2016 IL App (2d) 150485-U
No. 2-15-0485
Order filed July 12, 2016



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>ERIC A. WORTHINGTON,<br><br>Defendant-Appellee. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Circuit Court of Winnebago County.<br><br><br><br>Nos. 14-CF-100<br>14-DT-13<br>14-TR-708<br>14-TR-709<br><br>Honorable<br>Ronald J. White,<br>Judge, Presiding. |

JUSTICE BURKE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court erred in granting defendant's motion to suppress statements he made prior to his formal arrest, as defendant was not in custody under *Miranda* until he was formally arrested.

¶ 2 On a cold and snowy night in January 2014, the car of defendant, Eric A. Worthington, ended up in a snowdrift in a field after defendant attempted a "victory lap" in the parking lot outside of his apartment complex. Following an investigation, defendant was arrested for, among other things, aggravated driving while under the influence of alcohol (DUI) (625 ILCS

5/11-501(a)(2) (West 2014)). Defendant moved to suppress statements he made during that investigation, arguing that, because he was in custody when the statements were made, he should have been warned pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). After a hearing, the trial court granted the motion, suppressing all the statements defendant made in response to questions the police asked but not a volunteered statement defendant made at the police station. The State filed a certificate of impairment and timely appealed (see Ill. S. Ct. R. 604(a)(1) (eff. Dec. 11, 2014)). For the reasons that follow, we reverse the suppression order and remand for further proceedings.

¶ 3 Evidence presented at the hearing on defendant's motion to suppress revealed that Officer Curtis Wilson was on patrol in Loves Park on January 9, 2014, at approximately 10:50 p.m. when he saw headlights coming east in the westbound lane of Rock Valley Parkway. As he continued to drive, Wilson confirmed that there were two cars facing the wrong direction on that road. In addition, there was a car stuck in a snowdrift in an open field to the side of the road. Wilson pulled over, turned on his squad car's emergency lights to identify himself and alert passing motorists, and exited his squad car.

¶ 4 At the scene, Wilson, who was in full uniform, spoke to three men. One of the men was defendant, who testified that was 30 years old and the highest ranking site manager at Quest Global Services in Rockford. Wilson testified that defendant was covered in snow from his head to his feet. Although Wilson asked for the identities of all the men, defendant was the only one who gave Wilson his name, although initially Wilson could not hear defendant's response. Wilson stepped closer and asked defendant if he was alright. Defendant made some comment, but Wilson could not hear what defendant said. Accordingly, Wilson stepped closer to defendant and asked him again if he was alright. Wilson clarified that he asked defendant this because it

was the middle of winter, "blowing tremendously bad with snow" that was piled as high as the windshield on his squad car, it was close to zero degrees outside, and defendant was covered in snow. After still being unable to hear what defendant said, Wilson moved even closer to defendant, as he wanted to determine if defendant had a medical condition that Wilson needed to address.

¶ 5 At this point, Wilson detected a strong smell of alcohol coming from defendant and saw that defendant's eyes were red and glassy. Wilson testified that he did not know if the smell was emanating from defendant's clothes or his breath. On cross-examination, however, Wilson testified that defendant's "breath was heavy with the odor of alcohol." Moreover, Wilson testified on cross-examination that, given these observations, it was "possible" that he suspected defendant of DUI.

¶ 6 Wilson then asked defendant if he wanted to sit inside of Wilson's squad car to get warm, because, as noted, the weather conditions were horrible and Wilson was concerned that defendant had a medical condition that impaired his ability to communicate clearly. Defendant agreed to sit in the back of the squad. Although, before putting defendant in the backseat, Wilson patted defendant down, he did not handcuff him. Wilson testified that defendant was not under arrest at this point. Rather, Wilson was still investigating what had happened.

¶ 7 Once defendant was seated in the back of the squad, Wilson went to speak with the other two men who were at the scene. At some point, the two men told Wilson that they were trying to help defendant get his car out of the snowdrift, and they believed that defendant was drunk.[1]

[1] The record is unclear whether the two men told Wilson this before or after defendant was seated in Wilson's squad car.

¶ 8 Wilson returned to his squad and detected a strong odor of alcohol coming from defendant. Wilson then asked defendant, " 'why, how did' [you] 'get here? What's going on?' " He also asked defendant where he lived. In response to these questions, defendant pointed to an apartment complex that was 100 feet away, advised Wilson that he lived there, and told Wilson that he was doing a "victory lap" in the parking lot of the apartment complex when his car got stuck in the snow.

¶ 9 On cross-examination, Wilson testified that at some point he asked defendant from what bar he was coming, and defendant replied that he could not remember. Moreover, Wilson testified on cross-examination that many of his questions were posed to defendant when he and defendant were standing outside of the squad. Defendant confirmed this. Regardless of whether the questions were posed to defendant while he was in or outside the squad, Wilson testified that he asked defendant to sit in the squad because "the first order of business was getting [defendant] warmer." Indeed, at one point Wilson turned around while he was seated in the front of the squad and asked defendant if he was getting warmer. Defendant said that he was.

¶ 10 In any event, because defendant was not under arrest at this point, Wilson did not give defendant any *Miranda* warnings. Wilson also testified that if defendant had wanted to leave he would have strongly suggested that defendant remain in the squad or arrange for someone to take him home.

¶ 11 At 10:52 p.m., Officer Adam Wolgast was dispatched to the scene, and he arrived there shortly thereafter. Wolgast responded to the scene based on a "call out" that Wilson initiated. As Wolgast was driving to the scene, he received a text from Wilson indicating that Wilson suspected defendant of DUI. When Wolgast arrived, Wilson and defendant were in Wilson's squad.

¶ 12 Wilson told Wolgast what he had learned. According to Wilson, this conversation occurred while he and Wolgast stood outside or while Wolgast sat in his own squad car and Wilson stood outside Wolgast's squad. According to Wolgast, the conversation occurred while both men were seated in Wilson's squad car or while Wolgast stood outside and Wilson was seated in his own squad.[2] In any event, once Wolgast arrived at the scene, he continued the investigation while Wilson filled out an impound sheet to "get [defendant's car] out of the ditch [*sic*]."

¶ 13 Before Wolgast spoke to defendant, he noticed that defendant was not handcuffed. However, Wolgast testified that defendant was not free to leave. When Wolgast opened the door to ask defendant if he would take some field sobriety tests (FSTs), he noticed the smell of alcohol coming from the backseat. Defendant, who testified that Wolgast ordered him to get out of the car, told Wolgast that he would take the tests. Wolgast asked defendant from where he was coming when the accident occurred, and defendant said that he was coming from the RBI Bar and Grill. Wolgast observed that defendant slurred his speech, had to use the squad door to gain his balance when he exited the car, and swayed slightly as he walked. Once outside of the car, and in response to questions Wolgast asked him, defendant indicated that he had consumed one or two beers and was doing a "victory lap" a block from his home when his car ended up in the snowdrift.

¶ 14 Concerning the FSTs, Wolgast testified that he patted defendant down before beginning the tests. Wolgast stated that defendant did not complete the first FST as instructed and

[2] At one point, when the court was trying to clarify where the officers were when the conversation occurred and Wolgast indicated that he did not even think they had a conversation, the court indicated that Wilson was inside of his squad while Wolgast was standing outside of it.

indicated that he "didn't believe that it was [a] good idea" to attempt that test again, take three other FSTs Wolgast offered to administer, or take a preliminary breath test (PBT).

¶ 15 At that point, Wolgast arrested defendant for DUI. Prior to that, Wolgast never gave defendant any *Miranda* warnings.

¶ 16 Defendant testified that, during the entire encounter with the police, he never felt free to leave.

¶ 17 The trial court granted the motion to suppress. The court found that, once Wilson arrived at the scene, saw defendant covered in snow, smelled alcohol coming from defendant, and heard from the two men that they believed defendant was intoxicated, Wilson could not ask any further questions without giving defendant *Miranda* warnings. However, the court concluded that defendant's refusal to take any FSTs, and presumably the PBT, would be admissible at trial.

¶ 18 At issue in this appeal is whether defendant's statements to the police should be suppressed per *Miranda*. In considering that issue, we note that, in reviewing a trial court's ruling on a motion to suppress, we apply a two-part standard of review. *People v. Timmsen*, 2016 IL 118181, ¶ 11. First, we consider the trial court's factual findings. *Id.* Although we must accord great deference to the trial court's factual findings, we will reverse those findings if they are against the manifest weight of the evidence. *Id.* Second, after examining the trial court's factual findings, we review the trial court's ultimate legal ruling. *Timmsen*, 2016 IL 118181, ¶ 11. In doing so, we are free to undertake our own assessment of the facts in relation to the issues and may draw our own conclusions when deciding what relief should be granted. *People v. Little*, 2016 IL App (3d) 130683, ¶ 15. Accordingly, the trial court's ultimate legal ruling is subject to *de novo* review. *Timmsen*, 2016 IL 118181, ¶ 11.

¶ 19 Here, the State claims that defendant's motion to suppress should not have been granted, because defendant was not detained by the police for purposes o*f Miranda* until Wolgast arrested him for DUI. Accordingly, the State argues that the statements defendant made to the officers prior to that should not have been suppressed.

¶ 20 *Miranda* addresses the rights an accused has under the fifth amendment to the United States Constitution (U.S. Const., amend. V). *Miranda*, 384 U.S. at 444. The fifth amendment provides that "[n]o person shall be compelled in any criminal case to be a witness against himself." U.S. Const., amend. V. This right applies to the states through the fourteenth amendment. *Allen v. Illinois*, 478 U.S. 364, 368 (1986).

¶ 21 In *Miranda*, the Court determined that, in order to ensure that this right against self-incrimination is protected, an accused subject to a custodial interrogation must be informed by the police before any questioning ensues that "he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Miranda*, 384 U.S. at 444. If such warnings are not given to an accused who is subject to a custodial interrogation, any statements the accused makes in response to police questioning must be suppressed. *Id.*

¶ 22 The question raised here is when, if at all, *Miranda* is implicated when the police question a defendant at the scene of a traffic incident. The United States Supreme Court addressed this issue in *Berkemer v. McCarty*, 468 U.S. 420, 422-23 (1984). The Court observed that the roadside stop and questioning of a person is more akin to the brief detention and questioning presented in *Terry v. Ohio*, 392 U.S. 1 (1968), than to an interrogation of an accused following an arrest. *Berkemer*, 468 U.S. at 439. Thus, when an officer conducts a roadside stop, an officer, who lacks probable cause yet suspects that the person stopped has committed, is

committing, or is about to commit a crime, may briefly detain the person in order to investigate the circumstances that provoked the officer's suspicions. *Id.* at 439-40. In this context, *Miranda* is implicated only when a "reasonable man in the suspect's position would have understood his situation" and believed that he was in custody. *Id.* at 440-42.

¶ 23 Resolving whether an accused who is questioned at the scene of a traffic incident is detained for purposes of *Miranda* requires us to first consider the circumstances surrounding the questioning. See *People v. Slater*, 228 Ill. 2d 137, 150 (2008). Several factors are relevant in doing so. *Id.* They are: (1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present while the accused was being questioned; (3) the presence or absence of the accused's friends or family; (4) any indicia of a formal arrest, including a show of weapons or force, physical restraint, booking, or fingerprinting; (5) how the accused arrived at the place where the questioning occurred; and (6) the accused's age, intelligence, and mental makeup. *Id.* After examining the circumstances surrounding the questioning, we then must determine whether, in light of those circumstances, a reasonable person, who is innocent of any crime, would believe that he could terminate the questioning and leave. *Id.*

¶ 24 Here, we note that the record is very unclear as to when the alleged "interrogation" occurred. For example, it is unclear which questions Wilson asked while he and defendant were standing outside, and which, if any, he asked while defendant was seated in the squad car. However, we need not decide when the "interrogation" happened, as defendant was never "in custody" before Wolgast arrested him. Specifically, defendant was not in custody for purposes of *Miranda* at any of three instances: (1) when Wilson and defendant were outside, (2) when defendant was in the squad, and (3) when Wolgast and defendant were outside.

¶ 25 First, defendant was not in custody when he and Wilson were outside. The evidence revealed that Wilson saw defendant's car in a snowdrift and the other men's cars facing the wrong direction, and he stopped to provide assistance, turning on his squad's emergency lights for safety purposes. Wilson's initial questioning of defendant, who was 30 years old and held a supervisory position at work, occurred close to 11 p.m., outside on a road close to an apartment complex, and away from Wilson's squad car. Neither the time nor the place of this questioning can be held against the State. See *People v. Vasquez*, 393 Ill. App. 3d 185, 193 (2009) (circumstances of police questioning that result from forces outside of the officers' control cannot be held against the police in deciding whether an accused was in custody). Wilson initially questioned defendant in order to determine if he needed medical attention. This certainly was reasonable in light of the horrible weather conditions and the fact that defendant was standing outside in these conditions while covered with snow. Although Wilson might have asked defendant more interrogative questions while standing outside of the squad car, under *Berkemer* such questioning did not itself mean that defendant was in custody. Wilson was the only officer present, and the men who came to defendant's aid were nearby. Defendant was not handcuffed, and Wilson never drew his gun or physically restrained defendant. In light of these facts, we conclude that a reasonable person, who was innocent of any crime, would have believed that he could terminate the encounter and leave. *Slater*, 228 Ill. 2d at 150.

¶ 26 Next, defendant was not in custody when he was in the squad car. After observing that defendant was covered in snow, Wilson asked defendant if he wanted to sit in Wilson's squad car to warm up. Defendant agreed to do so. Although Wilson patted defendant down before placing defendant in the squad, defendant was not handcuffed. Further, although the questioning might have been interrogative, it lasted for only a few minutes, and nothing in the testimony

indicated that Wilson insisted that defendant answer any of the questions posed to him. See *Vasquez*, 393 Ill. App. 3d at 193 (noting that in a noncustodial setting the voluntariness of an accused's statements is determined by focusing on whether the police acted in such a way as to overbear the accused's will to resist). In light of these facts, we conclude that a reasonable person, innocent of any crime, would have felt that he could terminate the encounter in the squad car and leave. *Slater*, 228 Ill. 2d at 150.[3]

¶ 27 Finally, defendant was not in custody for purposes of *Miranda* when he and Wolgast were outside. Within minutes after Wilson stopped, Wolgast arrived at the scene. Having learned that Wilson suspected defendant of DUI, Wolgast conducted a typical DUI traffic stop, ordering defendant to exit the squad car and having him perform FSTs. The mere fact that, at this point, defendant was the focus of a police investigation does not mean that he was in custody for *Miranda* purposes. See *Vasquez*, 393 Ill. App. 3d at 192. Further, although a traffic stop does restrain the driver, it does not constitute custody under *Miranda* unless the driver is restrained to the same extent as a formal arrest. *People v. Tayborn*, 2016 IL App (3d) 130594, ¶ 20. Here, when defendant got out of the squad, Wolgast patted him down, but he did not handcuff defendant and never insisted that defendant answer any of the questions posed to him. Indeed, when defendant told Wolgast that he did not think he should continue with a particular test, Wolgast did not press defendant any further about that test. Clearly, this was a typical DUI traffic stop that did not amount to custody under *Miranda*.

¶ 28 In determining that defendant was not in custody for purposes of *Miranda* at any point before Wolgast arrested him, we observe that there are factors that weigh in favor of finding that

[3] Although Wolgast testified that defendant was not free to leave at this point, his subjective perception is irrelevant. See *People v. Wright*, 2011 IL App (4th) 100047, ¶ 35.

defendant was in custody, such as the fact that the officers were in uniform, that they were in marked squad cars, that both officers patted defendant down, and that defendant was seated in the backseat of Wilson's squad car while Wilson and Wolgast talked. However, we do not believe that those facts, in light of all the other circumstances, warrant a conclusion that a reasonable person, innocent of any crime, would not have felt free to terminate the encounter with the police. The fact of the matter is that defendant was detained for a very brief period, he was placed in Wilson's squad car only in order to keep him safe and warm, he voluntarily agreed to be placed in the squad car, and the officers never acted in such a way as to improperly elicit answers from defendant.

¶ 29 *Wright* supports our conclusion. There, the arresting officer saw the defendant, who the officer knew had had his driving privileges revoked, driving. *Wright*, 2011 IL App (4th) 100047, ¶ 7. The officer followed the defendant, lost contact with him, and soon saw the defendant in the passenger seat of another car. *Id.* The officer followed this second car and saw the defendant exit that car and walk into a nearby house. *Id.* ¶ 8. The officer went to that house, he told the homeowner that he wanted to speak to the defendant, and, while the officer remained in the front yard, the defendant exited the house. *Id.* As the defendant was telling the officer that he had driven to a nearby grocery store, the officer smelled alcohol on the defendant's breath. *Id.* The officer asked the defendant if he had been drinking, the defendant admitted that he had, the officer told the defendant that they were going to go to the store where his car was parked, and the defendant voluntarily accompanied the officer. *Id.* ¶¶ 8-9. Prior to this, the defendant was not given any *Miranda* warnings. *Id.* ¶ 10. The defendant, who was not handcuffed, sat in the backseat of the squad with the windows rolled down. *Id.* ¶ 9. After locating the defendant's vehicle, the officer administered some FSTs, and the defendant failed these tests. *Id.* ¶ 10. At

that point, the officer arrested the defendant for DUI. *Id.* ¶15. The defendant moved to suppress the statements he made after being placed in the backseat of the squad, and the trial court denied that motion. *Id.* ¶¶ 5, 11.

¶ 30 The appellate court determined that the defendant was not in custody for *Miranda* purposes when he was placed in the backseat of the officer's squad car. *Id.* ¶ 31. In doing so, the court considered whether the defendant was detained for purposes of *Miranda* at any point between the initial stop and the arrest at the grocery store. *Id.* ¶ 38. The court found that the defendant was not, noting that the defendant voluntarily exited the house he had gone into, he admitted to the officer that he had been drinking, and these admissions, though made in response to the officer's question, were "made absent any interrogation or custody." *Id.* ¶ 39. The court then observed that the defendant voluntarily left with the officer in the officer's squad, knowing that he was being transported to his vehicle, which was parked a short distance away. *Id.*

¶ 31 Here, as in *Wright*, nothing indicates that defendant was subject to a custodial interrogation at any time prior to his arrest following his refusal to take FSTs and submit to a PBT. Rather, as in *Wright*, once the police suspected defendant of DUI, all of the police questioning was conducted pursuant to a valid *Terry* investigation. That is, as in *Wright*, the officers properly asked defendant questions based on their suspicions that defendant had committed a crime, *i.e.*, DUI. Conducting an investigation to confirm or dispel the officers' suspicions was entirely proper. *Berkemer*, 468 U.S. at 439-40.

¶ 32 Relying on *People v. Patel*, 313 Ill. App. 3d 601 (2000), defendant argues that his motion to suppress was properly granted. We disagree. In *Patel*, the defendant was a passenger in a car the police stopped for two minor traffic violations. *Id.* at 602. After the arresting officer learned that the driver's privilege to drive was suspended, the officer arrested the driver and approached

the defendant to determine if the defendant could drive the car off of the private property where the car had been stopped. *Id.* During his encounter with the defendant, the officer learned that the defendant was intoxicated and underage. *Id.* The officer asked the defendant how much he had had to drink, and the defendant replied " ' a few beers.' " *Id.* The defendant was arrested for unlawful consumption of alcohol by a minor, and he moved to suppress the statement he made to the officer about how many beers he had consumed. *Id.* 602-03. The trial court granted the motion, and the State appealed. *Id.* at 603.

¶ 33 This court determined that the motion to suppress was properly granted, because the defendant was in custody for purposes of *Miranda* when the officer asked him how much he had had to drink. *Id.* at 605. In so concluding, we observed that "*Miranda* warnings are not required where the police conduct a general on-the-scene investigation as to the facts surrounding a crime or other general questioning." *Id.* at 604. By contrast, in *Patel* the defendant, who was not the driver, was questioned about matters unrelated to the traffic stop after the driver was arrested. *Id.* at 605.

¶ 34 Here, unlike in *Patel*, defendant was questioned about matters related to the reason for Wilson's presence at the scene. That is, Wilson observed a car stuck in a snowdrift, he saw defendant standing outside covered in snow at night when the weather conditions were horrible, and Wilson asked defendant questions related to whether defendant needed medical attention. After not receiving an answer to such questions, detecting the smell of alcohol emanating from defendant, and learning that the other two men believed that defendant was intoxicated, Wilson asked defendant from where he had been coming and how his car got stuck in the snow. Such questions, unlike those posed in *Patel*, were proper, as they were part of "a general on-the-scene investigation as to the facts surrounding a crime or other general questioning." *Id.* at 604.

¶ 35 In arguing that the motion to suppress was properly granted, defendant puts great reliance on the fact that Wilson was initially acting within his community-caretaking function. That is, Wilson did not stop defendant pursuant to a routine traffic stop that later revealed that the defendant had committed DUI. In our view, this is irrelevant and misdirected. The duties that police officers fulfill are fluid, not stagnant. Thus, although an officer may begin an encounter with the public while fulfilling one role, his role may change when the circumstances of the encounter necessitate it. Here, we agree that Wilson's initial encounter with defendant encompassed a type of community-caretaking function. See *People v. Luedemann*, 222 Ill. 2d 530, 545-46 (2006). However, when Wilson's investigation revealed that defendant might have committed DUI, nothing prevented Wilson, and thereafter Wolgast, from subsequently investigating whether their reasonable suspicions were correct. Regardless of the initial basis for the stop, defendant was never subjected to custody under *Miranda* at any point prior to his arrest for DUI. Accordingly, we must reverse the trial court's order granting defendant's motion to suppress.

¶ 36 For the reasons stated, we reverse the judgment of the circuit court of Winnebago County and remand this cause for further proceedings.

¶ 37 Reversed and remanded.