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VAIDIK, Judge

Case Summary

Matthew Spengler appeals his convictions for the strangulation and domestic battery of his wife, Tammy Spengler. Specifically, he argues that the trial court erred in admitting two statements he made to a police officer investigating Tammy's 911 call because they were asked during a custodial interrogation in which he was not given his *Miranda* warnings. We find that the trial court properly admitted Spengler's first statement, which related to strangulation, to police because the police were simply gathering information in an investigation and a reasonable person would feel free to leave under those circumstances. However, we find that the trial court erred in admitting Spengler's second statement, which related to domestic battery, because Spengler's first statement admitted illegal activity and he was therefore in custody, requiring a *Miranda* warning. Because we cannot say that Spengler's second statement did not contribute to the verdict, we reverse Spengler's conviction for domestic battery.

Facts and Procedural History

On the afternoon of December 24, 2007, Spengler and Tammy began to argue about who should go to the store to get milk for their eleven-month-old son J.M.S. As the argument became heated, Tammy told Spengler that she and their son would just leave the house. Spengler then told her that he had both sets of keys to the only car the couple owned. Tammy called her mother and asked if she and J.M.S. could stay with her. While this conversation was taking place, Spengler was yelling at Tammy that she was not leaving the house and that the family would remain together as a family for Christmas. Tammy told her

mother she would call right back and hung up the phone.

Tammy headed to the front door to walk outside and call her mother back. As she approached the door, she turned back around to continue arguing with Spengler. When she did, Spengler rushed toward her and grabbed her cell phone. He then began yelling at her and placed his hands on her shoulders and then her throat and choked her. After several seconds, Spengler released his hold on Tammy's throat, but he took his knee and drove it into Tammy's groin. Spengler then threw Tammy into a closet door and backed away from her.

Tammy left the house immediately and walked across the street to the residence of Dale Whitson, Spengler's grandfather. Tammy told Dale that Spengler had choked her and was trying to leave with the baby. She also said she was going to call the police. Dale attempted to calm her down. He went outside and saw Spengler pulling out of his driveway with the baby. Dale stopped Spengler and convinced him to return to his house. At that time, Dale took J.M.S. from the car. Spengler pulled back into his driveway, went back into his house, and sat down on the living room couch.

While this was taking place, Tammy called the police. Lieutenant Frank Loop of the Floyd County Sheriff's Department was the first to respond and arrived within minutes of Tammy's call. Shortly thereafter, two more Sheriff's deputies arrived. Lieutenant Loop first asked Tammy, who was outside the house, what had happened. She relayed the above facts. He also noted in his report that he observed redness across Tammy's throat.

After hearing Tammy's side of the story, Lieutenant Loop entered the house to talk with Spengler. He found Spengler sitting on the couch with his head in his hands. Without

placing Spengler under arrest or giving him his *Miranda* warnings, Lieutenant Loop asked him what had happened. Spengler said that he had grabbed Tammy around the shoulders and throat. Tr. p. 118-19. When Lieutenant Loop asked Spengler if he had kneed Tammy in the groin, Spengler responded, “I don’t know why I did that.” *Id.* at 119. Lieutenant Loop then placed Spengler under arrest and transported him to the Floyd County Jail.

The State charged Spengler with Class D felony criminal confinement, Class D felony strangulation, and Class A misdemeanor domestic battery (based upon kneeing or choking Tammy). Appellant’s App. p. 9-10. The case went to jury trial in June 2009. During the State’s direct examination of Lieutenant Loop, Spengler moved to suppress the statements he made to Lieutenant Loop in the house, claiming his *Miranda* rights were violated.

The jury was excused, and the trial court held a suppression hearing in the midst of trial. Lieutenant Loop testified that while there were three armed officers and squad cars at the Spengler home, Spengler was not under arrest when he was first asked about the incident. Rather, Lieutenant Loop entered the house for the simple purpose of gathering more information, not to arrest anyone. For that reason, he did not give Spengler his *Miranda* warnings. Lieutenant Loop further testified that at no point during their brief discussion did he use a coercive tone or threatening language. Lieutenant Loop never told Spengler that he was free to leave at any time, and he did in fact testify that had Spengler tried to leave, he would have stopped him.

The trial judge found that Spengler was not under formal arrest when he was questioned and that it was not a custodial interrogation. The judge found that the officer was

gathering information, Spengler was in his own home, and the statements were freely and voluntarily given. The trial judge denied Spengler's motion to suppress.

The trial resumed with Lieutenant Loop and then Tammy testifying, each giving similar accounts. Spengler testified in his own defense, claiming that the only contact his hands made with Tammy's throat was in an effort to push her away from him as she charged him. He also claimed that he did not knee Tammy in the groin; rather, she ran into his knee when she ran at him. The jury returned a verdict of guilty as to strangulation¹ and domestic battery² but not guilty as to criminal confinement. The trial court sentenced Spengler to one and a half years with six months suspended for strangulation and one year for domestic battery. The court ordered the sentences to be served concurrently. Spengler now appeals.

Discussion and Decision

Spengler contends that the trial court erred by admitting his statements to Lieutenant Loop into evidence because they were made during a custodial interrogation in which he was not given his *Miranda* warnings. In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court held that when law enforcement officers question a person who has been "taken into custody or otherwise deprived of his freedom of action in any significant way," the person must first "be warned 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." *Luna v. State*, 788 N.E.2d 832, 833 (Ind. 2003)

¹ Ind. Code § 35-42-2-9(b).

² Ind. Code § 35-42-2-1.3(a).

(quoting *Miranda*, 384 U.S. at 444). For an interrogation to be custodial in nature, one does not necessarily have to be under arrest. *C.L.M. v. State*, 874 N.E.2d 386, 390 (Ind. Ct. App. 2007) (citing *A.A. v. State*, 706 N.E.2d 259, 261 (Ind. Ct. App. 1999)). To be custodial in the non-arrest context, the interrogation must commence after the person's freedom of action has been deprived in any significant way. *Id.*; see also *Luna*, 788 N.E.2d at 833 (“When determining whether a person was in custody or deprived of his freedom, the ultimate inquiry is simply whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.” (quotation omitted)). This is determined by examining “whether a reasonable person in similar circumstances would believe he is not free to leave.” *Luna*, 788 N.E.2d at 833.

Here, police officers responded to a call regarding domestic abuse. After speaking with Tammy, Lieutenant Loop went inside the house to speak with Spengler. It is uncontested that Spengler was neither given his *Miranda* warnings nor placed under formal arrest before speaking with Lieutenant Loop. Spengler was never told he was free to leave, and Lieutenant Loop testified that he would not have let Spengler leave. During the initial questioning Lieutenant Loop did not convey to Spengler that he was going to be placed under arrest. He was not placed in handcuffs when he was questioned nor was he placed in a police car. Rather, Spengler was sitting on the couch in his own home during the questioning. At no time before the incriminating statements were made did Lieutenant Loop convey his intent to prevent Spengler from leaving.

Spengler made two statements to Lieutenant Loop, both of which he challenges on

appeal. As for the first statement, Lieutenant Loop merely asked Spengler what had happened and Spengler replied that he had grabbed Tammy around the shoulders and throat. We find that this first statement was not made in custodial interrogation. Lieutenant Loop was simply gathering information and did not know how Spengler would answer the question. A reasonable person would feel free to leave in such a situation. Lieutenant Loop's statement that he would not have let Spengler go had he tried to leave has no bearing on whether a reasonable person would feel free to leave. An officer's knowledge and beliefs are only relevant to the question of custody if conveyed—through either words or actions—to the individual being questioned. *King v. State*, 844 N.E.2d 92, 97 (Ind. Ct. App. 2005) (citing *Loving v. State*, 647 N.E.2d 1123, 1125 (Ind. 1995)). A police officer's “unarticulated plan has no bearing on the question” of custody. *Loving*, 647 N.E.2d at 1125 (quoting *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984)). Because a reasonable person would have felt free to leave when Lieutenant Loop's questioning began, Spengler's first statement was not made during a custodial interrogation and was properly admitted.

As for the second statement, Spengler directs us to *State v. Linck*, 708 N.E.2d 60 (Ind. Ct. App. 1999), *trans. granted and later withdrawn*. Once a person has admitted to illegal activity in the presence of police, he may not feel free to leave. *Id.* at 63. In *Linck*, two officers responded to a call regarding illegal drug use. The officers smelled burning marijuana outside the defendant's apartment. The officers knocked on the door and the defendant answered and allowed them to enter. The officers told the defendant they noticed the smell of marijuana and that they were responding to a call of illegal drug activity.

Without giving the defendant his *Miranda* warnings or telling him he was free to leave, they asked the defendant “what the problem was” in reference to the drug activity and odor and the defendant responded that he had been smoking marijuana. The officers asked the defendant if there was more marijuana in the apartment and the defendant produced two separate quantities of marijuana from different rooms. The trial court in that case suppressed all of the statements and the marijuana finding the defendant was in a custodial interrogation.

On appeal, this Court held that all of the evidence discovered after the initial admission of illegal activity should be suppressed because “a reasonable person would not have felt free to leave after that admission.” *Id.* However, in a footnote, the *Linck* Court held that only after first admitting illegal activity was the defendant in custody; therefore, the initial admission of illegal activity was admissible. *Id.* at 63 n.2.

The current case is analogous to *Linck*. The officers were investigating a domestic abuse claim. Lieutenant Loop approached Spengler in his house and asked him what had happened. Spengler made two incriminating admissions without being given *Miranda* warnings. Spengler first admitted to Lieutenant Loop that he had grabbed Tammy around the throat and neck. Lieutenant Loop then asked Spengler if he had kneed Tammy, and Spengler responded, “I don’t know why I did that.” Lieutenant Loop arrested Spengler directly after that admission. Spengler’s first admission effectively turned the police investigation into custodial interrogation because after admitting to Lieutenant Loop that he had choked his wife, a reasonable person would not feel free to leave. Spengler’s initial admission that he choked his wife is admissible, but because Lieutenant Loop did not administer *Miranda*

warnings after Spengler's admission of illegal activity, the second admission that he kneed Tammy is inadmissible.

The State argues that to the extent the admission of the second statement was error, it is harmless. When determining whether an error is harmless the error must be harmless beyond a reasonable doubt. *Kelley v. State*, 825 N.E.2d 420, 428-29 (Ind. Ct. App. 2005). The State must show that the admission of evidence did not contribute to the conviction. *Id.* at 429. To say that an error did not contribute to a conviction is to conclude that the error is unimportant in relation to everything else considered by the trial court on the issue in question, as revealed in the record. *Id.*

Since Spengler's second admission should have been excluded, we restrict the harmless error analysis to that admission alone. Tammy testified at trial that Spengler grabbed her shoulders and slammed his knee into her groin. Tr. p. 244. This testimony was contradicted by Spengler at trial, who conceded that his knee made contact with Tammy's groin. *Id.* at 516, 518-19. He claims, however, that he raised his knee to fend off Tammy and that she ran into it as she rushed him to get the baby.³ *Id.* at 516. Spengler's statement to Lieutenant Loop that "I don't know why I did that" impeached his own trial testimony and, more importantly, buttressed Tammy's version of events. The State even highlighted Spengler's admission to Lieutenant Loop in its closing argument. As such, we cannot say that Spengler's admission did not contribute to the verdict. We therefore reverse Spengler's

³ We note that the State cites to evidence of Spengler choking Tammy in an attempt to uphold his domestic battery conviction under the harmless error analysis. However, this evidence was presumably used to convict Spengler of strangulation. Although the charging information for domestic battery alleges both

conviction for domestic battery.

Affirmed in part as to the conviction and sentence for strangulation, reversed in part as to the conviction for domestic battery, and remanded for vacation of the domestic battery conviction.⁴

NAJAM, J., and BROWN, J., concur.

kneeing and choking Tammy and the State argued both acts during closing argument to support the domestic battery conviction, Spengler does not raise a double jeopardy argument on appeal.

⁴ Because Spengler was given concurrent sentences of one and a half years with six months suspended for strangulation and one year for domestic battery, his overall sentence does not change.