

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA09-834

NORTH CAROLINA COURT OF APPEALS

Filed: 2 March 2010

STATE OF NORTH CAROLINA

v.

Guilford County
Nos. 07CRS101911; 07CRS107639;
07CRS107640; 07CRS107641;
08CRS24772

BRELAND BARCEL LEE

Appeal by Defendant from order entered 26 September 2008 by Judge Lindsay Davis, Jr., in Guilford County Superior Court. Heard in the Court of Appeals 8 December 2008.

Attorney General Roy Cooper, by Assistant Attorney General William Hart, Jr., for the State

Mills & Economos, L.L.P., by Larry Economos, for Defendant.

BEASLEY, Judge.

Defendant appeals from a trial court order denying his motion to suppress several incriminating statements he made to police officers on 24 November 2007. For the reasons stated herein, we affirm.

On 24 November 2007, police officers with the Greensboro Police Department were conducting an "illegal drug suppression surveillance" operation along Immanuel Road in Greensboro, North Carolina. Defendant, Breland Lee, was a suspected drug dealer that lived in the area. While conducting the surveillance operation, the police officers observed a black Ford Crown Victoria, matching a

description of Defendant's vehicle. Officer Atkins noticed that the vehicle had only one functioning headlight and decided to initiate a stop to investigate any possible drug activity. However, before the stop could occur, the Defendant's vehicle pulled into the driveway of a residence on Immanuel Road. Once the Defendant's vehicle came to a rest, Officer Atkins positioned his unmarked police car behind the Crown Victoria. Officer Atkins observed that the driver of the Crown Victoria was no longer in the vehicle, and that there was an individual in the vehicle's passenger seat. "[Officer] Atkins alighted from his vehicle, approached the passenger side of the Crown Victoria and knocked on the window." When the Crown Victoria's passenger rolled down the window, Officer Atkins noticed an open container of an alcoholic beverage in the backseat and the smell of burnt marijuana emanating from the vehicle. Officer Atkins asked the passenger to step out of the vehicle.

While Officer Atkins was investigating, Officers Moore and Peach arrived to help locate the Defendant. Shortly after the arrival of the assisting police officers, the Defendant emerged from the house. After several questions from Officers Moore and Peach, Defendant told the police officers that he had been driving the Ford Crown Victoria, gave his driver's license to Officer Atkins upon request, and admitted that he had been smoking marijuana. After searching the Defendant for weapons, Officer Atkins obtained consent from the Defendant to conduct a search of his vehicle. However, the search of Defendant's vehicle yielded no contraband.

Officers Moore and Peach returned to the home and knocked on the front door. Ashley Delaney answered the door and explained that she lived there. Delaney consented to a search of a couch located in her living room. Officers Moore and Peach found small amounts of loose marijuana on a small coffee table. After obtaining Delaney's consent, the officers conducted an extensive search of the remainder of the home and found approximately one pound of marijuana in the kitchen. Officer Atkins was informed of the discovery while waiting outside with Defendant. After informing Defendant that marijuana was found, Officer Atkins asked Defendant if the marijuana belonged to him and Defendant admitted that it did. Defendant was thereafter arrested and received his *Miranda* warnings.

Defendant was indicted on several drug related charges which included possession with intent to sell/deliver marijuana, manufacturing marijuana, maintaining a dwelling place to keep and sell a controlled substance and an additional count of possession with intent to sell/deliver marijuana. On 20 August 2008, Defendant filed a motion to suppress the statements that he made during the search of the residence. After a hearing on 9 September 2008, the trial court denied Defendant's motion to suppress. Preserving his right to appeal, Defendant pled guilty to the charges for which he was indicted. In his sole assignment of error, Defendant argues that the trial court erroneously failed to suppress incriminating statements that he made before receiving his *Miranda* warnings. We disagree.

Law enforcement officials are only required to provide Miranda warnings when a defendant is subjected to custodial interrogation. *State v. Gregory*, 348 N.C. 203, 207, 499 S.E.2d 753, 757 (1998) (citation omitted). "[T]he trial court's determination of whether an interrogation is conducted while a person is in custody involves reaching a conclusion of law, which is fully reviewable on appeal." *State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001) (citation omitted). "[T]he trial court's conclusions of law must be legally correct, reflecting a correct application of applicable legal principles to the facts found." *State v. Fernandez*, 346 N.C. 1, 11, 484 S.E.2d 350, 357 (1997) (citation omitted).

"'Custodial interrogation' is defined as 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." *In re W.R.*, 363 N.C. 244, 247, 675 S.E.2d 342, 344 (2009) (citations and quotations omitted). "The test for determining if a person is in custody is whether, considering all the circumstances, a reasonable person would not have thought that he was free to leave because he had been formally arrested or had . . . his freedom of movement restrained to the degree associated with a formal arrest." *Id.* at 248, 675 S.E.2d at 344. "[N]o single factor controls the determination of whether an individual is 'in custody' for purposes of *Miranda*." *State v. Garcia*, 358 N.C. 382, 397, 597 S.E.2d 724, 737 (2004).

Here, the Defendant was not "in custody" when making statements to the police and therefore *Miranda* warnings were not

required. When officers arrived at the residence, Defendant voluntarily emerged from his girlfriend's residence. After a brief conversation, Defendant admitted that he was the driver of the Crown Victoria, walked to his parked vehicle and gave his driver's licence to Officer Atkins. While speaking with Officer Atkins, Defendant admitted that he had been smoking marijuana.

Other than a brief search conducted for safety purposes, Defendant's freedom of movement was not restrained prior to his arrest. Moreover, Defendant was not informed that he was under suspicion of committing a crime until after the officers located the one pound of marijuana inside of the residence and placed him under arrest, nor was he told that he was not free to leave. Defendant argues that the officers failed to inform him that he was not under arrest. A defendant's rights regarding questioning can only be invoked when the defendant is in custody. No such right attaches when defendant is not in custody. See *id.* at 397-400, 597 S.E.2d at 737-739. However, the custody determination is based on a totality of the circumstances and the determination will not be controlled by a single factor.

Based on a totality of the circumstances, a reasonable person in Defendant's position would not have felt restrained to a degree associated with formal arrest. Accordingly, we affirm.

Affirm.

Judges WYNN and CALABRIA concur.

Report per Rule 30(e).