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IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

STATE OF FLORIDA,)
)
 Appellant,)
)
 v.)
)
 JOSEPH ANTHONY VAZQUEZ,)
)
 Appellee.)
 _____)

Case No. 2D18-5028

Opinion filed May 13, 2020.

Appeal from the Circuit Court for
Hillsborough County; Laura E. Ward,
Judge.

Ashley Moody, Attorney General,
Tallahassee, and Michael Schaub,
Assistant Attorney General, Tampa; and C.
Todd Chapman, Assistant Attorney
General, Tampa (substituted as counsel of
record), for Appellant.

Howard L. Dimmig, II, Public Defender,
and Kevin Briggs, Assistant Public
Defender, Bartow, for Appellee.

BLACK, Judge.

The State seeks review of the trial court's order granting Joseph Vazquez's motion to suppress statements made to law enforcement during an interview and written statements made after the interview. The State contends that Vazquez's statements were not made during a custodial interrogation and were otherwise voluntary. We agree and reverse the order suppressing Vazquez's statements, both oral and written.

I. Background

In March 2017, Vazquez was charged with one count of sexual battery on a victim less than twelve years of age and one count of lewd or lascivious exhibition. In June 2018, Vazquez filed a motion to suppress statements he made during an interview with detectives from the Hillsborough County Sheriff's Office, as well as two written statements made thereafter and identified as an apology and a suicide note. In his motion to suppress, Vazquez initially alleged that two detectives engaged in a "non-custodial interview" with Vazquez which lasted about forty-five minutes. Vazquez then asserted that "while the totality of the circumstances leads to the conclusion that the initial portion of the interview with the defendant was not custodial, the same conclusion cannot be reached regarding the entire interview." He acknowledged his admission to masturbating in the presence of the victim. Vazquez argued that despite the detectives repeatedly informing him that he was not under arrest and was free to terminate the interview at any time, the interview was custodial at that point and yet the detectives did not give Vazquez the warnings required by Miranda v. Arizona, 384 U.S. 436 (1966). Vazquez also argued that statements he made during this interview should be suppressed because the detectives used unduly coercive techniques intended to

compel Vazquez to acquiesce to the detectives' version of events, rendering his statements involuntarily made. As to his written statements, Vazquez did not allege that they should be suppressed because of a Miranda violation; rather, he argued that those statements are not reliable.

At the hearing on the motion, the lead detective who conducted the interview testified. He stated that he and his partner arrived at Vazquez's home late in the afternoon. Vazquez's mother was home and walked the detectives into the house to meet with Vazquez. Vazquez then took the detectives to the porch where they sat with Vazquez for the interview. The lead detective believed that Vazquez was coherent and understood the questions posed to him. According to the lead detective, Vazquez was not placed in handcuffs at any point during the interview, the detectives did not otherwise restrain or place their hands on Vazquez, and they did not approach Vazquez in an intimidating manner. The lead detective testified that Vazquez denied knowing the victim and that Vazquez's responses to the detective's initial questions directed the tenor of the interview. The lead detective further testified that neither the apology nor the suicide note were written during the interview or in the presence of law enforcement and that they were not written at the request of the detectives. The audio recording of the interview was admitted into evidence.

Dr. Scot Machlus, a psychologist and expert in "the ability to waive Miranda and susceptibility to false confessions" testified for the defense. Dr. Machlus had reviewed the recorded interview with Vazquez and was familiar with the two written documents. He had also evaluated Vazquez in order to give an opinion as to Vazquez's susceptibility to giving a false confession and as to the reliability of Vazquez's

statements. Dr. Machlus testified that the detectives used leading questions, repeated the same information, and demonstrated an investigator bias in interviewing Vazquez. These techniques, according to Dr. Machlus, have been shown to increase the probability of false confessions and affect the reliability of statements. Dr. Machlus also testified that Vazquez provided information to the detectives independent of what the detectives had presented to him and that throughout the entire interview Vazquez maintained that he did not engage in sex with the victim.

On December 12, 2018, the trial court rendered its written order granting Vazquez's motion and suppressing all statements. The court detailed the evidence presented at the hearing and the facts as established in the audio recording of the interview. The court noted that it was approximately seven minutes into the forty-five-minute interview that Vazquez admitted to masturbating in the presence of the victim; that even after the admission, no Miranda warnings had been given; and that the lead detective testified that he did not give the warnings because Vazquez was still free to leave or discontinue the interview. The court related that the detectives refused to believe Vazquez's denial of sex with the victim and that "[e]ventually," although the court did not provide at what minute, Vazquez began agreeing with the detectives' factual assertions and he ultimately admitted to the sexual battery.

The trial court determined that Vazquez was interrogated and that although the interrogation began as noncustodial, it quickly became custodial and required Miranda warnings to have been given. Although the court did not provide at what point the interrogation became custodial, it specifically determined that Miranda warnings should have been administered after Vazquez admitted to the lewd or

lascivious exhibition. But it also found the interrogation as a whole to have been one that a reasonable person would not have felt free to discontinue. The court also suppressed the apology and suicide note as "fruit of the poisonous tree"—the interrogation.

The same day that the court rendered its order, the State filed a motion for clarification. The State was particularly concerned with the basis upon which the court suppressed the lewd or lascivious exhibition admission and the written statements. The court granted the motion in part, clarifying that the order suppressed all statements but providing no further details or discussion.

II. Analysis

We review a suppression order under a mixed standard: we are bound by the trial court's factual findings if they are supported by competent substantial evidence, and we review de novo the trial court's determination of legal issues. Pagan v. State, 830 So. 2d 792, 806 (Fla. 2002). Our record contains the recording of Vazquez's interview, and we "may independently review the audio recording of an interview to assess whether competent, substantial evidence supports the trial court's findings." State v. Thompson, 193 So. 3d 916, 919-20 (Fla. 2d DCA 2016) (citing Cuervo v. State, 967 So. 2d 155, 160 (Fla. 2007)); see also Almeida v. State, 737 So. 2d 520, 524 n.9 (Fla. 1999) (recognizing that insofar as a ruling is based on a video or audio recording, the trial court is in no better position to evaluate such evidence than the appellate court). Where the facts are undisputed or the trial court's factual findings are supported, whether a person was in custody such that Miranda warnings were necessary is a legal determination that we review de novo. State v. Herrera, 201 So. 3d 192, 196 (Fla. 2d

DCA 2016) (citing Thomas v. State, 894 So. 2d 126, 136 (Fla. 2004)); State v. Figueroa, 139 So. 3d 365, 368 (Fla. 5th DCA 2014).

"Interrogation occurs when a state agent asks questions or engages in actions that a reasonable person would conclude are intended to lead to an incriminating response." State v. McAdams, 193 So. 3d 824, 833 (Fla. 2016) (citing Traylor v. State, 596 So. 2d 957, 966 n.17 (Fla. 1992)). An interrogation must be custodial before Miranda warnings are necessary; the warnings apply only when the individual being questioned is both "in custody and under interrogation." Thompson, 193 So. 3d at 920 (quoting Davis v. State, 698 So. 2d 1182, 1188 (Fla. 1997)). "Absent one or the other, Miranda warnings are not required." Id. (quoting Davis, 698 So. 2d at 1188). "Failure to provide the Miranda warnings prior to custodial interrogation generally requires exclusion from trial of any post-custody statements given." McAdams, 193 So. 3d at 833 (citing Missouri v. Seibert, 542 U.S. 600, 608 (2004)).

Custody is "a heavily fact dependent" determination, involving a two-fold inquiry which requires the court to consider "(1) the 'circumstances surrounding the interrogation;' and (2) 'given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.'" Id. (quoting Ross v. State, 45 So. 3d 403, 415 (Fla. 2010)). "To evaluate how a 'reasonable person' in [the defendant's] position would have perceived the situation, we consider the four factors set forth in Ramirez[v. State], 739 So. 2d [568, 574 (Fla. 1999)]." Wilson v. State, 242 So. 3d 484, 493 (Fla. 2d DCA 2018). Those factors are:

- (1) the manner in which police summon the suspect for questioning;
- (2) the purpose, place, and manner of the interrogation;
- (3) the extent to which the suspect is confronted with evidence of his or her guilt;
- (4) whether the

suspect is informed that he or she is free to leave the place of questioning.

Id. (quoting Ramirez, 739 So. 2d at 574).

It is clear that the interview with Vazquez was an interrogation; the questions asked by the detectives were clearly intended to lead to incriminating responses. See Wilson, 242 So. 3d at 492. We therefore turn to the Ramirez factors to determine whether the interrogation was custodial, requiring Miranda warnings to have been given. In our review of the record, including the audio recording of the interrogation, we consider the factors as they apply to the three different statements suppressed by the trial court: (1) the admission to the lewd or lascivious exhibition; (2) the statements related to a sexual battery; and (3) the written documents.

(1) Lewd or lascivious exhibition

Given the concession in Vazquez's motion that the interrogation began as noncustodial and the allegation that it became custodial only after his admission to masturbating in the presence of the victim, it is unclear why the trial court ordered suppression of Vazquez's admission to the lewd or lascivious exhibition. Nonetheless, we conclude that while the trial court's factual findings as to this charge are supported, the interrogation did not begin as custodial and was not custodial at the time of Vazquez's admission to masturbating in the victim's presence.

The first Ramirez factor weighs in favor of the State. The detectives did not summon Vazquez; rather, they sought out Vazquez at his home and asked Vazquez to speak with them there. The interrogation occurred on the porch, at Vazquez's suggestion. He was not handcuffed or physically restrained.

The second Ramirez factor also weighs in favor of the State, although less decisively so. The place of the interrogation was at Vazquez's home, a fact which favors the State. See Figueroa, 139 So. 3d at 368 ("An interview with a suspect in his own home is not ordinarily regarded as a custodial interrogation."). However, it is clear that the purpose of the interview was to obtain a confession or incriminating statements from Vazquez; and the detective testified to as much at the suppression hearing. The manner of questioning quickly became confrontational and accusatory; but this was the result not of the purpose of the interview but of Vazquez's responses to the initial nonconfrontational questions, as testified to by the lead detective at the suppression hearing. The detectives' initial questions were informational and background related. Once the detectives asked about the victim, they were met with answers of "I don't remember anything" and Vazquez's claim that he did not remember the victim. After Vazquez repeatedly stated that he did not recall anyone by the victim's name and did not know who the detectives were talking about, the lead detective stated: "I'll tell you what her allegations are [I]f at any point I'm telling you this and it kinda makes you, oh, yeah, I remember, let me know." The lead detective presented details provided by the victim and repeatedly asked, "Is this beginning to jog your memory at all?"

Despite Vazquez initially and repeatedly claiming that he did not know the victim, within five minutes of the start of the interrogation Vazquez stated that he remembered that the victim was afraid of the family dog and recalled details about time he spent with the victim, including the victim sitting on Vazquez's lap. Once Vazquez admitted to remembering the victim, the following occurred:

Detective 2: Let me stop you right here. You just said a couple seconds ago you don't know [the victim]. Now you

know who [the victim] is. So don't—we just came here to talk to you. Don't just sit here and lie. Don't make us waste our trip that we just took all the way –

Vazquez: I do know who [the victim] is.

Detective 2: We know you know who [the victim] is. So just – we'll start fresh. How about that?

Vazquez: Yeah.

Detective 2: So nobody gets upset at each other and we just don't feel like getting lied to after this nice trip we took over here, okay? We just came to talk. When we're done talking we're gonna leave.

Vazquez: Okay.

Detective 2: So tell [the lead] detective how it went down.

At that point, Vazquez provided details not presented by the detectives.

And at around the seven-minute mark of the recording, the detective stated: "Did you have sex with her or did you rape her? Because that's where we're at." Vazquez then admitted to "[t]he whole masturbation thing."

Thus, although the manner of the questioning was confrontational and at times accusatory, the tone and presentation of accusations was necessitated by Vazquez's initial decision to deny knowing the victim. Given the location and the reason behind the tone of the questioning, the second Ramirez factor weighs in the State's favor.

As to the third Ramirez factor,

[a] reasonable person understands that the police ordinarily will not set free a suspect when there is evidence "strongly suggesting" that the person is guilty of a serious crime. That does not mean that whenever a suspect is confronted with some incriminating evidence, the suspect is in custody for purposes of Miranda.

State v. Pitts, 936 So. 2d 1111, 1128 (Fla. 2d DCA 2006). Vazquez was presented with evidence of his guilt through the detectives telling him what the victim had alleged in her statement. He was not presented with other evidence of his guilt prior to his admission to masturbating in the victim's presence; there was no mention of other evidence like test results, DNA, or witnesses. Cf. McAdams, 193 So. 3d at 843 (concluding that "the degree to which McAdams was confronted with tangible evidence that strongly suggested his guilt, [human blood and DNA evidence,] rather than uncorroborated accusations and mere suspicion" supported the "conclusion that McAdams was subjected to custodial interrogation"); Wilson, 242 So. 3d at 494 (concluding that the third Ramirez factor weighed against the State and in support of a conclusion of custody where "the officers repeatedly informed [the defendant] that they had physical evidence against him, including DNA and fingerprints, and . . . they had GPS data and cell phone calls confirming his involvement"). The evidence with which Vazquez was confronted—the allegations of the victim—did not so strongly suggest his guilt that this factor weighs against the State; "although the defendant was confronted with the allegations of his sexual abuse, the defendant was not confronted with evidence so indicative of guilt that a suspect in the defendant's position would feel that he was going to be arrested." See Figueroa, 139 So. 3d at 368. "Confronting a suspect with only some evidence of guilt" or "with evidence strongly inferring [a defendant's] guilt" does not render an interrogation custodial. Id. at 368-69 (alteration in original).

The fourth and final Ramirez factor, whether Vazquez was informed that he was free to leave or to end the interrogation, also weighs in the State's favor. It is clear in the audio recording of the interrogation that Vazquez was expressly advised

that he could terminate the interview at any point. The detectives also advised Vazquez that they "just came to talk" and that when they were "done talking [they were] gonna leave." Arrest was not mentioned. And, in fact, the detectives left after the interrogation, and Vazquez was not arrested that day. See Wilson, 242 So. 3d at 495; Thompson, 193 So. 3d at 923-24.

Under the totality of the circumstances, at the time Vazquez admitted to masturbating in the presence of the victim the interrogation was not custodial.

(2) Sexual battery

Although the trial court found that Vazquez "eventually confessed to the alleged sexual battery," that finding is not supported by evidence in the record. Our review of the audio recording and interrogation transcript confirms that at no point did Vazquez admit to sexual battery. Nonetheless, following Vazquez's first admission, we consider whether and to what extent the Ramirez factors changed in order to determine whether the trial court correctly suppressed the remainder of the interrogation.

The first and second Ramirez factors continue to favor the State; there were no material changes in the manner, purpose, and place of interrogation. With regard to the third factor, as the detectives continued to question Vazquez about the alleged sexual battery, they reiterated the victim's allegations but also asked: "From an anatomy standpoint how do we explain certain things once they're further investigated? Through examination and all these different things." Vazquez responded: "Yeah. . . . You can do the test and you're not gonna find anything." One of the detectives then stated, without elaboration, "We have the test," and Vazquez again denied engaging in sex with the victim. The detectives reiterated that everything else Vazquez had told

them aligned with what the victim had said. They questioned why she would lie about the sex, reminding Vazquez that the victim gave her statement under oath. Vazquez responded that the victim was exaggerating and that a test would not reveal semen, a fact which the detectives readily admitted was true. Although this questioning was confrontational, there was no tangible evidence and Vazquez was clearly aware of the lack of evidence.

We now turn to the fourth factor and whether the interrogation "steadily evolved into a custodial situation in which a reasonable person would not have felt free to terminate the interview and leave." See McAdams, 193 So. 3d at 833. That is, did the manner of the interrogation change such that the detectives' statements that Vazquez was free to terminate the interview at any time would no longer have allowed a reasonable person to believe he was free to go.

After his admission to masturbating in the presence of the victim, Vazquez provided additional details about the lewd or lascivious exhibition without prompting. When Vazquez again denied raping the victim, the detectives stated that they were there to connect the dots to understand whether the sex was consensual or not. The questioning resumed in the manner of explaining the victim's allegations and asking how Vazquez remembered it happening. Vazquez offered specific additional details not provided by the detectives. But he continued to deny engaging in sex with the victim. Vazquez was very specific; he stated that the victim was never "fully exposed" and that there was "never penetration." Neither of those were phrases used by the detectives. Vazquez also stated that his sister was always around when the victim was in the home. One of the detectives then told Vazquez that the victim had stated that Vazquez's sister

was asleep in the room the first time the victim and Vazquez "did it," and the detective asked Vazquez whether that was accurate. Vazquez responded: "First time, yeah. I can – I'll admit to that."

Considered out of context, this appears to be an admission to sexual battery; however, the detective's questions immediately following this statement establish that Vazquez was again admitting to the lewd or lascivious exhibition. Nonetheless, on consideration of the Ramirez factors, this statement is admissible. And after further statements from the detectives about just being there to talk and not to judge, Vazquez stated, "I guess maybe something happened but I legitimately 100 percent cannot think that I penetrated."

The detectives again reminded Vazquez that they were there to talk, to hear his story, and that there were no handcuffs and Vazquez would not go to jail that day. Thereafter, Vazquez stated that he could not remember if he penetrated the victim, "maybe" he tried to but when told that the victim alleged penetration Vazquez responded, "That is a lie."

"If a reasonable person in the suspect's position would understand that the police have probable cause to arrest the suspect for a serious crime such as murder or kidnapping, that circumstance militates strongly toward the conclusion that the suspect is in custody." Pitts, 936 So. 2d at 1128 (footnote omitted). However, "[i]f the suspect has been advised that he is not under arrest and is free to leave, the significance of this circumstance, of course, would be diminished." Id. at 1128 n.8. Even though the manner of questioning was confrontational and at times cajoling, the detective reiterated—even after the admission to lewd or lascivious exhibition—that Vazquez was

not going to be arrested that day. "This [w]ould have indicated to a reasonable person that his freedom was not being restrained." Cushman v. State, 228 So. 3d 607, 616 (Fla. 2d DCA 2017). And Vazquez gave no indication that he believed he would be arrested for his admission. Cf. id. at 619.

There was significant back and forth and attempts to clarify details during this interrogation, and there was cajoling. However, under the totality of the circumstances, considering all of the Ramirez factors and even the clear confession to lewd or lascivious exhibition, the interrogation did not become custodial. See Thompson, 193 So. 3d at 924 ("Florida courts have held that Miranda warnings were not needed in far more coercive situations."). The detectives "never made any promises or threats," and our review of the record supports the conclusion that Vazquez "followed the conversation." See Cushman, 228 So. 3d at 618. And despite Dr. Machlus's testimony at the suppression hearing, there is no indication from the transcript of the interrogation that Vazquez was "intimidated or subdued by the presence of the detectives or the questions being asked"; in fact, and despite Dr. Machlus's diagnosis, Vazquez never acquiesced to the detectives' statements of penetration or that there were three incidents. See Cillo v. State, 849 So. 2d 353, 356 (Fla. 2d DCA 2003); cf. Monroe v. State, 148 So. 3d 850, 856 (Fla. 1st DCA 2014) ("Although Agent Thomas was persistent, opinionated, and orally confrontational, he did not use coercive measures to elicit information from Monroe during the relatively brief interview.").

We note that although the trial court appears to have given weight to Dr. Machlus's testimony, the Ramirez factors do not allow for consideration of the

particularities of the individual defendant. The framework for determining whether a person is in custody as contemplated by Miranda is "an objective, reasonable person" standard. Wilson, 242 So. 3d at 492. Thus, to the extent that the trial court considered Vazquez's limitations and mental health issues in ruling on the motion to suppress rather than on the actions of the detectives, this was error. See Patrick v. State, 246 So. 3d 253, 261 (Fla. 2018); see also Thomas v. State, 456 So. 2d 454, 458 (Fla. 1984) ("To render a confession inadmissible . . . the delusion or confusion must be visited upon the suspect by his interrogators; if it originates from the suspect's own apprehension, mental state, or lack of factual knowledge, it will not require suppression."). The weight to be given to Vazquez's susceptibility to false confessions and his mental health issues is for the jury to consider; it is not at issue for the purposes of determining whether the interrogation was custodial. See State v. Crosby, 599 So. 2d 138, 141 (Fla. 5th DCA 1992) ("[T]he mental condition of [the defendant] in the absence of police misconduct does not affect the admissibility of his statements or confession under federal due process requirements" (citing Colorado v. Connelly, 479 U.S. 157, 167 (1986))); cf. Rigterink v. State, 193 So. 3d 846, 865 (Fla. 2016) (stating that evidence of inebriation not rising to the level of mania does not affect the admissibility question; rather, it is relevant to the weight and credibility of the confession).

(3) The written statements

The written statements were written at some point after the conclusion of the interrogation, which we have determined was not custodial. They are not, therefore, "fruit of the poisonous tree" as described by the trial court. Again, whether or to what

extent Vazquez's mental health and his susceptibility to giving false confessions impacted his suicide note and apology are issues for the jury in this case. The detectives in this case made no promises and no threats, and they did not otherwise improperly influence Vazquez's statements.

III. Conclusion

Accordingly, we reverse the order suppressing Vazquez's statements to law enforcement during the recorded interrogation and the written statements made thereafter. We remand for further proceedings.

Reversed and remanded.

VILLANTI and ROTHSTEIN-YOUAKIM, JJ., Concur.