STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 20, 2012
v	No. 308760 Kent Circuit Court
RANDY JOHN ROZEMA, Defendant-Appellant.	LC No. 11-006579-FH

Before: HOEKSTRA, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of second-degree criminal sexual conduct, MCL 750.520c(1)(a) (victim under 13 years of age). The trial court sentenced defendant to 180 days' imprisonment with credit for 47 days served. Because we conclude that defendant was not in custody when he made inculpatory statements to detectives and because we conclude that defendant's statements were voluntary, we affirm.

On appeal, defendant challenges only the admission of inculpatory statements he made to the detectives as evidence during his trial. First, defendant contends that the trial court erred by denying his motion to suppress statements he made to detectives who were investigating the allegations of criminal sexual conduct against defendant because he was in custody during the interview and was, therefore, entitled to a *Miranda*[1] warning.

Whether defendant was in custody and therefore entitled to *Miranda* warnings is preserved on appeal because defendant filed a pretrial motion to suppress the challenged evidence. *People v Gentner, Inc*, 262 Mich App 363, 368-369; 686 NW2d 752 (2004).

"The ultimate question whether a person was 'in custody' for purposes of *Miranda* warnings is a mixed question of fact and law, which must be answered independently by the reviewing court after review de novo of the record." *People v Mendez*, 225 Mich App 381, 382; 571 NW2d 528 (1997) (citation omitted). "This is so because an 'in-custody' determination calls for application of the controlling legal standard to the historical facts." *People v Coomer*, 245

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

Mich App 206, 219; 627 NW2d 612 (2001). "In reviewing suppression hearing findings, this Court will defer to the trial court's findings of historical fact, absent clear error." *Mendez*, 225 Mich App at 382. "A finding is clearly erroneous if, after reviewing the entire record, an appellate court is left with a definite and firm conviction that a mistake has been made." *Coomer*, 245 Mich App at 219.

In this case, the trial court made the following findings: (1) defendant had notice of the scheduled visit, (2) the detectives wore plain clothes, (3) the detectives were invited into defendant's residence, (4) defendant was not under arrest nor was he under other restrictions, and (5) defendant had knowledge of his basic rights and is "highly intelligent." Defendant does not dispute the accuracy of these facts; rather, defendant argues that he was in custody because a reasonable person under the circumstances would not feel free to leave. Specifically, defendant argues the environment was coercive and custodial because the police questioned him in his basement and his back was against a wall, the detectives' firearms were visible, the stairway that led to the only exit was accessible only by walking past one of the detectives, and the detectives would not accept his account of the events and insisted he acted inappropriately until he told the detectives what they wanted to hear.

In this case, it is not disputed that detectives never gave defendant *Miranda* warnings. However, *Miranda* warnings are not required in every circumstance. In *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999), we held that

> *Miranda* warnings need be given only in situations involving a custodial interrogation. *People v Anderson*, 209 Mich App 527, 532; 531 NW2d 780 (1995). The term "custodial interrogation" means "'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), quoting *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). 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 Roark*, 214 Mich App 421, 423; 543 NW2d 23 (1995). 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. *Stansbury v California*, 511 US 318, 323; 114 S Ct 1526, 128 L Ed 2d 293 (1994).

Here, we find that defendant was not in custody at the time of the interview. The detectives told defendant he was not under arrest, they wore plain clothes, and while their weapons were visible, the weapons were never drawn. The entire interview took place in defendant's residence and "interrogation in a suspect's home is usually viewed as noncustodial." *Coomer*, 245 Mich App at 220, quoting *People v Mayes (After Remand)*, 202 Mich App 181, 196; 508 NW2d 161 (1993) (Corrigan, P.J., concurring). When he was questioned by the detectives, defendant was 54 years of age and held two degrees from an accredited university. Moreover, defendant testified that he was aware of his rights. Defendant's subjective belief that he was not free to leave is immaterial because "[t]he 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." *Zahn*, 234 Mich App at 449 (citation omitted); see also *Coomer*, 245 Mich App at 220. Therefore, we find that the totality of the circumstances supports the conclusion that defendant was not in custody when he made the statements to detectives, and thus, defendant was not entitled to *Miranda* warnings.

Defendant next argues that, even if he was not entitled to *Miranda* warnings, his confession was nevertheless involuntary and the trial court erred by admitting his statements to the detectives.

Defendant did not object at trial or at the motion hearing to the admission of the statements on the ground that they were coerced or involuntary; therefore, this issue is not properly preserved for appellate review. *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001) ("To preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection that it asserts on appeal."). Accordingly, we review unpreserved, constitutional errors for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 752-753, 764; 597 NW2d 130 (1999). Substantial rights are affected when the defendant is prejudiced, meaning the error affected the outcome of the trial. *Id.* at 763.

In determining whether defendant's statements were coerced or involuntary, we consider whether "the confession is the product of an essentially free and unconstrained choice by its maker, or whether the accused's will has been overborne and his capacity for self-determination critically impaired." *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988) (citation omitted). "[C]oercive police activity is a necessary predicate to a finding that a confession is not voluntary within the meaning of the Due Process Clause of the Fourteenth Amendment." *People v DeLisle*, 183 Mich App 713, 722; 455 NW2d 401 (1990). To determine whether the defendant's statement was voluntary, the trial court should consider the totality of the circumstances including:

> the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse. [*Cipriano*, 431 Mich at 334.]

We conclude that the totality of the circumstances in this case shows there was no plain error in the admission of defendant's statements. The interview was scheduled in advance, defendant allowed the detectives into his home, he was 54 years of age, had two college degrees, the interview was only 30 to 35 minutes, defendant made no allegations that he was threatened with abuse or deprivation, and there is no evidence on the record that defendant was injured, intoxicated, drugged, or in ill health. Therefore, we reject defendant's argument that his

statements were involuntary and affirm the trial court's decision to admit the statements during defendant's trial.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello
/s/ Mark T. Boonstra