

Services (DCFS) of a suspected molestation. Charlene Necco, a DCFS investigator, was assigned to the case. She interviewed C.G. and spoke with defendant's wife, Lynette Glass. She contacted defendant, asking to meet with him about the alleged instances, and asked him to submit to an interview with the state police.

¶ 5 Charlene met with him at her offices in Metropolis on April 22, 2009. On that date, defendant and his wife went to the DCFS office. Defendant's wife did not go back into the office with him. In the office, defendant was interviewed by Officer Chad Brown of the Illinois State Police, with Charlene Necco in attendance. At the conclusion of the interview, defendant made certain admissions. Officer Brown informed defendant that he was going to turn on his tape recorder, in order to have the admissions documented. Officer Brown did not read defendant the *Miranda* warnings. Following this interview, defendant was ultimately charged with the three felony counts in August 2009.

¶ 6 On January 11, 2010, defendant filed a motion to suppress his confession. That motion was called for an evidentiary hearing on March 19, 2010. On June 1, 2010, the trial court entered its order suppressing defendant's confession because defendant had not been advised of his constitutional rights via the *Miranda* warnings. The State filed its certification of impairment, and it appeals from that order.

¶ 7 Because the trial judge concluded that the confession should be suppressed due to the fact that defendant was not given *Miranda* warnings, we turn to the testimony at the hearing on defendant's motion to suppress regarding the confession that took place.

¶ 8 Testimony of Officer Chad Brown. Officer Chad Brown testified that he had not spoken with defendant before the interview at the DCFS office in April 2009. The interview began at about 9 a.m. The room in which the interview was conducted was somewhere between a 12-foot-by-12-foot size and a 15-foot-by-15-foot size. Inside the room was a desk and a couple of chairs. He believed that there was a window in the room. He does not know

if the door to the room was locked. He, Charlene Necco of DCFS, and defendant were the only three persons in the room. Defendant sat near the door and was facing Officer Brown and Charlene Necco. Defendant was advised that they were planning to ask him about a child sexual abuse case, that he was not under arrest, that he was free to leave at any time, and that unless he threatened himself or others, he would be free to depart after the interview. Officer Brown testified that he repeated these statements during the time spent with defendant and that defendant told him that he had no problem talking with them—that he had nothing to hide. During the time spent with defendant, Officer Brown asked defendant if he could record the conversation, and defendant indicated that he had no issue with that. Officer Brown testified that during the recorded interview, he again advised defendant that he did not need to speak with them and that he was free to leave.

¶ 9 On cross-examination, Officer Brown acknowledged that his reason for being at the DCFS office on April 22, 2009, was to interview defendant. He acknowledged that defendant was the focus of the investigation relative to the specific alleged molestation crimes. He explained that the interview was interrupted on more than one occasion by phone calls or by other DCFS employees who needed access to the room or access to Charlene Necco. He admitted that the door to the DCFS office was closed during the interview. Officer Brown acknowledged on cross-examination that based upon the transcript of the recorded portion of the interview, he did not advise defendant until the end of the interview that he did not need to talk with the officer and that defendant was free to leave at any time. Officer Brown confirmed that he told defendant to call him if he had anything else to add to his statement and that he stressed the importance of getting to the truth of what happened. He acknowledged that defendant's response to all of his statement at the end of the recorded interview was a single word—"yea." Officer Brown testified that he did not read defendant the *Miranda* warnings before or during questioning nor before or during the recorded

interview. The recording began at 10:22 a.m. and was concluded at 10:35 a.m. The meeting with defendant was arranged by Charlene Necco.

¶ 10 On redirect examination, Officer Brown testified that because of the sensitive nature of the allegations with the involvement of a minor child, it was customary to keep the door to the room closed. Officer Brown stated that defendant made various gestures to indicate his understanding of his rights. Defendant was not handcuffed. Defendant left the DCFS building accompanied by his wife.

¶ 11 The court then asked Officer Brown why the first hour of the interview was not recorded. Officer Brown stated that in his experience, people sometimes do not want to talk at first in an interview if they know that they are being recorded because the recording process can be intimidating.

¶ 12 Testimony of Charlene Necco. At the time of the interview of defendant in April 2009, Charlene was a DCFS investigator. The interview was conducted in the Metropolis DCFS office. The interview was conducted in the office of a fellow investigator, not in Charlene's personal office. Charlene estimated that the room was perhaps 8 feet by 10 feet in size—which she compared to the size of a small bedroom. Later, Charlene testified that she was not good at estimating size. There was only one door used for ingress and egress into the office, and one window. The furniture in the office consisted of a desk with a computer, as well as two chairs and a small round table.

¶ 13 Defendant's interview occurred after Charlene had conducted an interview of defendant's children, as well as of his wife, Lynette, about the situation. Charlene then contacted defendant and asked him to come to her office for an interview with the Illinois State Police. Eventually, all persons who would be part of defendant's interview agreed to April 22, 2009, as the date.

¶ 14 Charlene testified that during the interview, she sat behind the desk. Both defendant

and Officer Brown were on the opposite side of the desk. Charlene testified that defendant and Officer Brown were physically separated by about 2.5 feet. Defendant was closest in proximity to the office door. The door was not locked. The interview was interrupted on a few occasions by Charlene's work, and she had to physically leave the office a few times. Charlene testified that when she and Officer Brown met defendant in the foyer of the office, she heard Officer Brown tell defendant that this was a voluntary statement and that he could leave at any time. Officer Brown repeated these statements after they were all in the investigator's office. While Officer Brown may not have used words specifically telling defendant that he did not have to talk with him, Charlene claims that the gist of that message was conveyed to defendant in different words by telling him that he was free to leave and that his statement was voluntary. Charlene could not recall if Officer Brown told defendant that he was free to leave during the recorded portion of the interview.

¶ 15 Charlene explained that once the matter had been submitted through the hotline, and after she had interviewed victims during which allegations were made, she was required to turn the allegations over to the local police department and to the county State's Attorney's office. Sometimes the local police agency declined to handle the matter, and in such cases, the Illinois State Police become involved.

¶ 16 Charlene stated that the foyer of the DCFS office is separated from the DCFS office rooms by a door that is locked. The door is locked and no access is available from the foyer side of the door without a key. The door is locked from the foyer side in order to keep the public from gaining access to the area in which the employees work. However, the door is not locked from the office rooms' side.

¶ 17 Testimony of Defendant, Robert W. Glass. At the time of the hearing, defendant was 37 years old. He was a high school graduate. He testified that he had attended special education classes all through his school years. Regarding his ability to leave the interview

at any time, defendant testified that the only thing Officer Brown told him was, "No matter what happens today, you're going home." He testified that Officer Brown told him this at about the halfway point of the unrecorded interview. He did not get up and leave the interview because he did not know that he could. In fact, he testified that he did not feel that he was free to leave. When asked why he stayed, he said that because the State representative and the police officer were there, he felt that he had to remain. His wife was the person who set up the interview. He never spoke with any State representative prior to that date and so believed that the interview request and compliance was mandatory. Defendant testified that he does not recall hearing Officer Brown tell him that he did not have to speak with them.

¶ 18 Testimony of Lynette Glass. She is defendant's wife. Lynette accompanied him to the interview. She learned of the allegations against her husband when they were informed by defendant's ex-wife that the children could not come for visitation. DCFS was involved due to an allegation that one of the children had been touched. She contacted DCFS to determine what the investigation was about and was told that defendant needed to come in for an interview. Charlene informed Lynette that both she and defendant needed to be interviewed. Charlene told Lynette that a detective would be there, as that is part of the procedure in this type of investigation. When Charlene came out into the lobby of her office to get them, Lynette stood up, as she believed that she too would be interviewed. However, Charlene told her that they wanted to interview her husband initially. Lynette was never interviewed. She was not allowed to go back with her husband when he was interviewed. On cross-examination, she explained that the appointment for the interview was scheduled to work around defendant's job schedule as a truck driver.

¶ 19 The Tape. The court finished the hearing by listening to the conclusion of the recorded interview where Officer Brown claimed that defendant paused and gestured his

understanding that he did not have to talk with the police and that he was free to leave at any time.

¶ 20 The Order Suppressing Defendant's Confession. The trial court's order states that the court carefully considered the factors that relate to whether a reasonable person would believe he was free to leave. In this order, the court stated, "Applying the aforementioned factors and taking into consideration the Defendant's intellect, the Court finds that he could have reasonably believed he was in custody." The court then noted the circumstances of the case—that Officer Brown already knew the allegations of the minor before he interviewed defendant. The court concluded that the purpose of the question was not investigatory but was designed to illicit a confession. The court found that under those circumstances, the fact that Officer Brown told defendant at the end of the recorded interview that he was free to leave was "not a silver bullet that can be used to circumvent Miranda."

¶ 21

LAW AND ANALYSIS

¶ 22 The State asks this court to reverse the trial court's order suppressing defendant's confession. The trial court's findings of fact and credibility determinations are given great deference upon the review of an order granting a motion to suppress. *In re Christopher K.*, 217 Ill. 2d 348, 373, 841 N.E.2d 945, 960 (2005). We will not overturn a ruling suppressing evidence unless the order is manifestly erroneous. *People v. Slater*, 228 Ill. 2d 137, 149, 886 N.E.2d 986, 994 (2008).

¶ 23 In ruling upon a motion to suppress a confession, the court must first determine whether the defendant was "in custody" during the interview process. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). The *Miranda* warnings are only required when a person is in custody. *Id.*; *People v. Lucas*, 132 Ill. 2d 399, 417, 548 N.E.2d 1003, 1009 (1989). The custodial interrogation that triggers the need to provide the warnings occurs after the person "has been taken into custody or otherwise deprived of his freedom of action in any

significant way." *Miranda*, 384 U.S. at 444. These safeguards become applicable when the person's freedom is curtailed on the level of a formal arrest. *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984) (citing *California v. Beheler*, 463 U.S. 1121, 1125 (1983)).

¶ 24 Whether or not the suspect is in "custody" is tested by an objective standard—what a reasonable person in the suspect's situation would perceive. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). In determining whether the statement was given in a custodial setting, the court must look to all circumstances of the questioning and then analyze those circumstances from an objective basis—whether "a reasonable person would have believed that he was not free to leave." *Id.*

¶ 25 In accordance with *Mendenhall*, the Illinois Supreme Court in *People v. Bolden*, 197 Ill. 2d 166, 181, 756 N.E.2d 812, 820 (2001), enumerated relevant police conduct determinative of seizure. The *Bolden* court stated:

"Among the circumstances a court may consider in determining whether a person has been seized for fourth amendment purposes are the presence of multiple police officers, the display of weapons by an officer, the touching of the person by the officers, the officers' use of language suggesting that the person is compelled to obey, and the occurrence of practices that normally accompany an arrest, such as searching, handcuffing, and fingerprinting." *Bolden*, 197 Ill. 2d at 181, 756 N.E.2d at 820.

¶ 26 In *Yarborough v. Alvarado*, the United States Supreme Court reaffirmed that, initially, the circumstances surrounding the suspect's questioning must be considered and that given those circumstances, the court must determine whether a reasonable person felt that " 'he or she was not at liberty to terminate the interrogation and leave.' " *Yarborough v. Alvarado*, 541 U.S. 652, 663 (2004) (quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995)). In a case involving a 17-year-old suspect, the *Yarborough* Court found that the objective nature

of the "in custody" test does not involve individual idiosyncrasies—such as age or prior experience with police. *Yarborough*, 541 U.S. at 666-67. The Supreme Court clarified the objectivity required:

" '[T]he clarity of [*Miranda's*] rule' [citation] ensur[es] that the police do not need 'to make guesses as to [the circumstances] at issue before deciding how they may interrogate the suspect' [citation]. ***

*** [T]he objective *Miranda* custody inquiry could reasonably be viewed as different from doctrinal tests that depend on the actual mindset of a particular suspect ***. ***

*** In most cases, the police officers will not know a suspect's interrogation history. [Citation.] Even if they do, the relationship between a suspect's past experiences and the likelihood a reasonable person with that experience would feel free to leave often will be speculative." *Yarborough*, 541 U.S. at 667-68 (quoting *Berkemer v. McCarty*, 468 U.S. 420, 430, 431 (1984)).

¶ 27 In *People v. Slater*, the Illinois Supreme Court compiled a slightly expanded version of the factors to be considered in determining if a suspect is "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." *Slater*, 228 Ill. 2d at 150, 886 N.E.2d at 995.

¶ 28 Upon reviewing the applicable law in this case, we determine that the trial court's order suppressing defendant's confession is flawed because the court's "in custody" analysis

was based on a subjective rather than an objective standard.¹

¶ 29 The trial court correctly stated the objective standard by which analysis of this issue should be approached—"whether a reasonable person would believe he or she is free to leave." However, in reaching its holding, the court concluded that based upon these objectively-based factors *coupled with defendant's intellect, defendant* would have reasonably felt that he was in custody. The trial court did not find that a reasonable person would believe that he was compelled to stay. The court's focus clearly shifted from the required objective standard to a very personalized subjective standard. As a result, that analysis and the resulting conclusion were flawed.

¶ 30 As the United States Supreme Court explained in *Yarborough v. Alvarado*, one major reason for the use of the objective standard involves the officers who conduct the interview.

¹Consideration of the personal traits of the suspect—to include age, intelligence, and mental makeup—although sanctioned by the Illinois Supreme Court as appropriate, appears to be in conflict with *Yarborough v. Alvarado*, a case in which the suspect was 17 years old and which specifically stated, "Our Court has not stated that a suspect's age or experience is relevant to the *Miranda* custody analysis ***." 541 U.S. at 666. The *Yarborough* Court viewed the consideration of a suspect's individual characteristics as subjective rather than objective. "We do not ask police officers to consider these contingent psychological factors when deciding when suspects should be advised of their *Miranda* rights." *Yarborough*, 541 U.S. at 668. Most recently, in a divided decision in a case where the suspect was 13 years of age, the United States Supreme Court altered its position with respect to the consideration of age, in holding, "so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test." *J.D.B. v. North Carolina*, ___ U.S. ___, ___, 131 S. Ct. 2394, 2406 (2011).

Officers should not be required to speculate about how an individual perceives the situation. The officers need only analyze the situation from an objective standpoint in determining whether a custodial setting exists mandating provision of *Miranda* warnings. *Yarborough*, 541 U.S. at 654.

¶ 31 Additionally, we note that the intellectual deficiency of defendant, as referenced by the court as a factor, was certainly never established at this hearing. The record is completely devoid of any testimony or documentary evidence about defendant's diminished intellect. All that the record contains is defendant's own testimony that even though he graduated from high school, he had been in special education classes. The fact that defendant had attended special education classes would not necessarily mandate a conclusion that defendant's intellect was diminished. Additionally, there was no indication in the record that the officers in this case were aware that defendant had a decreased intellect beyond his statement that he had been in special education classes during school and/or that they exploited his alleged decreased mental capacity in this interrogation. While the inquiry of whether or not a suspect is in custody does not burden the police with determining the suspect's idiosyncrasies, it also does not "sanction the exploitation of known frailties or idiosyncrasies by the government." *People v. Braggs*, 209 Ill. 2d 492, 513, 810 N.E.2d 472, 485 (2003) (case involving a woman with a 54 I.Q.). "Modification or refinement of the reasonable person standard is appropriate where *** such exploitation has occurred." *Id.* Based upon the lack of supportive evidence adduced at the hearing, consideration of defendant's intellect as a factor in determining whether a reasonable person would have felt that he was in custody was inappropriate.

¶ 32 We also disagree with the aspect of the court's order concluding that Officer Brown's prior interview of the victims and focus upon defendant as the only suspect necessitated *Miranda* warnings. As held by the Supreme Court in *Stansbury v. California*, that factor is

not entirely relevant to the determination of whether or not the person being interviewed is "in custody." *Stansbury v. California*, 511 U.S. 318 (1994). A law enforcement officer may maintain a subjective viewpoint that the person being interrogated is a suspect. *Stansbury*, 511 U.S. at 324. Focus upon the individual being interrogated is not relevant to the determination of whether or not the person is in custody. *Id.* "Our decisions make clear that the initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." *Stansbury*, 511 U.S. at 323. In this case, although the trial court did not cite authority for this specific proposition, two of the three cases generally cited as authority for its order of suppression held that law enforcement focus upon the interviewee as the suspect is a factor to be considered as a part of the "in custody" analysis. However, both cases predate the *Stansbury* case and are, therefore, not authoritative. See *People v. Hagar*, 160 Ill. App. 3d 370, 513 N.E.2d 628 (1987); *People v. Kerner*, 183 Ill. App. 3d 99, 538 N.E.2d 1223 (1989).

¶ 33 If the officer tells the person being interrogated that he is a suspect, the officer's beliefs "are relevant only to the extent they would affect how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her 'freedom of action.'" *Stansbury*, 511 U.S. at 325 (quoting *Berkemer*, 468 U.S. at 440). In this case, Officer Brown began his interview with defendant with the statement that he was going to be asked about a sexual abuse case. If we equate that statement by Officer Brown to a belief that defendant was the suspect in the sexual abuse case, that statement, alone, is not dispositive of the issue of whether defendant was "in custody." *Id.* The officer's statement of his beliefs is just one factor in the analysis of the reasonable person test. *Id.*

¶ 34 The court's determination that a defendant was "in custody" requires application of an objective standard. By focusing on the officer's personal beliefs about the guilt or

innocence of the person being interviewed, the focus veers into a subjective analysis. Therefore, we disagree with the court's conclusion that Officer Brown's focus solely upon defendant as a suspect required the officer to read defendant the *Miranda* warnings. Whether or not Officer Brown was focused upon defendant as the suspect and conveyed that belief to defendant, the court's "in custody" analysis must remain objective in nature.

¶ 35

CONCLUSION

¶ 36 Because we conclude that the trial court applied a subjective test, rather than the correct objective test, the order suppressing defendant's confession was manifestly erroneous. Since we conclude that the order must be reversed and remanded on the basis that the wrong standard was applied, we do not determine the merits of the court's application of the fourth amendment seizure circumstances to the specific facts of defendant's interview. We remand this case to the trial court for further orders and analysis to determine whether a reasonable person would have felt that he was in custody and not free to leave.

¶ 37 For the foregoing reasons, the judgment of the circuit court of Union County is hereby reversed, and the cause is remanded.

¶ 38 Reversed and remanded.