IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33895

STATE OF IDAHO,	)	
	)	**2008 Opinion No. 56**
Plaintiff-Respondent,	)	
	)	**Filed: June 13, 2008**
v.	)	
	)	**Stephen W. Kenyon, Clerk**
DUSTIN L. JAMES,	)	
	)	
Defendant-Appellant.	)	
	)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Elmore County. Hon. Michael E. Wetherell, District Judge.

Order denying motion to suppress confession, reversed, and case remanded.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Daniel W. Bower, Deputy Attorney General, Boise, for respondent.

LANSING, Judge

The question presented by this appeal is whether an investigative traffic stop had evolved into a custodial interrogation such that the officer was required to administer *Miranda* warnings before further interrogating a vehicle occupant about drugs found in the car. We hold that in the particular circumstances presented here, the individual was effectively in custody, and therefore statements he made without prior *Miranda* warnings must be suppressed.

I.
BACKGROUND

Dustin L. James was a passenger in a vehicle that was stopped by a law enforcement officer on Interstate 84. The record does not disclose the reason for the stop, but it is not disputed that the stop was justified. At approximately 1:30 a.m., Deputy Shaun Sterling was called to the scene to assist. By the time he arrived, the three occupants were all outside the vehicle and were separated from one another. The owner consented to a search of the vehicle,

and Deputy Sterling found a bag of methamphetamine in the backseat. At some point, either before or after the search of the vehicle, the officers conducted a pat-down search of the vehicle occupants, which yielded no weapons or contraband. Deputy Sterling then asked the driver and passengers to tell him who owned the methamphetamine. Upon receiving no immediate response, he informed them that if no one confessed to ownership of the drugs, he would arrest all of them. At that point, James said that he owned the methamphetamine, commenting that he did not want the officer to arrest everyone because one of the other individuals was on probation. To that point, James had not been given any *Miranda* warnings.

After being charged with possession of methamphetamine, Idaho Code § 37-2732(c)(1), James filed a motion to suppress his confession of ownership of the drug. He argued that this confession was elicited during a custodial interrogation in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). The district court denied the motion, holding that James was not in custody when he made the confession and therefore *Miranda* warnings were not required. Thereafter, James conditionally pleaded guilty, reserving the right to appeal the denial of his suppression motion.

II.
ANALYSIS

On review of a decision to grant or deny a motion to suppress evidence, this Court defers to the trial court's findings of fact unless they are clearly erroneous, *State v. Hawkins*, 131 Idaho 396, 400, 958 P.2d 22, 26 (Ct. App. 1998), but exercises free review over the application of constitutional standards to those facts. *Id.*

In *Miranda*, the United States Supreme Court held that, to protect the Fifth Amendment privilege against compulsory self-incrimination, police must inform individuals of their right to remain silent and their right to counsel, either retained or appointed, before police undertake a custodial interrogation. These warnings were deemed necessary as a prophylactic measure to secure Fifth Amendment rights because "without proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." *Miranda*, 384 U.S. at 467.

For application of the *Miranda* rule, persons are "in custody" when they have been arrested or when their "freedom of action is curtailed to a 'degree associated with formal arrest.'"

Berkemer v. McCarty, 468 U.S. 420, 440 (1984) (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983)); *State v. Medrano*, 123 Idaho 114, 117, 844 P.2d 1364, 1367 (Ct. App. 1992). In determining whether a suspect is in custody, an objective test is applied. The relevant inquiry is "how a reasonable man in the suspect's position would have understood his situation." *Berkemer*, 468 U.S. at 442. The totality of the circumstances must be examined, which may include the location of the interrogation, the conduct of the officers, the nature and manner of the questioning, the time of the interrogation, and other persons present. *Medrano*, at 117-18, 844 P.2d at 1367-68.

In *Berkemer*, the United States Supreme Court held that, generally speaking, roadside questioning of a motorist during a routine traffic stop does not amount to a "custodial interrogation" for *Miranda* purposes. There, the defendant was stopped for erratic driving. Without giving *Miranda* warnings, the officer asked whether the defendant had been using intoxicants, and he replied in the affirmative. In holding that the defendant's pre-arrest verbal response was admissible as evidence, the United States Supreme Court explained that an ordinary traffic stop is not a custodial interrogation but, rather, is more akin to a *Terry*-stop[1] during which the officer may ask the detainee a moderate number of questions to determine identity and to try to obtain information confirming or dispelling the officer's suspicions. The core inquiry, the Court said, is "whether a traffic stop exerts upon a detained person pressures that sufficiently impair his free exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights." *Berkemer* at 437. The Court concluded that two features of an ordinary traffic stop lessen the danger that the detainee will be induced to respond to an officer's questions where he would not otherwise do so freely:

> First, detention of a motorist pursuant to a traffic stop is presumptively temporary and brief. The vast majority of roadside detentions last only a few minutes. A motorist's expectations, when he sees a policeman's light flashing behind him, are that he will be obliged to spend a short period of time answering questions and waiting while the officer checks his license and registration, that he may then be given a citation, but that in the end he most likely will be allowed to continue on his way. In this respect, questioning incident to an ordinary traffic stop is quite different from stationhouse interrogation, which frequently is prolonged, and in

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

> which the detainee often is aware that questioning will continue until he provides his interrogators the answers they seek.
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> Second, circumstances associated with the typical traffic stop are not such that the motorist feels completely at the mercy of the police. . . . Perhaps most importantly, the typical traffic stop is public, at least to some degree. Passersby, on foot or in other cars, witness the interaction of officer and motorist. This exposure to public view both reduces the ability of an unscrupulous policeman to use illegitimate means to elicit self-incriminating statements and diminishes the motorist's fear that, if he does not cooperate, he will be subjected to abuse. The fact that the detained motorist typically is confronted by only one or at most two policemen further mutes his sense of vulnerability. In short, the atmosphere surrounding an ordinary traffic stop is substantially less "police dominated" than that surrounding the kinds of interrogation at issue in *Miranda* itself, and in the subsequent cases in which we have applied *Miranda*.

Id. at 437-39 (citations omitted). The Court then concluded:

> The comparatively nonthreatening character of detentions of this sort explains the absence of any suggestion in our opinions that *Terry* stops are subject to the dictates of *Miranda*. The similarly noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not "in custody" for the purposes of *Miranda*.

Id. at 440. The *Berkemer* Court went on to explain, however, that "[i]f a motorist who has been detained pursuant to a traffic stop thereafter is subjected to treatment that renders him "in custody" for practical purposes, he will be entitled to the full panoply of protections prescribed by *Miranda*." *Berkemer*, 468 U.S. at 440.

In the years since *Berkemer*, the appellate courts of this state have held several times that motorists' rights were not violated by police interrogations conducted without *Miranda* warnings during traffic stops. *See State v. Benefiel*, 131 Idaho 226, 953 P.2d 976 (1998) (defendant not entitled to suppression of un-*Mirandized* statements made during field sobriety tests because he was not in custody); *State v. Albaugh*, 133 Idaho 587, 592, 990 P.2d 753, 758 (Ct. App. 1999) (stop of commercial truck at a weigh station and brief questioning not a custodial interrogation); *State v. Pilik*, 129 Idaho 50, 921 P.2d 750 (Ct. App. 1996) (statements during field sobriety tests); *State v. Jones*, 115 Idaho 1029, 1033, 772 P.2d 236, 240 (Ct. App. 1989) (same); *State v. Hartwig*, 112 Idaho 370, 374, 732 P.2d 339, 343 (Ct. App. 1987) (same).

Occurrences in the present case significantly distinguish it from an ordinary traffic stop, however, and lead us to conclude that when James admitted ownership of the methamphetamine, he was subjected to a restraint on his liberty equivalent to formal arrest. Several factors contributed to a coercive atmosphere that is more equivalent to custodial interrogation than to an

ordinary traffic stop or other investigative detention of the type sanctioned by *Terry*. First, although it was nominally a "public" place, this traffic stop occurred in the middle of the night on an interstate freeway, and therefore afforded little of the exposure to public view which the *Berkemer* Court deemed important to the comfort level of an interrogated motorist. Second, by the time the challenged interrogation occurred, James knew this was no longer an investigation of a traffic violation but had become an investigation of a felony drug offense, for the officers had found suspected methamphetamine in the car. In addition, all of the vehicle occupants had been subjected to a frisk, an action that is permissible for officer safety purposes but is not typically done during a traffic stop.

Finally, and most significantly, Deputy Sterling's interrogation technique, threatening to arrest all of the vehicle occupants if none of them admitted possession of the drugs, was more coercive than ordinary questioning of a motorist about a traffic violation. The officer's statement conveyed to the owner of the methamphetamine that there existed only two possibilities: he could confess and be arrested for possession of the drugs, or he could say nothing and be arrested along with his friends. Either way, it was clear that he would not be leaving the site of the traffic stop except as an arrestee. In this respect, this roadside questioning was akin to *Berkemer's* description of a custodial stationhouse interrogation "in which the detainee often is aware that questioning will continue until he provides his interrogators the answers they seek." *Berkemer*, 468 U.S. at 438.

The Supreme Court said in *Berkemer* that it was the "comparatively nonthreatening character" and the "noncoercive aspect" of ordinary traffic stops that led it to hold such stops exempted from the *Miranda* requirements. *Id.* at 440. Those normal characteristics of traffic stops are not present here. The late-night hour, the discovery of drugs in the car, the frisking of the detainees, and the officer's announcement which made it clear that whoever owned the drugs would be arrested one way or another, was sufficient to cause a reasonable person in James's position to understand that his freedom of action was curtailed to a degree associated with formal arrest. Therefore, *Miranda* warnings were required.[2]

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[2] We do not suggest that Deputy Sterling's statement that he would arrest all of the automobile occupants if none of them confessed was improper--he may have had probable cause to do just that. *See State v. Zentner*, 134 Idaho 508, 510-11, 5 P.3d 488, 490-91 (Ct. App. 2000) (holding officer had probable cause to arrest defendant although he was not the sole occupant of

Because James's admission that he owned the methamphetamine was the product of a *Miranda* violation, it must be suppressed. Therefore, the district court's order denying James's suppression motion is reversed and the case is remanded.

Chief Judge GUTIERREZ **CONCURS**.

Judge PERRY, **DISSENTING**

As noted by the majority opinion, in the years since *Berkemer v. McCarty*, 468 U.S. 420 (1984), the appellate courts of this state have held several times that motorists' rights were not violated by police interrogations conducted without *Miranda*[1] warnings during traffic stops. *See State v. Benefiel*, 131 Idaho 226, 953 P.2d 276 (1998); *State v. Albaugh*, 133 Idaho 587, 990 P.2d 753 (Ct. App. 1999); *State v. Pilik*, 129 Idaho 50, 921 P.2d 750 (Ct. App. 1996); *State v. Jones*, 115 Idaho 1029, 772 P.2d 236 (Ct. App. 1989); *State v. Hartwig*, 112 Idaho 370, 732 P.2d 339 (Ct. App. 1987). The totality of the circumstances must be examined. *State v. Medrano*, 123 Idaho 114, 117-18, 844 P.2d 1364, 1367-68 (Ct. App. 1992).

Our courts have also noted that the officer's conduct is a factor to be considered in determining whether the defendant was in custody for the purposes of *Miranda*. *See State v.*

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the vehicle where a backpack containing drugs was found; this fact might prevent finding of guilt at trial absent more specific evidence of ownership, but the evidence of proximity of drugs to defendant and suspicious behavior were adequate to create probable cause for arrest). Nor do we hold that the deputy's statement was impermissibly coercive so that it violated due process by compelling James to involuntarily incriminate himself. *See Oregon v. Elstad*, 470 U.S. 298, 304-05 (1985) (explaining the distinction between the exclusion of self-incriminatory statements that must be excluded because they were obtained by techniques and methods offensive to due process, and the exclusion of voluntary statements that are excluded because they were made without required *Miranda* warnings); *State v. Doe*, 130 Idaho 811, 814, 948 P.2d 166, 169 (Ct. App. 1997) (explaining that the requirement of *Miranda* warnings is based upon the Fifth Amendment privilege against self-incrimination, while the doctrine disallowing the use of involuntary confessions is grounded in the Due Process Clause of the Fourteenth Amendment and applies to confessions that are the product of police coercion, either physical or psychological). Whether James's confession here was obtained by a means offensive to due process is not an issue that is before us. We hold only that in the circumstances presented here, Deputy Sterling was required to notify the vehicle occupants of their *Miranda* rights before interrogating them in the manner that he chose.

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

Ybarra, 102 Idaho 573, 576-77, 634 P.2d 435, 438-39 (1981) (defendant stopped on suspicion of robbery and confronted with multiple officers with guns drawn not in custody for *Miranda* purposes when extra officers withdrew after discovering defendant was not a threat, and defendant was asked basic investigatory questions that lasted a few minutes); *State v. Dice*, 126 Idaho 595, 601, 887 P.2d 1102, 1108 (Ct. App. 1994) (stop did not become custodial interrogation merely because additional officers did not immediately recede from the scene once defendant was stopped).

In this case, James was a passenger in a vehicle stopped during the night on the interstate. There were two officers at the scene. This is not an overwhelming police presence, particularly where the stopped vehicle had three occupants. The officers did not draw their weapons or handcuff the detainees or place any of them in a patrol car. Whatever the original reason for the stop may have been, it evolved into a detention to investigate suspicion of drug possession, and suspected methamphetamine was found in the vehicle. These circumstances do not add up to a restraint on the vehicle occupants akin to a formal arrest under the totality of the circumstances. It is only the deputy's warning--that he would arrest all of the occupants of the vehicle if none confessed to owning the methamphetamine--that places this case in a unique circumstance in considering whether James was "in custody" for *Miranda* purposes.[2]

A number of courts have noted or implied that, in combination with other factors, whether a defendant was threatened with arrest should be considered in the analysis. *See United States v. Mahan*, 190 F.3d 416, 422 (6th Cir. 1999) (defendant not in custody when, among other things, officer never communicated any threat of arrest to defendant); *United States v. James*, 113 F.3d 721, 727 (7th Cir. 1997) (in concluding that the suspect was not in custody for *Miranda* purposes, noting that officers did not threaten to arrest anyone); *United States v. Guarno*, 819 F.2d 28, 32 (2d Cir. 1987) (noting that defendant not in custody when, among other things, agents did not threaten defendant with arrest if he refused to cooperate); *State v. Snell*, 166 P.3d 1106, 1111 (N.M. Ct. App. 2007) (determining defendant was in custody when police threatened defendant with arrest and placed him in police vehicle); *State v. Tobias*, 887 P.2d 366, 367 (Or. Ct. App. 1994) (*Miranda* warnings not required when evidence showed conversation took place

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[2] James does not argue that this threat of arrest rendered his confession involuntary or coerced in direct violation of the Fifth Amendment.

on public street, conversation was casual, and officer did not frisk defendant, threaten him with arrest or physically detain him); *Johnson v. United States*, 616 A.2d 1216, 1228 (D.C. 1992) (noting that, among other things, defendant was never threatened with arrest or handcuffed).

I acknowledge that one jurisdiction has held that an encounter became a custodial interrogation solely due to an officer's threat to arrest a suspect if he did not respond to questioning. *See Aningayou v. State*, 949 P.2d 963 (Alaska Ct. App. 1997) and *Edwards v. State*, 842 P.2d 1281 (Alaska Ct. App. 1992). While these Alaska cases are factually similar, the Alaska courts did not use the *Berkemer* standard to define what amounts to custody. Rather than asking, consistent with *Berkemer*, whether a reasonable person under the circumstances would believe that his or her freedom of action had been curtailed to a degree associated with formal arrest, the Alaska court asked whether a reasonable person would have felt free to break off the interview and leave. Subsequent to the *Aningayou* and *Edwards* decisions, the Alaska court has expressed doubt about its formulation, noting that it applied a Fourth Amendment analysis rather than a Fifth Amendment analysis in those decisions. *See Bovee v. Municipality of Anchorage*, 2000 WL 1672753, 1 (Alaska Ct. App. 2000) (unpublished).

I conclude that, although the threat of arrest is a factor that could contribute to the elevation of an investigative detention into "custody" requiring administration of *Miranda* warnings before interrogation of the detainee, such a threat does not *ipso facto* cross that threshold. In the absence of other factors that more closely implicate techniques with which *Miranda* was concerned, such as physical restraint, removal from a public place or other police domination, the deputy's truthful announcement that he had grounds to arrest all the detainees if none confessed did not transform the encounter into a custodial interrogation under the totality of the circumstances.

Accordingly, the district court's order denying James's suppression motion should be affirmed, and I respectfully dissent.