

: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



DIVISION ONE  
FILED: 07/26/2012  
RUTH A. WILLINGHAM,  
CLERK  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 11-0743  
)  
Appellee, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication - Rule  
ADAM WILLIAM LOPEZ, ) 111, Rules of the Arizona  
) Supreme Court)  
Appellant. )  
)

Appeal from the Superior Court in Yavapai County

Cause No. V1300CR201080490

The Honorable Tina R. Ainley, Judge

**AFFIRMED**

Thomas C. Horne, Arizona Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel  
Criminal Appeals/Capital Litigation Section  
and Joseph T. Maziarz, Section Chief Counsel  
Criminal Appeals/Capital Litigation Section  
Attorneys for Appellee

David Goldberg Fort Collins, CO  
Attorney for Appellant

**N O R R I S**, Judge

¶1 Adam William Lopez timely appeals his conviction and suspended sentence for aggravated driving while under the influence. See Ariz. Rev. Stat. § 28-1383(A)(1) (2004). Lopez

argues the superior court should have suppressed the incriminating statements he made to the arresting officer before the officer advised him of his *Miranda*<sup>1</sup> rights. We disagree.

¶2 *Miranda* only applies when a defendant is in custody. To decide whether a defendant is in custody, a court must examine the circumstances surrounding the questioning, then determine whether, under the totality of those circumstances, a reasonable person would feel he or she was at liberty to terminate the questioning and leave. *Thompson v. Keohane*, 516 U.S. 99, 112, 116 S. Ct. 457, 465, 133 L. Ed. 2d 383 (1995) (footnote omitted). Factors relevant to this analysis include the site of the questioning, the length and form of the questioning, and the presence of objective indicia of arrest. *State v. Cruz-Mata*, 138 Ariz. 370, 373, 674 P.2d 1368, 1371 (1983).

¶3 Here, the superior court found Lopez was not in custody for purposes of *Miranda* when he confessed to the arresting officer. On the record before us, the superior court did not abuse its discretion in making this finding and, accordingly, in denying Lopez' motion to suppress. See *State v. Eastlack*, 180 Ariz. 243, 251, 883 P.2d 999, 1007 (1994) (citation omitted) (appellate court reviews denial of

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<sup>1</sup>*Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

suppression motion for abuse of discretion); see also *State v. Fornof*, 218 Ariz. 74, 76, ¶ 8, 179 P.3d 954, 956 (App. 2008) (citation omitted) (we review "only the evidence presented at the suppression hearing and view it in the light most favorable to upholding the trial court's factual findings").

¶4 First, the arresting officer questioned Lopez outside of his home, in public, and in front of his patrol car so he could videotape the encounter. The officer did not restrict Lopez' movement. Indeed, the officer left Lopez alone in front of his patrol car on two separate occasions and, on one of these occasions, Lopez' mother approached him and they engaged in conversation.

¶5 Next, the questioning lasted less than eight minutes. The officer's questions were not accusatory, but investigatory in nature. See *State v. Thompson*, 146 Ariz. 552, 556, 707 P.2d 956, 960 (App. 1985) (distinguishing investigatory from accusatory questions). Furthermore, the officer did not subject Lopez to or threaten him with any form of physical restraint or force.

¶6 Despite these circumstances, Lopez argues he was in custody because the "questioning here was a focused interrogation on the only suspect in this case." But, as the State correctly notes, in *Stansbury v. California*, 511 U.S. 318, 323-25, 114 S. Ct. 1526, 1529-30, 128 L. Ed. 2d 293 (1994), the

United States Supreme Court confirmed the "focus" factor was not relevant to determining custody under *Miranda*. See also *Berkemer v. McCarthy*, 468 U.S. 420, 421-22, 104 S. Ct. 3138, 3141, 82 L. Ed. 2d 317 (1984) ("A policeman's unarticulated plan has no bearing on the question whether a suspect was 'in custody' at a particular time; the only relevant inquiry is how a reasonable man in the suspect's position would have understood the situation."); accord *Cruz-Mata*, 138 Ariz. at 373, 674 P.2d at 1371 (rejecting focus of inquiry as indicia of custody).

¶17 For the foregoing reasons, we affirm the superior court's denial of Lopez' motion to suppress and affirm his conviction and sentence.

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/s/  
PATRICIA K. NORRIS, Judge

CONCURRING:

\_\_\_\_\_  
/s/  
MAURICE PORTLEY, Presiding Judge

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/s/  
LAWRENCE F. WINTHROP, Judge