2015 IL App (1st) 134014-U

FIRST DIVISION
November 23, 2015

No. 1-13-4014

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 6995
	)	
ANDREW BUCHANAN,	)	Honorable
	)	William J. Kunkle,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Liu and Justice Connors concurred in the judgment.

O R D E R

¶ 1 *Held*: The trial court properly denied defendant's motion to suppress his statement to police because it was not obtained in violation of his *Miranda* rights where no interrogation occurred.

¶ 2 Following a bench trial, defendant Andrew Buchanan was found guilty of possession of a controlled substance (720 ILCS 570/402(c) (West 2012)) and sentenced to 3 years' imprisonment. On appeal, defendant contends the trial court erred by failing to suppress his

statement to police officers obtained in violation of his *Miranda* rights. Defendant argues that absent this evidence, his conviction should be reversed and his cause remanded for new trial and that his mittimus should be corrected to reflect the proper offense.

¶ 3 Prior to trial, defendant filed a motion to suppress his statement on the basis that he was interrogated without *Miranda* warnings. At the suppression hearing, the parties adopted Officer Whigham's testimony from the probable cause hearing and agreed that the motion could be decided on oral argument only.

¶ 4 During the probable cause hearing, Officer Whigham testified that he and his partner curbed the vehicle defendant was driving on February 7, 2012, after they observed defendant commit a traffic violation. When defendant failed to produce a license or insurance he was taken into custody and placed in the back of the squad car while a search was performed of the vehicle. During the search, Officer Whigham recovered a magnetic box from underneath the outside of the vehicle below the driver's side that contained 13 plastic bags of a white powdery substance, which the parties stipulated tested positive for 1.1 grams of heroin. Defendant stated at the scene that "he understand[s] that it was his blow *** [and] he did not want to go back to jail."

¶ 5 On cross-examination Officer Whigham confirmed defendant was not the owner of the vehicle, nor did he observe defendant place the magnetic box underneath the vehicle. Defendant was in custody in the back of the squad car and Officer Whigham had shown him the contents of the box at the time he made this statement. Defense counsel questioned the officer as follows:

"Q: Now you said that he made a statement he understood that these were his blows?

A: Yes.

Q: Had you already recovered the box containing the 13 bags of suspect heroin?

A: Yes, I had.

Q: Had you shown him the box?

A: Yes, I did.

Q: Did you tell him what was inside?

A: Yes.

Q: Did you tell him it was blows?

A: He just admitted on scene.

Q: Did you show him the contents of the box before he made a statement stating he understood these were his blows?

* * *

A: Yes.

* * *

Q: Did you ask him if he put the box under the car?

* * *

A: No, I didn't ask him."

Based upon this testimony, defense counsel argued that Officer Whigham performed the functional equivalent of an interrogation by showing defendant the recovered magnetic box. Therefore, because defendant was not *Mirandized*, his statement was inadmissible. Defense counsel also argued that the officer's conduct was not "incidental," but "calculated." The State countered that Officer Whigham's conduct did not amount to an interrogation because he was showing the box to his partner, not defendant, and no questions were asked of defendant. The State asserted that based upon these circumstances, defendant made a spontaneous and voluntary

statement that should be admissible because *Miranda* only applies when a custodial interrogation occurs.

¶ 6 Although the trial court agreed the officer's conduct was not incidental, it denied defendant's motion and continued the case to allow defendant to file a motion to reconsider his suppression motion with case law to support his position. Defendant's motion to reconsider, which was denied, ultimately presented the same arguments he now presents on appeal.

¶ 7 At trial, Officer Whigham testified that he and his partner curbed defendant's vehicle and placed him into custody. Officer Whigham performed an inventory search of the vehicle and found the magnetic box containing heroin underneath the outside of the vehicle within reach of the driver's side. Once Officer Whigham recovered the magnetic box, he went to the squad car where defendant was seated and showed the box's contents to "[his] partner and the defendant." Defendant then "all of a sudden said, you know, I understand that those are my blows" and that he "didn't want to go back to jail." The officer also confirmed that defendant was the sole occupant of the vehicle from which the narcotics were recovered.

¶ 8 On cross-examination, Officer Whigham confirmed defendant was not the owner of the vehicle. He also stated that he showed the box to his partner, and to defendant, and "told [defendant] and [his] partner" that "this is what I found, heroin." When Officer Whigham makes "any type of recovery *** [he] let[s] his partner know right away." He also explained that he showed his partner what he found through the driver's side window because his partner was seated in the front passenger seat, but did not go to the back seat where defendant was seated.

¶ 9 The parties stipulated that 5 packets from the recovered magnetic box tested positive for 1.1 grams of heroin, and that the total weight of all 13 packets was 2.8 grams. A proper chain of custody was maintained over the magnetic box and its contents at all times.

¶ 10 At the close of the State's case-in-chief, defendant moved for directed finding on the basis that the State had not proved every element of the offense beyond a reasonable doubt where the admission elicited from defendant was taken in violation of his *Miranda* rights and the response given was ambiguous. The trial court ultimately denied defendant's motion and articulated that to the extent that counsel was also requesting a motion for rehearing on his original motion to suppress, this too was also denied.

¶ 11 Defendant presented no witnesses on his own behalf. The trial court found defendant guilty of possession of a controlled substance. In so finding, it determined defendant's statement to police that "I understand that those are my blows" was unambiguous and established his ownership of the heroin.

¶ 12 Defendant repeats on appeal the arguments made in his motion for reconsideration of his original motion to suppress and in his posttrial motion. Defendant argues that the officer's actions constituted the functional equivalent of an interrogation, and as such, defendant's statement to police should have been suppressed because they were obtained prior to being given proper *Miranda* warnings. The State, once again, argues that *Miranda* does not apply because an interrogation never occurred.

¶ 13 When reviewing the trial court's ruling on a motion to suppress, we will only reverse the trial court's factual findings and credibility determinations if they are against the manifest weight of the evidence. *People v. Slater*, 228 Ill. 2d 137, 149 (2008). The ultimate legal challenge, however, is reviewed *de novo*. *Id.* "Where a defendant challenges the admissibility of a confession through a motion to suppress, the State bears the burden of proving the confession was voluntary by a preponderance of the evidence." *Id.* When defendant renews his original motion to suppress in a motion for reconsideration following trial, a reviewing court may also

consider evidence adduced at trial when making its determination. *People v. Causey*, 341 Ill. App. 3d 759, 766 (2003).

¶ 14 It is well established that statements obtained as a result of a custodial interrogation may not be admitted if a suspect did not receive *Miranda* warnings (*Miranda v. Arizona*, 384 U.S. 436 (1966)). *People v. Manning*, 182 Ill. 2d 193, 206 (1998). Absent either custody or interrogation, however, an individual's privilege against self-incrimination is not threatened and *Miranda* warnings are not required. *People v. Bowen*, 2015 IL App (1st) 132046, ¶ 29. Here, it is undisputed that defendant made his statement while in custody. Thus, the issue is whether the officer interrogated defendant by showing him the box of recovered narcotics.

¶ 15 An "interrogation" occurs through express police questions or "any words or actions on the part of the police *** that the police should know are reasonably likely to elicit an incriminating response." *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980). When determining whether an interrogation occurred, the focus is upon the objective "perceptions of the suspect, rather than the intent of the police." *Innis*, 446 U.S. at 301; *People v. Olivera*, 164 Ill. 2d 382, 391 (1995).

¶ 16 The "fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk *** but whether he can be interrogated." *Miranda*, 384 U.S. at 478. This is because an " 'interrogation,' as conceptualized in the *Miranda* opinion, must reflect a measure of compulsion or coercion above and beyond that inherent in custody itself." *Innis*, 446 U.S. at 300; see also *People v. Peo*, 391 Ill. App. 3d 546, 820 (2003). Thus, "[v]olunteered statements are not *** barred by the Fifth Amendment" and therefore, do not require *Miranda* warnings. *Miranda*, 384 U.S. at 478.

¶ 17 The record clearly demonstrates and the parties do not dispute that Officer Whigham communicated with defendant by displaying the box of heroin in defendant's presence. Case law dictates, however, that purely informational statements made to a defendant while in custody, like those that do not invite an explanation or posit defendant's guilt, are not considered interrogatory because they do not involve coercion or compulsion. See *Peo*, 337 Ill. App. 3d at 552-53; *United States v. Payne*, 954 F. 2d 199 (4th Cir. 1992). This is true even if the statement to defendant was not spontaneous or incidental to the custodial process. See *Peo*, 337 Ill. App. 3d at 552-53.

¶ 18 In the case at bar, Officer Whigham did not directly ask a question or seek an explanation, nor can we say that simply displaying the narcotics in defendant's presence in some way implicitly communicated the officer's belief that the narcotics belonged to defendant. In fact, Officer Whigham's unrebutted testimony established that his conduct was not aimed directly at defendant. Furthermore, the officer did not ask follow-up or clarifying questions even after defendant admitted the drugs belonged to him. Therefore, it appears the officer's conduct was purely informational rather than interrogatory within the meaning of *Miranda*.

¶ 19 Defendant argues that this "exact factual scenario" has not yet been considered by Illinois courts and directs our attention to *Drury v. State*, 368 Md. 331 (2002), and *People v. Ferro*, 63 N.Y. 2d 316 (1984), which held the officers' nonverbal communication resulted in an interrogation which required *Miranda* warnings. The State, however, directs our attention to this court's decision in *People v. Jones*, 337 Ill. App. 3d 546 (2003), and argues it is analogous to the present case. For the reasons that follow, we agree with the State and find that *Jones* controls.

¶ 20 In *People v. Jones*, police officers found a handgun in the locked glove box of a vehicle the defendant was driving after performing a search of the vehicle subsequent to defendant's

arrest. *Jones*, 337 Ill. App. 3d at 549. Defendant was handcuffed and placed in the back of the squad car at the time of the search. *Id*. Upon finding the handgun, the officer walked to the squad car and advised defendant that he "located a handgun in the car." *Id.* Defendant asked why the officer "went into a locked glove box without a search warrant," which was used as evidence of his guilt. *Id.* At no point was defendant advised of his *Miranda* rights. *Id.* Defendant filed a motion to suppress his statement on the basis that it was obtained in violation of *Miranda*. *Id.* at 551.

¶ 21 This court found the officer's statement was not an interrogation and therefore, did not require *Miranda* warnings because the remark was "purely informational," where the officer merely informed defendant of the results of the search and did not "posit defendant's guilt and invite an explanation," nor could the officer have known that the statement was likely to elicit an incriminating response since the statement "did not seek or require a response at all." *Id.* at 552-53. The *Jones* court reached this conclusion despite the fact that the officer's comment was not a spontaneous remark, where the officer traveled from the defendant's vehicle to the squad car to inform the defendant of his finding. *Id.* at 552.

¶ 22 In the present case, like in *Jones*, defendant was arrested due to a traffic violation which resulted in a search of the vehicle that revealed unlawful contraband. Both defendants were driving vehicles they allegedly did not own and were the sole occupants. While the officer in the present case contends that he was informing his partner of the finding as opposed to purposefully notifying defendant, in both cases, the defendants were informed of the evidence found as a result of the search and made incriminating statements. Neither defendant was given *Miranda* warnings prior to making these statements or being confronted with the evidence.

¶ 23 Although we recognize that Jones was never shown the handgun and here defendant was presented with the box of narcotics, the message communicated was functionally equivalent. The officer essentially communicated the same message as the officer's verbal statement in *Jones* – that he located illegal contraband – by showing defendant the box of heroin. We find no real distinction on these facts between the officer's communication in the case at hand from the communication in *Jones*. Furthermore, unlike in *Jones* where the communication was clearly directed at defendant, the officer's unrebutted testimony in this case indicates that defendant was merely an incidental audience, and as a result, even less likely to respond than the defendant in *Jones*.

¶ 24 In conclusion, this court finds *Jones* is analogous because the facts are similar and the effect of the communication was substantially equivalent despite the differing methods of communication. For that reason, we follow the precedent set in *Jones* and conclude that the officer's communication in the present case was merely informative rather than interrogatory within the meaning of *Miranda*. Consequently, we need not look to the cases defendant cites outside this jurisdiction.

¶ 25 In so finding, we also reject defendant's contention that *Jones* can be distinguished on the facts. The purported distinctions defendant highlights are irrelevant to the objective question at hand – whether a suspect believed the officer's conduct required a response and was therefore, an interrogation.

¶ 26 Defendant emphasizes that the defendant in *Jones*, "exhibited suspicious behavior that made it clear that he knew a handgun was in the car prior to the officer's search," and that unlike *Jones*, "there is no evidence to support that [defendant, in the present case] knew about the drugs underneath the car before being curbed." While we agree, these facts are relevant only to the

lawfulness of the underlying search and seizure and have no bearing on whether the officer's conduct constituted an interrogation, which, as previously stated, depends on the objective perception of the accused. See *Olivera*, 164 Ill. 2d at 391.

¶ 27 We are also unconvinced by defendant's distinction that, unlike the case at hand, the defendant in *Jones* "later admitted knowledge of the specific location of the gun in the locked glove box compartment *** upon the officer's generic statement*** [and] was never shown the gun by the officer," because we have previously determined that the effect of the verbal and nonverbal communication in both cases was substantially equivalent.

¶ 28 Accordingly, following the applicable precedent set forth in *Jones*, defendant was not required to be given *Miranda* warnings because no interrogation occurred. The aim of *Miranda* is not to protect a person with a guilty conscience from spontaneously making an admission, but to ensure that any inculpatory statement made by a defendant is not merely the product of the compulsion inherent in custodial settings. See *Slater*, 228 Ill. 2d at 149. Therefore, the trial court properly denied defendant's motion to suppress his voluntary statement.

¶ 29 Defendant next argues, and the State concedes, that the mittimus should be corrected to reflect the proper name of the offense.

¶ 30 Where a mittimus incorrectly reflects the name of the offense of which a defendant was convicted, it should be corrected to conform to the judgment entered by the court. *People v. Brown*, 255 Ill. App. 3d 425, 438-39 (1993).

¶ 31 Except for the general conclusion that the mittimus is incorrect, however, neither party specifies the alleged error and defendant does not propose a correction. Here, defendant was convicted of possession of a controlled substance under section 402(c) and the mittimus reads, "POSS AMT CON SUB EXCEPT (A)/(D)." No error is apparent in the plain language of the

mittimus and without guidance from the parties as to the exact error, we have no basis for ordering a correction. Despite the State's concession, we reject defendant's request.

¶ 32 For the foregoing reasons, we affirm defendant's conviction for possession of a controlled substance.

¶ 33 Affirmed.