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Court of Appeals
Division II
State of Washington
1/2/2020 3:41 PM

NO. 53482-7-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

JAY SPADONI,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KITSAP COUNTY

The Honorable Jeanette M. Dalton, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The court erred in concluding that “the defendant was NOT in custody for purposes of *Miranda*.” CP 130 (Conclusion of Law II).

2. The court erred in concluding that “The officer’s questions were NOT a custodial interrogation of the defendant such that *Miranda* warnings were required.” CP 130 (Conclusion of Law III).

3. The court erred in concluding that the officer’s questions which could result in an incriminatory response “were part of the initial investigatory detention which became a community caretaking function[.]” CP 130 (Conclusion of Law IV).

4. The court erred in concluding that “The temporary detention and questions were not a custodial interrogation for purposes of *Miranda*. The questions were not reasonably designed to elicit an incriminating response from the defendant, and the questions did not reflect a measure of compulsion such that *Miranda* warnings were necessary.” CP 131 (Conclusion of Law VI).

5. The court erred in concluding that “The defendant voluntarily spoke to the police officers[.]” CP 131 (Conclusion of Law VII).

6. The court erred in concluding that *Miranda* warnings were not required. CP 131 (Conclusion of Law VIII).

7. The court erred in admitting appellant's unwarned statements.

Issue pertaining to assignments of error

Police responded to a report of a man in a house where he did not belong. They entered a small bedroom with guns drawn and found appellant, naked, sitting on the bed. The officers positioned themselves so that appellant could not leave the room and proceeded to ask him questions about his presence and his use of controlled substances. Where appellant was not advised of his constitutional rights before being subject to this custodial interrogation, should his statements have been suppressed?

B. STATEMENT OF THE CASE

On March 14, 2019, Port Orchard Police Officer Trey Holden was dispatched to a report of a man in a residence who did not belong there. 1RP¹ 37. The man was reportedly naked and saying he was on a mission from God. 1RP 37, 130. Holden treated the call as a potential burglary, but he asked for an aid unit to respond as well, because the report that the man

¹ The Verbatim Report of Proceedings is contained in four volumes, designated as follows: 1RP—5/6/19, 5/8/19, and 5/9/19; 2RP—5/10/19; 3RP—5/13/19 and 5/14/19; and 4RP—6/21/19.

was naked raised concerns that the suspect could be experiencing mental health issues or a bad drug trip. 1RP 130.

When Holden arrived he and Officer David Huibregtse were directed to an entrance which led to the bedroom where the suspect was located. 1RP 37. They drew their weapons and held them at low ready as they entered the small bedroom, taking positions to block the doorway and prevent the suspect from escaping. 1RP 37-38, 89, 93, 96-97, 133.

The officers found appellant Jay Spadoni sitting on the bed naked. Holden asked his name and what he was doing. 1RP 131. Spadoni responded that he was just doing what Jesus Christ told him to do. 1RP 38. Because he was investigating a potential burglary, Holden asked Spadoni if he knew whose room they were in. 1RP 134, 136. Spadoni was cooperative, but when he rambled some things that Holden did not understand, Holden asked what specifically Jesus was asking Spadoni to do. Spadoni replied that he was doing things even if they were uncomfortable for him and he was there to have sex with a beautiful woman, if she wanted to. 1RP 40.

Holden asked Spadoni when he last ate and what he ate, if he knew what day it was, and if he had used any drugs or alcohol. 1RP 132. Spadoni responded that he had taken a holy substance, which might be considered a drug. 3RP 183-84. Holden knew the aid crew needed specific

information about Spadoni's condition, so he asked Spadoni if he had used any alcohol, methamphetamine, or heroin. 1RP 132. Spadoni admitted that he had used methamphetamine. 3RP 184.

Holden wanted to get Spadoni dressed, so he asked where Spadoni's clothes were. Spadoni said they were outside. Holden had seen a pile of clothing before he entered the house, and he asked another officer to get them. 1RP 40-41. When the clothes were brought inside Holden asked Spadoni if they were his, and he said they were. 1RP 41-42.

Once Spadoni was dressed, the officers handcuffed him and took him outside to the waiting aid unit. 1RP 42. Spadoni was not provided *Miranda* warnings at any time during the encounter inside the house. 1RP 42.

Huibregtse transported Spadoni to the jail, where he searched Spadoni. 3RP 218-19. In the left front pocket of the pants Spadoni was wearing, the officer found a small baggy of methamphetamine. 3RP 219, 239. Spadoni was charged with possession of methamphetamine. CP 89-91.

At a pretrial CrR 3.5 hearing, Spadoni argued that his statements to police were inadmissible because he was not provided *Miranda* warnings. Counsel argued that Spadoni was in custody from the time the officers entered the room with guns drawn and stood between him and the

doorway to prevent him from leaving. 1RP 103; 2RP 23. He should have been advised of his rights before questioning. 1RP 104; 2RP 25-27, 31.

The court did not agree that the situation amounted to custodial interrogation. Rather, it found the officers were managing what appeared to be a mental health or drug-induced psychosis. 1RP 115. The court acknowledged that some of the officer's questions, including what substances Spadoni took, would reasonably be expected to elicit an incriminating response. 2RP 10. It also noted any reasonable person would understand he was not free to leave, as the officers intentionally blocked the doorway. 2RP 11. The court concluded, however, that Spadoni was not in custody for purposes of *Miranda*, and the officer's questions were not custodial interrogation. CP 130.

The court concluded the situation was an investigatory detention which became an exercise of the officers' community caretaking function. CP 130. The court concluded that "The temporary detention and questions were not a custodial interrogation for purposes of *Miranda*. The questions were not reasonably designed to elicit an incriminating response from the defendant, and the questions did not reflect a measure of compulsion such that *Miranda* warnings were necessary." CP 131. The court further concluded that Spadoni spoke voluntarily with the officers, never asked

Holden to stop questioning him, and never asked for an attorney, therefore *Miranda* warnings were not required. CP 131.

At trial, Holden repeated Spadoni's statements for the jury. 3RP 174-84. Spadoni testified that he had used methamphetamine earlier that day and did not recall much of his encounter with the police. He recalled getting dressed in clothes that were in the room, but the baggy of methamphetamine was not in the pocket of the pants he had been wearing that day. 3RP 256-57.

The jury returned a guilty verdict, and the court imposed a standard range sentence. CP 109, 112. Spadoni filed this timely appeal. CP 121.

C. ARGUMENT

BECAUSE SPADONI WAS NOT ADVISED OF HIS CONSTITUTIONAL RIGHTS BEFORE BEING SUBJECT TO CUSTODIAL INTERROGATION HIS STATEMENTS SHOULD HAVE BEEN SUPPRESSED.

An individual has the right to remain free from compelled self-incrimination while in police custody. U.S. Const. amends. V & XIV; *Miranda v. Arizona*, 384 U.S. 436, 479, 86 S. Ct. 1602, 16 L.Ed.2d 694 (1966). In *Miranda*, the Supreme Court recognized that custodial interrogation, by its very nature, "isolates and pressures the individual," "blurs the line between voluntary and involuntary statements," and thereby heightens the risk that an individual will be deprived of his privilege

against compulsory self-incrimination. *Dickerson v. United States*, 530 U.S. 428, 435, 120 S. Ct. 2326, 147 L.Ed.2d 405 (2000). Thus, before a suspect in custody may be interrogated by a state agent, he must be advised of his right to remain silent and his right to an attorney. *Miranda*, 384 U.S. at 479.

Miranda warnings protect a suspect's constitutional right not to make incriminating statements while in the coercive environment of police custody. *State v. Heritage*, 152 Wn.2d 210, 214, 95 P.3d 345 (2004). Without *Miranda* warnings, a suspect's statements during custodial interrogation are presumed involuntary. *Id.*

Whether a suspect's statement was obtained in violation of *Miranda* is a mixed question of law and fact. This Court reviews challenged findings of fact for substantial evidence but reviews legal conclusions drawn from those findings de novo. *State v. Rosas-Miranda*, 176 Wn. App. 773, 779, 309 P.3d 728 (2013). Here, the trial court's findings of fact are supported by the evidence, and therefore no error is assigned to the findings. They are verities. The findings do not, however, support the court's conclusions of law. The unsupported conclusions are the basis of this appeal. The court's decision to admit Spadoni's statements, based on its conclusion that Spadoni was not subject to custodial interrogation, is error which requires reversal.

Custodial interrogation means questioning by law enforcement officers after a person has been taken into custody. *Miranda*, 384 U.S. at 444. Whether a person is in custody is determined by an objective test. *Heritage*, 152 Wn.2d at 217. Thus, the question is whether a reasonable person in the suspect’s position would have felt his freedom was curtailed to the degree associated with formal arrest. *Berkemer v. McCarty*, 468 U.S. 420, 441-42, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984); *State v. Short*, 113 Wn.2d 35, 40, 775 P.2d 458 (1988).

The United States Supreme Court has held that a brief investigative detention, either in the context of a routine on-the-street *Terry*² stop or a traffic stop, does not rise to the level of “custody” for the purposes of *Miranda*. *Berkemer*, 468 U.S. at 439-40; *Heritage*, 152 Wn.2d at 218. The court below determined that Spadoni was not entitled to *Miranda* warnings based on its conclusion that his encounter with the police was this sort of investigatory detention. CP 130-31. The court was wrong.

The reason *Miranda* warnings are not required in traffic stops and routine *Terry* stops is that those types of detention are brief, they occur in public, and they are “substantially less ‘police dominated’ ” than the police interrogations contemplated by *Miranda*. *Berkemer*, 468 U.S. at 439; *Heritage*, 152 Wn.2d at 218. “Thus, a detaining officer may ask a

² *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed. 2d 889 (1968).

moderate number of questions during a *Terry* stop to determine the identity of the suspect and to confirm or dispel the officer's suspicions without rendering the suspect 'in custody' for the purposes of *Miranda*." *Heritage*, 152 Wn.2d at 218 (citing *Berkemer*, 468 U.S. at 439-40).

Spadoni's detention cannot be characterized as a *Terry* stop exempt from *Miranda*. It did not occur in public but in a small room completely dominated by the police presence. Spadoni was isolated in the room, naked, while the officers entered with weapons drawn and positioned themselves so as to block the only exit from the room. 1RP 38, 96-98. The officers initiated questioning about the suspected burglary and continued to ask questions about controlled substances. 1RP 136-37.

A reasonable person in Spadoni's position would understand that he was in custody. The key aspect of the custodial setting is the isolation of the suspect in a room dominated by law enforcement officials conducting an interrogation. "[T]he Supreme Court was explicit that the law enforcement technique of isolating the suspect from family and friends is one of the distinguishing features of a custodial interrogation." *United States v. Craighead*, 539 F.3d 1073, 1087 (9th Cir, 2008) (citing *Miranda*, 384 U.S. at 445-46). Indeed, it is "perhaps the crucial factor." *Id.* at 1086 (defendant questioned in storage room while search warrant

was executed in home; custodial interrogation even though defendant was told he would not be arrested that day).

An appellate court determines de novo whether a defendant was in custody while interrogated. *Rosas-Miranda*, 176 Wn. App. at 778. Thus, the question for this court is whether, under the totality of the circumstances, a reasonable person in Spadoni's position would have felt his freedom of movement was curtailed to a degree associated with formal arrest. *Rosas-Miranda*, 176 Wn. App. at 781.

In *Rosas-Miranda*, this Court applied the factors set out in *Craighead* in determining whether an in-home interrogation was custodial:

(1) the number of law enforcement personnel and whether they were armed; (2) whether the suspect was at any point restrained, either by physical force or by threats; (3) whether the suspect was isolated from others; and (4) whether the suspect was informed that he was free to leave or terminate the interview, and the context in which any such statements were made.

Rosas-Miranda, 176 Wn. App. at 783 (citing *Craighead*, 539 F.3d at 1084). Applying these factors, the court held that *Rosas-Miranda* was not in custody when she was interrogated in her home because she was not restrained in any way, she was not isolated from other family members inside the apartment, and, while she was not told she was free to leave, she was told she could limit or revoke her consent to the search of her home at any time. Considering the totality of the circumstances, this Court

determined that a reasonable person in Rosas-Miranda's position would not believe her freedom of action was curtailed to a degree associated with formal arrest. Thus, *Miranda* warnings were not required. *Id.* at 784-85.

Here, on the other hand, Spadoni was not in his own home. There were multiple police officers on the scene in response to a report that he did not belong in the house. Spadoni was restrained by the threat inherent in police entering the room unannounced with guns drawn. He was isolated in the small room dominated by police officers, who positioned themselves so that he could not leave if he tried. He was never informed that he was free to leave, and in fact the officers made it clear that he would not be permitted to end the encounter. Under these circumstances, any reasonable person would have understood he was in custody.

Moreover, Spadoni was subject to interrogation while he was in custody. The United States Supreme Court has defined "interrogation" for Fifth Amendment purposes as words or actions "the police should know are reasonably likely to elicit an incriminating response from the suspect." *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980). The focus of this definition is on the perceptions of the suspect, rather than the intent of the police. *Id.*; *State v. Sargent*, 111 Wn.2d 641, 650, 762 P.2d 1127 (1988). The standard is an objective one, focusing on what the officer knows or should know will be the result of

his words or acts. The subjective intention of the officer is not at issue. *Sargent*, 111 Wn.2d at 651.

Here, police restrained Spadoni for suspected burglary and asked him whose room he was in. 1RP 136. Since the officer had been informed Spadoni did not belong in the house, he knew or should have known Spadoni would perceive this question as requiring an incriminating response. The officer continued to question Spadoni, asking if he had taken any substances, and then specifically asking Spadoni if he had taken methamphetamine and heroin, both illegal substances. 1RP 137. Again, the officer should have known these questions were reasonably likely to lead to an incriminating response.

The court below relied on testimony that officer asked Spadoni about the substances he used in order to provide complete information to the aid crew. It concluded that because the questions were not designed to elicit an incriminating response, they did not amount to interrogation. CP 131. The officer's subjective intention in asking the questions is not determinative, however. Because the questions the officer asked, as perceived by Spadoni, were reasonably likely to elicit an incriminating response, they constituted interrogation. *See Sargent*, 111 Wn.2d at 651.

The court also reasoned that this was not custodial interrogation because the police were gathering information in order to exercise their

community caretaking function. CP 130-31. Community caretaking is a recognized exception to the warrant requirement. *State v. Boisselle*, 194 Wn.2d 1, 10, 448 P.3d 19 (2019). Under certain circumstances, police are excused from obtaining a warrant prior to search or seizure if acting in their community caretaking capacity. Evidence obtained under those circumstances is not excluded at trial for failure to obtain a warrant. *Id.*, at 10-14.

Spadoni made no argument that a warrant was required for entry into the residence or for his arrest. Thus the community caretaking exception to the warrant requirement is not at issue here. The court below attempted to craft a community caretaking exception to the *Miranda* requirement, but there is no sound basis for such an exception. *Miranda* protects a defendant's constitutional right against compelled self-incrimination in all settings in which their freedom of action is significantly curtailed. *Estelle v. Smith*, 451 U.S. 454, 466, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981). It applies any time a person is subject to (1) custodial (2) interrogation (3) by a state agent. *Sargent*, 111 Wn.2d at 647. Where those three factors exist, it does not matter whether the officers were performing a community caretaking function. Without warnings, statements made under these conditions are presumed involuntary and

cannot be used against the defendant at trial. *Id.* See also *Estelle*, 451 U.S. at 466 (*Miranda* applied to court ordered psychiatric examination).

Miranda is a constitutional requirement. As such, the State bears the burden of proving that the admission of statements obtained in violation of *Miranda* was harmless beyond a reasonable doubt. See *Arizona v. Fulminante*, 499 U.S. 279, 292-97, 111 S. Ct. 1246, 113 L.Ed.2d 302 (1991). In other words, the State must show that the admission did not contribute to the conviction. *Id.* at 296. The State cannot meet this heavy burden here. The State offered Spadoni's statements to prove that the methamphetamine found in his pocket was his. 1RP 118. It relied on those statements in arguing that the jury should not believe Spadoni's testimony that he did not know there was methamphetamine in his pocket. 3RP 285-86. Testimony about Spadoni's statements in response to the custodial interrogation likely contributed to the jury's verdict, and improper admission of the statements was not harmless. Spadoni's conviction must be reversed.

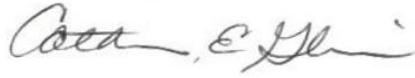
D. CONCLUSION

For the reasons addressed above, this Court should reverse Spadoni's conviction.

DATED January 2, 2020.

Respectfully submitted,

GLINSKI LAW FIRM PLLC

A handwritten signature in cursive script, appearing to read "Catherine E. Glinski".

CATHERINE E. GLINSKI

WSBA No. 20260

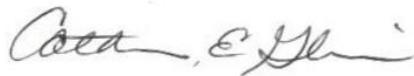
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I certify under penalty of perjury of the laws of the State of Washington
that the foregoing is true and correct.



Catherine E. Glinski
Done in Manchester, WA
January 2, 2020

GLINSKI LAW FIRM PLLC

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