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2018 IL App (3d) 160717-U

Order filed March 6, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Henry County, Illinois.
Plaintiff-Appellant,)	
v.)	Appeal No. 3-16-0717
)	Circuit No. 15-CF-307
REBECCA K. BLAIR, a/k/a Rebecca K. Simmons,)	The Honorable Jeffrey W. O' Connor,
Defendant-Appellee.)	Judge, presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices O'Brien and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's grant of defendant's motion to suppress statements was not error.

¶ 2 Defendant Rebecca Blair was charged with possession of methamphetamine precursor and possession of methamphetamine manufacturing material. Defendant filed, *inter alia*, a motion to suppress statements, arguing that the officer did not give defendant *Miranda* warnings. The State alleged that *Miranda* warnings were not necessary because defendant was not subject

to a custodial interrogation. The trial court granted defendant's motion, and the State appealed. We affirm.

¶ 3

FACTS

¶ 4

Defendant was charged with possession of methamphetamine precursor (720 ILCS 646/20(a)(7) (West 2014)) and possession of methamphetamine manufacturing material (720 ILCS 646/30(a) (West 2014)). At pretrial, defendant filed three separate motions: a motion to suppress all statements that defendant made during a traffic stop, a motion to suppress evidence due to unlawful detention, and a motion to suppress evidence due to unlawful arrest and search.

¶ 5

In September 2016, a hearing on the motions was held. On direct examination, Kewanee Police Sergeant Stephen Kijanowski testified that he was in the street crime unit as sergeant of investigations. On September 30, 2015, he observed defendant in the passenger's seat of a blue sport utility vehicle (SUV) in a Walgreens parking lot. Kijanowski observed Gilbert Simmons exit the Walgreens with a plastic bag, enter into the driver's seat of the SUV, and drive to a CVS pharmacy. Kijanowski knew Simmons's driver's license was revoked or suspended and confirmed his knowledge with dispatch. Kijanowski then saw defendant go inside the CVS and later exit the store with a plastic bag. Kijanowski dispatched to Kewanee Police Officer Andrew Kingdon that he had observed a traffic offense and believed the suspects were purchasing ingredients to make methamphetamine. Kingdon had made a traffic stop of the SUV. Afterward, Kijanowski arrived at the scene dressed in plain clothes, questioned defendant, and arrested her for possessing lithium batteries and cold packs. Kijanowski also testified that he and defendant had known each other from a prior interaction on May 4, 2015, when defendant admitted to Kijanowski that an empty package of pseudoephedrine, straws, a cellophane, and foil with

unknown residue was given to her to “burn.” Kijanowski also knew defendant and Simmons were in a relationship.

¶ 6 On cross-examination, Kijanowski testified pseudoephedrine, lithium batteries, and cold packs are items used to produce meth. Based on his training and experience, Kijanowski knew that the items found on defendant during the May 4 incident are used to package, store, and ingest meth and that many items used for the production of meth can be purchased at a CVS or Walgreens. On September 30, he thought it was odd that defendant and Simmons went to two convenient stores in succession because he knew people purchasing meth production items often separate themselves while entering stores and later meet back up. Kijanowski arrested defendant based on what he observed and their prior interaction.

¶ 7 Kewanee Police Sergeant Chris Woods testified he had assisted Kijanowski in searching the SUV. He did not interact with defendant and was on the scene to assist the other officers if needed.

¶ 8 Kewanee Police Officer Justin Reed testified that he was not at the scene when the traffic stop occurred, but he had searched the national precursor log exchange and found that defendant and Simmons attempted to purchase pseudoephedrine on or near September 30. Reed advised Kijanowski to arrest defendant based on the May 4 incident and her actions on September 30.

¶ 9 Kingdon’s and Kewanee Police Officer Dalton Kuffel’s body camera videos were submitted into evidence. Kuffel’s camera depicts the following events relevant to this case. The camera showed Kuffel driving up and later walking to the traffic stop. At this point, Kingdon was searching Simmons’s person. Kingdon instructed Kuffel to “keep an eye out” on defendant who was sitting in the passenger’s seat of the SUV. Kuffel walked to the passenger’s side of the

car and asked defendant for her driver's license. Defendant asked Kuffel if she could smoke a cigarette and Kuffel replied "that's fine, yea go ahead."

¶ 10 Six minutes later, Kijanowski arrived at the scene in plain clothes. Kijanowski approached the SUV where defendant was seated and asked defendant, "How was CVS and Walgreens?" Defendant began to respond but Kijanowski interjected, stating "and then you went to Walgreens, that looks weird. I'm checking right now to see if you guys bought pills. So you want to be honest with me?" Kijanowski also asked defendant what she had bought, and defendant stated that she bought batteries. Kijanowski inquired about defendant's reason for buying batteries, and defendant stated, "No particular reason other than the fact we need them at the house." Kijanowski asked what was purchased at Walgreens and requested her to check the bag in the backseat of the SUV. Defendant stated that the items were "cold packs for [Simmons's] knee." Kijanowski stated, "So I have two meth making materials already *** you guys involved in the meth game and I have charges waiting on you before this and you're going to sit here and tell me you need a cold pack and you need batteries?" Defendant responded that Simmons had needed the cold packs for his knees because he was having surgery. Kijanowski subsequently stated, "You're buying cold packs and you're buying batteries and you're going from two different places for meth making material that's how we prove this stuff."

¶ 11 Kijanowski asked defendant to step out of the car, and defendant exited the vehicle with her cigarette and drink in hand. As defendant was standing against the SUV, Kijanowski stated, "You know the seriousness of what we have on you already and now this is not looking good and it's very easy for us to make that—that connection that I observed, me personally, I was in Walgreens watching him walk out with a bag, watch you go to shell, and then you guys go to CVS and now you have two materials that are easily—that are easily proved to be used in the

production of methamphetamine, ok? And you're just going to say I bought batteries for no reason, they're lithium, that's fine—and cold packs.” Defendant responded that she understood what Kijanowski was saying.

¶ 12 Kijanowski then questioned defendant about her phone: “What’s on your phone? What’s your phone going to tell me if I download it and look at it. What’s it going to say? What’s your text messages going to say if I get them Subpoenaed? You think it’s hard for me to call Verizon or whoever you have and say hey can you freeze her account while I get a search warrant and I can look at all your text messages and stuff. All your phone calls, his too.” Defendant stated that she had nothing to hide.

¶ 13 At the end of his questioning, Kijanowski stated: “Okay, I’ll just tell Reed and Reed can do whatever. He’s got enough information on everybody that it doesn’t matter. And you already, you got the charges with what you had, what I caught you with so. Want to be honest with me now is the time before I get too far into this. Who you buying the batteries and the cold pack for?” Defendant stated that she needed the batteries for her house. Kijanowski made a statement about defendant buying pills, and defendant replied that she did not try to buy pills. Kijanowski responded, “Okay then we’ll get video of it.”

¶ 14 Afterward, Kijanowski walked away and another officer checked defendant’s insurance card and stated she was “good to go.” However, a moment later, officers pulled defendant over and arrested her.

¶ 15 Kingdon’s video showed Kingdon standing near a squad car at a distance from the SUV while Kijanowski and Kuffel were talking to defendant. Another officer was standing at a distance observing the questioning. Kijanowski was the only officer in plain clothes. At one

point, Kingdon walked over to Kijanowski and informed him that defendant and Simmons were blocked from purchasing pills.

¶ 16 The trial court denied both motions to suppress evidence but granted the motion to suppress statements, determining that the officer's continued focus on obtaining an oral pronouncement from defendant constituted a custodial interrogation warranting *Miranda* warnings (*Miranda v. Arizona*, 364 U.S. 436 (1966)). The State filed a motion to reconsider and the court denied the motion. The State appealed.

¶ 17 ANALYSIS

¶ 18 The only issue before us is the State's challenge to the trial court's allowance of defendant's motion to suppress all statements that defendant made during the traffic stop. A trial court's ruling on a motion to suppress presents both questions of law and fact. *People v. McCarty*, 223 Ill. 2d 109, 148 (2006). The court's findings of fact will be upheld unless they are against the manifest weight of the evidence. *Id.* Whether the evidence should have been suppressed based on findings of fact is a question of law and is reviewed *de novo*. *Id.*

¶ 19 The State argues the trial court erred when it granted defendant's motion to suppress statements. Specifically, the State contends the officers had reasonable suspicion that defendant was in possession of meth-manufacturing materials based on (1) Kijanowski's observations on September 30, (2) Kijanowski's training and experience investigating meth manufacturing, and (3) Kijanowski's interaction with defendant on May 4. Furthermore, it alleges that *Miranda* warnings were not necessary because Kijanowski's questioning did not constitute a custodial interrogation.

¶ 20 An officer may conduct a lawful traffic stop based on probable cause that the driver of the vehicle has committed a traffic violation. *People v. Matous*, 381 Ill. App. 3d 918, 922 (2008)

(citing *Illinois v. Caballes*, 543 U.S. 405 (2005)). An officer also may temporarily detain a person with less than probable cause if the officer has reasonable, articulable suspicion of the defendant’s criminal activity. *Id.* (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). “An officer may conduct a *Terry* traffic stop if the officer has a reasonable, articulable suspicion that (1) the driver is unlicensed; (2) the vehicle is not registered; or (3) that either the vehicle, or an occupant of the vehicle, is subject to seizure for violation of a law.” *Id.* (*Delaware v. Prouse*, 440 U.S. 648 (1979)). During a traffic stop, a person is usually not in police custody for *Miranda* purposes due to the “ ‘noncoercive aspect of ordinary traffic stops.’ ” *People v. Tayborn*, 2016 IL App (3d) 130594, ¶ 20 (quoting *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984)). *Miranda* warnings are required during a traffic stop when “a suspect’s freedom of action is curtailed to the same degree as a formal arrest.” *Id.*

¶ 21 Section 103-2.1(a) of the Code of Criminal Procedure of 1963 defines a custodial interrogation as “any interrogation during which (i) a reasonable person in the subject’s position would consider himself or herself to be in custody and (ii) during which a question is asked that is reasonably likely to elicit an incriminating response.” 725 ILCS 5/103-2.1(a) (West 2014). This section “codifies the common law definition of custodial interrogation developed in *Miranda* and [its] progeny.” *People v. Clayton*, 2014 IL App (1st) 130743, ¶ 26.

¶ 22 An interrogation occurs when a police officer uses words or actions that he should know are reasonably likely to elicit an incriminating response. *People v. Barnett*, 393 Ill. App. 3d 556, 558 (2009). Here, Kijanowski’s questions were demands for admissions of wrong-doing. At the beginning of the questioning, Kijanowski rebuffed defendant’s statement about her purpose for purchasing the batteries and cold packs, stating “[s]o I have two meth making materials already *** you guys involved in the meth game and I have charges waiting on you before this and

you're going to sit here and tell me you need a cold pack and you need batteries?" Later, Kijanowski insinuated he had enough information to charge defendant with a crime when he stated "I'll just tell Reed and Reed can do whatever. He's got enough information on everybody that it doesn't matter. And you already, you got the charges with what you had, what I caught you with so." Kijanowski then urged defendant to answer why she bought batteries and cold packs. Under the circumstances, we believe that Kijanowski should have known that his words were reasonably likely to elicit an incriminating response. Defendant was subject to an interrogation.

¶ 23 "[I]n determining whether a person is 'in custody' for purposes of *Miranda*, a court should first ascertain and examine the circumstances surrounding the interrogation, and then ask if, given those circumstances, a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave." *People v. Braggs*, 209 Ill. 2d 492, 506 (2008). When examining the circumstances of interrogation, the reviewing court should consider the following factors: the location, time, length, mood and mode of the interrogation; the number of police officers present; the presence or absence of the family and friends of the accused; any indicia of formal arrest; and the age, intelligence, and mental makeup of the accused. *Id.* "Although it is generally irrelevant that the interrogating officer subjectively viewed the individual under questioning as a suspect, the officer's beliefs, 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 have gauged the breadth of his freedom of action." *Id.* at 506-07.

¶ 24 A change from inquisitive to accusative questioning "tip[s] the mood factor toward a finding of custody." *People v. Alfaro*, 386 Ill. App. 3d 271, 291 (2008) (ruling officer's questions

were accusatory during portions of the questioning and “weigh[ed] heavily in favor of a finding that defendant was in custody for purposes of *Miranda*”); see *People v. Carroll*, 318 Ill. App. 3d 135, 138-39 (2001) (finding a reasonable person would have believed they were in custody because the investigation was “focused exclusively” on defendant and defendant had inculcated himself); *People v. Savory*, 105 Ill. App. 3d 1023, 1029 (1982) (determining defendant was in custody during his third interview because the officers “became accusatory as they began doubting defendant’s account and they suggested they had reliable information discounting his version of the events”).

¶ 25 Even if the officer had reasonable suspicion to conduct the traffic stop, Kijanowski’s questioning constituted a custodial interrogation for purposes of *Miranda*. We note that defendant was not in a police interrogation room; there was nothing particular about her age and intelligence as she was an adult and able to communicate and understand the officers; and there was minimal evidence of a formal arrest because she was not handcuffed and was even able to hold her cigarette and drink as she talked with the officers.

¶ 26 However, even though there were other officers at the scene, defendant had to wait six minutes for Kijanowski, an officer who had a prior interaction with defendant, to arrive on the scene. When he arrived, Kijanowski’s questioning was not inquisitive but accusatory in nature as he began by stating defendant’s actions “looked weird” and that he was “checking to see if you guys have bought pills.” Throughout the questioning, Kijanowski discredited defendant’s answers when he stated “So I have two meth making materials already *** you guys involved in the meth game and I have charges waiting on you before this and you’re going to sit here and tell me you need a cold pack and you need batteries?” Furthermore, Kijanowski made it clear to defendant that he knew she had committed an offense when he stated, “You’re buying cold packs

and you're buying batteries and you're going from two different places for meth making material that's how we prove this stuff" and stated "now this is not looking good *** you have two materials that are easily—that are easily proved to be used in the production of methamphetamine." Moreover, Kijanowski did the questioning while three other officers stood nearby. Under these conditions, a reasonable person would not feel free to leave, and therefore, defendant was subjected to a custodial interrogation. Accordingly, we find that the trial court did not err when it granted defendant's motion to suppress statements.

¶ 27

CONCLUSION

¶ 28

The judgment of the circuit court of Henry County is affirmed.

¶ 29

Affirmed.