STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0221

State of Minnesota,
Appellant,

vs.

Jerry Benjamin Carroll,
Respondent.

Filed September 16, 2008
Affirmed
Halbrooks, Judge

Clay County District Court
File No. 14-CR-07-2224

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

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James D. Hovey, 242 North 4th Street, Grand Forks, ND 58201 (for respondent)

Considered and decided by Connolly, Presiding Judge; Halbrooks, Judge; and Ross, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

In this appeal, the state challenges the district court's pretrial ruling suppressing evidence in the form of controlled substances found in respondent's vehicle. The district court suppressed the methamphetamine and heroin at issue because it concluded that their discovery was the fruit of incriminating statements that respondent made to law-enforcement officers before being read his *Miranda* warning. The district court found that a *Miranda* warning was required because respondent was "in custody" for *Miranda* purposes while being interrogated by the officers standing outside of his vehicle in the restaurant parking lot. Because we conclude that the district court did not err in its determination that respondent was "in custody" for *Miranda* purposes, we affirm.

FACTS

On October 15, 2007, Detective Schmidt of the West Fargo, North Dakota Police Department telephoned Det. Jeff Larson of the Moorhead Police Department with information about two individuals who were suspected of narcotics trafficking. Det. Schmidt relayed to Det. Larson that a confidential informant (CI) had told him that two men possessing several ounces of methamphetamine and heroin had just arrived in the Fargo-Moorhead area from Colorado and were about to transport the narcotics to Minot, North Dakota. The CI stated that, before driving to Minot, the two men were going to stop at the Village Inn restaurant in Moorhead. Other than a very generic description, the CI did not provide any identifying information for either of the men or the vehicle that they would be driving.

Det. Larson and Det. Brad Stuvland, also of the Moorhead Police Department, proceeded to the Village Inn restaurant in an unmarked pickup truck. The two detectives met Det. Schmidt in the restaurant parking lot. The three officers observed two men get out of a vehicle with North Dakota license plates and enter the restaurant. The two men were later identified as respondent Jerry Carroll and Carl Tanner. Det. Larson ran a computer check on the license-plate number of the vehicle and learned that it was registered to Daisha Carroll, a Minot resident. He then contacted Det. Brown of the Minot Police Department, who was a member of the local narcotics task force. Det. Brown recognized Daisha Carroll's name and identified her as someone who was known to be involved in the use and distribution of narcotics. Det. Larson told Det. Brown that the officers were currently investigating two men suspected of narcotics trafficking who were using Daisha Carroll's vehicle. Det. Brown speculated that one of the men might be respondent and told Det. Larson that respondent was also known to use and sell narcotics.

A short time later, Tanner and respondent left the restaurant and got into their vehicle. Det. Larson pulled the unmarked pickup into a parking spot adjacent to their vehicle, but did not block it. Det. Larson, who was in plain clothes, approached the vehicle on the driver's side, identified himself as a police officer, and determined that Tanner was the person in the driver's seat. Det. Stuvland, also in plain clothes, approached the vehicle from the passenger side, where respondent was seated. Det. Stuvland did not open the door or otherwise make contact with respondent.

Det. Larson asked Tanner to step out of the vehicle to talk with him. Tanner agreed to do so and got out of the vehicle. Det. Larson did not handcuff Tanner or pat him down for weapons. Tanner told Det. Larson that he and respondent had just arrived from Denver, Colorado and stated that they were on their way to Minot. Det. Larson then indicated to Tanner that the officers had information that the two men were transporting narcotics to Minot and asked if there was any contraband in the vehicle. Tanner stated that, to his knowledge, the vehicle did not contain narcotics.

Meanwhile, respondent opened the vehicle's front, passenger-side door and got out of the vehicle. Det. Stuvland, still standing next to the door, informed respondent that he was a police officer and requested that respondent wait beside the vehicle. Respondent agreed to do so. Det. Stuvland testified that he believed that respondent was unaware of his presence until respondent got out of the vehicle and that respondent would have left the scene had he not been stopped. Det. Stuvland did not handcuff respondent.

While Det. Larson continued to question Tanner, Det. Stuvland began to question respondent about who he was and where the two men were going. During this questioning, respondent placed his hands in his pockets several times. Det. Stuvland asked respondent to keep his hands visible and then patted him down for weapons. The pat down revealed nothing. Around this time, three other uniformed officers arrived in several marked squad cars. There were then six officers present. One of the officers was accompanied by a canine officer.

As Det. Stuvland questioned respondent, respondent at some point asked if he was free to go back inside the restaurant and finish his meal. The detective told respondent

that "it would be best if he stayed with [the officers]." Det. Stuvland later testified that, by this conduct, he prevented respondent from going back inside the restaurant and that respondent knew that the detective would not let him leave the scene. But while requesting that respondent remain standing next to the vehicle, Det. Stuvland also contemporaneously told respondent that he was not under arrest.

After Det. Stuvland refused to allow respondent to go back inside the restaurant, Det. Larson walked around to the passenger side of the vehicle and began to question respondent. He asked respondent if there were any narcotics in the vehicle, telling him that "this is his last chance to be honest" because the canine officer would find any narcotics. This statement regarding the canine officer prompted respondent to admit that there were narcotics in the vehicle, but he stated that he did not know where. It is unclear from the record how long respondent had been detained in the parking lot when Det. Larson elicited this statement from him.

Based on this admission, officers searched the vehicle and discovered methamphetamine, heroin, and various drug paraphernalia. The officers' search was conducted without either respondent's or Tanner's consent. Respondent was then handcuffed and formally arrested. At no time before his arrest was respondent given a *Miranda* warning.

Respondent was charged with felony first-degree possession of a controlled substance with intent to sell in violation of Minn. Stat. § 152.021, subd. 1(1) (2006), and petty misdemeanor possession of drug paraphernalia in violation of Minn. Stat. § 152.092 (2006). He moved to suppress the narcotics and drug paraphernalia found in the vehicle

on the grounds that the officers did not have reasonable suspicion to stop and question him and that the narcotics were discovered based on statements elicited from him in violation of his *Miranda* rights. Regarding the latter claim, respondent contended that he was "in custody" for purposes of *Miranda* when he made the incriminating statement to Det. Larson that the vehicle contained narcotics, and therefore he should have been given a *Miranda* warning.

The district court ruled that the officers had reasonable suspicion to stop respondent based on their corroboration of the confidential informant's tip.[1] But the district court agreed with respondent's argument that the officers should have given him a *Miranda* warning. The district court relied primarily on the fact that respondent was not permitted to go back inside the restaurant, stating that "Det. Stuvland testified that [respondent] was not free to leave from the moment he denied the request to go back to the restaurant. Therefore, [respondent] was in custody, and any further questioning should not have taken place until [respondent] was given his *Miranda* warning." Because the district court concluded that the officers did not have probable cause to search the vehicle before respondent admitted that it contained narcotics, it suppressed the contraband as fruit of the poisonous tree. This appeal follows.

D E C I S I O N

The question of whether a suspect is "in custody" for purposes of *Miranda* is one of law, which we review de novo. *State v. Miller*, 573 N.W.2d 661, 670 (Minn. 1998). But appellate courts review a district court's findings of fact underlying such a question

[1] Respondent did not cross-appeal this ruling, and accordingly the issue is not before us.

for clear error. *Id*. "We give considerable, but not unlimited, deference to a [district] court's fact-specific resolution of such an issue when the proper legal standard is applied." *State v. Champion*, 533 N.W.2d 40, 44 (Minn. 1995).

A. Critical impact on the state's case.

The state can appeal a district court's pretrial order under Minn. R. Crim. P. 28.04, subd. 1(1), only if it can "clearly and unequivocally" show that the order will have a "critical impact" on the state's ability to successfully prosecute the defendant and that the district court's order constituted error. *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998) (quotation omitted). Critical impact is shown "not only in those cases where the lack of the suppressed evidence completely destroys the state's case, but also in those cases where the lack of the suppressed evidence significantly reduces the likelihood of a successful prosecution." *State v. Joon Kyu Kim*, 398 N.W.2d 544, 551 (Minn. 1987). Typically, but not invariably, the suppression of narcotics will have a critical impact on the state's ability to prosecute a defendant for a violation of controlled-substance laws. *See, e.g.*, *State v. Holiday*, 749 N.W.2d 833, 839 (Minn. App. 2008) (holding that suppression of seized narcotics had a critical impact on the state's ability to prosecute the charged violation of controlled-substance laws); *State v. McGrath*, 706 N.W.2d 532, 539 (Minn. App. 2005) (same).

While respondent does not concede critical impact, it is difficult to dispute that the state's prosecution will be substantially more difficult, if not impossible, without the evidence of the methamphetamine and heroin. Therefore, we conclude that the

suppression of the controlled substances found in respondent's vehicle has a critical impact on the state's case.

B. "In custody" for the purposes of *Miranda*

Both the United States and Minnesota constitutions protect a person against compelled self-incrimination. U.S. Const. amend. V; Minn. Const. art. I, § 7. In order to protect this right, if a suspect is both "in custody" and subject to "interrogation," the Minnesota Supreme Court has required that the suspect be read his or her *Miranda* rights. *State v. Heden*, 719 N.W.2d 689, 694-95 (Minn. 2006) (citing *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612 (1966)). "Statements made during a custodial interrogation cannot be admitted into evidence unless the suspect is given the *Miranda* warning and [voluntarily and] intelligently waives the right against self-incrimination." *State v. Caldwell*, 639 N.W.2d 64, 67 (Minn. App. 2002) (citing *Miranda*, 384 U.S. at 444-45, 86 S. Ct. at 1612-13), *review denied* (Minn. Mar. 27, 2002). Evidence derived from statements elicited in violation of a suspect's *Miranda* rights generally must be suppressed as fruit of the poisonous tree. *See State v. Dakota*, 300 Minn. 12, 15-20, 217 N.W.2d 748, 751-53 (1974) (applying the fruit-of-the-poisonous-tree doctrine in the context of *Miranda* but stating that application of the doctrine did not require suppression under the particular circumstances of the case); *State v. Hendrickson*, 584 N.W.2d 774, 778-79 (Minn. App. 1998) (applying the fruit-of-the-poisonous-tree doctrine to discovery of a gun based on a statement made before a *Miranda* warning was given but finding that the doctrine's requirements were not met under the circumstances); *see also Wong Sun v.*

United States, 371 U.S. 471, 487-88, 83 S. Ct. 407, 417 (1963) (establishing the parameters of the fruit-of-the-poisonous-tree doctrine).

Here, the state does not dispute that Det. Larson was "interrogating" respondent for purposes of a *Miranda* analysis. It is also undisputed that the discovery of the narcotics was solely and directly the result of respondent's incriminating statement that the vehicle contained controlled substances. *See Wong Sun*, 371 U.S. at 487-88, 83 S. Ct. at 417 (stating that evidence derived from the "exploitation of [the] illegality," as opposed to evidence derived from "means sufficiently distinguishable to be purged of the primary taint," must be suppressed as fruit of the poisonous tree (quotation omitted)).[2] Thus, the only issue before us is whether respondent was "in custody" when Det. Larson's interrogation was taking place.

A *Miranda* analysis uses an objective test to determine whether an individual is "in custody": would all the surrounding circumstances lead a reasonable person to believe either that he or she is under formal arrest or that he or she is detained to a degree associated with formal arrest? *State v. Wiernasz*, 584 N.W.2d 1, 3 (Minn. 1998). "If a

[2] We note that the United States Supreme Court has refused to extend the fruit-of-the-poisonous-tree doctrine to physical evidence derived from statements given voluntarily but elicited in violation of a suspect's *Miranda* rights. *United States v. Patane*, 542 U.S. 630, 637-44, 124 S. Ct. 2620, 2626-30 (2004). But the Minnesota Supreme Court has declined to adopt this reasoning with regard to the protection against self-incrimination contained in article one, section seven of the Minnesota Constitution. Accordingly, we do not adopt it here. *See State v. Kahn*, 555 N.W.2d 15, 20 (Minn. App. 1996) (noting that the Minnesota Supreme Court has consistently declined to adopt the good-faith exception to the exclusionary rule for violations of the Minnesota Constitution, "[t]herefore, we again decline to adopt a good faith exception"); *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) (stating that "the task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court"), *review denied* (Minn. Dec. 18, 1987).

suspect has not yet been arrested, a . . . court must examine all of the surrounding circumstances and evaluate whether a reasonable person in the suspect's position would have believed he was in custody to the degree associated with arrest." *State v. Staats*, 658 N.W.2d 207, 211 (Minn. 2003) (quotation omitted).

Just because a suspect is questioned at a location other than a police station, such as a residence or even a public area, does not mean that the questioning is not custodial in nature. *See Orozco v. Texas*, 394 U.S. 324, 325-26, 89 S. Ct. 1095, 1096-97 (1969) (holding that a suspect was in custody when several police officers questioned him in his bedroom). Furthermore, a suspect who is not initially in custody for the purposes of *Miranda* may become so if "subjected to treatment that renders him 'in custody' for practical purposes." *Berkemer v. McCarty*, 468 U.S. 420, 440, 104 S. Ct. 3138, 3150 (1984). But an officer's "unarticulated plan [to later arrest the defendant] has no bearing on the question of whether a suspect was 'in custody' at a particular time; the only relevant inquiry is how a reasonable [person] in the suspect's position would have understood his situation." *Id*. at 442, 104 S. Ct. at 3151.

Because respondent had not been placed under arrest when he admitted that there were narcotics in the vehicle, the question is whether a reasonable person in respondent's position would have associated the circumstances surrounding his detainment with formal arrest. Many cases concerning *Miranda* and "custody" have arisen in the context of questioning occurring after a traffic stop. In *State v. Herem*, the supreme court held that a defendant who was pulled over for speeding and questioned while seated in the back seat of a patrol car by a single officer concerning why he smelled of alcohol was not "in

custody" for *Miranda* purposes. 384 N.W.2d 880, 881, 883-84 (Minn. 1986) (holding that "roadside questioning of a motorist briefly detained pursuant to a routine traffic stop is not 'custodial interrogation' . . . to which *Miranda* was meant to apply").

On the other hand, the supreme court has found that a driver stopped for a routine traffic violation was "in custody" for *Miranda* purposes when the driver was patted down, placed in the patrol car, knew that the officer was aware that his driver's license had been revoked and that the officer planned to impound his vehicle, and the officer did not tell the driver that he was free to leave. *State v. Malik*, 552 N.W.2d 730, 731 (Minn. 1996). This court has also held that an officer's confinement of a driver to the back seat of a patrol car and conditioning the driver's release on giving a statement about the driver's suspected criminal activity amounted to custody for *Miranda* purposes. *State v. Voight*, 486 N.W.2d 793, 794-96 (Minn. App. 1992), *review denied* (Minn. Aug. 4, 1992).

The facts here, of course, do not involve a traffic stop and its aftermath. Respondent relies on *State v. Rosse*, 478 N.W.2d 482 (Minn. 1991), to argue that the district court correctly concluded that he was in custody. In *Rosse*, the defendant (Rosse) gave two friends a ride to a residence that was under surveillance for narcotics activity. *Rosse*, 478 N.W.2d at 483. One of the friends got out of the car and was arrested and handcuffed as he approached the residence. *Id*. At the same time, two unmarked police cars blocked Rosse's vehicle. *Id*. The officers got out of the cars and approached Rosse with their guns drawn. *Id*. They patted down Rosse (but did not handcuff her), finding nothing. *Id*. They handcuffed Rosse's other friend, patted him down, found nothing, and

then put their guns away. *Id.* The officers subsequently searched Rosse's person, purse, and car for narcotics, but, again, found nothing. *Id.* An officer then directed Rosse to sit in the front seat of his unmarked car. *Id.* He did not tell her whether or not she was under arrest but did state that she would be free to go once they ascertained the nature and scope of the narcotics sting that was currently ongoing. *Id.* Rosse made some incriminating statements while being questioned in the vehicle by the officer, but was released after being detained approximately 15 minutes. *Id.* at 483-84. She was never read her *Miranda* rights. *Id.* at 483. Rosse was later charged with narcotics-related offenses. *Id.*

On appeal, the supreme court ruled that Rosse was "in custody" when she made the incriminating statements while seated in the police car, relying on the fact that the

> defendant found herself in the middle of a drug bust. Two unmarked police cars moved in quickly, one to the front and the other to the rear of her car, so that she could not move the car. . . . [T]here were at least six other police officers on the scene. Rosse's initial contact with the police was at the point of a gun. Although Rosse was not handcuffed, she saw . . . her two companions . . . handcuff[ed], and she was separated from them. Rosse was pat searched. Police officers then searched her purse, her pockets, and the interior of her car. She was told she would be free to go, but only after everything had been sorted out. During her questioning, she was alone with one officer in his car, but with other police officers close by.

Id. at 486. The supreme court said that none of these circumstances alone required that a *Miranda* warning be given, but when considering all these circumstances together a "reasonable person would believe that she was in custody." *Id.*

Here, respondent was initially approached by officers in plain clothes while sitting in the vehicle in a parking lot. The officers were pursuing a drug bust based on a CI's information that two men would be stopping at the Village Inn restaurant before transporting drugs to Minot. Before the officers approached the vehicle, they knew that it was registered to a woman who was known by the Minot police to be involved in drug trafficking and that the Minot police were then investigating two men who were using her vehicle for suspected drug trafficking.

While respondent's vehicle was not physically blocked in by law enforcement, there were ultimately a total of six officers and a canine officer on the scene, and the canine officer walked around respondent's vehicle. Respondent was separated from his cohort and questioned separately. Respondent was searched for weapons. Respondent knew that the officers believed that drugs were in the vehicle and that he was a suspect. Respondent was told that he should tell the truth about the drugs because the canine officer would find them regardless. And lastly and perhaps most importantly, respondent was twice expressly instructed by Det. Stuvland that he was not free to leave and should remain standing by the vehicle. Det. Stuvland later testified that it was his belief that respondent was aware that he was not free to leave. Restraining a suspect's freedom of movement, while not sufficient in itself to find custody, is consistently cited as an important factor in determining whether a suspect is "in custody" for the purposes of *Miranda*. *See, e.g., Staats*, 658 N.W.2d at 211-12 (citing past case law for the proposition that restraining a suspect's freedom of movement is one indicator of custody

and also indicating that a suspect's freedom to leave at any time is an indicator that the suspect is *not* in custody).

We conclude that these circumstances would lead a reasonable person in respondent's position to believe that he was detained to a degree associated with formal arrest. Accordingly, respondent was "in custody" for *Miranda* purposes, and the officers were required to give respondent his *Miranda* warning before questioning him about any narcotics in the vehicle. We therefore conclude that the district court did not err in granting respondent's motion to suppress as fruit of the poisonous tree the evidence that was subsequently found. Because respondent's *Miranda* rights were violated, suppression of the discovered narcotics is warranted.

Affirmed.