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2014 IL App (3d) 130155-U

Order filed February 25, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

|                         |   |                                     |
|-------------------------|---|-------------------------------------|
| THE PEOPLE OF THE STATE | ) | Appeal from the Circuit Court       |
| OF ILLINOIS,            | ) | of the 12th Judicial Circuit,       |
|                         | ) | Will County, Illinois,              |
| Plaintiff-Appellant,    | ) |                                     |
|                         | ) | Appeal No. 3-13-0155                |
| v.                      | ) | Circuit Nos. 12-CM-1507, 12-DT-597, |
|                         | ) | and 12-TR-38372                     |
|                         | ) |                                     |
| DANIEL SUTTER,          | ) | Honorable                           |
|                         | ) | Roger D. Rickmon,                   |
| Defendant-Appellee.     | ) | Judge, Presiding.                   |

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PRESIDING JUSTICE LYTTON delivered the judgment of the court.  
Justices Carter and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Trial court erred by granting defendant's motion to suppress statements under *Miranda v. Arizona*, 384 U.S. 436 (1966). Statements were made during an investigation of a traffic accident while defendant was not in custody.

¶ 2 Defendant, Daniel Sutter, was charged with failure to reduce speed (625 ILCS 5/11-601(a) (West 2012)), driving under the influence (625 ILCS 5/11-501(a)(2), (4), (5) (West 2012)), and possession of drug paraphernalia (720 ILCS 600/3.5(a) (West 2012)) after police arrested him at the scene of a single-vehicle accident. Defendant filed a motion to suppress

statements he made while officers were investigating the accident and questioning defendant about his potential intoxication. The trial court granted the motion, finding that defendant was in custody at the time he made the statements, and the officers had not given him the warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1966). The State appeals the trial court's decision. We reverse.

¶ 3

### FACTS

¶ 4 At approximately 6:30 a.m. on May 5, 2012, officers Gabel and Reid arrived at the grounds of Stepan Chemicals (Stepan) in response to a report of a suspicious person. The entrance to the Stepan grounds was guarded by a gate; on the other side of the gate, a gravel access road led onto the grounds. Approximately 75 feet down the access road onto Stepan property, a green Jeep was positioned half on the road and half in an adjacent ditch. The Jeep's hood was open, and a man, later identified as defendant, was under the hood, investigating the engine compartment.

¶ 5 The officers first spoke to Stepan security personnel, who believed defendant had driven the Jeep and crashed through Stepan's front gate before driving into the ditch. Security said that they first noticed defendant standing at the edge of the nearby woods. Defendant told the guards he was from a tree cutting company and had permission to be there. Security described defendant's behavior as "weird" and thought defendant was intoxicated.

¶ 6 After speaking with security, Gabel and Reid walked over to the Jeep. The security guards remained a distance away. Gabel noticed the Jeep had extensive front-end damage. There were bits of orange and yellow paint on the front end of the Jeep that matched the paint on the gate. The officers began talking to defendant. Defendant's speech was not slurred, but Gabel noticed a moderate smell of alcohol on defendant's breath. Reid noticed a bulge in defendant's front pants pocket and asked for defendant's consent to search the pocket. Defendant gave

consent. In the pocket, Reid discovered a cellophane cigarette wrapper, which contained trace amounts of a substance that smelled like cannabis.

¶ 7 After finding the cellophane wrapper, Gabel and Reid questioned defendant about how he arrived at Stepan and whether he was intoxicated. Defendant said he had consumed a 12-pack of beer at a friend's house in Wilmington from 7 p.m. until 1:30 a.m. that morning. He had also smoked cannabis during that time. At 1:30 a.m. defendant left his friend's house in the Jeep to drive home to Joliet. He claimed he ended up in the ditch after he ran over some debris, which punctured the Jeep's tire and caused it to veer into the ditch. However, Gabel testified that none of defendant's tires was flat. Defendant said that he did not drive through the front gate and had entered Stepan from a different entrance. Gabel testified that there was only one entrance to Stepan's grounds. Defendant was unsure what time he had arrived at the Stepan grounds. He was unsure which roadways were nearby and thought he was in a town that was actually located approximately 10 miles away.

¶ 8 Gabel administered field sobriety tests, including the horizontal gaze nystagmus test, the one-leg-stand test, and the walk-and-turn test. Defendant committed several errors during the tests. While administering the tests, a third officer arrived at the scene and remained with the security guards, away from the investigation of defendant. After the tests, Gabel arrested defendant for driving under the influence of alcohol and cannabis. A search of defendant's person uncovered a glass pipe used for smoking cannabis. At no time prior to his arrest was defendant given *Miranda* warnings.

¶ 9 Defendant was charged with failure to reduce speed (625 ILCS 5/11-601(a) (West 2012)), driving under the influence (625 ILCS 5/11-501(a)(2), (4), (5) (West 2012)), and possession of drug paraphernalia (720 ILCS 600/3.5(a) (West 2012)). Defendant filed a motion to suppress, arguing that any statements made by defendant after the officers found the trace

amounts of cannabis should be suppressed. Defendant argued that he was in custody at the point the officers found the cannabis, and because he was not given *Miranda* warnings, any incriminating statements he made after the cannabis was found should be suppressed. The trial court agreed with defendant and suppressed defendant's statements about his consumption of alcohol and cannabis.

¶ 10 The State filed a motion to reconsider. It argued that under the principles of *Berkemer v. McCarty*, 468 U.S. 420 (1984), defendant was not entitled to *Miranda* warnings, because a routine traffic stop and investigation does not constitute custody for *Miranda* purposes. Defendant argued that it was objectively reasonable to believe he was under arrest after officers found contraband in his pocket. The court denied the motion to reconsider, finding that defendant was arrested, and therefore entitled to *Miranda* warnings, as soon as the officers found the trace amounts of cannabis. The State appeals.

¶ 11 ANALYSIS

¶ 12 The State argues that defendant's statements should not have been suppressed, because defendant was not in custody for *Miranda* purposes when he made the statements. Defendant responds by arguing that the number of officers at the scene, the location of the investigation on private property, and the finding of contraband on defendant's person created a custodial environment in which defendant was entitled to *Miranda* warnings.

¶ 13 When reviewing a trial court's decision on a motion to suppress, we apply a two-tiered standard. *People v. Braggs*, 209 Ill. 2d 492 (2003). We will reverse the court's factual findings only if they are against the manifest weight of the evidence. *Id.* However, we review *de novo* the ultimate question whether suppression was warranted. *Id.*

¶ 14 The fifth amendment of the United States Constitution demands that "[n]o person \*\*\* shall be compelled in any criminal case to be a witness against himself[.]" U.S. Const., amend.

V. To give effect to the fifth amendment's protections, *Miranda* requires that a defendant be given certain warnings prior to custodial interrogation. *Miranda*, 384 U.S. 436. The issue presented by the present case is whether defendant was in custody when he stated that he had consumed alcohol and cannabis. Those statements were made after officers discovered the trace amounts of cannabis in defendant's pocket.

¶ 15 For a person to be in custody for *Miranda* purposes, two conditions must be present. *Howes v. Fields*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 1181 (2012). First, there must be an objectively reasonable belief that the person was not free to terminate the interrogation and leave. However, this " 'freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody.' " *Howes*, \_\_\_ U.S. at \_\_\_, 132 S. Ct. at 1190 (quoting *Maryland v. Shatzer*, 559 U.S. 98, 112 (2010)). Second, the environment must present the "same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Howes*, \_\_\_ U.S. at \_\_\_, 132 S. Ct. at 1190.

¶ 16 The second requirement distinguishes a typical traffic stop from a custodial interrogation requiring *Miranda* warnings. In *Berkemer*, 468 U.S. 420, the United States Supreme Court held that a typical traffic stop does not present the coercive pressures necessary to warrant *Miranda* warnings. The court explained that, unlike an interrogation conducted at the police station, a traffic stop is presumptively brief, conducted in public, and conducted by only one or two officers. *Id.* As a result, a person subjected to a traffic stop, although not free to leave, is not subjected to the kind of coercive pressure that would necessitate *Miranda* warnings. The *Miranda* warnings are not required unless the traffic stop limits the suspect's freedom of movement to a " 'degree associated with a formal arrest.' " *Id.* at 440 (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983)). At that point, the suspect is entitled to the "full panoply of protections prescribed by *Miranda*." *Id.*

¶ 17 When examining the circumstances surrounding an interrogation, courts 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. *People v. Braggs*, 209 Ill. 2d 492 (2003). In the present case, defendant was not handcuffed or placed in the back of a squad car. He was not told that he was under arrest. There were two officers directly interrogating defendant, although a third officer and "about three" Stepan security guards were in the general area. The interrogation took place on private grounds rather than on a public roadway. There is nothing in the record to suggest that the interrogation lasted any longer than a typical investigation of a traffic accident. The record does not suggest that the officers displayed their weapons or physically restrained defendant. This was "general on-the-scene investigation" (*People v. Havlin*, 409 Ill. App. 3d 427, 435 (2011)), rather than an environment resembling an interrogation at the police station.

¶ 18 The discovery of the cellophane did not raise the situation to the level of arrest. Although discovery of the cellophane most likely established probable cause to arrest defendant for possession of cannabis, officers are not required to cease an investigation and arrest a suspect the moment they acquire probable cause. *Hoffa v. United States*, 385 U.S. 293 (1966). The existence of probable cause did not limit defendant's freedom of movement to a degree associated with formal arrest, where officers never communicated that they planned to arrest defendant in response to the cellophane but, rather, continued their investigation.

¶ 19 We find that defendant was not in custody at the time he made the incriminating statements sought to be suppressed. As a result, *Miranda* warnings were not required, and the motion to suppress should have been denied.

¶ 20

CONCLUSION

¶ 21 The judgment of the circuit court of Will County is reversed.

¶ 22 Reversed.