NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

NO. 2013 KA 1168

STATE OF LOUISIANA

VERSUS

CHRISTOPHER WILLIAMS

RHP by EWD
JMG by EWD

Judgment Rendered: FEB 28 2014

On Appeal from the
22nd Judicial District Court,
In and for the Parish of Washington,
State of Louisiana
No. 10 CR8 110836, Division "G"

The Honorable William J. Crain, Judge Presiding

* * * * *

Walter P. Reed
District Attorney
Leigh Anne Wall
Assistant District Attorney
Franklinton, Louisiana

Kathryn Landry
Special Appeals Counsel
Baton Rouge, Louisiana

Attorneys for Plaintiff/Appellee,
State of Louisiana

Mary E. Roper
Louisiana Appellant Project
Baton Rouge, Louisiana

Attorney for Defendant/Appellant,
Christopher Williams

* * * *

BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

DRAKE, J.

The defendant, Christopher C. Williams, was charged by amended bill of information with simple burglary, a violation of Louisiana Revised Statutes 14:62. He pled not guilty and, following a jury trial, was found guilty of the responsive offense of attempted simple burglary. See La. R.S. 14:27. He filed motions for new trial and postverdict judgment of acquittal, both of which were denied. The defendant was then sentenced to six years at hard labor. Thereafter, the State filed a multiple offender bill of information, and the defendant admitted that he was a third-felony habitual offender. The district court vacated its previously imposed sentence of six years at hard labor, and resentenced the defendant as a habitual offender to twelve years at hard labor. The defendant now appeals, arguing that the district court erred in allowing the State to introduce at trial a statement that he made prior to his arrest. For the following reasons, we affirm the defendant's conviction, habitual offender adjudication, and sentence.

FACTS

On September 23, 2010, around 11:25 p.m., six officers with the Bogalusa Police Department working criminal patrol detail responded to an anonymous tip that subjects were carrying a refrigerator away from Redmond Heights, a public housing complex in Bogalusa, Louisiana. As soon as the officers pulled up, the men put the refrigerator down. They were sweating profusely and appeared exhausted. One of the officers asked where the men obtained the refrigerator. The defendant responded that it was sitting on the curb outside of a nearby house. The officers went to that house to investigate and discovered that it was vacant and had no electricity. The officers also determined that the refrigerator was still cold on the inside. The defendant and the other subject were then placed under arrest and

advised of their rights.[1] It was later determined that the refrigerator was stolen from an apartment unit in Redmond Heights, which was not far from where the two men were located.

DISCUSSION

In his sole assignment of error, the defendant contends that the district court erred in allowing his statement to be introduced at trial because he had not been informed of his **Miranda** rights when he made the statement. The defendant also contends that because he was "surround[ed] by three police units and five or six police officers[,]" there was an "atmosphere of coercion, fear and intimidation, rendering [his] statement involuntary."

While questioning Detective David Miller with the Bogalusa Police Department, the State asked, "Did you receive some information from one of the men that the refrigerator came from an abandoned house or something?" Defense counsel objected, arguing that he had not been given notice under Louisiana Code of Criminal Procedure article 768.[2] The State responded that the defendant was given open-file discovery. The jury was excused and a predicate hearing was held. Detective Miller clarified that when he and the other officers first arrived on the scene, he asked where the refrigerator came from as part of the investigation. According to Detective Miller's testimony, the defendant had not been taken into custody or arrested at that point. The district court found that the statement given was noncustodial and was made freely and voluntarily without force or intimidation.

---

[1] The other subject, Brent Crumedy, was charged with simple burglary by the same amended bill of information as the defendant. He pled guilty to simple burglary prior to the defendant's trial.

[2] Article 768 provides, "Unless the defendant has been granted pretrial discovery, if the state intends to introduce a confession or inculpatory statement in evidence, it shall so advise the defendant in writing prior to beginning the state's opening statement. If it fails to do so a confession or inculpatory statement shall not be admissible in evidence."

The obligation to provide **Miranda** warnings attaches only when a person is questioned by law enforcement after he has been taken "into custody or otherwise deprived of his freedom of action in any significant way." **Miranda v. Arizona**, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966); **State v. Payne**, 01-3196 (La. 12/4/02), 833 So.2d 927, 934. Custody is decided by two distinct inquiries: an objective assessment of the circumstances surrounding the interrogation to determine whether there is a formal arrest or restraint on freedom of the degree associated with formal arrest; and, second, an evaluation of how a reasonable person in the position of the interviewee would gauge the breadth of his freedom of action. **State v. Shirley**, 08-2106 (La. 5/5/09), 10 So.3d 224, 229.

As such, **Miranda** warnings are not required when officers conduct preliminary, noncustodial, on-the-scene questioning to determine whether a crime has been committed, unless the accused is subjected to arrest or a significant restraint short of formal arrest. Thus, an individual's responses to on-the-scene and noncustodial questioning, particularly when carried out in public, are admissible without **Miranda** warnings. See **State v. Davis**, 448 So.2d 645, 650-52 (La. 1984).

The defendant argues that he should have been **Mirandized** because he was "detained." In **State v. Fisher**, 97-1133 (La. 9/9/98), 720 So.2d 1179, 1182-83, our supreme court recognized a useful three-tiered analysis of interactions between citizens and the police from **United States v. Watson**, 953 F.2d 895, 897 n.1 (5th Cir.), cert. denied, 504 U.S. 928, 112 S.Ct. 1989, 118 L.Ed.2d 586 (1992). In the first tier, there is no seizure or Fourth Amendment concern during mere communication with police officers and citizens where there is no coercion or detention. The second tier consists of brief seizures of a person, an investigatory stop, under **Terry v. Ohio**, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), if

the officer has an objectively reasonable suspicion, supported by specific and articulable facts, that the person has been, is, or is about to be, engaged in criminal activity. See **State v. Belton**, 441 So.2d 1195, 1198 (La. 1983), cert. denied, 466 U.S. 953, 104 S.Ct. 2158, 80 L.Ed.2d 543 (1984). The third tier is custodial arrest where an officer needs probable cause to believe that the person has committed a crime. **State v. Hamilton**, 2009-2205 (La. 5/11/10), 36 So.3d 209, 212.

Defendant's interaction with officers in the instant case falls into the first tier, a preliminary, noncustodial, on-the-scene questioning to determine whether a crime has been committed. Therefore, no seizure or Fourth Amendment concern took place. **State v. Jolla,** 384 So. 2d 370, 373-74 (La. 1980); **State v. Overton,** 596 So. 2d 1344, 1353 (La. App. 1st Cir.), *writ denied,* 599 So. 2d 315 (La. 1992). Even if defendant's interaction with officers fell into the second tier, no **Miranda** warnings were required. Even if the defendant was, as he argues, "detained," and his freedom of movement was curtailed in a significant way, until the arrest actually occurred, this Fourth Amendment seizure did not constitute custody for **Miranda** purposes. See **Berkemer v. McCarty**, 468 U.S. 420, 439-40, 104 S.Ct. 3138, 3150, 82 L.Ed.2d 317 (1984). Thus, under the facts established in the record, **Miranda** warnings were not required. Therefore, the district court did not err in allowing the State to introduce the defendant's statement. Accordingly, this assignment of error is without merit.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.