

No. 1-12-1093

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 14965
)	
SANTIAGO VELEZ,)	Honorable Rosemary
)	Higgins-Grant,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Justices Simon and Pierce concurred in the judgment.

ORDER

¶ 1 *HELD:* Defendant is not entitled to a new trial following his conviction of driving under the influence, where the trial court properly denied defendant's motions to suppress inculpatory statements made by defendant prior to officer's issuance of *Miranda* warnings. Judgment affirmed.

¶ 2 Following a jury trial, defendant, Santiago Velez, was found guilty of driving under the influence of alcohol and was sentenced to four years' imprisonment. On appeal, defendant

contends that the circuit court erred in not suppressing statements he made prior to being advised of his *Miranda* rights. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On July 29, 2010, while driving his motor scooter, defendant was involved in a traffic accident near 2400 North Kimball Avenue in Chicago, Illinois.¹ Police officers arrived on the scene to investigate the accident and any injuries related thereto. During questioning from one of the officers, defendant made inculpatory statements concerning his alcohol consumption that day. Prior to the jury trial, defendant moved to suppress his statements on the grounds that his *Miranda* rights were violated. The circuit court denied this motion, and also denied the renewed motion to suppress brought by defendant following the trial.

¶ 5 A. Motion To Suppress

¶ 6 Chicago Police Department Officer Mihai Radulescu testified at the suppression hearing. According to Officer Radulescu, he and his partner, Officer Messino, arrived on the scene in a marked police car after receiving a call about the traffic accident. Both officers were in full uniform with their weapons holstered. Officer Radulescu testified that when they arrived, he saw defendant and a motor scooter lying on its backside in the middle of the intersection. At some point, a third officer, Officer Macapagal, joined the scene; Officer Macapagal assisted Officer Radulescu while Officer Messino interviewed a witness.²

¹ Defendant was charged with one count for aggravated driving under the influence of alcohol and one count for violation of the Sex Offender Act due to his failure to register. The two counts were severed prior to trial, after the State elected to proceed to trial only on the driving under the influence count.

² The record is unclear as to exact moment Officer Macapagal joined Officer Radulescu and defendant. During the suppression hearing, Officer Radulescu testified that Officer Macapagal was present during the initial contact with defendant. At trial, however, Officer Radulescu testified that he initially was alone when he began speaking with defendant, and Officer Macapagal testified that he was not present during Officer Radulescu's administration of the field sobriety tests, discussed below.

¶ 7 According to Officer Radulescu, he approached defendant and asked him if he had a driver's license and proof of insurance. Defendant, with slurred speech, responded that he did not. Officer Radulescu performed a pat-down of defendant and located his state identification card. He then asked defendant questions related to the accident and his alcohol consumption.

¶ 8 Defendant told Officer Radulescu that he wanted to get back on this scooter. But, as Officer Radulescu observed, defendant's right foot was bleeding and he had scratches on his head. He also was behaving in a way that made Officer Radulescu concerned for defendant's safety. Officer Radulescu accordingly urged defendant "[f]or his own safety, so he doesn't hurt himself any further until the EMS arrives, [to] please sit on the curb." Officer Radulescu testified that defendant was nonetheless still free to leave at this time. At no point during this initial encounter with Officer Radulescu was defendant placed in handcuffs or told that he was under arrest.

¶ 9 Paramedics eventually arrived on the scene, and they, with the assistance of Officer Macapagal, helped defendant into the ambulance. According to Officer Radulescu, defendant was placed under arrest after he was in the ambulance and heading toward the hospital.

¶ 10 After hearing Officer Radulescu's testimony and counsels' respective arguments at the suppression hearing, the circuit court denied defendant's motion to suppress. The court "found Officer Radulescu very credible." It concluded that the defendant was not "deprived of his freedom" because the officers were only attempting to "secure the Defendant for his safety so that they could provide medical attention." Noting that defendant had injuries "indicating he may have had a head wound," the court stated that defendant had been asked by Officer Radulescu "to have a seat on the curb for his safety" and that "[t]he officer's subjective intent was to secure the Defendant for his safety so that they could provide medical assistance."

¶ 11

B. Trial

¶ 12 Officer Radulescu also testified at defendant's trial. During his trial testimony, Officer Radulescu provided additional details about his encounter with defendant at the scene of the accident. For example, he explained that in asking defendant to sit on the curb, he "grabbed [defendant] by the hand," and told him, "for your safety just sit tight, your right foot is bleeding." According to Officer Radulescu, he had to ask defendant "repeatedly" to sit down.

¶ 13 Officer Radulescu also summarized defendant's response to his question about whether defendant had been drinking. He testified that defendant admitted that he had "one beer at 5:00 a.m." that morning, "one beer at noon," and "about 3 to 4 shots between noon and 4:00." Defendant also stated that he was coming from a liquor store before the accident.

¶ 14 Because he believed that defendant possibly had been driving under the influence, Officer Radulescu explained that he began to administer standardized field sobriety tests. But due to defendant's injuries, Officer Radulescu did not administer the "walk and turn" or "one leg stand" tests.

¶ 15 At the conclusion of the trial, Defendant's counsel renewed the motion to suppress. The circuit court allowed additional arguments but again denied the motion, finding that when defendant made his inculpatory statements, he was not subject to a custodial interrogation that required *Miranda* warnings. The jury found defendant guilty of driving under the influence.

¶ 16 Defendant filed a motion for a new trial which the circuit court denied on March 29, 2012. A stipulation was entered as to defendant's three prior convictions for driving under the influence. The circuit court sentenced defendant to four years' imprisonment in the Illinois Department of Corrections. Defendant now appeals. We have jurisdiction pursuant to Illinois Supreme Court Rules 603 and 606 (eff. Mar. 20, 2009).

¶ 17

ANALYSIS

¶ 18 On appeal, defendant contends that the circuit court erred in not suppressing the inculpatory statements he made on the scene prior to being advised of his *Miranda* rights, thereby requiring a new trial. Specifically, defendant argues that (1) the circuit court misapplied the legal standard for determining whether he was in custody by focusing on Officer Radulescu's subjective intent; and (2) the undisputed facts demonstrate that defendant was subject to a custodial interrogation at the time he made the statements at issue. We disagree.

¶ 19 In reviewing a ruling on a motion to suppress, the trial court's "findings of fact and credibility determinations *** are accorded great deference and will be reversed only if they are against the manifest weight of the evidence." *People v. Slater*, 228 Ill. 2d 137, 149 (2008). We can consider both the testimony presented at the suppression hearing as well as at trial. *Id.* (citing *People v. Melock*, 149 Ill. 2d 423, 433 (1992)). The ultimate legal question as to whether suppression was appropriate is reviewed *de novo*. *Id.* (citing *People v. Nicholas*, 218 Ill. 2d 104, 116 (2005)).

¶ 20 In *Miranda v. Arizona*, 384 U.S. 436 (1966), the U.S. Supreme Court held that an individual subject to a custodial interrogation must be notified of certain, now well-known rights. See *id.* at 478-79 (enumerating the required *Miranda* warnings). If police officers fail to both provide the requisite *Miranda* warnings and obtain a voluntary, knowing, and intelligent waiver of those rights, an individual's statements during a custodial interrogation are generally inadmissible. *Id.* at 444; *Dickerson v. United States*, 530 U.S. 428, 435, 443-44 (2000).

¶ 21 Before *Miranda* warnings are required, however, an individual first must be "in custody": "The finding of custody is essential, as the preinterrogation warnings required by *Miranda* are intended to assure that any inculpatory statement made by a defendant is not simply the product

of 'the compulsion inherent in custodial surroundings.'" *Slater*, 228 Ill. 2d at 149-50 (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 661 (2004)).

¶ 22 The "in custody" determination for purposes of *Miranda* requires two inquiries: "first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." *Id.* at 150 (citation omitted). The following factors are relevant for assessing whether a defendant's statement was made while in custody:

- "(1) the location, time, length, mood, and mode of the questioning;
- (2) the number of police officers present during the interrogation;
- (3) the presence or absence of family and friends of the individual;
- (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused." *Id.*

¶ 23 But "Miranda warnings are not, of course, necessary where the police conduct a general on-the-scene questioning as to facts surrounding a crime." *People v. Parks*, 48 Ill. 2d 232, 237 (1971); *People v. Acebo*, 182 Ill. App. 3d 403, 405 (1989); *People v. Clark*, 84 Ill. App. 3d 637, 640 (1980). Nor are they required when officers conduct an ordinary traffic stop, even though an individual is "temporarily detained." *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984) ("The *** noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not 'in custody' for purposes of *Miranda*."); *People v. Briseno*, 343 Ill. App. 3d 953, 959 (2003) ("A traffic stop, although restraining the driver's freedom of action,

does not sufficiently impair the driver's exercise of the privilege against self-incrimination so as to require that the driver be warned of his *Miranda* rights.").

¶ 24 Defendant first argues that the suppression ruling should be reversed because the circuit court misapplied the legal standard for determining whether he was in custody by considering Officer Radulescu's subjective intent. We acknowledge the well-settled law that "if it is undisclosed, a police officer's subjective view that the individual under questioning is a suspect does not bear on the question of whether the individual is in custody for purposes of *Miranda*." *Stansbury v. California*, 511 U.S. 318, 324 (1994). "However, an officer's beliefs on the custody issue, *if conveyed by word or deed* to the individual being questioned, are relevant to the extent that they would affect how a reasonable person in the position of the individual being questioned would gauge the breadth of his freedom of action." (Emphasis added.) *Id.* at 325.

¶ 25 According to his testimony, upon noticing defendant's injuries, Officer Radulescu specifically told defendant about his concerns for defendant's safety. He asked defendant to "please sit on the curb" while they were waiting for the ambulance so that defendant would not hurt himself. Finally, the evidence indicates that Officer Radulescu's subject intent during the encounter—to obtain medical assistance for defendant and to prevent defendant from incurring additional injuries—was effectively conveyed to defendant when the officer asked defendant to sit on the curb and when he held defendant's hand to get him sit down. When Officer Radulescu arrived at the scene of the accident, defendant and his motor scooter were lying in the middle of an intersection. Defendant had sustained visible injuries to his head and foot. He physically assisted defendant in sitting down at the curb. The officers called for an ambulance to take defendant to a hospital. By his communication and conduct, Officer Radulescu clearly conveyed his "subjective intent" regarding personal safety to defendant.

¶ 26 Moreover, to the extent that the circuit court considered Officer Radulescu's intent without further assessing the effect of his disclosed intent on a reasonable person in defendant's position, "[t]he question before us on review is the correctness of the trial court's result, not the correctness of the reasoning upon which that result was based." *People v. Nash*, 173 Ill. 2d 423, 432 (1996). Because we review the circuit court's legal conclusion on the suppression motion *de novo*, we can independently determine whether the relevant facts, which are not disputed on appeal, demonstrate that defendant was in custody. Thus, the circuit court's assessment of Officer Radulescu's subjective intent in its legal analysis is not a basis for reversal.

¶ 27 Next, defendant contends that the facts support a finding that, at the time he made the statements, he was in custody for purposes of *Miranda*. Again, we are not persuaded. The U.S. Supreme Court's *Berkemer* decision is instructive. In *Berkemer*, an officer stopped the respondent after witnessing his car "weaving in and out of a lane" on the highway. 468 U.S. at 423. The officer asked the respondent to perform the "balancing test"—a field sobriety test—which the respondent failed to do without falling. *Id.* The officer proceeded to question the respondent as to "whether he had been using intoxicants." *Id.* The respondent admitted that "he had consumed two beers and had smoked several joints of marijuana a short time before." *Id.* The officer then formally placed him under arrest. *Id.*

¶ 28 The Court in *Berkemer* concluded that respondent's statements were admissible because he was not in custody. Specifically, after holding that the temporary detention attendant to an ordinary traffic stop does not require the administration of *Miranda* warnings prior to questioning, (*id.* at 440), the Court concluded that the circumstances in *Berkemer* were not "the functional equivalent to a formal arrest":

"From aught that appears in the stipulation of facts, a single police officer asked respondent a modest number of questions and requested him to perform a simple balancing test at a location visible to passing motorists. Treatment of this sort cannot fairly be characterized as the functional equivalent of formal arrest." *Id.* at 442.

Accordingly, the officer's on-scene questioning did not violate *Miranda*, and the respondent's statements were admissible. *Id.*

¶ 29 Similarly here, in light of the relevant factors identified above, defendant was not in custody when he made the inculpatory statements. With respect to the "location, time, length, mood, and mode of the questioning," Officer Radulescu's questioning occurred on the scene of the accident—as opposed to, for example, a police station—and was in public with other civilians present. See *Berkemer*, 468 U.S. at 438 (emphasizing public nature of traffic stop in concluding that such stops ordinarily do not require *Miranda* warnings); *Slater*, 228 Ill. 2d at 154 (distinguishing between defendant's "voluntary arrival" at scene of questioning "from a situation in which a defendant is transported to and from the place of interrogation by law enforcement officers and has no other means of egress from that location"). See also *People v. Mitts*, 327 Ill. App. 3d 1, 13-14 (2001) (finding no custodial interrogation occurred where defendant stated that he owned a gun in response to officer's question, while in the police car on way to police station). The evidence also shows that his inquiry to defendant was brief in duration and related to the officer's investigation into the accident. See *Berkemer*, 468 U.S. at 437-38 (emphasizing temporary and brief nature of traffic stop in holding that such stops ordinarily do not require *Miranda* warnings; explaining that *Terry* stops generally allow officers to "ask the detainee a

moderate number of questions *** to try to obtain information confirming or dispelling the officer's suspicions" without triggering *Miranda*).

¶ 30 As to the "number of police officers present during the interrogation," exactly when Officer Macapagal joined Officer Radulescu is unclear, but it appears from the record that at most two officers were with defendant when he made the inculpatory statement. See *id.* at 438 (noting "[t]he fact that the detained motorist typically is confronted by only one or at most two policemen" in concluding that an ordinary traffic stop did not implicate *Miranda*).

¶ 31 There also was no "indicia of formal arrest procedure" at this point: the officers did not brandish their weapons, nor was defendant placed in handcuffs, booked, fingerprinted, or told that he was under arrest. There was no evidence that either of the officers drew their guns or exhibited any show of force.

¶ 32 Finally, nothing in the record indicates that defendant's "age, intelligence and mental makeup" impacted his perception of the officers' questioning about the accident.

¶ 33 Defendant's contention that he was placed in custody because the officers insisted that he sit down to avoid injury and conducted a pat-down is unpersuasive. The limited physical restraints that defendant emphasizes (*i.e.*, patting him down, grabbing his hand, and asking that he sit on the curb for his own safety) do not demonstrate that defendant was in custody. The evidence shows that Officer Radulescu told defendant that he wanted defendant to sit on the curb "for his own safety so he [didn't] hurt himself any further until the EMS arrives," not because defendant was being placed under arrest. The limited pat-down which located defendant's identification card was related to Officer Radulescu's on-scene investigation and was the type of non-coercive, temporary restraint that does not implicate *Miranda*. See *Acebo*, 182 Ill. App. 3d at 406 (finding *Miranda* not triggered where police officer questioned defendant about

automobile accident after frisking him with gun drawn). It is well established that an officer can temporarily detain and question an individual as part of an on-scene investigation without violating *Miranda*. *Berkemer*, 468 U.S. at 442; *Parks*, 48 Ill. 2d at 237. In light of the circumstances surrounding the questioning at the accident scene, a reasonable person in defendant's position would have felt that he was free to stop answering the officers' questions and leave. There was no evidence that defendant was forced to get into the ambulance and to go to the hospital. Nor was there any evidence that defendant was subjected to any verbal threats by the officers at any point in time.

¶ 34 Considering the totality of the circumstances surrounding defendant's encounter with the police, we conclude that a reasonable person in defendant's situation would not have believed that he was in custody during the officers' questioning about the circumstances of the motor scooter accident.

¶ 35 *People v. Melock*, 149 Ill. 2d 423 (1992), cited by defendant, does not support the opposite conclusion. Relying on *Melock*, defendant suggests that *any* restriction of an individual's freedom of movement through either physical force or show of authority renders that person "in custody" for *Miranda* purposes. But again, as the U.S. Supreme Court expressly acknowledged in *Berkemer*, an officer can temporarily detain and question an individual without triggering *Miranda*. Moreover, *Melock* did not address whether the type of on-scene investigational questioning and limited detention at issue here places an individual "in-custody" for purposes of determining whether *Miranda* rights are required.

¶ 36 *People v. Fort*, 2014 IL App (1st) 120037, which we granted defendant leave to cite, is also distinguishable from the instant case. In *Fort*, the court determined that the defendant was subject to a custodial interrogation while police were executing a search warrant in a home. In

reaching this conclusion, the court emphasized that "[p]olice made a considerable show of force as several officers forcibly entered the home with guns drawn." *Id.* ¶ 14. Additionally, the defendant was "sequester[ed] *** in the living room under armed police guard"; she needed permission to get her baby from a different room; an officer sought supervisor approval for the defendant's request; and when the defendant finally was allowed to retrieve her child, she had police supervision. *Id.* ¶ 15. From these circumstances, the court concluded that a reasonable person would not have believed that she was free to refuse to answer the officer's questions "and leave the encounter to retrieve her baby." *Id.*

¶ 37 In this case, in contrast, the record shows that Officer Radulescu conducted his questioning of defendant at the scene of an accident shortly after the accident occurred—a setting that, as explained above, allowed for some preliminary questioning related to the officers' on-scene investigation of the circumstances surrounding the accident. According to Officer Radulescu's testimony, at no time did either the officers brandish their weapons. Further, Officer Radulescu testified that defendant was free to leave and that he asked defendant to sit on the curb for defendant's own safety given his visible injuries—a safety concern not present in *Fort*. For these reasons, *Fort* is factually distinguishable and does not support the conclusion that defendant in the present case was questioned in a custodial setting.

¶ 38 CONCLUSION

¶ 39 We find that, given the circumstances of the on-scene investigation following defendant's motor scooter accident, defendant was not "in custody" when he made the inculpatory statements. Therefore, his rights under *Miranda* were not violated or otherwise in jeopardy.

¶ 40 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 41 Affirmed.