COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff	:	**CASE NO. 2015 CR 00180**
vs.	:	**Judge McBride**
ERIC SCOTT WARREN	:	**DECISION/ENTRY**
Defendant	:	

Carol A. Rowe, assistant prosecuting attorney, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103.

W. Stephen Haynes and James A. Hunt, assistant public defenders for the defendant Eric Scott Warren, 302 E. Main Street, Batavia, Ohio 45103.

This cause is before the court for consideration of a motion to suppress filed by the defendant Eric Scott Warren.

The court scheduled and held a hearing on the motion to suppress on June 24, 2015. At the conclusion of the hearing, the court took the issues raised by the motion under advisement.

Upon consideration of the motion, the record of the proceeding, the evidence presented for the court's consideration, the oral and written arguments of counsel, and the applicable law, the court now renders this written decision.

FINDINGS OF FACT

The defendant Eric Scott Warren was incarcerated at the Clermont County Jail on February 20, 2015 after he was arrested on an outstanding warrant. The defendant's clothing and property on his person was retained by the Clermont County Sheriff's Office when the defendant was booked into the Clermont County Jail, and that property was held in the inventory room.

On February 20th, Detective John Pavia of the Union Township Police Department confiscated one pair of brown boots and a set of keys belonging to the defendant from the property room.[1] Detective Pavia was investigating several burglaries that the defendant was suspected to have committed which were unrelated to the charges for which the defendant was incarcerated at the time.

Detective Todd Taylor of the Union Township Police Department testified that the keys were for the defendant's Jeep, which was located at the impound lot, and the boots were suspected to have been worn to several burglaries. On February 25, 2015, Detective Taylor of the Union Township Police Department went to the Clermont County Jail to speak with defendant Warren about those suspected burglaries.

Detective Taylor, along with Officer Marshall of the Union Township Police Department, met with the defendant in an interview room at the jail. After a short general discussion about unrelated matters, Detective Taylor began the recorded interview by reading the defendant his *Miranda* rights and reading him the form for waiver of those rights.[2]

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[1] State's Exhibit C.
[2] State's Exhibit A1.

When Detective Taylor asked the defendant if he understood those rights, the defendant responded: "I absolutely want a lawyer."[3] In response, Detective Taylor stated "[t]hen I'm not going to talk to you[,]" and the recording of that encounter was terminated. Detective Taylor recalls that the interview was terminated "just minutes before 2:30 [p.m.]." Detective Taylor testified that he stopped the recording because the interview had concluded and he was going to leave and return to the police station.

Detective Taylor testified that he next called for a corrections officer to come get the defendant. All three individuals then exited the interview room and stood in the anteroom outside of the interview room.

Detective Taylor testified that the defendant during his time in the anteroom asked him something such as "what is this all about?" or "what are you here for?" In response, Detective Taylor told the defendant that (1) he was there regarding several burglaries for which the defendant was going to be charged; (2) he had already spoken to Daniel Wilhelm [the defendant's alleged accomplice]; (3) he knew about American Trading Company; and (4) a search of the defendant's Jeep had already been performed and a large amount of stolen property was found therein.

A short discussion ensued wherein the defendant stated that he wanted to talk to Detective Taylor about all of this, and he mentioned that he had a problem with drugs. Detective Taylor told the defendant that, if they went back into the interview room, he wanted the truth and did not want the defendant to waste his time.

Detective Taylor called the corrections officer again and told him to give them more time because they were going to talk. Detective Taylor, Officer Marshall, and the

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[3] Id.

defendant then returned to the interview room and Detective Taylor started the recorded once again.

Detective Taylor began the renewed conversation by indicating that the defendant had stated that he changed his mind and now wanted to speak to the officers.[4] Detective Taylor stated "I didn't ask any questions out there, correct?" to which the defendant replied "no."[5]

Detective Taylor read the defendant his *Miranda* rights again and the defendant signed the waiver form.[6] Detective Taylor states on the recording that the waiver of rights was being signed at 2:30 p.m.[7]

Thereafter, Detective Taylor proceeded to question the defendant about the burglaries at issue in this case.

Detective Taylor's written narrative regarding his interview with the defendant on February 25th states in relevant part as follows: "I read Warren his Miranda rights and [he] stated that he wanted an attorney. At this time I terminated the interview and called for a CO to come get Warren. I explained to Warren that he was going to be charged with burglaries and told him that I knew about American Trading Co and I had already spoken to Wilhelm. Warren advised that he then wanted to speak to me."[8]

Detective Taylor acknowledged during his testimony that his written narrative does not state that the defendant initiated conversation with him after invoking his right to counsel. However, Detective Taylor testified that written narratives are not verbatim accounts and they are instead just a summary of what occurred. Detective Taylor

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[4] State's Exhibit A2.
[5] Id.
[6] Id. and State's Exhibit B.
[7] Id.
[8] Defendant's Exhibit 1.

testified several times that it was the defendant that initiated conversation with him while in the anteroom and that he did not ask the defendant any questions while in the anteroom, nor did he do anything to coerce the defendant to speak to him.

The defendant now seeks to suppress the statements made during his interview with Detective Taylor on February 25, 2015 and the items seized from the Clermont County Jail inventory room by Detective Pavia.

LEGAL ANALYSIS

(A) PROPERTY SEIZED FROM THE INVENTORY ROOM

" 'It is well established that searches conducted without a warrant are per se unreasonable, subject to certain 'jealously and carefully drawn' exceptions.' "[9] "A 'search incident to arrest' is a well-established exception to the general rule against warrantless searches that allows arresting officers to search both an arrestee's person and the area within the arrestee's immediate control."[10]

In *United States v. Edwards*, 415 U.S. 800, 94 S.Ct. 1234, 39 L.Ed.2d 771 (1974), the United States Supreme Court held "the search incident to arrest exception to permit that 'clothing or other belongings [of an accused] may be seized upon arrival of the accused at the place of detention and later subjected to laboratory analysis.' "[11] The

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[9] *State v. Alltop*, 12th Dist. Fayette No. CA2013-06-018, 2014-Ohio-1695, ¶ 25, quoting *State v. Smith*, 124 Ohio St.3d 163, 2009-Ohio-6426, 920 N.E.2d 949, ¶ 10, quoting *Jones v. United States*, 357 U.S. 493, 499, 78 S.Ct. 1253 (1958).
[10] Id. at ¶ 27, citing *Smith*, 124 Ohio St.3d at ¶ 11.
[11] Id. at ¶ 29, quoting *United States v. Edwards*, supra, 415 U.S. at 804, citing *United States v. Caruso*, 358 F.2d 184, 185 (2nd Cir.1966).

Court concluded that " '[w]hile the legal arrest of a person should not destroy the privacy of his premises, it does—for at least a reasonable time and to a reasonable extent—take his own privacy out of the realm of protection from police interest in weapons, means of escape, and evidence.' "[12]

In the case of *State v. Alltop*, the defendant was arrested and detained at the Fayette County Jail.[13] Immediately upon his detention, his clothing and other personal effects were bagged and placed in the jail's property room.[14] Less than 48 hours later, an officer acting on a tip retrieved the defendant's boots from the property room and sent them to Ohio's Bureau of Criminal Investigation for testing.[15] The Twelfth District Court of Appeals upheld the trial court's denial of the defendant's motion to suppress, noting that " '[i]t is difficult to perceive what is unreasonable about the police's examining and holding as evidence those personal effects of the accused that they already have in their lawful custody as the result of a lawful arrest.' "[16]

"[W]hile there may be limits imposed on an intrusive investigation of inventoried items, such as analyzing documents seized * * *, [the law] consistently holds that a person's clothing may be seized and tested without raising a constitutional claim."[17]

The defendant in the case at bar acknowledges the precedential value of the *Edwards* and *Alltop* cases. However, the defendant seeks to distinguish those cases from the present case based on the fact that, in the case at bar, the items confiscated

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[12] Id., quoting *Edwards* at 808-809, quoting *United States v. DeLeo*, 422 F.2d 487, 493 (1st Cir.1970).
[13] Id. at ¶ 30.
[14] Id.
[15] Id.
[16] Id., quoting *Edwards*, 415 U.S. at 806.
[17] *Barry v. Ficco*, 392 F.Supp.2d 83, 95-96 (D.Mass.2005), citing, e.g. *United States v. Monclavo-Cruz*, 662 F.2d 1285, 1290 (9th Cir.1981).

were not related to the charges on which the defendant was arrested and incarcerated at the time of the confiscation.

The fact that the defendant was under arrest for a different crime than the one for which the shoes and keys were seized does not alter the result here.[18] "* * * '[M]ost courts deciding this issue under the Fourth Amendment conclude that once an inmate's property is taken from him or her and inventoried and placed in a property room, the inmate's expectation of privacy is substantially or entirely reduced to the point that no constitutionally protectable interest remains.' "[19] " 'Thus, a 'second look' at an inmate's inventoried property in connection with investigation of a crime unrelated to the one for which the defendant is arrested does not violate the constitution.' "[20]

Therefore, the defendant did not have a legitimate privacy interest in his clothing and keys after they had been lawfully seized by the Clermont County Sheriff's Office pursuant to a lawful search incident to arrest. Therefore, Detective Pavia was permitted to confiscate the items and send them for further testing pursuant to his investigation. The fact that Detective Pavia's investigation was not related to the charges for which the defendant was originally arrested is of no consequence. As such, there is no basis upon which to grant a motion to suppress the evidence seized by Detective Pavia.

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[18] Id. at 96.

[19] Id., quoting *State of Washington v. Cheatam*, 150 Wash.2d 626, 635-637, 81 P.3d 830 (2003). See *State v. Bentler*, 759 N.W.2d 802, 806 (Iowa Ct. of Appeals 2008), citing *United States v. Turner*, 28 F.3d 981, 983 (9th Cir.1994), *cert. denied* 513 U.S. 1158, 115 S.Ct. 1117, 130 L.Ed.2d 1081 (1995); *United States v. Thompson*, 837 F.2d 673, 675 (5th Cir.1988), *cert. denied* 488 U.S. 832, 109 S.Ct. 89, 102 L.Ed.2d 65 (1988); *United States v. Jenkins*, 496 F.2d 57, 73 (2nd Cir.1974), *cert. denied* 420 U.S. 925, 95 S.Ct. 1119, 43 L.Ed.2d 394 (1975); *State v. Copridge*, 260 Kan. 19, 918 P.2d 1247, 1251 (1996); and *Wallace v. State*, 373 Md. 69, 816 A.2d 883 (2003). See, also, *Guilmette v. State of Indiana*, 14 N.E.3d 38, 41-42 (2014) (Police officers were not required to obtain a search warrant before testing evidence lawfully seized incident to arrest that was unrelated to the crime for which the defendant was in custody).

[20] Id.

(B) DEFENDANT'S ORAL STATEMENTS

The defendant also seeks to suppress the statements he made to Detective Taylor on February 25, 2015.

"The 'prosecution may not use statements, whether exculpatory or inculpatory, stemming from a custodial interrogation unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.' "[21] "Once *Miranda* warnings have been given, if a suspect asserts his right to counsel, the interrogation must cease until an attorney is present."[22]

In the case of *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981), the Court held that a suspect who has " 'expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, *unless the accused himself* initiates further communication, exchanges, or conversations with the police.' "[23] "In subsequent cases, it has been determined that police may not reinitiate an interrogation under the guise of a 'generalized discussion * * * [about] the investigation.' "[24] An interrogation may not resume unless the suspect himself initiates dialogue with the authorities.[25]

"Though the Supreme Court declined to fully define the term 'initiate,' it did note that 'a willingness and a desire for a generalized discussion about the investigation * * *

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[21] *State v. Coleman*, 12th Dist. Butler No. CA2001-10-241, 2002-Ohio-2068, *3, quoting *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).
[22] Id., citing *Miranda* at 474.
[23] *State v. Van Hook*, 39 Ohio St.3d 256, 259, 530 N.E.2d 883 (1988), quoting *Edwards v. Arizona*, 451 U.S. at 484-485.
[24] Id., quoting *Oregon v. Bradshaw*, 462 U.S. 1039, 1045, 103 S.Ct. 2830, 77 L.E.2d 405.
[25] Id., quoting *Wyrick v. Fields*, 459 U.S. 42, 46, 103 S.Ct. 394, 74 L.E.2d 214.

not merely a necessary inquiry arising out of the incidents of the custodial relationship' was sufficient to show initiation."[26]

"When a suspect makes statements after invoking the right to counsel, the focus of this inquiry is on whether the suspect has been compelled to speak or has spoken of his own volition."[27]

Miranda warnings are required where there has been such restriction on a person's freedom as to render him in custody.[28] "Similarly, the *Edwards* rule applies only if the accused invokes his right to an attorney while in custody."[29] In the case sub judice, the interview took place in the Clermont County Jail where the defendant was incarcerated. As such, there is no question that the defendant was in custody and that *Miranda* and *Edwards* apply in the present case.

"In *State v. Knuckles*, 65 Ohio St.3d 497, [605 N.E.2d 54] (1992), the Ohio Supreme Court determined that a statement that the officer only wanted to talk to the defendant about a third party was still an interrogation because it invited a response."[30] The *Knuckles* court set forth a bright-line rule that " '[o]nce an accused invokes his right to counsel, all further custodial interrogation must cease and may not be resumed in the absence of counsel unless the accused thereafter effects a valid waiver or himself renews communication with the police.' "[31] The court in *Knuckles* then required a two part test: "First, courts must determine whether the accused actually invoked his right to

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[26] *State v. Jacobs*, 4th Dist. Highland No. 11CA26, 2013-Ohio-1502, ¶ 19, quoting *Oregon v. Bradshaw*, 462 U.S. 1039, 1046, 103 S.Ct. 2830, 77 L.E.d2d 405 (1983).
[27] *State v. Wallace*, 9th Dist. Summit No. 25511, 2012-Ohio-2287, ¶ 9, citing *State v. Marrero*, 9th Dist. Lorain No. 10CA009867, 2011-Ohio-3745, ¶ 14.
[28] *Coleman*, supra, 2002-Ohio-2068 at *4, citing *Oregon v. Mathiason*, 492 U.S. 492, 494, 97 S.Ct. 711 713, 50 L.Ed.2d 714 (1977).
[29] Id., citing *United States v. Harris*, 961 F.Supp. 1127, 1135 (S.D.Ohio 1997).
[30] *State v. Baker*, 3rd Dist. Marion No. 9-12-51, 2013-Ohio-1737, ¶ 8.
[31] Id., quoting *Knuckles*, supra, 65 Ohio St.3d 497 at paragraph one of the syllabus.

counsel. * * * Second, if the accused invoked his right to counsel, courts may admit his responses to further questioning only on the finding that he (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right he had invoked."[32]

The court in *Knuckles* reiterated its holding in *State v. Williams*, 6 Ohio St.3d 281, 452 N.E.2d 1323 (1983), as follows:

> " 'Once an accused invokes his right to counsel, all further custodial interrogation must cease and may not be resumed in the absence of counsel unless the accused thereafter effects a valid waiver of his right to counsel or himself renews communication with the police.' The bright-line rule established in these cases eliminates the need for *ad hoc* determinations by the courts regarding what communications with a defendant are permissible once counsel is requested. It removes uncertainty by stopping all interrogation. It clearly tells the police what cannot be done."[33]

"To determine whether a suspect knowingly, intelligently, and voluntarily waived his Miranda rights, 'the court looks to the totality of the circumstances, including 'the age, mentality, and, prior criminal experience of the accused; the length, intensity, and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement.' "[34] " 'Absent evidence that a defendant's will was overborne and his capacity of self-determination was critically impaired because of coercive police conduct, the decision of a suspect to waive his Fifth Amendment privilege is made voluntarily.' "[35]

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[32] *Knuckles* at 496.
[33] Id. at 497.
[34] *State v. Petruccelli*, 11th Dist. Lake No. 2010-L-054, 2011-Ohio-3292, ¶ 40, quoting *State v. Smith*, 6th Dist. Lucas No. L-05-1350, 2007-Ohio-5592, ¶ 37, quoting *In re Watson*, 47 Ohio St.3d 86, 90, 548 N.E.2d 210 (1989).
[35] Id., quoting *Smith* at ¶ 37, citing *State v. Dailey*, 53 Ohio St.3d 88, 91-92, 559 N.E.2d 459 (1990).

In *State v. Baker*, 3rd Dist. Marion No. 9-12-51, 2013-Ohio-1737, the defendant invoked his right to counsel and the officer continued to speak to him after the right was invoked, including making such statements as "if you change your mind and you want to talk let us know * * *[;]" and "I know you feel bad."[36] The officer admitted during his testimony that the entire exchange was one continuing conversation that did not cease after the defendant invoked his right to counsel.[37] The court noted that "[the defendant] had unquestionably invoked his right to counsel multiple times, yet [the officer] continued to converse with [the defendant] concerning the case, how talking with [the officer] might help [the defendant's] situation, and how [the officer] knew [the defendant] felt bad about what had happened."[38]

The evidence demonstrated that this was one continuing conversation and, as such, the defendant never renewed communication with the officer because the communication had never ceased.[39] Additionally, the officer made statements that he knew or should have known would have elicited a response from the defendant after the defendant invoked his right to counsel and all communications should have ceased.[40] As a result, the appellate court held that the defendant's statements should have been suppressed.[41]

In *State v. Gerald*, 4th Dist. Scioto No. 12CA3519, 2014-Ohio-3629, the defendant unequivocally invoked his right to counsel but then almost immediately continued to speak to the detective, saying that the detective thought he was guilty, that

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[36] *Baker* at ¶ 11.
[37] Id.
[38] Id.
[39] Id. at ¶ 12.
[40] Id.
[41] Id. at ¶ 13.

he knew how the police did things, and that the detective would hang him out to dry.[42] In response to those statements, the detective explained to the defendant what the evidence and investigation showed and what the defendant could be charged with and also inquired on two occasions about whether the defendant still wanted to speak with an attorney.[43] Ultimately, the defendant made statements that he later sought to suppress.[44]

The court noted that "[a]lthough [the detective] continued to engage with [the defendant] when he continued talking with her, her comments were statements, rather than questions, regarding the crimes [the defendant] would be charged with once he was taken over to the jail, based upon the evidence gathered at the time."[45] The court held that, despite the defendant's unequivocal request for counsel, he subsequently waived that right by re-initiating conversation with the detective.[46]

The defendant in *State v. Petruccelli*, 11th Dist. Lake No. 2010-L-054, 2011-Ohio-3292, initially invoked his right to counsel but, several hours later, indicated that he wanted to discuss the case but not to put anything in writing.[47] The detective began the renewed interview by reading the defendant his *Miranda* rights again.[48] The court noted that the defendant initiated further conversation, bringing the facts of the case "squarely within the well-established exception where a suspect renews communication with the police after invoking his right to counsel."[49]

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[42] *State v. Gerald*, 4th Dist. Scioto No. 12CA3519, 2014-Ohio-3629, ¶ 77.
[43] Id.
[44] Id.
[45] Id. at ¶ 82.
[46] Id. at ¶ 83.
[47] *State v. Petruccelli*, supra, 2011-Ohio-3292, ¶¶ 15-17.
[48] Id. at ¶ 18.
[49] Id. at ¶ 38.

In the case at bar, the court finds Detective Taylor's testimony at the hearing on this matter to be credible. Therefore, the facts of this case demonstrate that the defendant initiated further conversation with Detective Taylor after invoking his right to counsel. The defendant's question indicated a clear willingness and desire to engage in a generalized discussion about the investigation. The defendant wanted to know why Detective Taylor was there to question him and/or what his investigation was about. With this question, the defendant renewed conversation with Detective Taylor of his own volition.

Detective Taylor's reply to the defendant's question, while detailed, was directly responsive to the defendant's inquiry. Furthermore, Detective Taylor's act of explaining to the defendant why he was there to question him did not, in and of itself, elicit any incriminating statements from the defendant. Instead, the defendant stated that he had a problem with drugs and indicated that he wanted to speak to Detective Taylor about his investigation. Before asking him any questions, Detective Taylor re-read the defendant his *Miranda* rights and the defendant knowingly, intelligently and voluntarily executed a valid waiver of those rights.

There is nothing in the record to indicate that the defendant was coerced into speaking to Detective Taylor or into waiving his right to counsel, and there is nothing in the record that demonstrates that the defendant's waiver of his *Miranda* rights was anything less than knowing, voluntary and intelligent. The gap between the initial questioning and the renewed interrogation was only a few minutes and there was no physical deprivation or mistreatment, or existence of threat or inducement. While Detective Taylor testified that the defendant was upset and somewhat emotional, he

was not crying and there is no reason for the court to find that he was mentally impaired at the time. Therefore, there is no evidence that the defendant's will was overborne or that his capacity of self-determination was critically impaired because of any coercive police conduct.

Detective Taylor ceased his interrogation of the defendant immediately after he invoked his right to counsel. Only after the defendant initiated further conversation about the investigation did Detective Taylor relay information to him about the status and subject of his investigation. Upon receiving this information, the defendant changed his mind and decided to waive his right to counsel and speak to Detective Taylor. This fact pattern does not violate the dictates set forth in the *Edwards* case. As a result, there is no basis to order the suppression of the defendant's statements.

CONCLUSION

Based on the above analysis, the defendant's motion to suppress is not well-taken and is hereby denied.

IT IS SO ORDERED.

DATED: 6-30-15

Judge Jerry R. McBride