DIVISION ONE
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RUTH WILLINGHAM, ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee, v. DARRIS F. MIKL, Appellant.	)	1 CA-CR 10-0040 DEPARTMENT B **MEMORANDUM DECISION** (Not for Publication – Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-129389-001 DT

The Honorable Susan M. Brnovich, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General By Kent E. Cattani, Chief Counsel Criminal Appeals/Capital Litigation Section Michael J. Mitchell, Assistant Attorney General Attorneys for Appellee	Phoenix
James J. Haas, Maricopa County Public Defender By Kathryn Petroff, Deputy Public Defender Attorneys for Appellant	Phoenix

K E S S L E R, Judge

¶1 Darris F. Mikl ("Defendant") appeals his conviction for possession of marijuana and possession of marijuana paraphernalia. For the reasons that follow, we affirm

Defendant's convictions and resulting imposition of probation.

FACTUAL AND PROCEDURAL HISTORY

¶2 The State filed a complaint charging Mikl with possession of marijuana and possession of marijuana paraphernalia in May 2008. Defendant pled not guilty.

¶3 Defendant filed a motion to suppress evidence obtained during a police search of his person at the time of his arrest. Defendant argued that the search was illegal because it was conducted without a warrant. Defendant also filed a separate motion requesting suppression of statements he made to the officer which led to the search, arguing that they must be suppressed because the officer questioned Defendant without giving him *Miranda* warnings.[1] The State argued that *Miranda* warnings were not required because Defendant was merely subject to a traffic stop and not in custody.

¶4 At the suppression hearing, the State presented evidence that a Glendale police officer ("Officer") made contact with Defendant after Defendant violated a crosswalk signal. A sergeant accompanied Officer during the contact and was present throughout the encounter. Officer obtained Defendant's identification and conducted a records check on

[1] *See Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966).

a police computer. Officer learned that Defendant had prior arrests for possession of marijuana and drug paraphernalia. Without providing *Miranda* warnings to Defendant, Officer then asked Defendant whether he had anything illegal such as marijuana or drug paraphernalia.

¶5 Defendant informed Officer that he had a marijuana pipe in his left front pocket. Officer reached into Defendant's pocket and retrieved the pipe. Officer retrieved a small baggy of marijuana from the same pocket. Officer then informed Defendant he was under arrest and read him the *Miranda* warnings. Officer did not place Defendant in handcuffs at that time.

¶6 After reading Defendant the *Miranda* warnings, Officer continued to interview Defendant. During the subsequent interview, Defendant stated that he knew marijuana was illegal but regularly uses about ten dollars worth per day. Officer informed Defendant that the case would be forwarded to the County Attorney for prosecution and released him. The entire encounter lasted approximately ten minutes.

¶7 The superior court denied both of Defendant's motions. The court reasoned that initially asking whether Defendant had any contraband was reasonable because the

situation was analogous to a *Terry* stop.[2] Once Defendant admitted possessing contraband, the search of Defendant's pockets was reasonable because Officer had probable cause to conduct it.

¶8 The superior court then conducted the trial and convicted Defendant on both charges. The court suspended sentencing and imposed a term of unsupervised probation and fined Defendant $750. Defendant filed a timely notice of appeal. This Court has jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003) and 13-4032(6) (2010).

ANALYSIS

¶9 On appeal, Defendant argues 1) that the superior court erroneously determined that *Miranda* warnings were not required prior to asking Defendant whether he was carrying contraband, and 2) other evidence was improperly admitted notwithstanding that it was the fruit of the improper questioning. We review the superior court's ruling on a motion to suppress for an abuse of discretion. *State v. Sanchez*, 200 Ariz. 163, 165, ¶ 5, 24 P.3d 610, 612 (App. 2001). We view the evidence in the light most favorable to

[2] *See Terry v. Ohio*, 392 U.S. 1, 9 (1968).

sustaining the superior court's ruling. *Id.* We review the superior court's conclusions of law de novo. *Id.*

I. The Superior Court Correctly Determined That Defendant Was Not Entitled to *Miranda* Warnings.

¶10 The superior court correctly held that Officer did not have to give Defendant *Miranda* warnings before asking him a question during a routine traffic stop. *Miranda* warnings are only required prior to interrogation if the subject is in custody. 384 U.S. at 444. A person is in custody if his or her freedom of movement is circumscribed in a significant way. *Id.* The mere fact of a traffic stop does not mean that a person is in custody. *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984). Typically, questions asked during traffic stops are not custodial interrogations because 1) traffic stops are generally much shorter than interviews in a police station, and 2) traffic stops take place in public, rather than in an atmosphere that is police dominated. *Id.* at 437-40.

¶11 Officer's encounter with Defendant fits within *Berkemer's* paradigm for a typical non-custodial traffic stop. This encounter, including the brief period in which Defendant was under arrest, lasted approximately ten minutes. Further, the interrogation was on a public street and only two officers were present. This case fits

precisely within *Berkemer's* example of a typical traffic stop that does not trigger the *Miranda* requirement.

¶12 Defendant contends that *Miranda* warnings were required because Officer subjectively desired to obtain incriminating evidence when he questioned Defendant. We disagree. Defendant correctly cites *State v. Finehout* for the proposition that an officer's subjective mental state influences whether a particular statement or act by an officer is interrogation.[3] 136 Ariz. 226, 230, 665 P.2d 570, 574 (1983). In *Finehout* the court considered whether officers improperly interrogated a defendant by exhorting him to "tell the truth" after the defendant invoked his right to remain silent. *Id.* at 229-30, 665 P.2d at 573-74. However, an interrogation only triggers *Miranda* if the defendant is in custody during the interrogation. *See Berkemer*, 468 U.S. at 441-42 (holding *Miranda* warning not required because defendant was not in custody, even though officer asked defendant questions during a traffic stop in an attempt to gather incriminating evidence and after officer had subjectively decided to arrest defendant).

[3] Although the test for interrogation may be subjective, the test for whether a defendant is in custody is objective. *See State v. Carter*, 145 Ariz. 101, 105, 700 P.2d 488, 492 (1985).

¶13 Because the superior court correctly concluded that *Miranda* warnings were not required, the court correctly denied Defendant's motion to suppress evidence that he told Officer the location of his marijuana pipe.

II. The Superior Court Properly Admitted Evidence Obtained During Officer's Subsequent Search.

¶14 Defendant's only challenge to the admission of the marijuana and pipe is that Officer found it only because of questioning conducted without a *Miranda* warning. Because we find Officer's pre-arrest question did not violate *Miranda*, Defendant's argument that other evidence was the fruit of the poison tree fails.

CONCLUSION

¶15 For the foregoing reasons, we affirm Defendant's convictions and the resulting imposition of probation.

/s/
DONN KESSLER, Presiding Judge

CONCURRING:

/s/
DIANE M. JOHNSEN, Judge

/s/
SHELDON H. WEISBERG, Judge