2012 IL App (2d) 100974-U
No. 2—10—0974
Order filed January 9, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of DeKalb County.
Plaintiff-Appellee,	)	No. 09—DT—126 No. 09—TR—3852
v.	)	No. 09—TR—3853
SARAH JANE COWELL,	)	Honorable Leonard Wojtecki
Defendant-Appellant.	)	James Donnelly Robbin Stuckert Judges, Presiding

JUSTICE BIRKETT delivered the judgment of the court.
Justices Jorgensen and Hudson concurred in the judgment.

ORDER

Held: The trial court's orders denying defendant's motions to suppress evidence and quash arrest were properly denied where there was no evidence that: (1) the police entered the common area of defendant's rooming house or her apartment illegally; or (2) defendant was subject to custodial interrogation when a police officer questioned defendant in her apartment, thus requiring defendant to be given *Miranda* warnings before being questioned by the police.

¶ 1 The defendant, Sarah Jane Cowell, was charged with improper lane usage (625 ILCS 5/1—709(a) (West 2008)), leaving the scene of a property damage accident (see 625 ILCS 5/11—404 (West 2008)) and two counts of driving under the influence of alcohol (625 ILCS

5/11—501(a)(1); (a)(2) (West 2008)). Defendant filed a motion to suppress evidence and a motion to quash arrest, which were both denied. After a jury trial, defendant was found guilty of all counts. She was sentenced to 18 months conditional discharge and ordered to serve 240 hours of community service, receive an alcohol evaluation and counseling and assessed various fines and fees. On appeal, defendant argues that the trial court erred in denying her motion to suppress as well as her motion to quash arrest. For the following reasons, we affirm.

¶ 2 I. FACTS

¶ 3 The record reflects that on June 9, 2009, defendant filed a motion entitled, "Motion in Limine to Suppress" any and all "oral communications, confessions, statements, or admissions, whether inculpatory or exculpatory, made by defendant prior to, at the time of, or subsequent to her arrest on the instant charges." In the motion, defendant argued that the State could not prove the *corpus delicti* for the charged offenses in the absence of statements made by defendant on the day she was arrested.

¶ 4 On July 14, 2009, a hearing was held on defendant's motion to suppress in front of Judge Leonard Wojtecki. At the hearing, Corporal Scott Farrell, a DeKalb police officer, testified that around 2:30 a.m. on February 28, 2009, he received a call about a hit and run accident in the Eve's Garden subdivision. According to Farrell, he was told that a maroon colored vehicle driven by a white female had struck a mailbox post.

¶ 5 When he arrived at the scene, Farrell saw the main mailbox post in the middle of the road with several mailboxes attached to it. Farrell spoke to several residents and explained to them that their mailboxes had been run down. Along with the original witness who called the police department to report the hit and run, another witness called in and reported the license plate of the vehicle. Farrell then had dispatch try and locate a local address for the person who owned that

vehicle. Dispatch informed Farrell that defendant was the registered owner of the vehicle and that she lived on Locust Street in DeKalb. Around 3:30 a.m., Farrell went to that location and had other officers meet him there. When he arrived at the location, he observed defendant's vehicle and noticed that there was damage to the driver's side door. According to Farrell, the damage appeared to be "fresh."

¶ 6 When he arrived at the apartment, another tenant let Farrell and the other officers inside the building. Farrell and the other officers were then led up to defendant's apartment. As he approached defendant's apartment, Farrell saw that apartment door was open. Defendant's boyfriend was in the apartment and in bed with defendant, and he woke her up. Her boyfriend had to repeatedly shake her and call her name to get her to wake up. When asked whether he then "made contact" with defendant, Farrell replied that he did. Defendant appeared to be under the influence of alcohol. Specifically, she had slurred speech, and she seemed to be "out of it." The first thing that Farrell noticed about defendant was that she had bloodshot eyes and a fairly strong odor of alcohol on her breath. Farrell could smell defendant's breath even though she was a couple of feet away from defendant at the time.

¶ 7 Farrell then asked defendant if she had been driving the vehicle in question, and defendant told him that she drove it to drop off a friend in the Eve's Garden subdivision around 2:30 a.m. Defendant admitted that she had been distracted inside the vehicle and that she had struck a mailbox. She did not explain to Farrell why she didn't stop after she hit the mailbox post, but admitted that she just returned home after the accident.

¶ 8 Farrell asked defendant if she had anything to drink that evening, and defendant told him that she had wine before she went out to the bars. She also had a couple of drinks at the bars. Defendant said that she had not been drinking since the accident. Farrell then accompanied defendant outside

to observe the damage to her vehicle. Defendant viewed the damage, and admitted that it was recently caused during the accident.

¶ 9 On cross-examination, Farrell testified that when he arrived at defendant's apartment about 3:30 a.m. on the morning of the accident, he was at the address for 10 to 15 minutes before he had any contact with anyone at the residence. During that time, he was waiting for backup to arrive and trying to locate defendant's vehicle. After backup arrived, the police officers knocked on the door. Another tenant answered the door and let the officers in. Farell described the tenant as a woman in her twenties. Farrell said that he assumed the woman was a tenant because she let the officers into the rooming house, but she only let them into the common area.

¶ 10 Farrell explained that the residence was a rooming house with separate apartments. The woman who let the officers into the common area led them up to defendant's apartment. When they reached the apartment, Farrell spoke to defendant's boyfriend, Nathaniel Rada. He and Rada had a short conversation about who was driving the vehicle, and Rada told Farrell that defendant had dropped off a friend.

¶ 11 On redirect examination, Farrell said that when he spoke to defendant she was in her room initially, but then the officer made her move outside to her vehicle. According to Farrell, defendant was not under arrest at that time and she was free to leave. Farrell asked her to speak with him, and she did.

¶ 12 After Farrell finished testifying the defendant argued to the court why her motion to suppress should be granted. Specifically, the record reflects that she made the following argument:

¶ 13 "[DEFENSE COUNSEL]: The officer enters the home, doesn't bother to write down the information of the person who lets him into the home, which I think is fairly serious. His own testimony is that he woke her up. She was in a deep sleep. It took — at this point it

was well over 3:30 in the morning and then he begins questioning her. I would make the argument that it was inappropriate for him to enter and also question her in that state."

¶ 14 In response, the State argued that the officers were allowed into the common area by someone who appeared to lived there, and then Farrell was let into defendant's actual apartment by someone who did live there. The State contended that defendant voluntarily spoke to Farrell, she was not under arrest at that time, and the statements were voluntary.

¶ 15 The trial court denied the motion to suppress. Specifically, the court found that there was no proof whatsoever that any of defendant's statements were involuntary and defendant was not interrogated while in police custody. The court also found that defendant was free to leave at any time, and that her voluntary intoxication did not trigger a suppression of any statements defendant made to the police.

¶ 16 On October 30, 2009, defendant filed another motion to suppress. On November 17, 2009, a hearing was held on the motion in front of Judge Melissa Barnhart. At the hearing, defense counsel explained that this motion differed from the previous one ruled on in July because in the first motion, defendant argued that without her statements the State couldn't show that the offense of driving under the influence occurred. Defendant argued that the motion to suppress filed on October 30, 2009, however, focused on the fact the officers had allegedly: (1) entered defendant's residence illegally; and (2) subjected defendant to custodial interrogation when Farrell questioned her in her room without first *Mirandizing* her. Defendant claimed that it was only through Corporal Farrell's testimony at the hearing on the first motion to suppress did counsel learn of the officers' illegal behavior. Defense counsel said, "[t]he exact evidence that came to light during that initial hearing was that [the] police officers don't remember who supposedly let them in the house that night, and a police officer testified to that." In response, the State argued that the new motion to

suppress was barred by *res judicata* because defendant's earlier motion to suppress had been denied on the ground that her statements to the police were voluntary.

¶ 17 After the trial court reviewed the transcript of the earlier hearing, it held that defendant's arguments contained in the new motion to suppress were the same as those raised in the first motion. Specifically, the court noted that defendant argued in her first motion that her statements to the police were not voluntary, and that is what she was still arguing in the new motion, although she just worded it differently. In response, defense counsel argued that the issue of whether the police made a warrantless, non-consensual entry into the premises was not addressed at the first hearing on the motion to suppress because it was based upon new facts that came to light as result of the hearing. In response, the State argued that the issue of an alleged illegal entry should be addressed in a motion to quash arrest.

¶ 18 The trial court denied defendant's second motion to suppress, but allowed defendant to file a motion to reconsider the denial of the first motion to suppress with Judge Wojtecki. The court also allowed defendant to file a motion to quash arrest on the ground that the officers made a warrantless, non-consensual entry onto the premises.

¶ 19 On December 17, 2009, defendant filed a motion to reconsider the denial of her first motion to suppress. After a hearing, defendant's motion was denied. On that same day, defendant also filed a motion to quash arrest. In that motion, she claimed that her reasonable expectation of privacy in her home guaranteed by the fourth amendment was violated when officers gained entry into her home without a warrant, her consent or exigent circumstances.

¶ 20 On April 16, 2010, a hearing was held on the motion to quash arrest before Judge James Donnelly. At the hearing, the State indicated that Farrell had already testified concerning all the information that he had about the entry at the hearing on defendant's motion to suppress on July 14,

2009, in both the State's direct examination and defendant's cross-examination. Therefore, the State said that it had no further evidence to present. It then submitted the transcript of that hearing for the court's review. While reviewing the transcript, the court asked defense counsel if there was any testimony at the motion to suppress hearing that Farrell actually went into defendant's room. The following colloquy took place:

"[THE COURT]: First of all, was there any testimony that he actually went in?

[DEFENSE COUNSEL]: He actually —

[THE COURT]: Entered her room?

[DEFENSE COUNSEL]: Well, he says that he made contact with her.

[THE COURT]: Yes, I read through the transcript. As we sit here now is there any testimony that says that he did anything other than stand at the doorway?

[DEFENSE COUNSEL]: There is no testimony except for [the assistant state's attorney] in her final argument does suggest that. I know that that's not evidence."

[THE COURT]: It's not evidence, you're right, so I'm only going by — I'm not caring what anybody makes in those arguments. As we stand here today, is there any evidence that [the] officer ever entered your client's room?"

¶ 21 In response, counsel said that he could put his client on the stand and ask her. The trial court said that he was asking about what was contained in the transcript. Defense counsel then continued arguing that Farrell's testimony that he "made contact" with defendant was sufficient evidence that he entered her room. Finally, the court found that defendant had not presented any evidence about illegal entry and it was denying the motion to quash arrest. The case proceeded to trial, and the defendant was found guilty on all counts.

¶ 22 II. ANALYSIS

¶ 23 On appeal, defendant argues that the trial court erred in denying both her motion to suppress evidence and her motion to quash arrest. Specifically, she argues that both motions should have been granted because: (1) the evidence against her was only obtained after the police gained entry into her home without her consent, the consent of a person who had capacity to give consent, or exigent circumstances; and (2) her statements to the police were obtained following an unreasonable seizure of her person which constituted a custodial interrogation in the absence of *Miranda* warnings.

¶ 24 We initially note that before turning to the merits of this case, we must address the issue of defendant's consecutive motions to suppress evidence followed by a motion to quash arrest. The general rule is that collateral estoppel bars rehearing of suppression motions in the same proceeding. The only exception is where the defendant shows: (1) exceptional circumstances; or (2) any evidence *in addition to that presented in the first hearing* that was unavailable for submission in connection with the motion to suppress. *People v. Gilliam*, 172 Ill. 2d 484, 506 (1996). Here, although the issue raised in defendant's first motion to suppress was that her statements to the police should be suppressed because they were not voluntarily made, at the hearing on the motion, Farrell testified about the entry to the rooming house and his conduct in approaching and "making contact" with defendant while she was in her apartment. Further, the record reflects that defense counsel cross-examined Farrell vigorously on the issue of the woman who allowed him into the rooming house. Counsel also questioned Farrell about his conversation with Rada. Therefore, the defendant did not show that he possessed any evidence *in addition to that presented at the first hearing* to justify his second motion. At the conclusion of the hearing on the motion to suppress, defendant could have argued that the officers' entry into the rooming house and into defendant's apartment was illegal for lack of valid consent, and requested that the court treat her motion as a motion to suppress

evidence and quash arrest. However, she did not. Notwithstanding defendant's failure to raise this argument at the hearing on the motion to suppress, however, we will address both legal arguments that defendant raises on appeal because: (1) instead of objecting to the argument regarding illegal entry in defendant's second motion to suppress on collateral estoppel grounds, the assistant state's attorney instead suggested to the court that defendant should raise this issue in a motion to quash; and (2) the State does not raise this issue on appeal. Accordingly, the State has forfeited this argument on appeal, and we turn to the merits of the case.

¶ 25 In reviewing the trial court's denial of a suppression motion, the reviewing court will afford great deference to the trial court's factual findings, and will reverse those findings only if they are against the manifest weight of the evidence. However, we will review *de novo* the ultimate question of the defendant's legal challenge to the denial of his motion to suppress or quash arrest. See *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). Here, we will consider defendant's motions to suppress evidence and quash arrest *de novo* because the testimony is uncontested and the credibility of the witnesses is not questioned, thus presenting a question of law. *People v. Besser*, 273 Ill. App. 3d 164, 167 (1995).

¶ 26 A. Illegal Entry

¶ 27 Defendant first contends that her private residence was entered into without her consent, the consent of a person who had capacity to give consent, or exigent circumstances coupled with probable cause. Therefore, she claims, the entry violated the fourth amendment, and the evidence obtained from the illegal entry should not have been admitted against her. In support of her contention, defendant cites to several cases where courts have held that exigent circumstances did not exist to justify a warrantless entry onto a defendant's premises.

¶ 28 We initially note that if we find the officers were invited into the rooming house and defendant's apartment by individuals who possessed authority to consent, we need not reach the issue of whether exigent circumstances existed to allow a warantless entry. Therefore, we will first review the issue of consent.

¶ 29 The fourth amendment's prohibition against warrantless entries does not apply to situations in which voluntary consent has been obtained from the defendant or a third party who possesses common authority over the premises. *Illinois v. Rodriguez*, 497 U.S. 177, 181 (1990). The United State Supreme Court has defined "common authority" as follows:

¶ 30 "'Common authority' rests on 'mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that any of the co-inhabitants has the right to permit the inspection in his own right and that the others have assumed the risk that one of their number might permit the common area to be searched." *United States v. Matlock*, 415 U.S. 164, 171 (1974).

The burden of establishing common authority to consent rests upon the State. *Id.*

¶ 31 A warrantless search is valid even if the consenting party does not actually possess authority to consent, as long as the police officers reasonably believe under the circumstances that the third party possesses such authority. *Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990).

¶ 32 In *Rodriguez*, the defendant's girlfriend consented to the police officers' entrance into the defendant's apartment. Once inside the apartment, the officers saw drug paraphernalia and containers filled with a substance later found to be cocaine. The defendant was arrested, and he filed a motion to suppress the evidence seized from the apartment on the ground that his girlfriend lacked the actual authority to consent to the police entry of the apartment. *Illinois v. Rodriguez*, 497 U.S. 177 (1990).

¶ 33 The United States Supreme Court found that the girlfriend lacked the actual authority to allow the police to enter the defendant's premises because she did not live there at the time she allowed the police into the apartment and she had no legal interest in the premises. *Id.* at 181-82. However, the court held that the officers' entry was nevertheless valid because the officers reasonably believed that the girlfriend had the authority to allow them to enter the apartment. *Id.* at 185. In determining whether a police officer had consent to enter, the Court emphasized that a determination of whether there was consent to enter must be judged against an objective standard; that is, whether the facts available to the officer at the moment of entry would warrant a man of reasonable caution to believe that the consenting party had authority over the premises. *Id*. at 188.

¶ 34 Here, it is clear that the officers were given consent to enter the common area of the rooming house. Corporal Ferrell testified that around 3:30 a.m. on February 28, 2009, he knocked on the door of the rooming house, and was invited in by a woman in her twenties. We disagree with defendant that the fact that Farrell did not write down the woman's name is "fairly serious." Here, Farrell testified that the officers knocked on the rooming house door in the middle of the night and a woman answered the door and allowed them entry into the common area. This testimony was not contradicted at the hearing on the motion to suppress. Given these facts, we find that a man of reasonable caution would believe that the woman who answered the door had authority over the premises. At the moment of entry, the officers had a reasonable belief that the woman was a co-tenant of the rooming house. Although not necessary, that belief was corroborated moments later when the woman knew the exact location of defendant's apartment and led the officers there.

¶ 35 Next, we turn to the issue of whether defendant's boyfriend, Nathaniel Rada, had the authority to invite the officers into her apartment. We note, however, that the record is not clear whether the officers even entered the apartment at all. Farrell testified that when he reached

defendant's room her door was open, and Farrell could see her sleeping with her Rada. Although Farrell testified that he "made contact" with the defendant after Rada woke her up, Farrell did not testify that he ever actually crossed the threshold into defendant's apartment. However, for purposes of our analysis, we will assume that the officers entered defendant's apartment.

¶ 36 A careful review of the record indicates that Rada had apparent authority to invite the officers into defendant's apartment. Farrell testified that when he reached defendant's room her apartment door was open, and Farrell could see her sleeping in bed with Rada. Farrell then spoke with Rada, and Rada told Farrell that defendant had been driving the vehicle in question and that she had dropped off a friend. We find the fact that the officers were able to view Rada actually sleeping in the same bed as defendant was sufficient to lead a reasonable person to believe that Rada either lived with the defendant in the rooming house and therefore had authority to invite the police into the apartment, or that he had at least joint access or control over the premises which enabled him to consent to the officers' entry.[1] Accordingly, the trial court did not err in denying defendant's motion to quash arrest on the basis that the officers entered defendant's rooming house or apartment illegally. Since we are affirming the dismissal of defendant's motions on the ground of valid consent, we need not reach the issue of exigent circumstances.

¶ 37 B. Custodial Interrogation

[1] In defendant's reply brief, she states that the premises in question is an all-female rooming house located on the Northern Illinois University campus. However, she offers no record cite for this fact, and there is no indication in the record that Farrell or the other officers were aware of this fact. Moreover, it does not change our determination that a reasonable person could have believed that Rada lived with defendant in the rooming house, or that he at least had sufficient control over the premises to consent to the officers' entry of the apartment.

¶ 38 Next, defendant argues that her statements to the police were obtained following an unreasonable seizure of her person which constituted a custodial interrogation in the absence of *Miranda* warnings.

¶ 39 For purposes of the fourth amendment, an individual is "seized" when an officer "'by means of physical force or show of authority, has in some way restrained the liberty of a citizen.'" *People v. Gherna*, 203 Ill. 2d 165, 177-78 (2003), citing *Florida v. Bostick*, 501 U.S. 429, 434 (1991). If such a seizure occurs, the individual's privilege against compulsory self-incrimination can only be protected if he were warned of that privilege before being subjected to custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436, 479 (1966).

¶ 40 It is well settled law that a seizure does not occur simply because a law enforcement officer approaches an individual and questions that person if he or she is willing to listen. *Gherna*, 203 Ill. 2d at 178; *United States v. Drayton*, 536 U.S. 194, 200 (2002). As long as a reasonable person would feel free to disregard the police and continue about his business, the encounter is consensual and the officer does not need reasonable suspicion to speak with the individual. *Bostick*, 501 U.S. at 434. However, if, after taking into account all the circumstances surrounding the encounter, the conduct of the police would lead a reasonable, innocent person under the same circumstances to believe that he or she was not "free to decline the officers' requests or otherwise terminate the encounter" that person is seized. *Gherna*, 203 Ill. 2d at 178, quoting *Bostick*, 501 U.S. at 436. Therefore, this analysis turns on an objective evaluation of the police conduct and not upon the subjective perception of the individual approached. *Id.*

¶ 41 Our supreme court has adopted a four-factor test articulated in *United States v. Mendenhall*, 446 U.S. 544 (1980), for determining whether police activity should be characterized as a seizure. *People v. Murray*, 137 Ill. 2d 382, 288-91 (1990), *abrogated on other grounds by People v.*

Ludemann, 222 Ill. 2d 530 (2006). *Mendenhall* lists four examples of circumstances that may be indicative of a seizure, even where the person did not attempt to leave: (1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) some physical touching of the person of the citizen; and (4) the use of language or tone of voice indicating that compliance with the officer's request might be compelled. *Mendenhall*, 446 U.S. at 554. "In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person." *Id*. at 555.

¶ 42 In support of defendant's claim that her statements to the police were obtained following an unreasonable seizure of her person which constituted a custodial interrogation, defendant cites to *People v. Gherna*, 203 Ill. 2d 165 (2003); *People v. Ocampo*, 377 Ill. App. 3d 150 (2007); and *People v. Kveton*, 362 Ill. App. 3d 822 (2005).

¶ 43 In *Gherna*, two uniformed officers riding bicycles passed the defendant and her 13-year-old daughter seated in a vehicle with a bottle of beer in the center console. The officers approached the vehicle, and positioned themselves at the driver's and passenger's side door. One officer asked the defendant to hand him the beer bottle and she complied. After seeing that the beer was unopened and in its original container, the officer determined that illegal alcohol consumption had not occurred and handed the bottle back to the defendant. The officers then continued to "talk casually" with the defendant, which led to the discovery of narcotics on the defendant's person . The defendant was arrested and charged with possession of a controlled substance. *Gherna*, 203 Ill. 2d 165 (2003). The defendant filed a motion to suppress, which the trial court granted, but the appellate court reversed.

¶ 44 In reversing the appellate court's decision, our supreme court in *Gherna* found that the positioning of the officers, which prevented the defendant from exiting the vehicle or driving away,

coupled with the request for the beer bottle and other questioning would have "communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business." *Id*. at 180.

¶ 45 In *People v. Ocampo*, 377 Ill. App. 3d 150 (2007), this court held that a defendant was "seized" with the meaning of the fourth amendment when an officer pulled his car in front of the defendant behind a gas station, exited the car, showed his badge and told the defendant that he "needed to talk to him." Id. at 160-61. Finally, in *Kveton*, 362 Ill. App. 3d 822 (2005), a police officer in an unmarked car traveling around 40 miles per hour came to screeching halt in front of the defendant as he was walking home from high school. About 30 seconds later, a marked squad car also arrived on the scene. One of the officers ordered the defendant to approach the officer's car, told the defendant that he "knew what he was up to," and asked the defendant for permission to search his backpack. The defendant consent, and marijuana was found. The police then searched the defendant's home, and discovered additional stores of marijuana. *Id*. at 824-25. In reversing the trial court's denial of the defendant's motions to quash arrest and suppress evidence, this court found that the initial encounter and subsequent search was an involuntary acquiescence to the authority of the police officers because the nature of the encounter, including the accusation of wrongdoing, coupled with the urgency created by the officers' dramatic arrival, made the defendant reasonably believe that he was not free to leave. *Id*. at 836.

¶ 46 Our review of the facts in *Gherna*, *Ocampo*, and *Kveton* indicates that they are distinguishable from the facts of the instant case and do not support defendant's claim that she was seized within the meaning of the fourth amendment and therefore subject to custodial interrogation without being given *Miranda* warnings. Unlike the cases cited by defendant, there was no evidence introduced below to even hint at the fact that defendant was not free to leave when Farrell was

asking her questions. Farrell testified at the hearing on the motion to suppress that the door to defendant's apartment was open and that he spoke to defendant after Rada woke her up. Contrary to defendant's allegations in his brief, no evidence was introduced below that the door to defendant's apartment was blocked while Farrell spoke with defendant. There was also no evidence that the officers ever displayed their weapons to defendant. Further, we do not interpret Farrell's testimony that he "made contact" with defendant as evidence that she was ever touched.

¶ 47 Finally, defendant argues that Ferrell's testimony that he "made" defendant follow him outside is similar to the officer's testimony in *Ocampo* when he told defendant that he "needed to talk to him." We are not persuaded. A review of the record indicates that Farrell did not testify that he told defendant that he was "making her" go outside. Instead, on redirect examination, Farrell said that when he spoke to defendant she was in her room initially, but then he "made her" move outside to her vehicle. Farrell was never asked what words he used to either ask or demand that defendant leave her apartment and go outside to view her vehicle. Therefore, the only *Mendenhall* factor that applies in this case is the presence of more than one officer at the scene. That factor, standing alone, is wholly insufficient evidence that defendant was seized within the meaning of the fourth amendment when Farrell was questioning her. Accordingly, the trial court properly denied defendant's motion to quash arrest on the ground that she was subject to custodial interrogation without being given *Miranda* warnings.

¶ 48 III. CONCLUSION

¶ 49 For all these reasons, we find that defendant's motions to suppress evidence and to quash arrest were properly denied. The judgment of the circuit court of DeKalb County is affirmed.

¶ 50 Affirmed.