

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH HERBERT KOEPKE,

Defendant-Appellant.

UNPUBLISHED

May 8, 1998

No. 203340

Ogemaw Circuit Court

LC No. 96-001033-FH

Before: Hoekstra, P.J., and Jansen and Gage, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession of a dangerous weapon. MCL 750.224(1); MSA 28.421(1). Defendant pleaded guilty to a second habitual offender charge, MCL 769.10; MSA 28.1082, and was sentenced to serve forty-five days in jail. He appeals as of right. We affirm.

This case arises from the routine traffic stop of defendant's vehicle because of a noisy muffler, although defendant was not charged with this offense. One of the two police officers who stopped defendant's vehicle testified that upon approaching defendant's vehicle, he smelled marijuana and asked defendant's permission to search the vehicle. Defendant consented to the search. The officer searched the vehicle while defendant and the other officer waited at the rear of the vehicle. The search, which did not reveal any marijuana, instead revealed a pair of metallic brass knuckles. Neither officer at the scene told defendant he had a right to remain silent, to consult with an attorney, and to have an attorney appointed for him if he could not afford one. When the officer asked defendant who owned the brass knuckles, defendant admitted that he owned them. The officers confiscated the brass knuckles and told defendant that they would contact him after further investigation. Defendant returned home.

Defendant argues that the trial court erred when it considered as evidence defendant's statement admitting ownership of the pair of brass knuckles because the statement was obtained in violation of his *Miranda* rights.¹ We disagree. We review this question de novo. *People v Mendez*, 225 Mich App 381, 382; 571 NW2d 528 (1997). To support his contention that he was entitled to *Miranda*

warnings, defendant relies on this Court's holding in *People v Chernowas*, 111 Mich App 1, 5-6; 314 NW2d 505 (1981). However, Michigan no longer follows the "focus" test applied in *Chernowas*. *People v Hill*, 429 Mich 382, 390-391; 415 NW2d 193 (1987). Instead, *Miranda* warnings need only be given in situations where a defendant is "in custody." *Id.*

In *Berkemer v McCarty*, 468 US 420, 436-438; 104 S Ct 3138; 82 L Ed 2d 317 (1984), the Supreme Court held that the questioning of a defendant pursuant to a routine traffic stop does not constitute a "custodial interrogation" for purposes of the *Miranda* rule, although the Court acknowledged that a traffic stop significantly curtails the "freedom of action" of the driver and any passengers of the detained vehicle. The Court stated that a person detained in an ordinary traffic stop is not under sufficient pressure to make *Miranda* warnings necessary for two reasons: first, an ordinary traffic stop is temporary and brief, allowing the detained motorist to continue on his way; and second, such a stop is not "police dominated" because it occurs in public view and is conducted by two police officers at the most. *Id.* at 468 US 437-439. The Court specifically rejected the contention that the initial stop of the defendant's vehicle, by itself, renders the defendant "in custody." *Id.* at 441. See also *People v Edwards*, 158 Mich App 561, 564; 405 NW2d 200 (1987).

Here, as in *Berkemer*, this case involves defendant's brief roadside detention in public view. Neither officer ever told defendant that he was under arrest, and defendant was permitted to leave after being questioned. Thus, at the time defendant was questioned by the officer, defendant was not in the sort of coercive atmosphere requiring *Miranda* warnings. Accordingly, the trial court properly considered defendant's statement as evidence.

Next, defendant argues that the prosecution produced insufficient evidence to support his conviction. Specifically, defendant contends that the prosecution failed to show that defendant "knowingly" possessed the brass knuckles and failed to show that defendant "knew" the brass knuckles were a weapon. See CJI2d 11.29. When reviewing a sufficiency of the evidence question following a bench trial, the appropriate inquiry is whether the trial court's findings of fact were clearly erroneous. MCR 2.613(C), *People v Lakeman*, 135 Mich App 235, 240, n1; 353 NW2d 493 (1984). Circumstantial evidence and the reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). We find no clear error in the trial court's finding that defendant's admission was sufficient to establish "knowing" possession. Accordingly, we hold that the prosecution produced sufficient evidence to support defendant's conviction.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kathleen Jansen
/s/ Hilda R. Gage

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).