

**IN THE COURT OF APPEALS OF IOWA**

No. 3-355 / 12-1074  
Filed May 15, 2013

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**JASON ROBERT WALKER,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Worth County, James M. Drew,  
Judge.

A defendant appeals his conviction and sentence. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Denise A.  
Timmins, and Laura Roan, Assistant Attorneys General, and Jeff Greve, County  
Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

**VOGEL, P.J.**

After a trial on the minutes of evidence, Jason Walker appeals his conviction and sentence for sexual abuse in the third degree, a class “C” felony, in violation of Iowa Code section 709.4(4) (2009). He argues the district court erred in denying his motion to suppress the statements he made to investigating officers in the afternoon of December 9, 2010, and on February 28, 2011. Because we find the defendant was not subject to custodial interrogation when he made the statements, we affirm the district court’s denial of the motion to suppress and therefore affirm his conviction.

We review *de novo* a district court’s refusal to suppress statements allegedly made in violation of constitutional safeguards. *State v. Pearson*, 804 N.W.2d 260, 265-66 (Iowa 2011). We independently evaluate the totality of the circumstances as shown by the entire record. *Id.* “We give deference to the district court’s fact-findings due to its opportunity to assess the credibility of witnesses, but we are not bound by those findings.” *Id.*

The constitutional safeguards guaranteed by the Fifth Amendment to the U.S. Constitution against self-incrimination “protect the individual against the coercive nature of custodial interrogation, [and] they are required only where there has been such a restriction on a person’s freedom as to render him in custody.” *Id.* at 267 (quotations omitted). The relevant factors for determining custody include (1) the language used to summon the individual, (2) the purpose, place, and manner of the interrogation, (3) the extent to which the person is confronted with evidence of guilt, and (4) whether the person is free to leave the place of questioning. *State v. Bogan*, 774 N.W.2d 676, 680 (Iowa 2009).

The December 9 interview in question was the second interview that took place that day between the investigator, Special Agent James Thiele, and Walker.<sup>1</sup> Based on our de novo review of the record, we agree with the district court, the second interview on December 9 was not a custodial interrogation. Walker was summoned to the second interview by a cordial request by Thiele for Walker to give him a call after class.<sup>2</sup> The interview took place in a standard interview room at the Iowa State Patrol headquarters, with Walker sitting closest to the door. Walker was told at the beginning of the interview, “As I told you before, you’re free to leave, you’re not under arrest. You realize that. You know how to get out the same way we came in.” Agent Thiele was at all times in plain clothes without a weapon displayed. We agree with the district court’s description of the tone of the exchange as “conversational” and the confrontation of evidence of guilt was only a small portion of the interview.

The February 28 encounter took place in Thiele’s vehicle outside of Walker’s home. This questioning is even clearer it was not custodial interrogation by the statements made by the Thiele during the conversation:

[AGENT THIELE]: Okay. You know, and I—I know you’re frustrated and you’ve been more than helpful just like you are this afternoon.

[WALKER]: (Unintelligible)

[AGENT THIELE]: I asked if you’d have a minute to answer—

[WALKER]: Right

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<sup>1</sup> Walker does not challenge the first interview on December 9.

<sup>2</sup> Agent Thiele concluded the first interview with Walker so Walker could attend a class from 1:30 to 2:30. At that time Agent Thiele requested, “Why don’t you, um, if you get a chance when you get out of class at 2:30, might be the easiest thing, why don’t you call me before you leave town.” He directed Walker to give him a call if he had any questions and said, “So—and if you give me a call when you get out of class this afternoon I’d appreciate it, because we may have some other questions. I don’t want to bother you during class, so.”

[AGENT THIELE]: —a few questions.

[WALKER]: Right.

[AGENT THIELE]: You know, like I told you before you realize you're not under arrest.

[WALKER]: I know.

[AGENT THIELE]: You're not—you're not being held.

[WALKER]: Right.

[AGENT THIELE]: You came here to my car on your own free will.

[WALKER]: Right.

[AGENT THIELE]: We're sitting in front of your house.

[WALKER]: Right.

[AGENT THIELE]: So, you know, anytime you want to quit you can. You can—

[WALKER]: I know.

[AGENT THIELE]: Hopefully you're not frustrated with me.

[WALKER]: No.

Based on our review of the totality of the circumstances and the factors from *Bogan*, the two challenged conversations were consensual encounters not intended to place Walker under arrest, nor would a reasonable person believe otherwise. We affirm the district court pursuant to Iowa Court Rule 21.26(1)(a),(e).

**AFFIRMED.**