STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 21, 2008
v	No. 272730 Oakland Circuit Court
CHRISTOS ZOIS SCHIZAS, Defendant-Appellant.	LC No. 2006-207424-FH

Before: White, P.J., and Hoekstra and Schuette, JJ.

PER CURIAM.

Defendant was convicted of operating a vehicle under the influence of alcoholic liquor, third offense, MCL 257.625. He was sentenced as an habitual offender, second offense, MCL 769.10, to two years' probation, with ninety days to be served in the Oakland County Jail. He appeals as of right. We affirm his conviction and sentence, but remand for correction of the PSIR.

On January 27, 2006, at approximately 2:15 a.m., defendant returned home from a friend's house, where he had consumed alcoholic beverages. On his way home, a police officer observed him turn left from Flint Street onto North Lapeer Street without using a turn signal. Defendant pulled to a stop in front of his apartment building. The officer pulled in behind defendant's truck with his lights flashing, and observed defendant leave the truck. Defendant was alone. When the officer approached, he noted that defendant smelled of intoxicants and his eyes were glassy and watery. Defendant admitted to drinking alcohol before he drove home, and the officer then administered field sobriety tests, with mixed results. Defendant was arrested and subsequently submitted to a DataMaster breath test, which registered a .13, and then a .14.

Defendant first asserts that the trial court erred in denying his motion to suppress his answers to questions posed to him by a police officer, without advice of his *Miranda*[1] rights, under circumstances where he was not free to leave. We disagree. We review de novo the question whether defendant was in custody at the time he made the statements at issue. *People v Herndon*, 246 Mich App 371, 394; 633 NW2d 376 (2001). We also review a trial court's

[1] *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

ultimate decision on a motion to suppress evidence de novo. *People v Akins*, 259 Mich App 545, 563; 675 NW2d 863 (2003).

Miranda warnings must be given to an individual "at the time he is in custody or otherwise deprived of his freedom in any significant way." *People v Hill*, 429 Mich 382, 384; 415 NW2d 193 (1987). A person is in custody when he "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; 568 NW2d 153 (1997). "To determine whether a defendant was in custody at the time of the interrogation, we look at the totality of the circumstances with the key question being whether the accused reasonably could have believed that he was not free to leave." *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999). This is determined by considering the objective circumstances of the interrogation rather than the subjective views of either the officers or the person being questioned. *Id.*

Generally, a routine traffic stop does not involve taking a person into custody, and an officer usually does not have to inform a driver of his *Miranda* rights before conducting a field sobriety test. *People v Burton*, 252 Mich App 130, 139; 651 NW2d 143 (2002).

> Ordinarily, and unlike a stationhouse interrogation, the roadside questioning and detention of a driver in such a situation is brief and spontaneous. Further, the circumstances do not possess a threatening 'police dominated' atmosphere that might make the driver feel 'completely at the mercy of the police.' Accordingly, the 'compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present.'" [*Id.* at 139-140 (internal citations omitted).]

After a review of the entire record, we conclude that defendant was not in custody for purposes of *Miranda* when he was questioned by the police officer. The stop was relatively brief and spontaneous. Defendant was not handcuffed, placed in the back of the police vehicle, or physically restrained. Defendant was outside of his own home, just feet away from his door, and was not in a "police dominated" atmosphere like the police station. *Id.* There was only one police officer on the scene, who did not threaten defendant. Based on these facts, one could infer that defendant did not feel "completely at the mercy of the police." *Id.* Accordingly, we find no error in the conclusion that the compelling atmosphere inherent in the process of an in-custody interrogation was not present, and *Miranda* warnings were not necessary. *Id.* at 140.

Defendant next argues that the trial court should have granted his motion to suppress on the basis that the police officer did not have a reasonable basis to believe that defendant was engaged in criminal activity so as to justify defendant's initial detention and subsequent arrest. Defense counsel specifically agreed during the suppression hearing that, if the officer's testimony was credible, defendant's detention and subsequent arrest were proper and within the officer's authority. A defendant may not assign error on appeal to something his counsel deemed proper during trial. *People v Green*, 228 Mich App 684, 691; 580 NW2d 444 (1998). The trial court found the officer's testimony regarding the traffic stop credible, and we see no basis for overturning this determination on appeal. "Questions of credibility are left to the trier of fact and will not be resolved anew by this Court." *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). The record does not support that the trial court's credibility determination was clearly erroneous.

Finally, defendant argues on appeal that the trial court abused its discretion by failing to strike inaccurate information from the presentence investigation report (PSIR), and that he is entitled to resentencing because the trial court relied on the inaccurate information. We agree in part. We review a sentencing court's response to a defendant's claim that the PSIR is inaccurate for an abuse of discretion. *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003). "An abuse of discretion will not be found if the trial court's decision is within the principled range of outcomes." *People v Osantowski*, 274 Mich App 593, 607; 736 NW2d 289 (2007).

A defendant has the right to the use of accurate information at his sentencing; a trial court must respond to a challenge to the accuracy of the sentencing information. *People v McAllister*, 241 Mich App 466, 473; 616 NW2d 203 (2000), remanded in part on other grounds 465 Mich 884 (2001). However, the trial court has "wide latitude in responding to these challenges." *People v Newcomb*, 190 Mich App 424, 427; 476 NW2d 749 (1991), overruled on other grounds *People v Randolph*, 466 Mich 532 (2002). The court may determine the accuracy of the information, accept the defendant's version, or, as a matter of expediency, disregard the challenged information. *Id.* If the trial court "finds on the record that the challenged information is inaccurate or irrelevant, that finding shall be made a part of the record, the presentence investigation report shall be amended, and the inaccurate or irrelevant information shall be stricken accordingly before the report is transmitted to the department of corrections." MCL 771.14(6). Where inaccurate information remains in a PSIR, but the trial court did not rely on the inaccurate information to sentence the defendant, "resentencing is not required; rather the remedy is to remand for the limited purpose of correcting the PSIR." *Spanke*, 254 Mich App at 651.

At sentencing, defendant challenged the accuracy of his criminal history, and asserted that he was not actually convicted of several charges appearing on his record. The prosecution responded that these convictions appear in the law enforcement information network (LEIN), and the probation representative explained that the probation officer was able to verify one of the convictions over the telephone with the relevant police department, but attempted and was unable to make contact regarding the other two convictions. After a review of the entire record, we conclude that the trial court's reliance on the LEIN information and failure to hold an evidentiary hearing were not an abuse of discretion.

Here, defendant merely challenged his convictions at sentencing. He did not offer any evidence to substantiate his assertion that he was never convicted of these crimes, he did not request an evidentiary hearing, and he did not request more time to gather evidence to substantiate his claims. We conclude that the trial court's reliance on LEIN to verify defendant's convictions in the face of his unsubstantiated assertions of error is within the principled range of outcomes, given the wide latitude possessed by the trial court to determine the validity of such claims of error. *Spanke*, *supra*. Thus, the trial court did not abuse its discretion, and we affirm defendant's sentence.

However, two inaccuracies remain in the PSIR that should be corrected. At sentencing, the trial court ordered that the PSIR should be changed to indicate on page 1 that defendant was convicted by a jury rather than by plea; and to indicate on page 7 that defendant completed the Step Forward substance abuse program. These changes were never made. Therefore, we remand to the trial court for the limited purpose of correcting these two errors in the PSIR.

Affirmed, but remanded for correction of the PSIR. We do not retain jurisdiction.

/s/ Helene N. White
/s/ Joel P. Hoekstra
/s/ Bill Schuette