

**IN THE TRIBAL COURT
FOR THE POKAGON BAND OF POTAWATOMI INDIANS**

The People of the Pokagon Band
of Potawatomi Indians,

Plaintiff,

-vs-

Case No. 18-4723-CR

Beth Ann Edelberg,

Defendant.

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OPINION AND ORDER ON DEFENDANT’S MOTION TO SUPPRESS STATEMENTS

THIS MATTER comes before the Court on Defendant’s Motion to Suppress Statements and Incorporated Brief in Support, filed November 8, 2018 (Doc. 47) (“Motion”). The Motion requests this Court to suppress statements Defendant made to a Pokagon Band Detective during an investigatory interview in a conference room at the Pokagon Band Administration Building on March 8, 2018. Defendant argues that her statements were made without the presence of counsel and without being informed of her rights under *Miranda v. Arizona*, 388 U.S. 436 (1966), in violation of the Pokagon Band of Potawatomi Indians Constitution and the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1304 (2012). Defendant also argues that her statements were involuntary because Detective Beauchamp knowingly used Defendant’s mental state to elicit a confession. The Court held an evidentiary hearing on December 20, 2018 regarding this matter.

The Court denies Defendant’s Motion. The Court concludes the following: (1) Defendant had no right to counsel at the time of the interview because formal criminal proceedings had not been initiated against Defendant; (2) Detective Beauchamp was not required to inform Defendant of her rights because Defendant was not “in custody” before or during the interview; and (3) Detective Beauchamp did not conduct the interview in a manner that overwhelmed Defendant’s will, rendering her statement involuntary.

BACKGROUND

Defendant is charged with one count of larceny in a building over \$100.00 contrary to PBCrimO § 15 as applied to MCL § 750.360 for allegedly taking and carrying away a bank bag containing \$662.36 belonging to the Pokagon Band of Potawatomi Indians with the intent to permanently deprive the Pokagon Band. Criminal Complaint, filed March 21, 2018 (Doc. 1). Prior to charging Defendant, Pokagon Band Detective Beauchamp interviewed Defendant concerning a missing bank bag on March 8, 2018 at the Pokagon Band Administration Building.

On November 8, 2018, Defendant filed her Motion seeking suppression of all statements Defendant made to Detective Beauchamp during the March 8 interview. *See* Motion at 1. Defendant contends that the Court should suppress the statements because the statements were obtained in violation of her rights under Article XVI of the Pokagon Band of Potawatomi Indians Constitution, and her rights under Section 1302 of the Indian Civil Rights Act. *See* Mot. at 1-2. Defendant requested an evidentiary hearing to establish the facts and circumstances of the interview. Mot. at 5-6.

Defendant makes three arguments as to why her statements are tainted as “fruits of the poisonous tree of police misconduct,” Mot. at 5:

1. Defendant’s statements were made without counsel during a governmental interrogation, which is a “critical state” of a criminal proceeding triggering the right to counsel. *See* Mot. at 2-3, 5.
2. Detective Beauchamp was required to inform Defendant of her *Miranda* rights prior to questioning because the interview constituted “custodial interrogation.” *See* Mot. 3-5; and
3. Defendant’s statements were involuntary made to Detective Beauchamp because she was in a “fragile mental state,” and Detective Beauchamp used Defendant’s vulnerable mental state to illicit a confession. *See* Mot. at 4-5.

On December 11, 2018, the People of the Pokagon Band of Potawatomi Indians (“People”) filed a Response to Motion to Suppress Statements (Doc. 61) (“Response”) and a Brief in Support of Defendant’s Response to Motion to Suppress Statements and Incorporated Brief in Support (Doc. 62) (“Response Brief”). The People argue there was no police misconduct giving rise to the suppression of any statements from the interview. Resp. at 5; Resp. Br. at 1. The People make several arguments to refute the Defendant’s claims:

1. The interview did not violate Defendant’s constitutional right against self-incrimination since at the time of the interview there was no “criminal case” against Defendant as there was no arrest, warrant, or judicial proceedings initiated against Defendant. Resp. Br. at 3.
2. Defendant did not have a right to counsel at the time of the interview because the People had not initiated adversarial judicial proceedings against Defendant and “there is no

right to counsel pre-arraignment under the tribal code,” except in the context of “custodial interrogation” under PBCP § 3(G). Resp. Br. at 3-4.

3. Defendant had no right to be recited the rights enumerated under PBCP § 3(G) because the interview was not a “custodial interrogation,” since the interview was not an interrogation, nor was Defendant formally detained or arrested. *See* Resp. Br. at 4-5.
4. Detective Beauchamp was unaware of Defendant’s mental condition and even if Defendant had a “fragile mental state,” Detective Beauchamp did not utilize her mental condition to illicit a confession because during the interview “there were no threats, deprivation, or coercion by the detective” Resp. at 5.

On December 20, 2018, the Court held a hearing where the parties were given the opportunity to present evidence and make oral arguments. At the hearing, the People called Detective Beauchamp as a witness to testify to the circumstances of the March 8 interview. Defendant cross-examined Detective Beauchamp but offered no other evidence to dispute his testimony. After direct and cross-examination of Detective Beauchamp, the People moved a copy of an audio recording of the March 8 interview into evidence as Exhibit 1.

The People then asked for oral argument on Defendant’s Motion. The People provided the Court with the recently decided Michigan Court of Appeals cases of *People v. Barritt*, No. 341984 (Mich. Ct. App. Aug. 9, 2018), and *People v. Nelms*, No. 339789 (Michigan Ct. App. Nov. 27, 2018), for the Court’s consideration as these cases were neither discussed nor cited in the People’s Response or Response Brief. The People then argued that *People v. Barritt* is distinguishable from the present case. Defendant made no argument in response. After oral argument, the Court adjourned the hearing.

LAW REGARDING MOTIONS TO SUPPRESS

The Pokagon Band Code of Criminal Procedure provides that “[a] Defendant may move to suppress as evidence any confession or admission given by her or him on the ground that it was not voluntary or otherwise obtained in violation of the defendant’s rights.” PBCP § 7(C)(1). Defendants bear the burden of persuasion on such motions by proving the validity of their claims by a preponderance of the evidence. *Id.* § 7(C)(2).

The Pokagon Band’s Rules of Evidence are silent as to what evidence the Court may consider when determining preliminary issues on the admissibility of evidence. However, the Pokagon Band Rules of Evidence permit the presiding judge on the Court’s own initiative to apply the Michigan Rules of Evidence in any proceeding at the Judge’s discretion. PBCR Ch. 4 § 4. The Court will apply the Michigan Rules of Evidence to this preliminary evidentiary issue.

Under Michigan Rule of Evidence 104(a), trial courts may consider any non-privileged evidence when making preliminary determinations concerning the admissibility of evidence. MRE 104(a); *see People v. Barrett*, 480 Mich. 125, 137, 747 N.W.2d 797, 804 (2008).¹ Throughout this

¹ Michigan Rule of Evidence 104 mirrors that of Federal Rule of Evidence 104. The codification of Federal Rule of Evidence 104 confirmed the common understanding that “the same rules of evidence governing criminal jury trials

Opinion, the Court relies on the March 8 audio recording of the interview (People’s Exhibit 1) and the testimony of Detective Beauchamp for its findings and conclusions.

ANALYSIS

Defendant asserts that her statements should be suppressed as a result of police misconduct in violation of the Pokagon Band of Potawatomi Indians Constitution (“Pokagon Band Constitution”) and Section 1302 of the Indian Civil Rights Act (“ICRA”), 25 U.S.C. §§ 1301-1304. The issues raised by Defendant’s Motion are whether:

1. Defendant’s right to counsel attached at the time of the interview;
2. Defendant had a right to be informed of her rights prior to questioning; and
3. Detective Beauchamp obtained an involuntary confession from Defendant.

To decide these substantive legal issues, the Court first applies Pokagon Band law then, to the extent applicable, the law of the United States. Tribal Ct. Code § 8(A). Thus, the Court will only look to ICRA if Pokagon Band law leaves a gap in procedural safeguards guaranteed to criminal defendants that ICRA would otherwise fill. Consideration of ICRA’s protections is unnecessary to resolve Defendant’s claims because the Pokagon Band Constitution affords protection against impermissible government action to the same, if not greater, extent as ICRA. *Compare* Pokagon Band Const. art. XVI, §§ (d), (f), (h), *with* 25 U.S.C. § 1302(a)(4), (6), (8).

Defendant relies on subsection 1302(c) of ICRA for the assertion that “the Tribe must provide to the defendant the right to effective counsel at least equal to that guaranteed by the United States Constitution.” Mot. at 4; 25 U.S.C. § 1302(c)(1). Subsection 1302(c)’s heightened protections for criminal defendants only trigger when a tribe “imposes a total term of imprisonment of more than 1 year on a defendant.” 25 U.S.C. § 1302(c). Subsection 1302(c) is inapplicable because Defendant has not been sentenced nor is there a possibility of Defendant being sentenced to more than one-year imprisonment. *See* Criminal Complaint (Doc. 1). The Court having concluded that ICRA is inapplicable to this case turns next to the substantive issues.

I. Defendant had no right to counsel at the time of the March 8 interview.

The Pokagon Band Constitution provides that the Pokagon Band shall not “[d]eny any person in a criminal proceeding the right . . . to have the assistance of counsel for his/her defense.” Pokagon Band Const. art. XVI § (f).² Under federal law, the right to counsel attaches upon the formal “initiation of adversary judicial criminal proceedings—whether by way of formal charge,

are not generally thought to govern hearings before a judge to determine evidentiary questions” *United States v. Matlock*, 415 U.S. 164, 173 (1974); *see also United States v. Stepp*, 680 F.3d 651, 668 (6th Cir. 2012).

² The ICRA right to counsel in criminal proceedings in which an Indian tribe imposes a total term of imprisonment of no more than one year contains materially identical language. *See* ICRA, 25 U.S.C. § 1302(a)(6). Although subsection 1302(a) of ICRA and the Pokagon Band Constitution provide only the right to counsel at the defendant’s expense, other Pokagon Band laws guarantee to indigent defendants the right to court-appointed counsel in criminal proceedings where a defendant faces potential imprisonment. *See* PBCP, § 1(B)(10); *Rangel v. People*, No. 13-002-AP, at *2-5 (Pokagon Band Ct. App. Oct. 14, 2014); *see also* Pokagon Band Civil Rights Ordinance, § 2(F).

preliminary hearing, indictment, information, or arraignment.” *Rothery v. Gillespie Cty.*, 554 U.S. 191, 198 (2008) (quoting *United States v. Gouveia*, 467 U.S. 180, 188 (1984)). After the right to counsel attaches, criminal defendants are “entitled to the presence of appointed counsel during any ‘critical stage’ of the post attachment proceedings.” *Id.* at 212. Critical stages are formal and informal proceedings that amount to “trial-like confrontations” between defendants and government at which the presence of “counsel would help the accused ‘in coping with legal problems or . . . meeting his adversary.’” *Id.* at 212 n.16 (quoting *United States v. Ash*, 413 U.S. 300, 312-13 (1973)).

Defendant asserts that any statements she made during the March 8 interview were made without counsel during the critical stage of police interrogation in violation of her right to counsel.³ Interrogation is a critical stage of a criminal proceeding. *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009) (citing *Massiah v. United States*, 377 U.S. 201, 204-05 (1964)). However, interrogations are considered critical only after formal initiation of adversary judicial proceedings, *Moran v. Burbine*, 475 U.S. 412, 432 (1986), because the initiation of criminal proceedings marks the government’s commitment to prosecute, thereby defendants need the assistance of counsel to face “the prosecutorial forces of organized society.” *See id.* at 430 (quoting *Main v. Moulton*, 474 U.S. 159, 170 (1985)).

In the present case, Defendant had no right to have counsel present during the March 8 interview. Defendant’s right to counsel had not attached at the time of the interview because Defendant had not been formally charged of a crime. Defendant was formally charged on March 21, 2018 upon the filing of a criminal complaint. *See* Criminal Complaint (Doc. 1). Prior to March 21 Defendant had no need for the assistance of counsel to navigate the intricacies of criminal law and procedure. *Rothgery*, 554 U.S. at 198. Therefore, the Court concludes that Detective Beauchamp’s March 8 interview of Defendant without counsel present did not violate Defendant’s her right to counsel.

II. Detective Beauchamp was not required to recite to Defendant her rights prior to questioning.

Defendant argues that her statements were made without being informed of her *Miranda* rights in violation of the Pokagon Band Constitution. *Miranda* rights were originally articulated in *Miranda v. Arizona*, 384 U.S. 436 (1966), and effectuate the federal right against compelled self-incrimination. Under *Miranda*, police officers must give certain warnings to anyone subject to “custodial interrogation.” *Id.* at 444. Any statements made to law enforcement during custodial interrogations in the absence of *Miranda* warnings are generally inadmissible. *See id.* at 444-45.

Although not bound by *Miranda*, Pokagon Band law enforcement officers must administer very similar warnings to anyone subject to custodial questioning. The Pokagon Band Code of Criminal Procedure provides that “[p]rior to questioning any person in custody,” an officer must inform the person of the following rights: (1) the person has the right to remain silent; (2) anything said can be used against the person in court; (3) the person has the right to legal counsel prior to

³ The interview constituted an interrogation because Detective Beauchamp expressly questioned Defendant about her involvement with the bank bag and asked questions of Defendant that he knew were “reasonably likely to elicit an incriminating response.” *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980).

answering questions; and (4) if the person indicates a desire to remain silent then questioning will cease. PBCP § 3(G).

There is no doubt that Detective Beauchamp questioned Defendant about her involvement with a suspected crime during the March 8 interview, nor is there doubt that Detective Beauchamp did not inform Defendant of her rights prior to or during the interview. *See* Mot. at 4; Resp. at 4 (admitting that no *Miranda* rights were provided). Thus, the primary issue is whether the Defendant was “in custody” for PBCP § 3(G) purposes at any time before or during the interview.

The Pokagon Band Code of Offenses does not define “custody” for purposes of PBCP § 3(G) questioning. *See* PBCrimO § 1(L) (providing no custody definition). In the absence of a Pokagon Band definition of “custody,” the Court will apply the federal definition of “custody” under *Miranda v. Arizona*. *See* Tribal Ct. Code § 8(A). Under *Miranda*’s progeny, “custody” refers to a set of circumstances that present a “serious danger of coercion,” *Howe v. Fields*, 565 U.S. 499, 509 (2012), the existence of which involves a two-step inquiry. The initial step entails determining whether a reasonable person in light of the circumstances surrounding the interrogation would have felt free to terminate the interrogation and leave. *Id.* If a defendant’s freedom of movement was sufficiently restrained, then the next step becomes whether the interrogation’s circumstances present the same coercive pressures at the type of questioning at issue in *Miranda*. *Id.*

The Court begins the custody analysis by determining whether Defendant’s freedom of movement during the March 8 interview was restrained. A determination of whether a reasonable person would have felt free to terminate the interview and leave involves an analysis of all the interrogation’s objective circumstances. *Id.* Relevant circumstantial factors include “the location of the questioning, statements made during the interview, its duration, the presence or absence of physical restraints during the questioning, and the release of the interviewee at the end of the questioning.” *Id.* (internal quotations and citations omitted). No one circumstantial factor is dispositive, rather the analysis requires weighing the totality of the circumstances. *People v. Barritt*, No. 341984, slip op. at 3 (Mich. Ct. App. Aug. 9, 2018).

Under the totality of the circumstances, a reasonable person in Defendant’s position would have felt free to terminate the interview. To begin, Detective Beauchamp questioned Defendant not at a police facility but at her place of employment. Police questioning conducted at a place familiar to the Defendant generally weighs against a finding of custody because “individuals are more comfortable speaking up and asserting themselves.” *See United States v. Luck*, 852 F.3d 615, 622 (6th Cir. 2017) (discussing police questioning at a defendant’s residence); *see also United States v. Panak*, 552 F.3d 462, 466 (6th Cir. 2009) (“[A]ll individuals, the meek and the brazen alike, generally will find it easier to exercise such control on their home turf than at the station house.”).

As for the length of the interview and manner of questioning, the interview lasted approximately 90 minutes in a relaxed non-confrontational atmosphere. The duration of the interview weighs neither in favor nor against a finding of custody because a 90-minute interview is a neutral factor. *Barritt*, No. 341984, slip op. at 6 (explaining that the United States Supreme Court determined that a two-hour long interview weighed in favor of a finding of custody, but had also held that a 30-minute interview weighed against a finding of custody). Detective Beauchamp

was not in a police uniform and conducted the interview in a calm, mostly conversational manner, never becoming aggressive or brandishing his weapon. The Court does not consider Defendant's alleged "fragile mental state" in a custody analysis because the standard is that of a reasonable person. *Luck*, 852 F.3d at 622 (rejecting consideration of a defendant's learning disabilities and use of sleeping medication under an "objective custody" inquiry).

Furthermore, Detective Beauchamp did not physically restrain Defendant at any time before or during questioning. Defendant voluntarily accompanied Detective Beauchamp to the conference room for questioning. Defendant was not handcuffed before or during the interview. The conference room door was unlocked throughout the interview and on one occasion Detective Beauchamp left her alone in the room. Although Detective Beauchamp did not inform Defendant that she was free to leave, he did tell Defendant, prior to Defendant making incriminating statements, that she was not under arrest and would not be arrested. At the end of the interview, Detective Beauchamp did not arrest Defendant and she was free to leave the Pokagon Band Administrative Building after speaking with the Band's human resources personnel.

The totality of the circumstances of the March 8 interview indicate that a reasonable person in Defendant's position would have felt free to terminate the interview and leave. Since the Court concludes that Defendant's freedom of movement was not curtailed, the Court does not address the second step of the custody inquiry as to whether the interview presented coercive pressures of the type at issue in *Miranda*. Accordingly, Defendant was not in "custody" within the meaning of PBCP § 3(G) during the March 8 interview, as such Detective Beauchamp was not required to read Defendant her rights prior to questioning her about the missing bank bag.

III. Defendant's statements were voluntarily made to Detective Beauchamp.

Due process requires that incriminating statements obtained involuntarily be excluded as evidence. *See Dickerson v. United States*, 530 U.S. 428, 434 (2000). The voluntariness inquiry examines whether the "defendant's will was overborne" by the circumstances of the interrogation. *Id.* (quoting *Schneckloth*, 412 U.S. 218, 226 (1978)). The following are particularly important facts to consider in a voluntary analysis: defendant's psychological characteristics, *see Culombe v. Connecticut*, 367 U.S. 568, 603-05 (1961); threats made by police, *see Lynumn v. Illinois*, 372 U.S. 528, 534 (1963); police use of physical or psychological force, *see Culombe*, 367 U.S. at 605-06; and promises made by police, *see United States v. Lopez*, 437 F.3d 1059, 1064 (10th Cir. 2006).

Defendant did not testify at the hearing; thus, the Court has no evidence of her mental characteristics other than her statements during the interview and Detective Beauchamp's testimony. Detective Beauchamp testified that Defendant did not appear intoxicated or under the influence of medication because Defendant spoke clearly and was understandable during the interview. The Court finds that the audio recording of the interview confirms Detective Beauchamp's testimony. Absent additional evidence, the Court cannot conclude that Defendant had any psychological characteristics rendering her more susceptible than the average person to police questioning.

Additionally, the factual circumstances surrounding the interrogation do not indicate that Detective Beauchamp's conduct during the interview was particularly coercive. Detective


Beauchamp made no threats against Defendant or her family. Detective Beauchamp did not use physical force against her nor did he attempt to psychologically manipulate Defendant other than utilizing common police questioning tactics. Detective Beauchamp made no promises to Defendant to induce her to act in any particular manner. In some ways, Defendant may have actually been less susceptible to police coercion because Defendant said that she had been through interrogation training as part of her employment. Consequently, the Court concludes that Defendant's statements made during the interview were voluntary and their admission into evidence will not offend Defendant's right to due process.

CONCLUSION

The Court concludes that Defendant's constitutional rights were not violated during the March 8 interview and any statements made during the interview are admissible against Defendant.

IT IS ORDERED that Defendant's Motion to Suppress Statements and Incorporated Brief in Support, filed November 8, 2018 (Doc. 47), is denied.

Dated: January 18, 2019



David M. Peterson
Judge, Pokagon Band Tribal Court