

NOTICE
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2012 IL App (4th) 110172-U

Filed 8/7/12

NO. 4-11-0172

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
MELVIN ARMSTRONG,)	No. 10CF730
Defendant-Appellant.)	
)	Honorable
)	James E. Souk,
)	Judge Presiding.

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly denied defendant's motion to suppress his statements, made to a jail supervisor during a noncustodial interrogation.

¶ 2 On August 4, 2010, the State charged defendant, Melvin Armstrong, by indictment with aggravated battery of a correctional officer, a Class 2 felony (720 ILCS 5/12-4(b)(18), (e)(2) (West 2010)). Defendant filed a motion to suppress a statement made to an investigating officer at McLean County Detention Facility (MCDF), alleging the officer failed to give him *Miranda* warnings. See *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). The trial court denied defendant's motion. Following a bench trial, the court found defendant guilty and sentenced him to three years in prison, to be served consecutively to the sentence imposed in McLean County case No. 10-CF-152. Defendant appeals, arguing the trial court improperly denied his motion to suppress. We affirm.

¶ 3 The State alleged that on July 19, 2010, as defendant was returning to jail from a court hearing in case No. 10-CF-152, defendant grabbed the buttocks of Officer Jennifer Rueter. At trial, Officer Rueter testified she was escorting defendant from the courthouse back to jail when defendant entered her "personal space." She told defendant to back up, yet he moved closer. She then placed her hand on his chest, warning him to step back. Defendant, however, moved closer to Officer Rueter and grabbed her buttocks with his left hand. Officer Rueter called Jail Control for assistance, and Sergeant Rodney Frank and "a couple other officers" responded to assist her. The officers placed defendant against the wall, searched him, took him to the booking room to allow him to change from his court clothing to his jail clothing, and returned him to his cellblock.

¶ 4 Following the incident, Officer Reuter filed a written report alleging defendant committed a minor rule violation: "making profane or obscene remarks or gestures towards other inmates, staff members, volunteers, or visitors." She also alleged defendant committed three major rule violations: (1) "any assault or battery," (2) "interference with MCDF personel [*sic*] in the performance of their duties," and (3) "threatening, intimidating, extortion or blackmailing for protection or any othe[r] reason, of any employee, inmate or other person while incarcerated in [MCDF]."

¶ 5 At the suppression hearing, Sergeant Frank testified it was his responsibility to follow up with Officer Reuter's reports, to determine if a minor rule violation had taken place in which Sergeant Frank would impose up to 72 hours in disciplinary segregation. Sergeant Frank was also required to investigate the major rule violation and determine if probable cause existed to schedule a hearing on the matter.

¶ 6 Sergeant Frank testified he interviewed defendant about the incident approximately 1 hour and 40 minutes after defendant was returned to his cellblock. Sergeant Frank could not remember if he interviewed defendant in the hallway outside defendant's cellblock or in the vestibule connecting the hallway to the cellblock. He testified he questioned defendant about the incident, giving him the "opportunity to defend himself against the allegations," as was his common practice. Sergeant Frank said defendant replied "Frank, that'd be me, man. Me and Officer Reuter grab each other all the time like that, and she must not have been feelin' it today." Sergeant Frank allowed defendant to return to his cell block, and he completed the paperwork concerning Officer Reuter's reports.

¶ 7 At the suppression hearing, defendant testified he did not intentionally grab Officer Reuter's buttocks. He explained that he slipped on the ramp entering the jail and touched her back as he tried to catch himself. Defendant testified the interview took place in the hallway outside the cellblock and only Sergeant Frank questioned defendant. He was not handcuffed during the interview.

¶ 8 Following the suppression hearing, the trial court found defendant was not in custody for *Miranda* purposes during the interview and denied defendant's motion to suppress. The trial court held a bench trial and found defendant guilty. The court sentenced defendant to three years in prison, to be served consecutively to the sentence imposed in McLean County case No. 10-CF-152.

¶ 9 This appeal followed.

¶ 10 On appeal, defendant urges this court to grant his motion to suppress and remand for a new trial. Defendant argues Sergeant Frank was required to give him *Miranda* warnings

because he was in pretrial custody, which is always custody for the purposes of *Miranda*. In the alternative, defendant argues the specific circumstances of his questioning required *Miranda* warnings. We affirm the trial court's denial of defendant's motion.

¶ 11 A trial court's ruling on a motion to suppress evidence presents mixed questions of law and fact. *People v. Pitman*, 211 Ill. 2d 502, 512, 813 N.E.2d 93, 100 (2004). As a reviewing court, we accord great weight to the trial court's factual findings and will only reverse if those findings are against the manifest weight of the evidence. *Pitman*, 211 Ill. 2d at 512, 813 N.E.2d at 100-01. Ultimately, we review *de novo* the decision to grant or deny the motion to suppress. *People v. Sorenson*, 196 Ill. 2d 425, 431, 752 N.E.2d 1078, 1083 (2001).

¶ 12 Defendant first argues he was in jail on pretrial custody, which always constitutes custody for the purposes of *Miranda*. For this proposition, defendant cites *Maryland v. Shatzer*, 559 U.S. ___, 130 S. Ct. 1213 (2010). In *Shatzer*, however, the Supreme Court made it clear it has "never decided whether incarceration constitutes custody for *Miranda* purposes, and have indeed explicitly declined to address the issue." *Shatzer*, 559 U.S. at ___, 130 S. Ct. at 1224. Whether a defendant is in custody for *Miranda* purposes depends upon whether a formal arrest has been made or whether a defendant's freedom of movement has been restrained to suggest a formal arrest. *Shatzer*, 559 U.S. at ___, 130 S. Ct. at 1224. The freedom-of-movement test, "no doubt, is satisfied by *all forms* of incarceration," but is not in and of itself "a sufficient condition for *Miranda* custody." (Emphasis added.) *Shatzer*, 559 U.S. at ___, 130 S. Ct. at 1224. Thus, contrary to defendant's assertion, his incarceration as a pretrial detainee does not, on its own, constitute "custody" for *Miranda* purposes.

¶ 13 Defendant further argues the *Shatzer* court repeatedly emphasized a difference

between incarceration pursuant to a sentence and pretrial incarceration, which leads to the conclusion that pretrial incarceration is inherently coercive for *Miranda* purposes. We do not agree with defendant's conclusion as defendant has misread *Shatzer*. The *Shatzer* court did not repeatedly emphasize a difference between incarceration pursuant to a sentence and pretrial incarceration. Rather, the Court distinguished between incarceration pursuant to a sentence and *Miranda* custody. See *Shatzer*, 559 U.S. at ___, 130 S. Ct. at 1224-25. Defendant mistakenly equates pretrial incarceration with *Miranda* custody. However, as already stated, incarceration as a pretrial detainee does not on its own constitute *Miranda* custody.

¶ 14 In distinguishing between sentenced prisoners and those in *Miranda* custody, the *Shatzer* court considered the effect an interrogator has on the suspect's continued detention. See *Shatzer*, 559 U.S. at ___, 130 S. Ct. at 1225. The Court noted that an interrogator has no power to increase or decrease the sentenced prisoner's duration of incarceration as a result of what is said (or not said) during an investigation. *Id.* Thus, the inherently compelling pressures of a custodial interrogation are absent and *Miranda* warnings are not needed. *Id.* On the other hand, suspects whose continued detention rests with those controlling the interrogation, and who are faced with uncertainties as to final charges, convictions, and sentences, are more likely to experience the inherently compelling pressures of a custodial interrogation. *Id.* The latter situation is more akin to *Miranda* custody. See *Id.*

¶ 15 Here, defendant was not a sentenced prisoner as discussed in *Shatzer*. Nor does defendant qualify *per se* as a suspect whose continued detention rested with those controlling the interview, as discussed in *Shatzer*. When the alleged offense took place, defendant was in pretrial custody on an unrelated case—No. 10-CF-152. When Sergeant Frank interviewed

defendant in jail on the alleged offense, defendant's continued detention in case No. 10-CF-152 did not rest with Sergeant Frank. Defendant would have remained in jail on the charges in case No. 10-CF-152 regardless of what he said (or did not say) to Sergeant Frank in the interview. Thus, defendant's circumstances were more akin to a sentenced prisoner, as opposed to a suspect in *Miranda* custody, whose continued detention rested with his interrogators. Accordingly, to find defendant was in *Miranda* custody, we must determine whether his "liberty [was] limited beyond the usual conditions of his confinement." *People v. Patterson*, 146 Ill. 2d 445, 453, 588 N.E.2d 1175, 1179 (1992).

¶ 16 All of the circumstances surrounding the questioning should be considered in determining whether a person is in *Miranda* custody. *Patterson*, 146 Ill. 2d at 454, 588 N.E.2d at 1180. The Supreme Court has recently discussed relevant factors to consider in the context of a prisoner who is questioned, in private, about events occurring outside the prison. See *Howes v. Fields*, 565 U.S. ___, ___, 132 S. Ct. 1181, 1189 (2012). Such factors include the location of the questioning, the duration of the questioning, the presence or absence of physical restraints, statements made during the interview, and the release of the interviewee at the end of the questioning. See *Fields*, 565 U.S. at ___, 132 S. Ct. at 1189.

¶ 17 In *Fields*, the Supreme Court found the respondent was not in *Miranda* custody after considering all the relevant factors. *Fields*, 565 U.S. at ___, 132 S. Ct. at 1192-93. The respondent was interviewed in a well-lit, average-sized conference room, where the door was sometimes left open. *Fields*, 565 U.S. at ___, 132 S. Ct. at 1193. He was questioned for five to seven hours but was given food and water and was told he was free to end the questioning and return to his cell. *Id.* The officers were armed but the respondent was not physically restrained

or threatened. *Id.* The Court found a reasonable person in such an interrogation environment would have felt free to terminate the questioning. *Id.*

¶ 18 Considering all the circumstances surrounding defendant's questioning, we do not find defendant was in *Miranda* custody. Defendant testified Sergeant Frank "asked him to step outside into the hallway." Although Sergeant Frank could not remember if the questioning was in the hallway or the vestibule connecting the cellblock to the hallway, he was positive it was one of the two places. Defendant testified Sergeant Frank was the only officer who questioned him. Sergeant Frank testified he questioned defendant to give him an "opportunity to defend himself against the allegations." The questioning only lasted a few minutes, defendant was not handcuffed, and he was allowed to return to his cellblock after questioning.

¶ 19 The circumstances of defendant's interrogation do not support the inherently coercive nature associated with custodial interrogations, which would have required Sergeant Frank to give defendant *Miranda* warnings. The trial court properly denied his motion to suppress statements.

¶ 20 For the reasons stated above, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 21 Affirmed.