



Early one morning, a police officer gave eighteen-year-old Gregory Calvin a ride home and discovered that he had been drinking. Calvin was eventually found guilty of illegal consumption of an alcoholic beverage, a class C misdemeanor. Ind. Code § 7.1-5-7-7 (2012). He appeals, and we affirm.

### FACTS AND PROCEDURAL HISTORY

The evidence favorable to the judgment revealed that at 5 a.m. on August 12, 2012, Deputy Scott Rautio was on patrol in Johnson County when he drove past Calvin. Calvin was wearing nonreflective clothing as he walked along the side of the road in the dark. Rautio was concerned that Calvin could be hit by a car, so he turned around and drove back to him.

Deputy Rautio asked Calvin if he was okay and if he needed a ride. Calvin explained that he was walking home from a birthday party. He accepted Rautio's offer of a ride, saying, "If I'm not going to be a burden or anything like that, yeah, give [me] a lift." Tr. p. 11. Calvin said he lived two miles away. Rautio patted down Calvin for weapons and found none. He also checked Calvin's identification and learned that Calvin was eighteen years old. Next, Rautio allowed Calvin to get into the back seat of his car.

As Rautio drove Calvin home, he noticed an odor of alcoholic beverage on Calvin's person. He asked Calvin about the smell, and Calvin said he had spilled gasoline on himself. Near the entrance to Calvin's neighborhood, Calvin asked Rautio to drop him off there, and said he would walk the rest of the way. At that point, Rautio

stopped the car and both of them got out. Rautio again asked Calvin if he had been drinking alcohol, and Calvin admitted that he had. Instead of driving Calvin home, Rautio took him to jail.

The case was tried to the bench. After the presentation of evidence and argument, the court found Calvin guilty and imposed a fine of \$10, plus court costs of \$166. This appeal followed.

### DISCUSSION AND DECISION

Calvin claims there is insufficient evidence to sustain his conviction. Specifically, he says his admission that he had been drinking was obtained in violation of his *Miranda* rights, and that without his admission, there is no evidence he had consumed alcohol.

The Supreme Court held in *Miranda* that a person who is subjected to police questioning after being taken into custody must be provided with procedural safeguards effective to protect the constitutional privilege against self-incrimination. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). “The person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.” *Id.*

As to whether an individual is in custody for *Miranda* purposes, “the ultimate inquiry is simply whether there [was] a ‘formal arrest or restraint on freedom of movement’ of the degree associated with a formal arrest.” *Stansbury v. California*, 511 U.S. 318, 322 (1994) (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983)).

The encounter between Rautio and Calvin has the hallmarks of a consensual interaction, and we conclude that Calvin was not in custody when Rautio questioned him about alcohol consumption. *See Clark v. State*, 512 N.E.2d 223, 227 (Ind. Ct. App. 1987) (Clark not in custody when officer stopped him as he walked along the road, asked him questions about a report of a vehicle in a ditch, and, upon inviting him into the police car to go to the vehicle, discovered that he smelled of alcohol).

Rautio's questioning of Calvin did not implicate his *Miranda* rights, so Calvin's confession was admissible. There is sufficient evidence to sustain Calvin's conviction.

#### CONCLUSION

We affirm the judgment of the trial court.

Affirmed.

MATHIAS, J., and PYLE, J., concur.