2011 IL App (3d) 100230-U

Order filed December 5, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	for the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois
	)	
	)	Appeal No. 3-10-0230
v.	)	Circuit No. 08-CF-735
	)	
COURTNEY L. MAYES,	)	Honorable
	)	Richard C. Schoenstedt
Defendant-Appellant.	)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Carter concurred in the judgment.
Justice Holdridge dissented.

ORDER

¶ 1 *Held*: Police arrested defendant at a homicide scene without probable cause and continually detained him at the police station for more than 24 hours during which defendant made several statements, two of which implicated him in the offense. Because the arrest was unlawful, all subsequent statements and physical evidence derived from the unlawful arrest must be suppressed. The trial court erred in denying defendant's motions to suppress statements and evidence.

¶ 2 Defendant Courtney Mayes was charged with first degree murder. He moved to suppress statements he made during several police interrogations and to quash his arrest and suppress

evidence. The trial court denied his motions, and following a stipulated bench trial, convicted Mayes and sentenced him to a 20-year term of imprisonment. We reverse and remand.

¶ 3 **FACTS**

¶ 4 Defendant Courtney Mayes was charged with two counts of first degree murder. 720 ILCS 5/9-1(a)(2), (3) (West 2008). He was also charged with several other offenses which were later nol-prossed. Prior to trial, Mayes filed a motion to suppress statements based on federal and state constitutional violations and state statutory violations. U.S. Const., amends. V, XIV; Ill. Const. 1970, art. 1, §§ 2, 10; *Miranda v. Arizona*, 384 U.S. 436 (1966); 725 ILCS 5/103-2, 103-2.1, 103-4, 114-11(West 2008). He filed an amended motion to suppress statements alleging violation of the eavesdropping statute. 720 ILCS 5/14-2, 14-4, 14-5 (West 2008). He subsequently filed a motion to quash arrest and suppress evidence based on lack of probable cause to arrest. 725 ILCS 5/114-12 (West 2008). The following facts are adduced from the hearings on Mayes's motions.

¶ 5 Mayes was visiting the home of an acquaintance, John Rosales, on April 1, 2008, at approximately 12:30 a.m., when Rosales was shot by two men who burst in to rob him. Mayes ran out of the house, called 911, and waited in the driveway for the police to arrive. When uniformed patrol officer Kevin Fasana of the Naperville police department responded to the scene in his squad car with its lights and siren activated, he saw two males standing in the driveway. The men were Mayes and co-defendant Cherrod Moore (*People v. Moore*, No. 3-10-0231 (2011) (unpublished order under Supreme Court Rule 23)), both of whom Fasana ordered at gunpoint to lay on the ground with their arms out. Fasana was concerned for officer safety and did not know the involvement of Mayes and Moore in the shooting. He patted down the men for weapons and questioned them about the shooting. Mayes stated they had been playing video games at Rosales's

house when two men burst in with a gun, screaming about drugs and money. According to Fasana, once Mayes was handcuffed and searched for weapons, any threat to officer safety was minimized. Fasana testified that Mayes was not free to leave the scene but was cooperative. Three other officers arrived, including officers Michael Rimdzius and Matthew Wagner of the Naperville police department. Wagner handcuffed Moore and Rimdzius handcuffed Mayes. According to Wagner, after Mayes was handcuffed and patted down, any threat to officer safety was minimized within one to two minutes. At that time, "there was no probable cause to believe that [Mayes or Moore] had committed any crime," although Wagner considered them possible suspects. Mayes and Moore remained handcuffed and guarded at gunpoint on the driveway. Although Mayes did not behave in a dangerous or aggressive manner, he remained handcuffed for officer safety and as a possible suspect.

¶ 6 Still handcuffed, Mayes and Moore were placed in the back seat of separate squad cars where they remained for a period of time. Rimdzius stayed at his squad car in which Mayes was placed to "make sure Mayes was still conscious and breathing." Rimdzius transported Mayes to the Naperville police station. During the ride, Mayes vomited in the squad car. Once they arrived at the station, Rimdzius uncuffed Mayes so he could clean himself up in the bathroom. Rimdzius then re-restrained Mayes. According to Rimdzius, he would not let Mayes go anywhere in the station without watching him and Mayes was not allowed to leave. He believed Mayes was detained.

¶ 7 Mayes and Moore were taken to the station's lower level and placed in a separate interview rooms at approximately 1:30 to 2 a.m. The interview room in which Mayes was placed was approximately 6 to 7 feet wide and 15 feet long. It had two doors with locks, although the doors generally remained unlocked. Mayes was subsequently uncuffed by detective Nick Liberio, who

had called his sergeant inquiring about the handcuffs because witnesses generally were not restrained. Liberio apologized to Mayes for keeping him restrained and informed Mayes he would be taking a statement from him shortly. According to Liberio, both Mayes and Moore were told they were free to leave at any time, but they agreed to stay and help in the investigation.

¶ 8 Detectives Elena Deuchler and Don Bisch responded to the shooting call and encountered another witness, Michael Barry, who was not in handcuffs. Deuchler and Bisch transported Barry, uncuffed, to the station in a squad car. At the station, they interviewed Barry as a witness. He stated that Mayes received a phone call "moments before the shooting" occurred. Another witness, Eric Smith, was transported to the police station from the hospital. His clothes were taken as evidence and he was given a jail jumpsuit. Deuchler and Bisch interviewed Mayes at approximately 2:20 a.m. at the direction of detective James Griffith [hereinafter Interview #1]. Mayes was upset and physically distraught, and had blood on his clothes. Deuchler testified that she told Mayes he was not under arrest and could leave at any time, but that he needed to be a good witness. She asked him "if he minded staying and talking." Bisch, however, testified that he told Mayes that they needed to take a witness statement from him but did not specifically state that Mayes was free to leave. Mayes was not given *Miranda* warnings and the interview was not videotaped because he was not a suspect. The officers asked Mayes for his clothes since they were covered with blood and gave him an orange jail jumpsuit. He was also asked to consent to a search of his cell phone and to complete a written statement. The statement was completed on a form used for suspects, as opposed to a form used for witnesses such as the one Deuchler provided Barry to write his statement. Interview #1 lasted one-half hour and when it concluded, Mayes agreed to stay in case the detectives had more questions, according to the detectives.

¶ 9 After his initial interview, Mayes asked to smoke and Deuchler escorted him out a back door of the station, which needed a keycard for reentry. She stayed with him while he smoked. The detectives met and decided to interview Mayes again because there was a "question or a concern about [Mayes and Moore's] involvement in this incident." The second interview of Mayes [State's exhibit 2a (hereinafter Interview #2)] was conducted by Griffith and Bisch. It began at 4:44 a.m. and lasted about 65 minutes. Interview #2 was videotaped, although Mayes was not aware it was taped and did not consent to the recording. Bisch stated Mayes was still a witness and not a suspect. Because he was a witness and not under arrest or in custody, Mayes was not given *Miranda* warnings. Mayes asked to use the phone to arrange a ride for his brother. Bisch guarded Mayes during the call and created a report detailing the contents of Mayes's conversation. Like Bisch, Griffith testified that at the time of the second interview, Mayes was a witness and free to leave. Griffith stated that Mayes was not told what to say or how to respond and was not physically harmed, or threatened. He was provided a jacket because he was cold, as well as water and food. He had access to the bathroom. Griffith asked for consent to search Mayes's vehicle "for possible evidence linking to the case" and Mayes gave his consent. Mayes also provided written consent for the earlier search of his cell phone. Mayes thereafter remained in the interview room.

¶ 10 At 3:40 p.m. on April 1, Mayes and Moore were brought to the lobby to be released and were told they were free to leave. The officers had taken Mayes's car keys and the men waited while they were located. Both Mayes and Moore were still in jail jumpsuits. While searching for Mayes's keys, Liberio was told to secure both men. Liberio told Mayes and Moore that they had new information and asked them to step back into separate interview rooms. Sergeant Cunningham had received information from an anonymous tipster that Mayes and Moore "were involved, were

suspects in this case." The tip came from a woman who indicated that she was relaying information from an also anonymous third party who had "intimate knowledge" regarding the murder of Rosales. Neither man was free to leave at that time but Mayes and Moore were not officially arrested until nearly an hour later at 4:45 p.m.

¶ 11 Liberio and Griffith interviewed Mayes; the interview was again recorded without Mayes's knowledge or consent [State's exhibit 2b (hereinafter Interview #3)]. He was read his *Miranda* rights and waived them. He was interrogated and subsequently admitted he and his cousins, including Moore, planned to commit the robbery. Mayes had gone with Moore to the victim's house. Moore had prearranged phone calls with two other co-defendants, Reggie Martin and Tyrell Jackson, who would then enter the victim's house and rob him at gunpoint. However, Moore's phone did not work so Mayes used his cell phone for the calls. One of the guns used in the murder had been provided by co-defendant Justin Harper. Mayes was interviewed again on April 2, 2008, at 1:30 p.m. [State's exhibit 2c (hereinafter Interview #4)], made admissions, and provided a written statement. The interrogation was recorded, although the recording equipment failed. The audio portion could not be clearly heard.

¶ 12 Mayes testified in his own behalf that he did not feel free to leave the police station and that he considered himself to be in custody at the time of Interview #1. He was not told he was free to leave.

¶ 13 The evidence presented at the hearing on Mayes's motion to suppress statements was used by stipulation for the trial court's determination of Mayes's motion to quash arrest and suppress evidence. Additional evidence of detective Cunningham's report regarding the anonymous tip was also admitted. The trial court denied Mayes's motions to suppress statements and his motion to

quash arrest and suppress evidence. It also denied his motions to reconsider the denials. The trial court made the following findings of fact, in pertinent part:

> "7. At the scene, both men [Mayes and Moore] were detained and not free to leave.
>
> 8. Mayes and Moore were transported to the Naperville Police Department, a place of detention, as defined by 5/103-2.1(a).
>
> 9. Prior to the statements made in exhibit[ ] 2a ***, Mayes and Moore told officers they called the police, both men said they would stay and cooperate, both voluntarily gave their clothes and other personal property, including car keys, cellphone [*sic*], both had their handcuffs removed and both were offered food, beverage and bathroom.
>
> 10. When exhibit 2a was made, Mayes was no longer detained, was not under arrest and was free to leave."

¶ 14 The trial court found that "[b]y the facts and evidence heard, a reasonable person in the position of Mayes would not consider himself to be in custody when those statements were made." The trial court also made findings regarding the anonymous tip that resulted in the further questioning and arrest of Mayes. The trial court concluded that it could not determine the reliability of the person who informed the tipster of the information provided in the tip; that there was no evidence concerning the reliability of the tipster; that the informant used the wrong nicknames for the "set-up"men, Mayes and Moore; and that she incorrectly "guessed" at their physical description. However, the trial court concluded that the tip provided probable cause to

arrest Mayes.

¶ 15 A stipulated bench trial took place and Mayes was found guilty of first degree murder. He filed a motion for a judgment notwithstanding the verdict and for a new trial. The motion was heard and denied. The trial court sentenced Mayes to a 20-year term of imprisonment. He appealed.

¶ 16 **ANALYSIS**

¶ 17 Mayes raises three issues on appeal: whether the trial court erred when it denied his motion to quash arrest and suppress evidence; whether the trial court erred in admitting Mayes's statements that were recorded in violation of the eavesdropping statute (725 ILCS 5/103-2.1 (West 2008)); and whether the trial court erred in failing to apply the fruit of the poisonous tree doctrine to exclude statements Mayes made when interviewed in violation of the recording requirements of the homicide statute (720 ILCS 5/114-2 (West 2008)).

¶ 18 This court employs a two-part standard of review on motions to quash arrest and suppress evidence. *People v. Hopkins*, 235 Ill. 2d 453, 471 (2009) (citing *People v. Wear*, 229 Ill. 2d 545, 561 (2008)). The trial court's factual findings will not be reversed unless against the manifest weight of the evidence and the trial court's ultimate ruling on suppression is a question of law reviewed *de novo*. *Hopkins*, 235 Ill. 2d at 471.

¶ 19 We begin with the first issue. Mayes argues that the trial court erred when it denied his motion to quash arrest and suppress evidence because there was no probable cause to arrest him at the scene. Mayes challenges the trial court's finding that he was not in custody when questioned during Interviews #1 and #2, and further argues that when he was expressly arrested prior to Interview #3, there was not probable cause to do so. He submits that his fourth amendment right

to be free from unreasonable seizure was violated and he requests that all evidence, including oral and written statements and physical evidence, that was obtained subsequent to his unlawful arrest, be excluded from evidence.

¶ 20 The fourth amendment protects citizens from warrantless searches and seizures not supported by probable cause. U.S. Const., amend. IV*; People v. Jackson*, 348 Ill. App. 3d 719, 727 (2004). A defendant challenging a seizure as violative of the fourth amendment bears the burden of establishing a *prima facie* case that the police lacked probable cause to arrest. *Jackson*, 348 Ill. App. 3d at 727 (citing *People v. Culbertson*, 305 Ill. App. 3d 1015, 1023 (1999)). A person is considered detained or arrested where his freedom of movement has been restrained by police use of physical force or show of authority. *Jackson*, 348 Ill. App. 3d at 727 (quoting *People v. Perkins*, 338 Ill. App. 3d 662, 666 (2003)). In determining whether an arrest occurred, the court considers, under the totality of the circumstances, "whether a reasonable person, innocent of any crime, would have believed that he was not free to leave." *People v. Williams*, 303 Ill. App. 3d 33, 40 (1999). Factors to be considered include: (1) the time, place, length, mood and mode of the encounter between the defendant and law enforcement; (2) the number of police officers present; (3) any indicia of formal arrest or restraint, such as the use of handcuffs or weapons; (4) the officers' intentions; (5) the defendant's subjective belief or understanding; (6) whether the defendant was informed he did not have to accompany the police; (7) whether the defendant was transported in a squad car; (8) whether the defendant was told he was free to leave; (9) whether the defendant was told he was under arrest; and (10) the language used by the officers. *People v. Delaware*, 314 Ill. App. 3d 363, 370 (2000). An officer's statement that a suspect is free to leave and that is he not under arrest does not in all instances establish that the defendant is not arrested. *People v. Gorman*,

207 Ill. App. 3d 461, 475 (1991). Any control by the police over a defendant suggests he is in custody. *Gorman*, 207 Ill. App. 3d at 475.

¶ 21 Considering the applicable factors under the totality of the circumstances, we find that Mayes was arrested at the time he was brought to the police station and he was continually detained from that time on. Mayes was first detained at the murder scene where he was ordered to the ground at gunpoint, searched and handcuffed. He remained restrained and under guard of at least four officers with weapons drawn. Testimony at the motion to suppress hearing established that any threat to officer safety was minimized within one to two minutes of Mayes being handcuffed and searched. Mayes was then separated from his cousin, Moore, placed in the back of a squad car for some period of time, while still handcuffed, and transported to the police station, arriving at approximately 1:30 a.m. He was brought to the secured lower level of the station and put in an interview room. Moore was placed in another room. Mayes remained handcuffed in the interview room until Naperville police officer Nick Liberio ordered the restraints released. Liberio testified that he was assigned to interview Mayes and Moore as witnesses to the shooting. He was confused when he encountered Mayes in handcuffs, as witnesses generally are not restrained. After checking with the chief detective at the scene, Liberio had Mayes's handcuffs removed.

¶ 22 Three or four different officers were involved in interviews with Mayes at the station. The intentions of the various officers demonstrate that Mayes's liberty was restrained. For example, Deuchler stated she expressly told Mayes he was not under arrest but free to go while Bisch testified that "we didn't specifically tell him he was free to leave[;] we just said he was there to take a statement." Mayes's requests to make a call to arrange a ride for his brother and to smoke indicate that he did not have a subjective belief he was free to do as he wished. Rather, his requests

indicate that he believed his liberty was restrained. In addition, Mayes was guarded while smoking and an officer monitored his phone call and wrote a report regarding the phone conversation. Mayes was initially questioned at 2:20 a.m. for one-half hour. He was questioned again at 4:45 a.m. for over an hour. This interview was recorded without Mayes's consent.

¶ 23 The trial court determined that before making the statements in Interview #2 as evidenced by the recording [State's exhibit 2a], Mayes was no longer detained, was free to leave, and voluntarily provided his keys, cell phone and clothing to the police. The trial court further found that a reasonable person in Mayes's position would not consider himself to be in custody when those statements were made. In accord with the above discussion, we consider that the trial court's factual findings that Mayes was not in custody during his detention at the police station are against the manifest weight of the evidence.

¶ 24 We must now determine whether there was probable cause to arrest Mayes at the scene of the murder. Mayes argues that he was arrested without probable cause at the scene when his liberty was restrained. He argues in the alternative that the police also lacked probable cause at the time he was formally arrested prior to Interview #3 based on the anonymous tip.

¶ 25 Probable cause to arrest exists when the police have information which would lead a reasonable person to conclude that a crime has occurred and that the defendant committed it. *People v. Bramlett*, 341 Ill. App. 3d 638, 649 (2003); 725 ILCS 5/107-2(1) © (West 2008). "Probable cause is found 'when a reasonable and prudent person in possession of the knowledge of facts and circumstances known to the officer at the time of the arrest would believe that the suspect had committed the offense.' " *People v. Prince*, 288 Ill. App. 3d 265, 275 (1997) (citing *People v. Smith*, 222 Ill. App. 3d 473, 478 (1991)). Probable cause is required to detain a person

for custodial interrogation. *Prince*, 288 Ill. App. 3d at 273.

¶ 26 When law enforcement responded to the 911 call about the shooting, they immediately restrained Mayes and held him at gunpoint. Several officers testified that after Mayes was handcuffed and searched, any threat to officer safety was minimized. Mayes explained to the responding officers that he had placed the 911 call and had witnessed the shooting. He described that two men wearing masks burst into Rosales's house, shot the victim, and fled. At this point, the police had, at best, reasonable articulable suspicion sufficient to justify a *Terry* stop. *Terry v. Ohio*, 392 U.S. 1 (1968) (a person may lawfully be detained in a brief investigatory stop if he is suspected to be engaged in criminal activity). However, rather than investigate further, the police arrested Mayes. They lacked probable cause. Accordingly, we hold that his arrest must be quashed.

¶ 27 The trial court found that after his initial detention at the scene, Mayes was free to leave after arriving at the police station but voluntarily stayed and participated in Interviews 1 and 2. Although the trial court suppressed statements Mayes made in Interview #2 as violative of the eavesdropping statute, we consider that because Mayes remained in custody based on the unlawful arrest, the statements in Interview #2 are also barred due to lack of probable cause to arrest. Moreover, we also find that the trial court erred in determining that Mayes's subsequent statements were admissible as voluntary.

¶ 28 Evidence obtained as a result of an illegal arrest or search may be excluded as fruit of the poisonous tree. *People v. Johnson*, 237 Ill. 2d 81, 92 (2010). To determine whether the unlawful conduct implicates the exclusionary rule, the "relevant inquiry is whether the [evidence] bear[s] a sufficiently close relationship to the underlying illegality. *Johnson*, 237 Ill. 2d at 92 (quoting

People v. Lovejoy, 235 Ill. 2d 97, 130 (2009)). We find that the statements Mayes made during all the interview and the evidence derived from the interviews bear a sufficiently close relationship to his unlawful arrest that the evidence must be suppressed as fruit of the poisonous tree. *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963) (evidence obtained at exploitation of illegality must be suppressed). As discussed above, Mayes remained in custody for more than 14 hours after his initial, unlawful detention. He remained sequestered in an interview room in a secured area of the police station and was twice interviewed by teams of detectives prior to his formal arrest. Although given *Miranda* warnings prior to Interview #3, the preceding circumstances do not establish that his statements in Interview #3 were an act of free will sufficient to purge the primary taint from his unlawful arrest. *Brown v. Illinois*, 422 U.S. 590, 601 (1975); *Wong Sun*, 371 U.S. at 486.

¶ 29 Because our determination that Mayes was arrested without probable cause requires the suppression of all his statements and the physical evidence derived from his unlawful detention, we need not address the other issues he raises on appeal.

¶ 30 For the foregoing reasons, the judgment of the circuit court of Will County is reversed and the cause remanded.

¶ 31 Reversed and remanded.

§ 32 JUSTICE HOLDRIDGE, dissenting:

§ 33 I would affirm the circuit court's denial of the defendant's motions to quash his arrest and suppress evidence. I, therefore, respectfully dissent. The defendant raised three issues on appeal: (1) whether the circuit court erred when it denied his motion to quash his arrest and suppress evidence; (2) whether the circuit court erred in admitting certain statements by the defendant that were allegedly recorded by the police in violation of the eavesdropping statute (725 ILCS 5/103-2.1

(West 2008)); and (3) whether the circuit court erred in failing to apply the fruit of the poisonous tree doctrine to exclude certain statements made by the defendant allegedly in violation of the recording requirements of the homicide statute (720 ILCS 5/114-2 (West 2008)).

§ 34 When reviewing a circuit court's ruling on a motion to suppress, we grant great deference to the court's credibility determinations and findings of fact, and we will disturb those rulings only if they are against the manifest weight of the evidence. *People v. Frank-McCarron*, 403 Ill. App. 3d 383, 390 (2010). However, after granting due deference to the circuit court's factual determinations, the ultimate ruling on a motion to suppress evidence is subject to *de novo* review. *Id.*

§ 35 Here, the circuit court made several findings of fact, which the majority found to be against the manifest weight of the evidence, but which I believe were amply supported by the record. While the majority referenced four of the circuit court's factual findings, I believe that a proper understanding of the circuit court's ruling requires a complete recitation of that court's factual findings:

> " 1. On April 1, 2008, at 12:30 a.m., Officer Fasana responded to a shots fired call with a subject shot.
>
> 2. Upon arrival at the scene, he saw two male individuals standing in the driveway.
>
> 3. The officer drew his service revolver and ordered the two men to lay down with their arms out to their sides.
>
> 4. No other officer was yet present and after a quick pat down, the two men were placed in handcuffs.

5. Officers Wagner and Rimjus arrived when the two men were already on the ground. Officer Rimjus recalled handcuffing the individual identified as Courtney Mayes.

6. The other individual was identified as Cherrod Moore.

7. At the scene, both men were detained and not free to leave.

8. Mayes and Moore were transported to the Naperville Police Department, a place of detention, as defined by 5/103-2.1(a).

9. Prior to the statements made in exhibits 2a and 4a, Mayes and Moore told officers they called the police, both men said they would stay and cooperate, both voluntarily gave their clothes and other personal property, including car keys, cellphone [*sic*], both had their handcuffs removed and both were offered food, beverage and bathroom.

10. When exhibit 2a was made, Mayes was no longer detained, was not under arrest and he was free to leave.

11. When exhibit 4a was made, Moore was no longer detained, was not under arrest and he was free to leave."

§ 36 Based upon these factual findings, the circuit court determined that a reasonable person in the position of the defendant would not consider himself to be in custody when he made statements to the police contained in exhibit 2(a).[1] The court also held that, since the interview transcribed in

[1] Exhibit 2(a) was a transcript of an interview of the defendant conducted at approximately 4:45 a.m. on April 1, 2008. Exhibit 4(a) was a transcript of an interview of Cherrod Moore and is not relevant in the instant matter.

exhibit 2(a) was not a custodial interrogation within the meaning of section 5/103-2.1(a), compliance with that section was not required. However, the court also noted that the statements contained in exhibit 2(a) were inadmissible at trial unless the defense "opened the door" for their use.

§ 37 The first issue is whether the defendant's statements should have been suppressed because his right to be free from unreasonable search and seizure, guaranteed under the United States and Illinois constitutions (*Miranda v. Arizona*, 384 U.S. 436 (1966); *People v. Caballes*, 221 Ill. 2d 282, 314-16 (2006)), was violated when he was subject to an in-custody interview without probable cause for his arrest. Here, the essential question that must be answered is whether the defendant was in custody and therefore entitled to the constitutional protections against custodial interrogation. It is well settled that the warnings required by *Miranda* are unnecessary if the individual is not in custody when questioned by police. *People v. Slater*, 228 Ill. 2d 137 (2008). An individual's entitlement to constitutional protections articulated in *Miranda* is triggered when he is subjected to custodial interrogation. *People v. Carroll*, 318 Ill. App. 3d 135, 138 (2001). The determination of whether an individual was in custody is an objective one, which requires a court to look to the particular circumstances surrounding the encounter and assess whether a reasonable person in that situation would have felt free to terminate the encounter and leave. *Slater*, 228 Ill. 2d at 150. The well-accepted test is what a reasonable person, innocent of any crime, would have thought had he or she been in the defendant's shoes. *People v. Fair*, 159 Ill. 2d 51, 67 (1994). Moreover, it is irrelevant that the accused may have believed he was not free to leave, just as it is irrelevant whether the interrogating officers harbored notions that the defendant was a suspect at the time of the questioning. *Carroll*, 318 Ill. App. 3d at 139.

§ 38 Here, the record supports the circuit court's finding that a reasonable person in the defendant's position would have felt free to terminate the encounter and leave. While the record clearly established that the defendant was under arrest and in custody when he was bought to the police station, shortly after he arrived at the station, the defendant was told by Detective Liberio that the arrest at the scene was a mistake and that he was not, in fact, under arrest. Liberio ordered the arresting officers to remove the handcuffs and leave the room. Liberio explained to the defendant that the handcuffing and arrest was the result of confusion and caution by the officers on the scene. Liberio apologized to the defendant for the handcuffing and told the defendant that he was free to leave at that time. Liberio then asked the defendant if he would stay and answer some questions. Liberio testified that the defendant "agreed to stay and help us in any way [he] could."

§ 39 Given these facts, and Liberio's credible testimony, the circuit court determined that, even though the defendant was in custody when he arrived at the police station, he was released from custody by Liberio shortly after he was taken to the station. I would find that the circuit court was correct in determining that the defendant was no longer in custody at that point. When a reasonable person is told by a detective, who orders the arresting officers to remove the handcuffs and leave the room, that his arrest and transportation to the police station was a mistake, that person would surely feel, at that point, to immediately terminate the encounter and leave. When that reasonable person is further told by the detective that the arrest was a mistake and receives an apology from the detective, that person would surely feel free to terminate the encounter and leave. The circuit court's determination that the defendant was no longer in custody after Liberio had him released

from the handcuffs and that a reasonable person in his circumstances would feel free to leave was not against the manifest weight of the evidence.

§ 40 The majority notes, however, that, after he agreed to stay and answer questions, the defendant did not have a subjective belief that he was free to leave. This analysis is incorrect, as the defendant's subjective belief is irrelevant. *Carroll*, 318 Ill. App. 3d at 139. Similarly, the majority notes that Officers Bisch and Deuchler indicated their subjective belief that the defendant was in custody when one of them accompanied the defendant on a smoke break and the other surreptitiously monitored his telephone call to arrange a ride. Again, the subjective beliefs of the interrogating officers are not relevant to a determination as to whether the defendant was in custody at the time of the interrogation. *Id*.

§ 41 The circuit court was correct in its conclusion that the defendant's initial arrest and transportation to the police station was of no relevance to the issue of whether to suppress the statements made after Detective Liberio released the defendant. Thus, the majority's analysis concerning whether there was probable cause to arrest the defendant at the scene is irrelevant to the suppression issue. As the circuit court determined, whether the defendant was under arrest at the scene is not relevant to the evidentiary issues raised by the defendant since he clearly was no longer under arrest, nor in custody, at the time the allegedly inculpatory statements were given. See *People v. Miller*, 91 Ill. App. 3d 1031, 1036 (1980) (defendant arrested at crime scene and transported to the police station was no longer in custody after the police determined that no charges would be filed; thus, his continued presence at the station and his cooperation with the investigation did not render the situation a custodial one).

§ 42 I would also point out that, during the two interviews, which the circuit court determined were not custodial interrogations, the defendant made no inculpatory statements. The record showed that during each interview, the defendant told the police that the victim had been shot by unknown assailants who barged into the apartment where he and the victim were playing video games. The defendant steadfastly denied any involvement in the crime. At the end of each interview, the police thanked the defendant for his voluntary cooperation. Simply put, there was nothing in either interview which required suppression.

§ 43 Moreover, the mere fact that the defendant remained at the station for an extended period of time after Librio released him does not indicate that he was illegally detained. *People v. Davis*, 142 Ill. App. 3d 630, 636 (1986). The record indicates that the second interview ended at approximately 5:45 a.m. The record also indicates that the defendant was placed under arrest at 4:45 p.m. There is no indication from the State or the defendant, or the majority, as to what happened in the 11 hours between the end of the second interview and the defendant's arrest. We must assume that he remained at the police station during this time, but there is no discussion of the circumstances that transpired during those 11 hours. Was he placed in a locked room? The record would seem to indicate that the interview room was unlocked. Did he ask to communicate with anyone? Other than his telephone call to his brother shortly after the end of the second interview, there is no evidence that the defendant asked to contact anyone. Did he ask for, or was given, food, water or access to restroom facilities? We are given no information regarding what happened to the defendant during those 11 hours. While it might be difficult to presume that a reasonable person not guilty of a crime would remain at the police station for 11 hours, without any evidence to the contrary, we cannot simply assume that the defendant's liberty was restricted and

he was in custody during this time. Given the state of the record, I would find that the circuit court's determination that the defendant was not in custody until he was placed under arrest at 4:45 p.m. was not against the manifest weight of the evidence.

§ 44 As I would affirm the circuit court's finding that no custodial interrogation of the defendant took place, I would find that the fruit of the poisonous tree doctrine would not require reversal of the circuit court's ruling. *People v. Seehausen*, 193 Ill. App. 3d 754 (1990) (fruit of the poisonous tree rule applies only to evidence derived from an unlawful act).

§ 45 For the foregoing reasons, I would affirm the circuit court's ruling. I, therefore, respectfully dissent from the majority's determination to reverse the circuit court and remand the matter for a new trial.