

**STATE OF NEW HAMPSHIRE**

**HILLSBOROUGH, SS.  
NORTHERN DISTRICT**

**SUPERIOR COURT**

State of New Hampshire

v.

Adam Montgomery

Docket No. 216-2022-CR-00020  
216-2022-CR-00577

**ORDER ON MOTION TO SUPPRESS STATEMENTS  
FROM AFTERNOON OF DECEMBER 31, 2021**

In Docket No. 216-2022-CR-20, the defendant is charged with second degree assault, endangering the welfare of a child, and interference with custody. In Docket No. 216-2022-CR-577, the defendant is charged with two counts each of armed career criminal, felon in possession, theft, and receiving stolen property. The defendant now moves to suppress statements made to police during an interaction on the afternoon of December 31, 2021. The State objects. The Court held a hearing on September 28, 2022. For the reasons that follow, the defendant's motion is GRANTED in part and DENIED in part.

**Factual Background**

On December 31, 2021, Manchester Police officers detained the defendant and held him pending the arrival of Detectives Scott Riley and John Dunleavy, who had an *ex parte* order—ordering him to produce his daughter, Harmony, to the custody of the Department of Children, Youth, and Families (DCYF)—to serve upon the defendant. While waiting for the detectives to arrive, the police briefly handcuffed the defendant and

frisked him. The police took possession of a phone that was found in the defendant's jacket pocket.

When the detectives arrived, Detective Riley separated the defendant from the rest of the police and handed him a copy of the *ex parte* order. (State's Ex. 3.) Detective Riley explained that the order stated that the defendant was to turn over his daughter, Harmony, and/or provide details of her location. In response, the defendant asked if he was under arrest. Detective Riley told the defendant he was not under arrest but had to comply with the order. The defendant stated, "Either arrest me or I am leaving. I am not answering any questions." Detective Riley allowed the defendant to leave.

Before leaving the scene, Detective Dunleavy spoke with the defendant and restated the purpose of the *ex parte* order. (State's Ex. 9.) The defendant asked, "Do I have to sign this?" Detective Dunleavy said no, explained that the defendant was just being served with the document, and stated that he had to comply with it. Detective Dunleavy said they would be taking the defendant's phone, to which the defendant said, "That's not my phone." Detective Dunleavy asked if the defendant knew how to get in touch with him, and the defendant indicated he did. Detective Dunleavy effectively encouraged the defendant to do the right thing and come talk to him at some point, to which the defendant provided one-word responses such as "right" and "yup." Detective Dunleavy then said, "You're free to go," and the defendant left the scene.

### **Analysis**

The defendant argues that he was in custody during his interaction with the police and was therefore entitled to Miranda protections. The defendant asserts he invoked his right to remain silent to Detective Riley when he stated, "I am not answering any

questions.” He argues that Detective Dunleavy failed to scrupulously honor this invocation when, after answering the defendant’s questions, he attempted to persuade the defendant to speak to the police. The defendant also seeks to exclude his invocation of his right to remain silent.

The State concedes that the defendant was in custody during this encounter. The State also does not appear to contest the defendant’s claim that he invoked his right to remain silent and represents that it does not intend to introduce the defendant’s invocation. Further, the State does not appear to seek to introduce any of the defendant’s statements after the invocation. However, the State argues that the defendant’s statements prior to invoking—asking if he was under arrest and stating “either arrest me or I am leaving”—are admissible. Moreover, the State argues that Detective Dunleavy’s statements to the defendant did not constitute interrogation or the functional equivalent thereof.

“Miranda safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent.” State v. Gravel, 135 N.H. 172, 177 (1991) (quoting Rhode Island v. Innis, 446 U.S. 291, 300–01 (1980)). “The functional equivalent of interrogation includes any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.” State v. Spencer, 149 N.H. 622, 625 (2003). Here, prior to the defendant’s invocation, Detective Riley presented him with a court order and explained the order’s purpose. Such conduct does not constitute interrogation. Cf. State v. Thelusma, 167 N.H. 481, 485 (2015) (“Police can inform individuals about charges against them or about evidence” without violating

Miranda). Therefore, the defendant's responses to Detective Riley's statements were not elicited in violation of his Miranda rights. As a result, other than his invocation of his right to remain silent, these statements are admissible.

With respect to Detective Dunleavy, his initial interaction with the defendant involved answering direct questions asked by the defendant himself. This does not constitute interrogation. See id. ("Police also may respond to direct questions asked by defendants."). After answering the defendant's questions, Detective Dunleavy informed the defendant that the police would be taking his phone, and asked if the defendant knew how to get a hold of him in case he wanted to have a conversation with him. The Court finds neither of these statements are reasonably likely to elicit an incriminating response from the defendant.

At that point, however, Detective Dunleavy told the defendant:


I think you know you need to do the right thing and . . . have more of a conversation with me. We're going to figure this out one way or another, it's not going away. It's going to get real [REDACTED] big real quick, and it's not going to be good if you get on the wrong side of it, you know what I mean? So, you've gone down this road before. You know how to get a hold of me, right?

(State's Ex. 9 at 00:28–:50.) The Court finds that these statements cross into the functional equivalent of interrogation, as they actively encourage the defendant to speak to the police about the subject of their investigation. Although the defendant only provides one-word responses and makes no clearly incriminating statements in response, this portion of Detective Dunleavy's interaction with the defendant violated his Miranda rights and must be suppressed.

Accordingly, the defendant's motion is GRANTED in part and DENIED in part, consistent with the foregoing.

**SO ORDERED.**

October 19, 2022  
Date

  
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Amy B. Messer  
Presiding Justice

Clerk's Notice of Decision  
Document Sent to Parties  
on 10/19/2022