

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD LOUIS TEMPLE,

Defendant-Appellant.

UNPUBLISHED

June 10, 2004

No. 245143

Washtenaw Circuit Court

LC No. 00-001721-FC

Before: Hoekstra, P.J., and O’Connell and Donofrio, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316, for killing his former girlfriend, who was pregnant with their child.¹ He was sentenced to life imprisonment without the possibility of parole. He appeals of right. We affirm.

Defendant and the victim had a relatively short-term relationship, which began in February or March 2000. During the relationship, the victim became pregnant and the couple decided to marry. Within months of announcing their plan to marry, however, the victim cancelled the wedding. She moved out of defendant’s home in July 2000. Afterward, she repeatedly refused defendant’s requests to get back together. Defendant threatened to kill the victim on several occasions, both before and after they broke off their relationship. He stated that if he could not “have” her, no one else would and indicated that he did not want someone else raising his child.

On November 5, 2000, the day after the couple had originally planned to marry, the victim was strangled in her home. On the morning of her death, a neighbor observed the victim and defendant in a heated argument outside the victim’s home. Later in the day, defendant’s friend, Deanna Devoy, received a page from defendant, displaying a telephone number and several “911s” after it.

According to Devoy, when she returned defendant’s page, defendant told her that he had “hurt” the victim. Later, at defendant’s request, Devoy went to the victim’s residence. The

¹ On defendant’s directed verdict motion, the trial court dismissed an additional charge of assault of a pregnant individual, intentionally causing miscarriage or stillbirth. MCL 750.90a.

victim's face was blue, her eyes were closed and puffy, her chest was heaving, and she was gasping. Defendant refused to allow Devoy to call for assistance. He wanted Devoy to help him put the victim into his automobile, which he had moved from the driveway to a place near the front door. After Devoy refused to assist defendant, he threatened to kill her or blame the crime on her. Devoy hurried from the victim's house and called 911.

At trial, defendant attempted to establish that his statements to police were coerced and untrue. He insinuated that Devoy was the one who killed the victim, and alternatively, he asserted that he had diminished capacity at the time the victim was killed and could not be held criminally responsible. The jury convicted defendant of first-degree murder.

Defendant first argues that his statements to a trooper while riding to the sheriff's department were erroneously admitted into evidence. Defendant argues that he was in police custody at the time but was not advised of his *Miranda*² rights, so the trial court should have suppressed the statements. We disagree.

We review for clear error a trial court's factual findings following a suppression hearing. *People v Herndon*, 246 Mich App 371, 395; 633 NW2d 376 (2001). We review de novo, however, the trial court's conclusion that defendant was not in custody. *Id.* "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." *People v Peerenboom*, 224 Mich App 195, 197-198; 568 NW2d 153 (1997), citing *Stansbury v California*, 511 US 318, 322; 114 S Ct 1526; 128 L Ed 2d 293 (1994). When determining whether a defendant was in custody at the time statements were made, we review the totality of the circumstances. *People v Coomer*, 245 Mich App 206, 219; 627 NW2d 612 (2001). The key question is "whether the accused reasonably could have believed that [he] was not free to leave." *Id.* "The determination of custody depends on the objective circumstances of the interrogation rather than the subjective views harbored by either the interrogating officers or the person being questioned." *Id.* at 219-220.

Defendant concedes that he was not subject to formal arrest. He argues, however, that a reasonable person in his circumstances would have believed that there was a restraint on his freedom of movement to a degree associated with formal arrest. We disagree. Defendant called 911 and summoned the police to the victim's residence. He admitted that when police arrived, he wanted to speak to the trooper and tell him what happened. Defendant acted distraught over the victim's death and immediately accused Devoy. Defendant even hugged the trooper during the interview. When defendant first sat in the trooper's police car, the door was not always closed, he was not in handcuffs, and he sat in the front seat. Defendant was left alone during a portion of the time he sat in the car. According to the trooper, defendant was only considered a witness at that time, not a suspect. Defendant had been arrested on previous occasions and had always been handcuffed when placed into police cars.

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

Defendant was never told that he was under arrest or that he was required to stay in the police car. He admitted that the trooper was solicitous and that the trooper specifically asked defendant if he was willing to go to the sheriff's department. Defendant agreed. He was never ordered to go with the trooper. Defendant admitted that he never questioned the request or made any statement indicating that he did not wish to go to the sheriff's department. On the ride there, defendant remained uncuffed in the front seat and began providing inconsistent accounts of scratches on his arms and the events surrounding the victim's death.

The objective facts support the trooper's claim that defendant was only treated as a witness at that point in the investigation. Defendant's subjective view that he had no choice but to go with the police and make the statements is irrelevant to the inquiry. *Coomer, supra*. Considering the totality of the circumstances, a reasonable person treated in the same manner as defendant would not have believed that police had placed any formal restraint on his freedom of movement. Because defendant was not in custody for *Miranda* purposes, the trial court did not err in denying defendant's motion to suppress his statements.³

Defendant also argues that the trial court abused its discretion by admitting certain other-acts evidence under MRE 404(b). We disagree. The challenged evidence consists of testimony from two witnesses about defendant's conduct on July 4, 2000. According to the witnesses, defendant and the victim attended a party at the home of the victim's former boyfriend and his new girlfriend. At the party, defendant pinched the new girlfriend's buttocks. The victim's ex-boyfriend informed the victim of defendant's conduct, and defendant became enraged. He threw the victim's purse at her, hitting her in the face, and openly threatened to kill her. He also stated that, if he could not "have" the victim, no one would. He told the ex-boyfriend that he would kill the victim before the ex-boyfriend could "ever have her" again. He picked up a cinderblock and acted as if he was going to throw it at the victim, her ex-boyfriend, or another partygoer.

Defendant does not challenge the admission of testimony showing that he threw a purse at the victim, threatened to kill her, and said that if he could not have her, no one would. Rather, he challenges the testimony that he threatened others, pinched the new girlfriend, and brandished a cinderblock during the confrontation.

As our Supreme Court recognized in *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996), "it is essential that prosecutors and defendants be able to give the jury an intelligible presentation of the full context in which disputed events took place." Without the challenged background evidence, the jury could not properly put in context defendant's overreaction at the party or understand his violent behavior and threats toward the victim. The challenged evidence was not offered for the prohibited purpose of implying that defendant had bad character, so he probably strangled his ex-girlfriend. Rather, the evidence provided the factual backdrop for understanding the stimuli that led defendant to become threatening and physically abusive of the

³ Although defendant observes that he could not leave the police car once it began moving, this does not necessarily create a custodial situation. The fact that defendant felt unable to leave the moving car was not the product of a "formal restraint" on defendant's freedom by the police but rather a circumstance incidental to the act of transporting defendant – a byproduct of defendant's voluntary decision to go to the sheriff's department with the trooper.

victim on that occasion. Therefore, the trial court did not abuse its discretion when it allowed the challenged testimony. Moreover, given the strength of the unimpeachable evidence admitted against defendant, any error regarding these minor points was harmless. MRE 103.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell
/s/ Pat M. Donofrio