

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ROBERT HARLAN RICHARDSON,

Defendant-Appellee.

UNPUBLISHED
February 24, 2004

No. 251297
Eaton Circuit Court
LC No. 03-020202-FH

Before: Hoekstra, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

The prosecutor appeals by leave granted the order granting defendant's motion to suppress his oral and written statements made to police. We reverse and remand.

The lower court ruled that defendant's statements were inadmissible because they were the product of custodial interrogation that was not preceded by *Miranda* warnings. *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966). We disagree.

A police officer's "obligation to give *Miranda* warnings to an accused attaches only when the person is subject to custodial interrogation." *People v Ish*, 252 Mich App 115, 118; 652 NW2d 257 (2002). Whether a person is "in custody" for purposes of *Miranda* warnings presents a mixed question of fact and law that this Court answers independently after a de novo review of the record. *People v Mendez*, 225 Mich App 381, 382; 371 NW2d 528 (1997). Absent clear error, this Court will defer to the trial court's historical findings of fact. *Id.* at 382-383.

A custodial interrogation is questioning initiated by law enforcement officers after the accused has been taken into custody or deprived of his freedom in a significant way. *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999). The inquiry focuses on whether, under the totality of the circumstances, the defendant would have reasonably believed that he was free to leave. *Id.* at 382-383. The fact that an individual has become the focus of an investigation does not trigger the *Miranda* requirement absent a finding that the individual was in police custody. *Beckwith v United States*, 425 US 341; 96 S Ct 1612; 48 L Ed 2d 1 (1976); *People v Hill*, 429 Mich 382, 389-390; 415 NW2d 193 (1987).

The determination of custody depends on objective circumstances of the interrogation rather than the subjective views harbored by either the interrogating officer or person being questioned. *Zahn, supra* at 449. Thus, the trial court erred to the extent its decision was based

on the fact that the officers would have detained defendant if defendant had attempted to leave, since that fact was not communicated to defendant.

In *Zahn, supra*, this Court stated that the brevity of the interview and assurances that the suspect is not under arrest are key factors in determining whether a defendant is in custody. The interrogation here lasted fifteen to twenty minutes, and the interrogating officer repeatedly told defendant he was not under arrest. Moreover, this Court has also been “less willing to find [custody] where interrogation occurs in familiar or neutral surroundings. *People v Mayes (After Remand)*, 202 Mich App 181, 196; 508 NW2d 161 (1993) (Corrigan, P.J., concurring). And, interrogations in a suspect’s home are generally viewed as noncustodial. *People v Coomer*, 245 Mich App 206, 219; 627 NW2d 612 (2001). The interview in this case did not take place inside defendant’s home, but outside at the end of the driveway, where he could have easily returned to the house. Defendant stated that each time he got into the police cruiser he did so voluntarily. Defendant also admitted that he knew he could have gotten out of the patrol car, and there was no patrol car preventing defendant from going back into the house. The totality of the circumstances do not support a conclusion that a reasonable person would have believed he was unable to leave. Because defendant was not in custody, the trial court erred by suppressing defendant’s statements on the ground that defendant was not advised of his *Miranda* rights .

Reversed and remanded. Jurisdiction is not retained.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot