SIXTH DIVISION
March 31, 2011

No. 1-09-0667

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MARIA CUEVAS, Defendant-Appellant.	) Appeal from the) Circuit Court of Cook County)) No. 06 CR 25096)) Honorables) Michael P. Toomin and) Nicholas R. Ford,) Judges Presiding.

JUSTICE CAHILL delivered the judgment of the court.
Justices McBride and R.E. Gordon concurred in the judgment.

O R D E R

Held: Defendant's conviction for aggravated battery of a child affirmed over her contention that the trial court erred by denying her motion to suppress her handwritten statement. Trial court's assessment of $18,000 fine is vacated.

After a bench trial defendant Maria Cuevas was found guilty of aggravated battery of a child, sentenced to eight years' imprisonment and fined $18,000 plus court costs. She appeals, arguing that the trial court erred by: (1) denying her motions to suppress statements and quash

arrest and suppress evidence; and (2) fining her $18,000. We affirm defendant's conviction but vacate the trial court's order imposing the fine.

Defendant was arrested on October 28, 2006, in connection with the physical abuse of her three-month old son Luis Moreno. She was charged by grand jury indictment with two counts each of aggravated battery of a child and aggravated domestic battery.

Before trial, defendant filed a motion to suppress her handwritten statement, arguing that Detective Tracy Fanning conducted a custodial interrogation of her at Children's Memorial Hospital during which he "threatened and insulted [her,] causing her apprehension and fear." Defendant supplemented her motion with the argument that her interrogation was illegal because it was akin to the two-step "question-first, warn later" interrogation method found in *Missouri v. Seibert*, 542 U.S. 600 (2004). She claimed that Fanning gave her *Miranda* warnings only after she made an inculpatory statement.

Defendant also filed a motion to quash arrest and suppress evidence, arguing that her interrogation at the hospital was an unlawful seizure in light of the surrounding circumstances and that her statements should be suppressed because they were the fruit of that unlawful seizure. She claimed that before the unlawful interrogation at the hospital, detectives did not have probable cause to arrest her. A single hearing was held on both motions.

Detective Fanning testified that in the early morning hours of October 28, 2006, he received an assignment to investigate a battery of a child. Fanning and his partner Detective Steven Soria went to Children's Memorial Hospital. There, Fanning spoke with a nurse and responding officers. He learned that the victim's name was Luis Moreno and that his parents,

defendant and Augustine Moreno, were at the hospital. Fanning identified defendant as the victim's mother.

Detectives Fanning and Soria spoke with defendant in the hospital waiting room for about 10 minutes. Fanning testified their conversation was in English and that he did not have a problem understanding defendant. During their conversation defendant admitted her involvement in the crime. When she did so, Fanning advised defendant of her *Miranda* rights. Defendant acknowledged understanding those rights and continued to speak with Fanning. Fanning denied threatening or insulting defendant. He also denied telling defendant that she had to answer his questions. Soria transported defendant to Area 5 police headquarters and contacted the State's Attorneys office.

At Area 5, Detective Fanning again advised defendant of her *Miranda* rights. Defendant acknowledged understanding those rights and agreed to speak with Fanning. The pair had a brief conversation. Shortly after their conversation, Assistant State's Attorney Tracy Stanker arrived at Area 5. Fanning said Stanker advised defendant of her *Miranda* rights. Defendant acknowledged understanding those rights and agreed to speak with Stanker and Fanning. After their conversation, defendant agreed to a handwritten statement.

On cross-examination, Detective Fanning said he interviewed defendant and her husband separately at the hospital. Fanning said he escorted defendant about 20 feet away from the general waiting area to "a separate little alcove," where he held the conversation with defendant. After defendant explained what happened to her son, Fanning confronted her with the medical findings. He then told her that "she needed to tell the truth." At this point, defendant began to

cry and made an inculpatory statement. Fanning then advised defendant of her *Miranda* rights. Fanning acknowledged that he did not advise defendant of her *Miranda* rights before she admitted her involvement in the crime. Fanning explained that he spoke with defendant because he "didn't know the story" of how the victim was injured. He said defendant was free to leave the conversation.

Detective Soria testified that before interviewing defendant at the hospital, Detective Fanning spoke with medical personnel about the extent of the victim's injuries. The detectives then had a conversation with defendant "in a section of the waiting room." Soria said the section of the waiting room was not separated by walls and that it was "just another section of the waiting room." Soria said Fanning questioned defendant. The detectives were armed and dressed in plain clothes. During their conversation, Fanning confronted defendant with the doctor's diagnosis of the victim's injuries. Defendant then began to answer Fanning's questions. Soria said defendant did not cry during their conversation. Soria acknowledged that neither he nor Fanning advised defendant of her *Miranda* rights before speaking with her. He said they advised defendant of her *Miranda* rights after she made an incriminating statement. Defendant was then arrested and transported to Area 5.

On cross-examination, Detective Soria said Detective Fanning spoke to a nurse at the hospital who told him that defendant informed the doctors that the victim was injured on October 5, 2006. The nurse told Fanning that the doctor believed the injury was more recent. The detectives then had a conversation with defendant to find out who was taking care of the child at the time he was injured. Soria said defendant was separated from her husband because in his

experience, mothers "may cover for a father in a child abuse situation" and are more comfortable talking outside the father's presence. Soria said Fanning told defendant he did not believe the victim's injuries occurred on October 5, 2006. Defendant then admitted that she shook the child and threw him into his crib. The detectives advised defendant of her *Miranda* rights at that time. Soria denied raising his voice or yelling at defendant. He also denied threatening defendant or telling her that she needed to speak with Fanning.

On redirect, Detective Soria acknowledged that defendant told him she had trouble with "some words in English." Soria said he did not consider defendant a suspect before speaking with her at the hospital.

Assistant State's Attorney Tracy Stanker testified that on October 28, 2006, she received an assignment to go to Area 5 in response to a battery of a child. There, she spoke with Detective Fanning. Stanker then met with defendant in an interview room. Stanker introduced herself to defendant as an assistant State's Attorney and advised defendant of her *Miranda* rights. Defendant acknowledged understanding those rights and agreed to speak with Stanker. Stanker said she spoke with defendant in English and that she did not have a problem understanding defendant. Fanning was present for the interview.

After their conversation, Stanker explained to defendant that she could make an oral statement or memorialize her statement in writing. Defendant chose to give a handwritten statement. Stanker asked Detective Fanning to leave the interview room and then questioned defendant about how she was treated while in police custody. Defendant said she had been treated fine and that she was not threatened or promised anything in return for her statement.

Stanker advised defendant of her *Miranda* rights before defendant prepared the statement. After the statement was completed, defendant read the first paragraph aloud. Stanker said defendant did not have a problem reading English. Defendant told Stanker that she has been able to speak and read English since she was 10 years old. Defendant reviewed her statement, made corrections and signed it.

Defendant testified that she met Detectives Fanning and Soria in the hospital waiting room. She said the detectives separated her from her husband and Fanning asked her questions. Defendant said she was alone in the room with Fanning and that he was standing right next to her. During their conversation, defendant spoke both English and Spanish. Defendant denied asking Fanning if they could speak in Spanish. Defendant said during their conversation Fanning hit his hands on a table in the waiting room, called her a pejorative name and told her to tell the truth. Defendant then started crying because she was scared "of the way he reacted." After defendant started crying, Fanning told her he was going to take her to the police station. Defendant then began answering his questions and was transported to Area 5.

At Area 5, defendant said she spoke with Detective Fanning and Assistant State's Attorney Stanker. Defendant said she could not understand everything they were saying because they were speaking in English. Defendant testified that she speaks English "a little bit" but does not "understand all of it." Defendant acknowledged that she did not tell Stanker or Fanning that she would be more comfortable talking in Spanish. Defendant said that while she was at the police station she was scared because she had never been arrested or interrogated before. Defendant said she signed the handwritten statement because Stanker told her if she did she

could be with her son. Defendant did not tell Stanker that Fanning had called her a pejorative name and slammed his hands on a table. Defendant said she did not do so because Fanning "was always in the room with [Stanker]."

On cross-examination, defendant said when she arrived at the hospital she told the doctor that her son was hurt on October 5, 2006, because he fell off a bed, broke his leg and hit his head on the bed's metal frame. Defendant said while she waited for her son to be treated she agreed to speak with Detectives Fanning and Soria. Defendant said there were no locks on the door to the waiting room. During their conversation Fanning told defendant that the doctor believed the victim was injured more recently then October 5, 2006. Defendant acknowledged she then told Fanning that she had shaken the child and thrown him into his crib. She denied that Fanning then advised her of her *Miranda* rights. Detective Soria transported defendant to Area 5 where she met with Assistant State's Attorney Stanker. Defendant acknowledged that she gave Stanker a handwritten statement and signed every page of the statement. Defendant also acknowledged that she told Stanker she had been able to speak and read English since she was 10 years old. Defendant said she could not remember if Stanker advised her of her *Miranda* rights.

The trial court took the matter under advisement and continued the case. When the case was recalled, the court recounted the evidence presented and denied defendant's motions to suppress and quash. The court found that defendant was not in custody at the hospital and the detectives were not required to advise defendant of her *Miranda* rights before speaking with her. The court also found that the interview in the hospital was "a far cry" from the two-step interrogation method employed in *Seibert.* The court further found that no credible evidence

supported defendant's arguments that she was psychologically coerced into making a statement and that she did not make a knowing and intelligent waiver of her constitutional rights because police did not provide her with an interpreter.

At trial, the State introduced a certified copy of the victim's birth certificate, showing that he was born on July 20, 2006. Chicago police officer Dolly Frioloux testified that about 11:30 p.m. on October 27, 2006, she was dispatched to Children's Memorial Hospital in connection with a possible child abuse case. When she arrived at the hospital, Frioloux learned that the victim's name was Luis Moreno and that his parents were at the hospital. Frioloux identified defendant as the victim's mother. Frioloux spoke with defendant about her son's injuries. She said defendant told her that the child was injured during an incident that occurred on October 5, 2006.

Detective Fanning testified to substantially the same sequence of events as he did at the hearing on defendant's motions to suppress statements. Fanning published defendant's handwritten statement to the court.

Defendant said in the statement that in the early morning hours of October 27, 2006, she became frustrated and picked up the victim from his seat on the floor of his bedroom. Defendant said the child was not crying at the time. She then placed her hands around his body and began shaking him back and forth. Defendant did not know how long or hard she shook the victim. She then threw him into his crib "very hard." When she did so, he hit his head on a hammer and a hard plastic toy that were inside the crib. Defendant had placed the hammer inside the crib after using it to nail things into the wall earlier that morning. After she threw the child into the

crib, he began screaming. About an hour later, defendant noticed that the victim was stiff and not moving in his crib. She also noticed that his eyes had rolled back in his head. Defendant then took him to Norwegian Hospital where he was transferred to Children's Memorial Hospital. There, defendant told a nurse that the child was injured on October 5, 2006. The statement said defendant lied to the nurse because she knew what she did to him was wrong.

Detective Fanning testified that after defendant gave her written statement, he and an assistant State's Attorney went to defendant's house where they found a hammer in the victim's crib.

Doctor Emily Flaherty testified as an expert witness in pediatrics and child abuse pediatrics. Flaherty said she evaluated and treated the victim on October 27, 2006. She said when the child was admitted to the hospital he was hyper-responsive to stimuli, not moving his arms, could not look in one direction and was experiencing repeated seizures. Flaherty explained that the child's symptoms were indicative of head trauma. Flaherty ordered numerous tests for him and reviewed the results. The tests revealed that the victim suffered extensive retinal hemorrhaging in one eye. Flaherty testified that retinal hemorrhaging is indicative of "acceleration and deceleration" forces being applied to the head. The child also had contusions to both of his eyes. A computed tomography (CT) scan showed large bilateral subdural hematomas caused by bleeding in between the victim's brain and skull. Flaherty opined that the victim's injuries were consistent with shaking or an impact against a hard surface. Flaherty characterized the injuries as "severe."

Doctor John Curran testified for the defense as an expert witness in pediatric

neuroradiology. Curran explained that neuroradiology is the interpretation of imaging studies such as CT scans related to the head or spine. Curran said that with the use of a CT scan, it is possible to "grossly" date when a patient suffered a subdural hematoma. Curran opined that "[i]n purely imaging terms, there [was] not evidence that [the victim] suffered a severe trauma to the brain" on October 27, 2006.

The trial court found defendant guilty of aggravated battery of a child and aggravated domestic battery. At the sentencing hearing that followed, the court merged defendant's conviction for aggravated domestic battery with aggravated battery of a child and sentenced her to eight years' imprisonment. The court also fined defendant $18,000 to be taken from her bond. In doing so, the court noted:

> "I'm aware that the family is alleged to have posted a bond in this case. There's no surety listed on the bond slip, nor do I think it's appropriate in this particular circumstance with this amount of money to not consider a fine as a punitive aspect of the case in this circumstance.
>
> I am aware that they are working people, but it's a large sum of money. The fine I think is appropriate in light of the seriousness of the case, and the fact that there is obviously a degree of liquidity here which would allow these funds to be used against the fines in this circumstance."

Defendant filed a motion to reconsider sentence, arguing that the court erred in imposing the $18,000 fine because the court did not consider defendant's financial resources and the hardship the fine caused her family. After a hearing, the court denied defendant's motion, noting

that the law affords the imposition of a fine on a defendant in appropriate circumstances. The court pointed out that "the bond form indicates these moneys may be used for fines." Defendant appeals.

Defendant first contends on appeal that the trial court erred in denying her motions to suppress statements and quash arrest and suppress evidence. A trial court's ruling on a motion to quash arrest and suppress evidence ordinarily involves a mixed question of law and fact. *People v. Gherna*, 203 Ill. 2d 165, 175, 784 N.E.2d 799 (2003). The trial court's findings of fact will not be overturned unless they are against the manifest weight of the evidence. *Gherna*, 203 Ill. 2d at 175. Whether suppression is warranted under those facts is reviewed *de novo*. *Gherna*, 203 Ill. 2d at 175.

Defendant argues that her statement in the hospital was the product of custodial interrogation and, in the absence of *Miranda* warnings, should have been suppressed. She also argues that her handwritten statement should have been suppressed under *Seibert*, because the two-step "question-first, warn later" tactics employed by the detectives here rendered defendant's subsequently administered *Miranda* warnings meaningless. The State responds that *Miranda* warnings were not required at the hospital because defendant was not in custody. The State also responds there was no evidence that detectives used an improper two-step interrogation method.

It is well-settled that before the start of an interrogation, a person being questioned must be advised of her *Miranda* rights if she has been "taken into custody or otherwise deprived of [her] freedom of action in any significant way." *People v. Slater*, 228 Ill. 2d. 137, 149, 886 N.E.2d 986 (2008), quoting *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). The finding of

custody is essential because *Miranda* warnings are intended to assure that inculpatory statements made by a defendant are not the result of " 'the compulsion inherent in custodial surroundings.' " *Yarborough v. Alvarado*, 541 U.S. 652, 661 (2004), quoting *Miranda*, 384 U.S. at 458.

Two discrete inquiries determine whether a defendant is "in custody" for *Miranda* purposes. *People v. Harris*, 389 Ill. App. 3d 107, 119, 904 N.E.2d 1077 (2009). First, " 'what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.' " *People v. Braggs*, 209 Ill. 2d 492, 505-06, 810 N.E.2d 472 (2004), quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

In examining the circumstances of an interrogation, our supreme court in *Slater* identified a number of factors to consider when deciding whether a statement was made in a custodial setting. These factors include: (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 person; (4) evidence of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the person arrived at the place of questioning; and (6) the age, intelligence and mental makeup of the accused. *Harris*, 389 Ill. App. 3d at 119-20, citing *Slater*, 228 Ill. 2d at 150. After examining these factors, we must then decide whether, under the facts presented, "a reasonable person, innocent of any crime" would have believed that she could terminate the encounter and was free to leave. *Harris*, 389 Ill. App. 3d at 120, citing *Braggs*, 209 Ill. 2d at 506.

Applying the first three factors to the facts presented, we note that defendant was

questioned by two detectives in a hospital waiting room for about 10 minutes. See *Slater*, 228 Ill. 2d at 156 (finding it significant that the defendant's initial statements were made at a children's advocacy center rather than a police station which presents a more foreboding, intimidating and adversarial environment). At the time, defendant's husband was 20 feet away. Detective Soria testified that there were no walls partitioning the waiting room. Because the case was in the investigatory stage, the mode of the questioning was fact finding. See *Slater*, 228 Ill. 2d at 155. Detective Fanning testified that at the time, he was trying to learn how the victim was injured. As the victim's mother, defendant was the logical starting point of the investigation. *Harris*, 389 Ill. App. 3d at 120. The record shows the detectives were trying to establish the circumstances surrounding the victim's injuries. Defendant was not considered a suspect or target of the investigation. *Harris*, 389 Ill. App. 3d at 120.

We are unpersuaded by defendant's argument that because the detectives separated her from her husband, they believed she was a suspect. It is customary interviewing practice to separate witnesses during an investigation. *Harris*, 389 Ill. App. 3d at 110. Detective Soria testified that defendant was separated from her husband because in his experience, mothers often cover for a father in child abuse cases and are more comfortable talking outside the father's presence. Contrary to defendant's argument, the testimony here shows the detectives were more focused on the victim's father as a suspect than defendant.

We are also unpersuaded by defendant's argument that because the detectives confronted her with the doctor's findings, they believed she was a suspect. In *Harris*, detectives went to speak with the defendant to confront her with inconsistencies in her earlier statement. *Harris*,

389 Ill. App. 3d at 121-22. In finding that the defendant was not in custody, this court pointed out that "those inconsistencies did not imply a change in status from interested parent to murder suspect or otherwise go to the heart of the investigation." *Harris*, 389 Ill. App. 3d at 122. Similarly, the fact that Detective Fanning confronted defendant with the doctor's findings did not imply she was a suspect.

We also reject defendant's argument that, after speaking with the medical personnel, the detectives suspected defendant was responsible for the victim's injuries because they knew he was injured while in her care. Detective Soria testified that the detectives had a conversation with defendant because they did not know who was taking care of the victim at the time he was injured. As mentioned, Soria's testimony showed the detectives were more focused on the victim's father as a suspect than defendant.

As for the fourth factor, there was no evidence of a formal arrest, such as a show of force or physical restraint. Although the detectives were armed, they were dressed in plain clothes and there is no evidence that they showed their weapons. See *Slater*, 228 Ill. 2d 156-57. At no time before admitting her involvement in the crime was defendant restrained or handcuffed. Given that the cause of the victim's injuries was unknown at the time, it is unlikely that an intention to effect an arrest existed. *Harris*, 389 Ill. App. 3d at 120, citing *People v. McKinney*, 277 Ill. App. 3d 889, 894, 661 N.E.2d 408 (1996).

The fifth factor also weighs against defendant. The record shows defendant was voluntarily at the hospital and agreed to speak with the detectives in the waiting room. Defendant's voluntary arrival at the place of questioning is "distinguishable from a situation in

which a defendant is transported to and from the place of interrogation by law enforcement officers and has no other means of egress from that location." *Slater*, 228 Ill. 2d at 154. There is no showing that the detectives transported defendant to a police station before she admitted her involvement in the crime.

Addressing the final factor, defendant's age, intelligence and mental makeup, at the time of questioning defendant was 22 years old and had attended high school until her sophomore year. Defendant had no difficulty communicating with the officers and there was no outward showing of a developmental disability. See *Slater*, 228 Ill. 2d at 157. Defendant said she had been able to speak and read English since she was 10 years old.

Having examined the factors set out in *Slater*, we next consider whether a reasonable person in defendant's position would have believed that she could terminate the encounter and was free to leave. Defendant claims that she did not believe she was free to terminate the encounter because Detective Fanning yelled at her, called her a pejorative term, hit his hands on a table and told her to tell the truth. Defendant maintains that Fanning's behavior scared her, made her cry and prompted her to make an inculpatory statement. Fanning testified that he did not threaten or insult defendant during their conversation. Detective Soria testified that he did not raise his voice at defendant or tell her that she had to speak with Fanning. The trial court found the detectives' version of events more credible and denied defendant's motions. We cannot say that the court's factual findings were against the manifest weight of the evidence. Gherna, 203 Ill. 2d at 175. In light of the circumstances surrounding defendant's questioning and considering what a reasonable person would have believed, we find defendant was not in custody at the

hospital for *Miranda* purposes. *Harris*, 389 Ill. App. 3d at 121.

In reaching this conclusion, we have considered the cases cited by defendant in support of her argument and find them distinguishable. See *People v. Alfaro*, 386 Ill. App. 3d 271, 896 N.E.2d 1077 (2008); *People v. Carroll*, 318 Ill. App. 3d 135, 742 N.E.2d 1247 (2001); and *People v. Savory*, 105 Ill. App. 3d 1023, 435 N.E.2d 226 (1982). Here, unlike *Alfaro*, *Carroll* and *Savory*, the questioning did not take place in a police station. Unlike in *Alfaro*, defendant was not questioned in an accusatory manner by multiple detectives. *Alfaro*, 386 Ill. App. 3d at 298-99. Unlike the defendant in *Carroll*, defendant was advised of her *Miranda* rights immediately after making an inculpatory statement. *Carroll*, 318 Ill. App. 3d at 139. Unlike in *Savory*, defendant was free to leave the hospital waiting room, she was not 14 years old at the time of questioning and she was not questioned for over two hours. *Savory*, 105 Ill. App. 3d at 1029.

We also reject defendant's argument that her handwritten statement should have been suppressed under *Seibert*, because the two-step "question-first, warn later" tactics employed by the detectives rendered her later administered *Miranda* warnings meaningless. Here, we cannot say that the detectives deliberately employed a two-step strategy to undermine *Miranda* or to evade its requirements. See *People v. Lowenstein*, 378 Ill. App. 3d 984, 993, 883 N.E.2d 690 (2008). There is no evidence that the questioning was " 'systematic, exhaustive and managed with psychological skill.' " *Lowenstein*, 378 Ill. App. 3d at 993, quoting *Seibert*, 542 U.S. at 616. The record shows that during routine investigatory questioning, defendant admitted her involvement in the crime. See *Harris*, 389 Ill. App. 3d 123. The detectives then immediately

advised defendant of her *Miranda* rights and placed her under arrest. Defendant was transported to a police station and again advised of her *Miranda* rights. Because defendant's custodial interrogation did not begin until *Miranda* warnings were given, a *Seibert* violation could not have occurred. *Harris*, 389 Ill. App. 3d at 121, citing *People v. Calhoun*, 382 Ill. App. 3d 1140, 1147, 889 N.E.2d 795 (2008). Defendant's motions to suppress statements and quash arrest and suppress evidence were properly denied.

Defendant next contends that the trial court erred in assessing an $18,000 fine to be paid from the cash bond that had been posted by her family. Defendant claims that she is indigent and that the court failed to consider her ability to pay the fine before imposing it.

Fines are discouraged for defendants who lack the ability to pay them. *People v. Nearn*, 178 Ill. App. 3d 480, 496, 533 N.E.2d 509 (1988); *People v. Echols*, 146 Ill. App. 3d 965, 497 N.E.2d 321 (1986). Here, defendant is indigent and was represented by a public defender. The money for defendant's bond was posted by her family. The presentence investigation report showed that defendant worked as a cook at a McDonald's restaurant and earned $7 per hour. Her net monthly earnings were $700. Defendant also received aid every month in the form of a $260 Link card. She reported her expenses as being rent, gas, telephone bills and clothing for her three children. Although defendant posted bail, her ability to do so does not necessarily show she has the financial ability to pay the fine because the money may have been borrowed or paid by relatives. See *Echols*, 146 Ill. App. 3d at 977; *People v. Collins*, 265 Ill. App. 3d 568, 584, 637 N.E.2d 480 (1994). We note that the Unified Code of Corrections discourages imposition of a fine where it would hurt a defendant's dependents more than the defendant herself. *Echols*, 146

Ill. App. 3d at 978. The trial court's order imposing the fine is vacated. *Collins*, 265 Ill. App. 3d at 584.

We affirm the judgment of the trial court in all respects except the imposition of the $18,000 fine. The imposition of the fine is vacated.

Affirmed in part and vacated in part.