

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANDY SCOTT HARDEN,

Defendant-Appellant.

UNPUBLISHED

April 2, 1999

No. 199735

Clinton Circuit Court

LC No. 96-006027 FH

Before: O'Connell, P.J., and Jansen and Collins, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted his plea-based conviction of delivery or manufacture of marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Police went to defendant's residence to investigate a home invasion. Defendant told police that he and his family had been beaten by armed assailants, but that he had managed to expel them from the home. After defendant was treated by paramedics, he was questioned about possible motives for the attack. This questioning took place at a neighbor's home. A search of the area revealed two trash bags of marijuana in a neighbor's yard. Tracks led from defendant's home to the bags. Defendant returned with the police to his home, where he acknowledged that the marijuana belonged to him, and that the assailants had been looking for money and drugs. The police requested consent to search defendant's home. Defendant signed a consent form, then left his residence to go to the hospital. Subsequently, defendant went to the police station as requested for further questioning regarding the home invasion. Defendant provided a written incriminating statement. He was arrested and charged some three months later.

Defendant moved to suppress the marijuana and the statements given at his home and the station. The trial court denied the motion, finding that defendant's consent to search was freely given, and that he was not in custody when he made the statements. Thereafter, defendant entered a plea of guilty, but reserved his right to appeal the denial of his motion to suppress. The trial court sentenced defendant to twelve to forty-eight months in prison and fined him \$2500, but stayed execution of the sentence pending appeal.

The consent exception to the search warrant requirement allows search and seizure when consent is unequivocal and specific, and freely and intelligently given. *People v Kaigler*, 368 Mich 281, 294; 118 NW2d 406 (1962). The validity of the consent depends on the totality of the circumstances. A trial court's findings of fact regarding the validity of consent are reviewed for clear error, while the decision whether the evidence should be suppressed is reviewed de novo. *People v Goforth*, 222 Mich App 306, 309-310; 564 NW2d 526 (1997).

Defendant argues that the trial court clearly erred by finding that his consent to search was valid. We disagree. Defendant's contention that his emotional and physical state prevented him from understanding the request for consent is not supported by the record. Paramedics treated defendant briefly, then allowed him to speak with police. Defendant acknowledged that when consent was requested, he understood that police wanted to search the residence for evidence. Lack of a warning of the right to refuse does not invalidate consent. *People v Malone*, 180 Mich App 347, 356; 447 NW2d 157 (1989). No coercion, actual or implied, existed in this case. Under the totality of the circumstances, defendant's consent was valid. *Goforth, supra*.

Miranda warnings are not required unless an accused is subject to custodial interrogation. *People v Hill*, 429 Mich 382, 384; 415 NW2d 193 (1987). Custodial interrogation is questioning initiated by law enforcement officers after an accused has been taken into custody or otherwise deprived of freedom of action in a significant way. *People v Mayes (After Remand)*, 202 Mich App 181, 190; 508 NW2d 161 (1993). Whether an accused was in custody depends on the totality of the circumstances. *People v Marsack*, 231 Mich App 364, 374; 568 NW2d 234 (1998). Whether a person was in custody and thus entitled to *Miranda* warnings is a mixed question of fact and law which must be answered independently by the reviewing court after a de novo review of the record. *People v Mendez*, 225 Mich App 381, 382; 571 NW2d 528 (1997).

Defendant argues that the trial court erred by holding that his statements were admissible. We disagree. With regard to custody, the critical question is whether the accused reasonably believed that he was not free to leave. *People v McElhaney*, 215 Mich App 269, 278; 545 NW2d 18 (1996). At no time during the questioning at defendant's home or at the station was defendant told that he could not leave. Defendant spoke with police at his home, then left to go to the hospital. He agreed to appear at the police station after receiving treatment. At the station, the questioning centered on the events of the home invasion rather than on his involvement with marijuana. Notwithstanding the fact that defendant made an incriminating statement at the station, he was allowed to leave. Under the totality of the circumstances, defendant could not be said to have been in custody in either instance.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kathleen Jansen
/s/ Jeffrey G. Collins