# STATE OF MICHIGAN

# COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STANLEY DOERR,

Defendant-Appellant.

UNPUBLISHED
January 25, 2002

No. 227302
Mecosta Circuit Court
LC No. 99-004282-FH

Before: Cavanagh, P.J., and Neff and B. B. MacKenzie*, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for felonious assault, MCL 750.82, and felony-firearm, MCL 750.227b. We affirm.

Defendant first contends that the trial court clearly erred when it determined that defendant was not in custody at the time he made allegedly incriminating statements to the police. Defendant argues that he reasonably believed that he was not free to leave his home while the police investigated a possible domestic disturbance. We disagree.

The issue whether a person is in custody for purposes of *Miranda*[1] warnings is a mixed question of law and fact that must be answered independently by this Court after reviewing the lower court record de novo. *People v Mendez*, 225 Mich App 381, 382; 571 NW2d 528 (1997). This Court defers to a trial court's findings of fact absent clear error. *Id.* A trial court's findings of fact are clearly erroneous if they leave this Court with a definite and firm conviction that a mistake has been made. *Id.*; *People v Williams*, 244 Mich App 533, 537; 624 NW2d 575 (2001).

The United States Constitution and Michigan Constitution guarantee a criminal defendant the right against self-incrimination. US Const, Am V; Const 1963, art 1, § 17; *Dickerson v United States*, 530 US 428; 120 S Ct 2326; 147 L Ed 2d 405 (2000); *People v Cheatham*, 453 Mich 1, 9; 551 NW2d 355 (1996). *Miranda* warnings are only required when there is a custodial interrogation. *People v Coomer*, 245 Mich App 206, 219; 627 NW2d 612 (2001), quoting *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999). "Custodial interrogation"

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

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

occurs when there is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *People v Hill*, 429 Mich 382, 387; 415 NW2d 193 (1987) (citations omitted).

To determine whether a defendant is in custody at the time of an interrogation, this Court must review the totality of circumstances to determine whether the defendant reasonably could have believed that he was not free to leave. *Coomer*, *supra*. We consider the objective circumstances of the interrogation, not the subjective views held by the questioning officers or person being questioned, when determining a custody issue. *Zahn*, *supra*, citing *Stansbury v California*, 511 US 318, 323; 114 S Ct 1526; 128 L Ed 2d 293 (1994). "An officer's obligation to give *Miranda* warnings to a person attaches only when the person is in custody, meaning that the person has been formally arrested or subjected to a restraint on freedom of movement of the degree associated with a formal arrest." *Id*. at 322.

Here, the trial court's determination that defendant was not in custody at the time he answered police questions was not clearly erroneous. An objective review of the evidence reveals that defendant was not formally arrested before the deputies questioned him, the deputies never handcuffed defendant, and they did not exercise any type of physical control over defendant that would apprise him of the fact that he was going to be arrested. Although defendant claimed that he believed that he was going to be arrested because someone usually gets arrested when the police respond to a domestic disturbance call, his subjective beliefs are not persuasive, *Coomer*, *supra* at 220; rather, an objective assessment of the totality of circumstances surrounding the statement controls the issue of custody. *Id*.

Further, defendant's freedom of movement was not restrained to a degree that could reasonably be associated with a formal arrest. See *People v Kulpinski*, 243 Mich App 8, 25; 620 NW2d 537 (2000), quoting *People v Peerenboom*, 224 Mich App 195, 197-198; 568 NW2d 153 (1997), citing *Stansbury*, *supra*. Defendant's claim that his freedom of movement was impeded when he was asked to move during questioning from his bed to a chair, about three to four feet, is without merit. An interrogation in an accused person's home is usually viewed as noncustodial. *Coomer*, *supra*, quoting *People v Mayes* (*After Remand*), 202 Mich App 181, 196; 508 NW2d 161 (1993). Further, under the circumstances presented here, it is unreasonable for a person asked to move in such a manner to believe that his freedom of movement was restrained to a degree associated with a formal arrest. See *Kulpinski*, *supra*. Therefore, the trial court did not clearly err in finding that defendant was not in custody.

Finally, defendant asserts that the trial court abused its discretion when it denied his motion for mistrial. We disagree. A trial court's decision to deny a motion for mistrial is reviewed for an abuse of discretion. *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001). An abuse of discretion exists when an unprejudiced person, considering the facts on which the trial court ruled, would conclude that there was no justification or excuse for the ruling. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant and impairs the defendant's ability to receive a fair trial. *People v Stewart* (*On Remand*), 219 Mich App 38, 43; 555 NW2d 715 (1996). Not every instance where a witness mentions an inappropriate subject matter in front of the jury warrants a mistrial. *People v Griffin*, 235 Mich App 27, 36; 597 NW2d 176 (1999).

Before trial, the prosecutor agreed not to introduce any evidence about a marijuana pipe found in defendant's home. However, one of the arresting officers testified that another officer saw the marijuana pipe. This brief, unresponsive testimony was volunteered when the prosecutor questioned the officer about whether defendant consented to a search. The prosecutor's question was not designed to elicit this testimony and the testimony was unexpected. Consequently, the testimony was not grounds for a mistrial. See *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). Further, defendant failed to demonstrate prejudice that was not dispelled by the curative instruction given by the trial court. See *Dennis*, supra at 581-582.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Janet T. Neff
/s/ Barbara B. MacKenzie