Agent Lewis does not contest that he had probable cause to arrest Defendant prior to initiation of the traffic stop. (*Id.* at 17.)

Agent Lewis testified that he had not intended to arrest Defendant until the two drug-sniffing dogs made positive indications on the tractor trailer. (*Id.* at 60, 62.) The decision to arrest Defendant was made only after the drug-sniffing dogs alerted to the presence of narcotics.

(*Id.* at 63.) The arrest was based on probable cause to believe that he was involved in a drug organization.

B. Procedural History

On June 19, 2017, Defendant filed the instant Motion to Suppress. (Def.'s Mot., ECF No. 264.) On July 7, 2016, the Government filed a Response to the Motion. (Gov't's Resp., ECF No. 286.) On July 31, 2016, a hearing was held on the Motion. (Min. Entry, ECF No. 296.) At the hearing, the Government presented the testimony of Agent Lewis. Defendant presented no witnesses.[1]

II. DISCUSSION

When questioned by Agent Lewis, Defendant stated that he did not know any of the individuals named in the Indictment, except for Vernon Addison. Defendant also stated that he knew that Addison was another tractor-trailer driver. Defendant argues that these statements to Agent Lewis were obtained in violation of his rights under the Fifth Amendment, and therefore must be suppressed. Specifically, he contends that Agent Lewis's questioning of him constituted a custodial interrogation, which was improper without the administration of the *Miranda* warnings.

Under *Miranda v. Arizona*, if a suspect has not been advised of his constitutional right to remain silent, right to an attorney, and right to have an attorney appointed for him, then any statement the suspect makes to law enforcement may not be used against him. 384 U.S. 436, 444-45 (1966). *Miranda* warnings are required when a suspect is: (1) in custody; and (2) being subjected to interrogation. *Illinois v. Perkins*, 496 U.S. 292, 296 (1990). There is no dispute that

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[1] Defendant introduced two exhibits into evidence at the hearing. Defendant's Exhibit 1 was a search warrant of Defendant's tractor trailer that was executed by Agent Lewis. (*See* July 31 Hr'g Tr. 18.) Defendant's Exhibit 2 was the 302 report prepared by Agent Lewis on June 5, 2016, regarding his questioning of Defendant. (*Id.* at 37.)

Agent Lewis did not administer *Miranda* warnings prior to his questioning of Defendant. At issue, however, is whether Defendant was actually in custody when he spoke to Agent Lewis.

Generally, ordinary traffic stops are considered "non-coercive," and "motorists are not 'in custody' and therefore not entitled to *Miranda* warnings." *United States v. Whitney*, 350 F. App'x 627, 630 (3d Cir. 2009) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984)). However, *Miranda* warnings are required during a traffic stop if the motorist "thereafter is subjected to treatment that renders him 'in custody' for practical purposes." *Berkemer*, 468 U.S. at 440.

Custody is "a 'formal arrest or restraint on freedom of movement; of the degree associated with a formal arrest.'" *United State v. Leese*, 176 F.3d 740, 743 (3d Cir. 1999) (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983)); *see also Berkemer*, 468 U.S. at 440 ("[T]he safeguards prescribed by *Miranda* become applicable as soon as a suspect's freedom of action is curtailed to a degree associated with formal arrest." (citation and internal quotation marks omitted)). In other words, a person is in custody, despite not being formally arrested, when "something [is] said or done by the authorities, either in their manner of approach or in the tone or extent of their questioning, which indicates that they would not have heeded a request to depart or to allow the suspect to do so." *United States v. Willaman*, 437 F.3d 354, 359 (3d Cir. 2006) (citation and internal quotation marks omitted); *see also United States v. Mailloux*, No. 13-270, 2015 U.S. Dist. LEXIS 95295, at *14-20 (E.D. Pa. July 22, 2015) ("A person is in custody if, given the totality of the circumstances surrounding the interrogation, a reasonable person would not feel at liberty to terminate the interrogation and leave." (citing *J.D.B. v. North Carolina*, 564 U.S. 261, 263 (2011))); *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980) ("[I]nterrogation under *Miranda* refers not only to express questioning, but also to 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.").

Courts consider five factors when determining whether an individual was in custody for purposes of *Miranda*: "(1) whether the officers told the suspect he was under arrest or free to leave; (2) the location or physical surroundings of the interrogation; (3) the length of the interrogation; (4) whether the officers used coercive tactics such as hostile tones of voice, the display of weapons, or physical restraint of the suspect's movement; and (5) whether the suspect voluntarily submitted to questioning." *United States v. King*, 604 F.3d 125, 138 (3d Cir. 2010) (citing *Willaman*, 437 F.3d at 359-60). Custody determinations for *Miranda* purposes are "made on a case-by-case basis" by considering "the totality of the circumstances." *United States v. Killingsworth*, 118 F. App'x 649, 650 (3d Cir. 2004) (citing *Stansbury v. California*, 511 U.S. 318, 323 (1994)). "This determination is objective, based on 'how a reasonable man in the suspect's position would have understood his situation.'" *United States v. May*, 87 F. App'x 223, 227 (3d Cir. 2003) (quoting *Berkemer*, 468 U.S. at 442).

Here, there is no evidence in the record that Defendant was told he was under arrest, and there is no evidence that he was told he was free to leave. This factor is therefore neutral. *Cf. King*, 604 F.3d at 137 (concluding that the officer's statement to the suspect that he was not under arrest weighed in favor of the government's position that the suspect was not in custody); *United States v. Mailoux*, No 13-270, 2015 WL 4476898, at *6 (E.D. Pa. July 22, 2015) (concluding that first factor weighed in favor of custody because the officers did not tell him that he was free to leave, and the defendant was in handcuffs).

The location and surroundings of the interrogation favors a finding that Defendant was not in custody. Although the traffic stop took place at 3:00 a.m., it was located on a public highway, presumably with other vehicles passing. *See United States v. Holyfield*, 267 F. App'x 130, 136 (3d Cir. 2008) (finding that traffic stop that took place on a public street weighed in favor of finding that the suspect was not in custody). The length of the interrogation also weighs in favor of finding that Defendant was not in custody. Although there is no bright-line test for determining how long an interrogation must last to constitute a finding that the suspect was in custody, the Third Circuit has observed that an interrogation lasting approximately one hour and fifteen minutes in a police station interview room "was of relatively short duration." *United States v. Griggie*, 105 F. App'x 431, 436 (3d Cir. 2006). Here, Agent Lewis's questioning of Defendant lasted approximately ten to fifteen minutes. In addition, Agent Lewis's questioning followed the Georgia State Police's traffic stop investigation, which lasted only five to ten minutes. The length of the interrogation was brief.

There is no evidence that Agent Lewis or the Georgia State Police used coercive tactics, such as hostile tones or threatening language. Defendant was not placed in handcuffs, Agent Lewis did not display a weapon during the questioning, and there was no evidence that there was any other restraint on Defendant's movement. This factor also favors a finding that Defendant was not in custody. *See United States v. Caraballo*, 643 F. App'x 163, 168-69 (3d Cir. 2016) (affirming district court's denial of motion to suppress pre-arrest statements made during traffic stop where the "afternoon traffic stop was relatively brief," occurred in public, and did not involve coercive tactics, hostile tones, or displays of weapons); *Holyfield*, 267 F. App'x at 134-136 (concluding that the defendant was not in custody when police officers, who had their guns drawn, did not use physical force or handcuffs to detain defendant, during a traffic stop).

Finally, it appears that Defendant voluntarily submitted to Agent Lewis's questioning. There is no evidence in the record that Defendant refused to answer questions. Based on the totality of the circumstances, we find that a reasonable person in Defendant's position would have perceived that he was free to terminate the questioning by Agent Lewis. As a result, we conclude that Defendant was not in custody for purposes of *Miranda* when he was questioned by Agent Lewis.

Defendant also argues that his statements should be suppressed because Agent Lewis made a strategic decision to initiate a traffic stop and question Defendant without administering *Miranda* warnings while he already had probable cause to arrest Defendant for his involvement in the conspiracy. According to Defendant, this is improper under *Miranda*. Whether or not Agent Lewis had probable cause to arrest Defendant or whether he formed the intent to arrest Defendant prior to his questioning of him, is not relevant to our determination of whether Defendant was subjected to a custodial interrogation and should have been administered *Miranda* warnings. A police officer's "subjective and undisclosed view concerning whether the person being interrogated is a suspect is irrelevant to the assessment whether the person is in custody." *Stansbury*, 511 U.S. at 323. As the Supreme Court stated in *Berkemer*: "A policeman's unarticulated plan has no bearing on the question whether a suspect was 'in custody' at a particular time; the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." 468 U.S. at 421-22. The police officer in *Berkemer* decided to take the respondent into custody prior to his questioning of him, but he did not communicate this intention to the respondent. *Id.* The Court concluded that the police officer's intention, if not communicated, is of no relevance to the inquiry into whether the respondent was

in custody for purposes of *Miranda*. *Id.* The statements that the respondent made were admissible against him. *Id.*

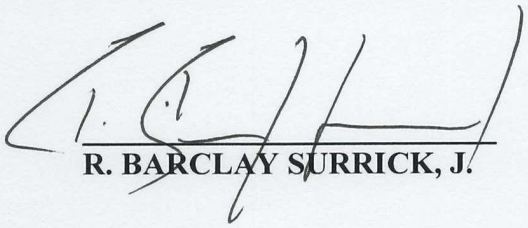
Here, there is no dispute that Agent Lewis had probable cause to arrest Defendant before the traffic stop even occurred. Defendant had been named in an indictment that charged him with conspiracy to distribute marijuana and attempted possession of marijuana. Agent Lewis testified that he did not intend to arrest Defendant, despite having probable cause, until after the drug-sniffing dogs made positive indications for drugs in the tractor-trailers. However, it does not matter when Agent Lewis formed the intent to arrest Defendant. Our conclusion that Defendant was not in custody is based upon the totality of the circumstances, and based upon how a reasonable person in Defendant's position would have understood the interaction with Agent Lewis.

III. CONCLUSION

For these reasons, Defendant's Motion to Suppress Statements will be denied.

An appropriate Order follows.

BY THE COURT:



R. BARCLAY SURRICK, J.

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ORDER

AND NOW, this 11th day of August, 2017, upon consideration of Defendant's Motion to Suppress Statements (ECF No. 264), and all documents submitted in support thereof and in opposition thereto, and after a hearing in open Court, it is **ORDERED** that the Motion is **DENIED**.

IT IS SO ORDERED.

BY THE COURT:

R. BARCLAY SURRICK, J.