DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

WALTER STEPHEN MENCHILLO,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-3466

November 2, 2022

Appeal from the County Court for Charlotte County; Peter A. Bell, Judge.

Howard L. Dimmig, II, Public Defender, and Susan M. Shanahan, Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Katherine Coombs Cline, Assistant Attorney General, Tampa, for Appellee.

LaROSE, Judge.

After the trial court denied a motion to suppress evidence, a jury found Walter Stephen Menchillo guilty of leaving the scene of a crash involving damage to unattended property. *See* § 316.063(1), Fla. Stat. (2020). Mr. Menchillo now challenges his judgment and

sentence. We have jurisdiction. *See* Fla. R. App. P. 9.030(b)(1)(A). Utilizing the factors set forth in *Ramirez v. State*, 739 So. 2d 568, 574 (Fla. 1999), the trial court correctly determined that Mr. Menchillo was not in custody when he made incriminating statements to law enforcement officers.[1] Therefore, we affirm.

Background

Late one rainy evening Mr. Menchillo was driving his Ford sport utility vehicle (SUV) on a highway. Suddenly, the SUV veered off the road and crashed into a fence. Mr. Menchillo was unharmed. The fence, however, sustained much damage. Mr.

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[1] Mr. Menchillo argued below that the accident-report privilege precluded admission of his incriminating statements. *See generally State v. Jones*, 283 So. 3d 1259, 1267 (Fla. 2d DCA 2019) ("[S]ection 316.066(4) generally makes statements made by a person involved in a crash inadmissible in a civil or criminal trial, except that 'a law enforcement officer at a criminal trial may testify as to any statement made to the officer by the person involved in the crash if that person's privilege against self-incrimination is not violated.' "). He abandons that issue here. *See Rosier v. State*, 276 So. 3d 403, 406 (Fla. 1st DCA 2019) ("An appellate court is 'not at liberty to address issues that were not raised by the parties.' . . . For an appellant to raise an issue properly on appeal, he must raise it in the initial brief. Otherwise, issues not raised in the initial brief are considered waived or abandoned." (en banc) (citations omitted) (quoting *Anheuser-Busch Co. v. Staples*, 125 So. 3d 309, 312 (Fla. 1st DCA 2013))).

Menchillo summoned a tow truck, left his SUV by the roadside, and continued home by other means.

Sometime after the tow truck arrived on scene, deputies from the Charlotte County Sheriff's Office showed up. After obtaining Mr. Menchillo's phone number from the tow truck driver, Deputy Guetler called Mr. Menchillo, who reported that he had crashed into the fence due to a blown tire; he left the scene and went home. Deputy Guetler asked Mr. Menchillo to furnish a sworn statement.[2] Mr. Menchillo agreed to meet the deputy at Mr. Menchillo's house. So, Deputy Guetler and another deputy proceeded to the residence.

Mr. Menchillo met the deputies in his driveway. He invited them into his living room. He spoke with them briefly; he gave a

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[2] Deputy Guetler must complete a short-form crash report when investigating a motor vehicle accident involving damage to unattended property. *See* § 316.066(1)(c) ("[T]he law enforcement officer shall complete a short-form crash report . . . to be completed by all drivers . . . involved in the crash . . . ."). To complete the report, Deputy Guetler testified that he needed "to identify . . . the driver of the vehicle." *See* § 316.066(1)(c)3. Deputy Guetler was also obligated to include additional information in the short-form crash report that was not self-evident from the crash scene and which, our record reflects, Mr. Menchillo did not furnish over the phone. *See* § 316.066(1)(c)1, 6 (requiring the short-form crash report include "[t]he . . . time . . . of the crash" and "[t]he names of the insurance companies for the respective parties involved in the crash").

four-minute-long sworn statement. Effectively, he admitted every element of the crime with which he was later charged. *See generally* § 316.063(1); Fla. Std. Jury Instr. (Crim.) 28.4(b). At no point did the deputies handcuff or otherwise restrain Mr. Menchillo.

Believing that they were conducting a civil investigation to complete the civil crash report, the deputies did not Mirandize Mr. Menchillo. *See Miranda v. Arizona*, 384 U.S. 436 (1966). Deputy Guetler testified that they spoke "[a]bout the crash itself, why was the vehicle damaged, why was the fence damaged, why was [Mr. Menchillo] not at the scene. Basically, the things [Deputy Guetler] needed to know for the crash report."

Deputy Guetler testified that Mr. Menchillo was free to leave. He conceded, however, that the deputies never told him so. Deputy Guetler informed Mr. Menchillo that his SUV had broken a fence and "that there was [sic] cattle on the property and they could have gotten out."

Mr. Menchillo testified that when the deputies arrived, he "thought [he] was under arrest." More specifically, Mr. Menchillo affirmed that he "was under the impression [he] was getting a ticket, which pretty much is being arrested." Mr. Menchillo

explained to the deputies that "because there was [sic] no injuries," he believed he could leave the crash scene.

After speaking with Mr. Menchillo, the deputies issued him a criminal citation for leaving the scene of a crash involving damage to unattended property, a misdemeanor offense.

Mr. Menchillo filed a motion to suppress, arguing that his statements to the deputies were made involuntarily without the protections against self-incrimination required by the Fifth Amendment to the United States Constitution. *See State v. McAdams*, 193 So. 3d 824, 833 (Fla. 2016) ("Failure to provide the *Miranda* warnings prior to custodial interrogation generally requires exclusion from trial of any post-custody statements given." (citing *Missouri v. Seibert*, 542 U.S. 600, 608 (2004))).

At the suppression hearing the trial court assessed the *Ramirez* factors, 739 So. 2d at 574, and concluded that Mr. Menchillo was not in custody during his encounter with the deputies. Thus, the trial court found that Mr. Menchillo was not entitled to *Miranda* warnings. *See Miranda*, 384 U.S. at 436. The trial court denied the suppression motion. After the jury found Mr.

Menchillo guilty, the trial court sentenced him to six months' probation with a suspended sentence of forty-five days in jail.

On appeal, Mr. Menchillo maintains that "[t]he evidence shows that [he] was in custody at the time he was questioned by law enforcement"; in the absence of *Miranda* warnings, the trial court "erred in denying [his] motion to suppress." *See Bell v. State*, 201 So. 3d 1267, 1274 (Fla. 2d DCA 2016) ("In *Miranda* . . . the United States Supreme Court established a procedural safeguard to protect an individual's [F]ifth [A]mendment privilege against compelled self-incrimination from the coercive pressures of custodial interrogation." (quoting *Caso v. State*, 524 So. 2d 422, 423 (Fla. 1988))).

Analysis

As an initial matter, we observe that

> when reviewing a trial court's ruling on a motion to suppress, "mixed questions of law and fact that ultimately determine constitutional rights should be reviewed by appellate courts using a two-step approach." We defer to a trial court's findings of fact as long as they are supported by competent, substantial evidence, but we review de novo a trial court's application of the law to the historical facts.

Ross v. State, 45 So. 3d 403, 414 (Fla. 2010) (quoting *Connor v. State*, 803 So. 2d 598, 605 (Fla. 2001)).[3] We are mindful that "[a] trial court's ruling on a motion to suppress comes to us clothed with a presumption of correctness and, as the reviewing court, we must interpret the evidence and reasonable inferences and deductions derived therefrom in a manner most favorable to sustaining the trial court's ruling." *Murray v. State*, 692 So. 2d 157, 159 (Fla. 1997) (citing *McNamara v. State*, 357 So. 2d 410, 412 (Fla. 1978)).

Law enforcement officers must provide *Miranda* warnings to a suspect subject to custodial interrogation. *State v. Pitts*, 936 So. 2d 1111, 1123 (Fla. 2d DCA 2006); *cf. State v. Shepard*, 658 So. 2d 611, 612 (Fla. 2d DCA 1995) (explaining that reading *Miranda* rights resolves any self-incrimination problem regardless of whether the statements were made during an accident or criminal investigation). "For *Miranda* purposes, custodial interrogation

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[3] The deputies did not record the interview at Mr. Menchillo's house. The hearing transcript is all we have to review the propriety of the denial of the suppression motion. *Cf. 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).

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.' " *Ross*, 45 So. 3d at 415 (quoting *Miranda*, 384 U.S. at 444)). Thus, the right against self-incrimination implicates two issues: first, whether a suspect is in custody, and second, whether the suspect is being interrogated. "Absent one or the other, *Miranda* warnings are not required." *State v. Thompson*, 193 So. 3d 916, 920 (Fla. 2d DCA 2016) (quoting *Davis v. State*, 698 So. 2d 1182, 1188 (Fla. 1997)).

Generally, "[i]nterrogation takes place . . . when a person is subjected to express questions, or other words or actions, by a state agent, that a reasonable person would conclude are designed to lead to an incriminating response." *Traylor v. State*, 596 So. 2d 957, 966 n.17 (Fla. 1992). In our view, the deputies interrogated Mr. Menchillo. Consequently, the crux of this case is whether Mr. Menchillo was in custody when speaking to the deputies in his house. We review this legal determination de novo. *See State v. Vazquez*, 295 So. 3d 373, 378 (Fla. 2d DCA 2020) ("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." (first citing *State v. Herrera*, 201 So. 3d 192, 196 (Fla. 2d DCA 2016); and then citing *State v. Figueroa*, 139 So. 3d 365, 368 (Fla. 5th DCA 2014))).

"Custody for purposes of *Miranda* encompasses not only formal arrest, but any restraint on freedom of movement of the degree associated with formal arrest." *Ramirez*, 739 So. 2d at 573. Moreover, "[a] person is in custody if a reasonable person placed in the same position would believe that his or her freedom of action was curtailed to a degree associated with actual arrest." *Id.*; *Connor*, 803 So. 2d at 605 ("In order for a court to conclude that a suspect was in custody, it must be evident that, under the totality of the circumstances, a reasonable person in the suspect's position would feel a restraint of his or her freedom of movement, fairly characterized, so that the suspect would not feel free to leave or to terminate the encounter with police.").

In *Ramirez*, the supreme court approved a four-factor test to

> provide[] guidance in making the determination whether a reasonable person in the suspect's position would consider himself in custody: (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. at 574.

We acknowledge that "[a]lthough the four [*Ramirez*] factors provide the structure of our analysis, the ultimate inquiry is twofold: (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.' " *Ross*, 45 So. 3d at 415 (quoting *Yarborough v. Alvarado*, 541 U.S. 652, 663 (2004)); *Yarborough*, 541 U.S. at 663 ("Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." (quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995))).

Further, "the four-factor test must be understood as simply pointing to components in the totality of circumstances surrounding an interrogation." *Pitts*, 936 So. 2d at 1124. "No factor . . . can be considered in isolation. The whole context must be considered." *Id.*; *see Myers v. State*, 211 So. 3d 962, 974 (Fla. 2017) ("This is a conjunctive test, so no factor is solely determinative of whether Myers was in custody for *Miranda* purposes."). This is an objective, reasonable person standard. *Vazquez*, 295 So. 3d at 382 ("[T]he *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." (quoting *Wilson v. State*, 242 So. 3d 484, 492 (Fla. 2d DCA 2018))).

With this legal framework in mind, we apply the *Ramirez* factors to the facts recounted above.

(1) Manner in which the police summon the suspect for questioning

The manner in which the deputies summoned Mr. Menchillo for questioning favors the State. Mr. Menchillo spoke with Deputy

Guetler over the phone and agreed to furnish a sworn statement. When the deputies arrived at his house, Mr. Menchillo invited them inside. *See, e.g.*, *Ross*, 45 So. 3d at 415 ("The first of the four factors, the manner in which police summon the suspect for questioning, weighs in favor of the State. Ross voluntarily came to the sheriff's office for a meeting with a victim's advocate. While he was at the office, Detective Waldron requested that Ross see him before he left, and Ross agreed."); *Thompson*, 193 So. 3d at 920 ("Nothing in our record indicates that every encounter between Ms. Thompson and the detective was anything but her voluntary undertaking. The detective did not coerce, cajole, entice, or summon Ms. Thompson to engage in the interviews."). We see no indicia of custody under this factor.

(2) The purpose, place, and manner of the interrogation

Deputy Guetler testified that he met Mr. Menchillo to complete a civil "traffic crash report." Seemingly, Mr. Menchillo simply repeated the information he had previously given Deputy Guetler over the phone. Their in-person encounter was brief. *See Chavez v. State*, 832 So. 2d 730, 748 (Fla. 2002); *State v. Shell*, 932 So. 2d 628, 634 (Fla. 2d DCA 2006) (concluding that Ms. Shell was not in

custody because, in part, "the interrogation lasted only five minutes and was not conducted in an intimidating manner"). Certainly, our record reflects no confrontational or intimidating questions posed by Deputy Guetler. Nor does the record indicate any restraint on Mr. Menchillo's movements in his own house. *See, e.g.*, *Thompson*, 193 So. 3d at 921 ("The tone and content of the conversation suggest nothing coercive or confining about the location of the last interview."); *Pitts*, 936 So. 2d at 1126 ("As to the manner of the interrogation, the record is clear that the officers did not in any way subject Pitts to force. There is no indication that the officers ever touched Pitts. He was never handcuffed, and he was never locked in a room. The officers conducted the interrogation in a conversational tone. They did not raise their voices or otherwise speak to Pitts in an intimidating manner."); *Bannister v. State*, 132 So. 3d 267, 276 (Fla. 4th DCA 2014 ("Typically, '[a]n interview with a suspect in his own home is not ordinarily regarded as a custodial interrogation,' since the suspect 'is not likely to have a sense that he is being detained, as might be the case if the suspect had been stopped on a highway or taken to an interrogation room at the

police station.' " (alteration in original) (quoting *Evans v. State*, 911 So. 2d 796, 800 (Fla. 1st DCA 2005))).

Mr. Menchillo suggests that he was apprehensive and thus that his interrogation was custodial. We cannot agree. *Cf. Cushman v. State*, 228 So. 3d 607, 617 (Fla. 2d DCA 2017) ("While '[m]ost custodial interrogations take place in a police station, and a defendant's presence in a station while subjected to questioning undoubtedly can have a bearing on how a reasonable person in the defendant's situation views his status,' 'mere questioning at the police station does not establish custody.' " (alteration in original) (first quoting *Pitts*, 936 So. 2d at 1126; and then quoting *Thompson*, 193 So. 3d at 921)). After all, the interviewee's subjective beliefs and feelings have no place in our custody analysis. *See State v. Scott*, 786 So. 2d 606, 608 (Fla. 5th DCA 2001) ("[A]n 'interviewee's own set of apprehensions or mental state, unless visited upon her or him by the interrogator, does not require suppression.' . . . Thus, the fact that Scott testified that she did not feel that she was free to leave the scene during her interview with [Officer] Longson is not dispositive of this case." (quoting *State v. Gilles*, 701 So. 2d 375, 377 (Fla. 3d DCA 1997))). And "[i]n the absence of any indicia of

coercion or intimidating circumstances, police questioning about criminal conduct or activity alone, does not convert an otherwise consensual encounter into a custodial interrogation." *Shell*, 932 So. 2d at 632 (quoting *Scott*, 786 So. 2d at 609).

This factor, too, favors the State.

(3) The extent to which the suspect is confronted with evidence of his guilt

> Although not necessarily dispositive, "the extent to which the suspect is confronted with evidence of his or her guilt" can be a circumstance that weighs heavily in the balances. A reasonable person in the situation of a suspect who has been "confronted with evidence strongly suggesting his guilt" may well understand that such evidence means that the police will not allow the suspect to go on his way. *Mansfield*[*v. State*], 758 So. 2d [636,] 644 [(Fla. 2000)]. 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*. The significance of this factor turns on the strength of the evidence as understood by a reasonable person in the suspect's position as well as the nature of the offense. 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 1127-28 (footnote omitted).

This factor favors the State. Mr. Menchillo had already freely admitted to the offense with Deputy Guetler over the phone. The only "new" information that Deputy Guetler told Mr. Menchillo was that there were cattle on the property that could have escaped because of the damage to the fence. Such an isolated statement is insufficient for us to conclude that Mr. Menchillo was in custody. *See*, *e.g.*, *Ross*, 45 So. 3d at 416 ("This factor also weighs in favor of a finding that Ross was in custody. Ross was confronted with very strong evidence of his guilt during the January 9 interview—most importantly, that pants Ross wore on the night in question had blood on them that matched the crime scene. Detective Waldron referred to the bloody pants throughout the interview and how this evidence could not be disputed. Ross finally acknowledged that this evidence '[p]uts me at the crime scene.' " (alteration in original)).

(4) Whether the suspect is informed that he is free to leave

> "[A] suspect need not be advised that he or she is free to leave in order for the court to determine that the suspect was not in custody." [*Shell*, 932 So. 2d at 633] (citing *Noe v. State*, 586 So. 2d 371, 373, 381 (Fla. 1st DCA 1991)). But "it is certainly true that a suspect who has been advised that he is free to leave is less likely to be deemed to be in custody than a suspect who has not been so advised." *Pitts*, 936 So. 2d at 1125.

Cushman, 228 So. 3d at 617 (first alteration in original); *Shell*, 932 So. 2d at 633 ("[A] suspect need not be advised that he or she is free to leave in order for the court to determine that the suspect was not in custody. The determination of whether a reasonable person would believe that his or her freedom is restrained is made by looking at the totality of the circumstances." (citations omitted)).

In *Noe v. State*, 586 So. 2d 371, 371 (Fla. 1st DCA 1991), the investigating officers asked a mother and a father to come to the police station for questioning about their child's death. The officers interviewed the mother for "less than two hours" with questions that "did not appear to be especially intimidating." *Id.* at 381. No officer informed the mother that she was free to leave, and after approximately two hours, the mother confessed that she "snapped." *Id.* at 373–74. Later, the mother filed a motion to suppress her statement, claiming that she was in custody and had not received the *Miranda* warning. *Id.* at 373, 380. The First District affirmed the trial court's denial of the mother's motion, finding that "a reasonable person would not have considered the situation as being in custody." *Id.* at 381.

Because custody entails a limitation on freedom "to a degree associated with actual arrest," given the totality of the circumstances, we conclude that a reasonable person in Mr. Menchillo's position would not have considered himself in custody, notwithstanding the officers' failure to advise him that he was free to leave. *See*, *e.g.*, *Scott*, 786 So. 2d at 610–11 (concluding that appellee was not in custody even though police did not tell her she was free to leave where there was nothing in the record to suggest that her freedom of movement was curtailed in any manner).

Conclusion

Under the totality of circumstances, Mr. Menchillo was not in custody when the deputies interviewed him inside his house. Consequently, the trial court properly denied Mr. Menchillo's suppression motion. We affirm Mr. Menchillo's judgment and sentence.

Affirmed.

KELLY and BLACK, JJ., Concur.

Opinion subject to revision prior to official publication.