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SJC-12830

COMMONWEALTH vs. AMADOR MEDINA.

Worcester. January 6, 2020. - July 24, 2020.

Present: Gants, C.J., Lenk, Gaziano, Lowy, Budd, Cypher, & Kafker, JJ.

Due Process of Law, Police custody. Constitutional Law, Admissions and confessions, Voluntariness of statement. Evidence, Admissions and confessions, Voluntariness of statement. Practice, Criminal, Motion to suppress, Interlocutory appeal, Admissions and confessions, Voluntariness of statement.

Indictments found and returned in the Superior Court Department on February 17, 2016.

A pretrial motion to suppress evidence was heard by Shannon Frison, J.

An application for leave to prosecute an interlocutory appeal was allowed by Cypher, J., in the Supreme Judicial Court for the county of Suffolk, and the case was transferred by her to the Appeals Court. After review by the Appeals Court, the Supreme Judicial Court granted leave to obtain further appellate review.

Ellyn H. Lazar, Assistant District Attorney, for the Commonwealth.
David M. Osborne for the defendant.

LENK, J. The Hartford, Connecticut, police department received a tip that the defendant had three human skulls sitting on his porch. Over the next several hours, Hartford police officers met with the defendant, first at his apartment, and later at a police station, to uncover whether, how, and why he had these bones. After learning that they might have been stolen during a grave robbery in Worcester, and at the request of the Worcester police, Hartford police officers placed the defendant under arrest.

This case is before us on appeal from an order by a Superior Court judge allowing the defendant's motion to suppress statements he made to Hartford police officers. The motion judge determined that all of these statements were made under custodial interrogation, without Miranda warnings, and that they were involuntary.

We conclude that the defendant was not subjected to custodial interrogation while speaking with officers of the Hartford police department at his apartment and, thus, Miranda warnings were not required at that time. In addition, the record reflects that the defendant's statements to police there were otherwise voluntary. Accordingly, the motion judge's conclusion that all of his statements must be suppressed was

erroneous, and the order allowing the defendant's motion to suppress must be reversed.

1. Background. a. Facts. We recite the facts from the motion judge's findings, reserving certain details for later discussion.

On December 4, 2015, a caller who identified himself as "Juan" telephoned 911 and reported that he had seen several sets of human remains at the defendant's home. At approximately 3:22 P.M., Officer Bryan Gustis of the Hartford police responded to the defendant's address in Hartford. After knocking and unsuccessfully trying to enter through a locked front door, Gustis went to the back door of the defendant's second-floor apartment. There he was met by the defendant. Gustis explained that the Hartford police had received a complaint about possible human remains; the defendant invited him into the apartment to discuss it.

Gustis initially was alone with the defendant in the apartment, except for two pit bull dogs that were chained up inside. He asked the defendant whether it was true that he had human bones. The defendant responded that he did, and pointed out a black plastic bag on his porch. Gustis could see dirt and bones protruding from the top of the bag. The defendant told Gustis that he kept these bones for religious purposes. He "cordial[ly]" explained that he was a priest in the religion of

Palo Mayombe, which, he said, "is the darker side of Santeria and is a very old religion." He described the role that bones played in rituals of his faith, and how bones of different ages had different healing powers. He told Gustis that, in total, he had five sets of human remains in black trash bags. Gustis could see bones inside one partially-opened bag and could see other evidence of religious rituals, including numerous figurines, candles, and bowls containing additional human bones.

The defendant elaborated on how he came to possess these bones. He said that he had purchased the five sets of human remains in May of 2015 from an unidentified man in Worcester, at a cost of approximately $3,000 apiece. Without being asked, he showed Gustis photographs on his cellular telephone of the same bones when they were still entombed. Upon learning all of this information about the bones, Gustis did not arrest or handcuff the defendant.

Additional Hartford police officers arrived at the apartment; first Sergeant Labbe, and, later, Detectives Anthony Rykowski and Brando Flores. Each officer spoke with the defendant and observed the skeletal remains. The defendant also showed Rykowski the photographs of the bones in their caskets that he had shown Gustis. Signs appearing in the background of these photographs indicated that they had been taken in Hope

Cemetery, which the defendant confirmed was located in Worcester.

Rykowski contacted the Worcester police and learned that, in October 2015, a mausoleum in Worcester had been broken into, and six sets of human remains had gone missing. Upon learning this, Rykowski informed the defendant that police would be removing the bones from his apartment so that they could be returned to their families.

Following approximately two and one-half hours of continuous discussion at the apartment, Rykowski asked the defendant to come to the police station and make a further statement. The defendant agreed, and officers drove him to the station. There, detectives interviewed the defendant for at least two more hours; the interview culminated in a written statement that the defendant then declined to sign.

Near the end of the interview, Worcester officers told the Hartford police that they had probable cause to arrest the defendant, and asked that he be held as a fugitive from justice. The Hartford police complied, and the defendant was arrested. Hartford police officers also sought and received a search warrant for the defendant's apartment. From his first encounter with Gustis until his arrest at the station, the defendant was never provided Miranda warnings.

b. Prior proceedings. The defendant was indicted on several charges related to the removal of human remains from the Worcester cemetery.[1] In November 2017, he filed a motion to suppress evidence and statements; after two evidentiary hearings, the motion was allowed in February 2018. A single justice of this court thereafter allowed the Commonwealth's petition to pursue an interlocutory appeal in the Appeals Court. In a lengthy unpublished opinion issued pursuant to its rule 1:28,[2] the Appeals Court reversed the order allowing the defendant's motion to suppress. Commonwealth v. Medina, 95 Mass. App. Ct. 1118 (2019). We allowed the defendant's application for further appellate review.

The Commonwealth maintains that the motion judge erred by deciding that the defendant was in custody throughout his encounter with officers of the Hartford police department, and

[1] The defendant was indicted on two counts of breaking and entering at night, in violation of G. L. c. 266, § 16; two counts of injuring a tomb, grave or memorial, in violation of G. L. c. 272, § 73; nine counts of disinterring a body, in violation of G. L. c. 272, § 71, and two counts of conspiracy, in violation of G. L. c. 274, § 7. None of these statutes criminalize the defendant's possession of human bones for religious purposes; they merely proscribe the manner in which he came to possess the bones.

[2] Under rule 1:28 of the Rules of the Appeals Court, "a panel of the justices of th[at] court may determine that no substantial question of law is presented by the appeal or that some clear error of law has been committed which has injuriously affected the substantial rights of an appellant."

that his statements were involuntary.[3] For the reasons that follow, we agree.

2. Discussion. a. Standard of review. "In reviewing a ruling on a motion to suppress, we accept the judge's subsidiary findings of fact absent clear error 'but conduct an independent review of his ultimate findings and conclusions of law.'" Commonwealth v. Cawthron, 479 Mass. 612, 616 (2018), quoting Commonwealth v. Scott, 440 Mass. 642, 646 (2004).

b. Custody. Miranda warnings are required only where a suspect is subjected to custodial interrogation. See Commonwealth v. Bryant, 390 Mass. 729, 736 (1984), citing Miranda v. Arizona, 384 U.S. 436, 444 (1966). An interrogation becomes custodial when a suspect either is formally "in custody," or "otherwise deprived of his freedom of action in any significant way." Miranda, supra at 445. The defendant bears the burden to establish the custodial nature of his or her encounter with police. Commonwealth v. Larkin, 429 Mass. 426, 432 (1999).

"Whether a suspect was subject to custodial interrogation is a question of Federal constitutional law." Id., citing Commonwealth v. Morse, 427 Mass. 117, 123 (1998). Determining

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[3] The Commonwealth does not contest that the defendant was subjected to interrogation, and that Miranda warnings were not given.

whether a suspect was "in custody," as the term is used here, requires two related inquiries: "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." See Thompson v. Keohane, 516 U.S. 99, 112 (1995).

"Not all restraints on freedom of movement amount to custody for purposes of Miranda." Howes v. Fields, 565 U.S. 499, 509 (2012). See Cawthron, 479 Mass. at 623, quoting Howes, supra ("Determining whether an individual's freedom of movement was curtailed . . . is simply the first step in the analysis"). Outside a formal arrest, a suspect is in custody "if the officer detaining the suspect treats the suspect in a manner that a reasonable person would regard as involving an arrest for practical purposes" (quotations omitted). See 1 McCormick On Evid. § 151 (8th ed. 2020) (discussing applicability of Miranda, "custody," "interrogation," and exceptions).

When considering "how a suspect would have "'gauge[d]' his 'freedom of movement,' courts must examine 'all of the circumstances surrounding the interrogation.'" Howes, 565 U.S. at 509, quoting Stansbury v. California, 511 U.S. 318, 322, 325 (1994). In Commonwealth v. Groome, 435 Mass. 201, 211-212 (2001), we identified four factors that a court should consider when assessing the circumstances surrounding an interrogation.

They are "(1) the place of the interrogation; (2) whether the officers have conveyed to the person being questioned any belief or opinion that that person is a suspect; (3) the nature of the interrogation, including whether the interview was aggressive or, instead, informal and influenced in its contours by the person being interviewed; and (4) whether, at the time the incriminating statement was made, the person was free to end the interview by leaving the locus of the interrogation or by asking the interrogator to leave, as evidenced by whether the interview terminated with an arrest." Id.

In prior decisions, we occasionally have suggested that these four factors are the beginning and the end of the custody analysis. See, e.g., Commonwealth v. Amaral, 482 Mass. 496, 501 (2019) ("Four factors are considered in determining whether a person is in custody"); Commonwealth v. Simon, 456 Mass. 280, 287, cert. denied, 562 U.S. 874 (2010) ("Whether a defendant is in custody depends on four factors"). We take this opportunity to clarify that they are not.

These "Groome factors" have never been intended as a straitjacket. They provide a framework for assessing what kinds of circumstances may be relevant when a court considers whether a defendant was in custody; they do not limit the obligation of a court to consider all of the circumstances that shed light on

the custody analysis.[4] See Groome, 435 Mass. at 211 (court must "consider[] all the circumstances"). Indeed, any effort to establish such a limit would conflict with governing Federal law. Regardless of the tools a court employs to organize its analysis, the ultimate question remains the same: whether the defendant was subjected to "a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest" (quotations and citation omitted). Thompson, 516 U.S. at 112. See Cawthron, 479 Mass. at 623.

Here, the defendant's several-hours-long encounter with police occurred in two locations; initial interviews with police officers at his apartment were followed by further questioning at the police station. To succeed in his motion to suppress all of the statements he made, the defendant must meet his burden to prove that he was in custody throughout the encounter. We examine all of the surrounding circumstances to determine "how a reasonable [person] in the [defendant's] position would have understood his situation." Berkemer v. McCarty, 468 U.S. 420, 442 (1984).

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[4] As we are interpreting Federal law, and both Massachusetts and Connecticut courts apply the proper totality of the circumstances analysis, we need not determine whether Massachusetts or Connecticut law is applicable. Compare Commonwealth v. Groome, 435 Mass. 201, 211 (2001) (recognizing totality of circumstances analysis); with State v. Mangual, 311 Conn. 182, 196-197 (2014) (accord).

c. Nature of the interviews. When the defendant first spoke with Hartford police officers, he was in his own apartment, a setting "far removed from the incommunicado interrogation of individuals in a police-dominated atmosphere for which the Miranda protections were tailored" (quotations and citation omitted). See Bryant, 390 Mass. at 737. In such a setting, "questioning tends to be significantly less intimidating than questioning in unfamiliar locations." United States v. Crooker, 688 F.3d 1, 11 (1st Cir. 2012).

The officers who interviewed the defendant did not transform his apartment into a coercive environment. The first officer to arrive came alone, knocked on the defendant's door, and only entered the apartment with the defendant's permission. See Commonwealth v. Sneed, 440 Mass. 216, 221 (2003) (no custody where suspect "voluntarily admitted her questioners into the familiar surroundings of her home"). Although more officers arrived over the following two hours, it does not appear that they meaningfully restricted the defendant's freedom of movement within his home. See Crooker, 688 F.3d at 11-12 (no custody despite presence of numerous armed officers in home, due to lack of physical restraint and cooperative interactions). Compare United States v. Axsom, 289 F.3d 496, 502 (8th Cir. 2002) (nine officers executing search warrant in home did not render interrogation custodial), with United States v. Hashime, 734

F.3d 278, 284 (4th Cir. 2013) (custody where home was "occupied by a flood of armed officers who proceeded to evict him and his family and restrict their movements once let back inside"). Nor did the officers assert control over the surroundings, such as by removing the defendant's two pit bulls that were chained up in the apartment. In the absence of police domination, the defendant's home remained an inherently noncoercive setting.

During this first stage of questioning, police officers did not signal to the defendant that he was suspected of committing any crime. Cf. Groome, 435 Mass. at 211-212. Rather, they explained that they had received a report that human remains were in the defendant's home, and were responding to learn whether that report was accurate.

Notwithstanding the officers' testimony to the contrary, the motion judge determined that they should have known, and indeed did know, that they were investigating the defendant on suspicion of criminal activity. She concluded that this knowledge contributed to the custodial nature of the interrogation. While the officers well may have known that they had uncovered evidence of a crime during their time in the defendant's apartment,[5] their subjective understanding alone does not alter the custody analysis.

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[5] Later in the evening, officers sought and received a search warrant for the defendant's apartment. In the search

"[C]ustody must be determined based on how a reasonable person in the suspect's situation would perceive his circumstances," Yarborough v. Alvarado, 541 U.S. 652, 662 (2004), "not on the subjective views harbored by either the interrogating officers or the person being questioned," Stansbury, 511 U.S. at 323. "[S]ubjective beliefs held by law enforcement officers are irrelevant in the determination whether a person being questioned is in custody for purposes of the receipt of Miranda warnings, except to the extent that those beliefs influence the objective conditions surrounding an interrogation." Morse, 427 Mass. at 123-124. Because any suspicions that the officers harbored remained unexpressed at this point, the motion judge erred by giving weight to those suspicions in the custody analysis.

The nature of the officers' questioning also was consistent with the noncustodial nature of this interaction. When speaking to the defendant in his apartment, the officers' questions were "investigatory rather than accusatory." Commonwealth v. Kirwan, 448 Mass. 304, 311 (2007). There is no indication that the

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warrant application, Detective Anthony Rykowski stated his belief that, "upon searching [the defendant's] apartment, the affiants will locate evidence that the crime of [l]arceny by possession had occurred." The motion judge made no finding, however, that this suspicion was communicated to the defendant, or even that the defendant was aware that a search warrant was being sought while he spoke to police at the station.

officers raised their voices, threatened the defendant, or expressed disbelief in response to his answers. See Sneed, 440 Mass. at 221 (no custody, in part, because there was "no evidence of shouting or raised voices on the part of the investigators").

For his part, the defendant was "cordial" and cooperative. On several occasions, he offered additional information and evidence without any prompting by the officers. Indeed, the motion judge's findings reflect that the defendant sought to discuss, at length, the role that the human remains played in his religious practices. Whereas the "contours of the discussion with [police] were left entirely up to the defendant," Groome, 435 Mass. at 213, the officers' questions did not exert the kind of coercive pressure associated with custodial interrogation.

In her order allowing the motion to suppress, the judge placed dispositive weight on the fourth and final Groome factor. She found that, had the defendant tried to leave or to put the police out of his apartment, they would not have allowed him to do so. Primarily for that reason, she concluded that the defendant was in custody in his apartment. We do not agree.

While freedom to leave "may be a critical factor . . . it cannot be the determinative factor." Cawthron, 479 Mass. at 623. This factor is relevant only insofar as officers

communicate to a defendant, through word and action, that he or she is being detained. Here, the judge made no finding that the defendant had asked whether he was free to leave, nor that the officers had expressed that he was not. Where the motion judge's conclusion was based entirely on the subjective, uncommunicated views of the questioning officers, her conclusion that the defendant was in custody cannot stand.

Rather, we must look to the objective features of the encounter to see whether a reasonable person in the defendant's position would not have felt free to leave or to put the officers out of his apartment. According to the judge's findings, the defendant never was placed in handcuffs or told that he was under arrest. Nor did the officers place him under arrest at the conclusion of the questioning at his apartment. See Bryant, 390 Mass. at 742 n.15 ("the nonarrest of the suspect at the close of the interrogation is often deemed indicative of the lack of a custodial atmosphere during interrogation"). In light of the over-all nature of his interaction with the police, a reasonable person in the defendant's position likely would have concluded that he was still free to leave or cut off questioning at that point.

We acknowledge, however, that other circumstances surrounding the initial encounter were consistent with custody. As the defendant notes, it was the police, and not the

defendant, who sought out this interview. See State v. Mangual, 311 Conn. 182, 199 (2014) ("when the confrontation between the suspect and the criminal justice system is instigated at the direction of law enforcement authorities, rather than the suspect, custody is more likely to exist" [citation omitted]). Further, while the officers' questions themselves were not coercive, the defendant was asked to offer the same explanation to three separate sets of officers in quick succession. See United States v. Bekowies, 432 F.2d 8, 13 (9th Cir. 1970) ("close and persistent questioning . . . [among other factors] may reasonably induce in a suspect the belief that he is no longer free to go about his business without significant restraint"). Additionally, as the questioning went on, the defendant continued to offer more incriminating statements and evidence to the officers. In some circumstances, when a suspect "makes incriminating statements, a previously noncustodial setting can become custodial." Commonwealth v. Hilton, 443 Mass. 597, 611-612 (2005), S.C., 450 Mass. 173 (2007).

Nonetheless, these conditions do not tip the scales in favor of a determination of custody at the defendant's apartment. The picture that emerges from these initial interviews is that of a man speaking openly with officers about his possession of human remains and the religious practices that motivated him, rather than a suspect reacting to coercive

pressure from the police. Viewing all of the circumstances through the eyes of the defendant, we conclude that he has not met his burden of showing that he was in custody while at his apartment.

It is not clear on the record before us whether the nature of the interview changed after the defendant agreed to accompany officers to the police station. The motion judge, having already concluded that the defendant was in custody while being questioned at his apartment, made relatively few findings about this later interrogation. She found only that the defendant was present at the station for a number of hours before being arrested, and that, for at least two of those hours, he was questioned by police officers. Although officers testified about the particular location and nature of the interrogation, the motion judge did not incorporate those facts into her findings. Accordingly, their testimony fell under the motion judge's prefatory statement that "[a]ny facts relayed at the hearing but not recited below were not credited by the [c]ourt."[6]

[6] The motion judge's prefatory statement does not, however, "relieve [her] of [her] obligation to make adequate findings." See Commonwealth v. Tremblay, 480 Mass. 645, 660 (2018). While a busy trial court judge "need not make findings with respect to every piece of evidence in the record, irrespective of pertinence," a motion judge cannot omit testimony where doing so "unnecessarily impairs our ability on the entire evidence to evaluate whether the judge's findings adequately support his [or her] ultimate conclusions of law." See id.

We do not know the conditions the defendant was in at the police station, and therefore cannot determine whether a reasonable person in those conditions would have felt that, effectively, he was under arrest. Consequently, without these missing details, we cannot determine whether the defendant was in custody at the police station. Regardless of the circumstances surrounding the interview at the police station, however, the substance of the defendant's statements does not appear to have changed. There is no indication in the record that the defendant provided any novel information to police officers at the station beyond the full accounting he provided during the noncustodial encounter at his apartment. Even assuming the defendant was in custody while at the police station, his earlier statements while at his apartment nonetheless would not be subject to suppression. See Hilton, 443 Mass. at 613 (judge erred in suppressing defendant's confession at police station made prior to moment she was in custody).

Moreover, in her decision, the motion judge did not differentiate between the questioning at the apartment and the police station. Rather, her conclusion that Miranda warnings were required was predicated entirely on her determination that the defendant was in custody at his apartment. Because we conclude that he was not, the motion judge's decision

suppressing the defendant's statements on this ground was erroneous.

d. Voluntariness. The judge further concluded that the defendant's statements to police were involuntary, in violation of the due process clause of the Fifth Amendment to the United States Constitution and art. 12 of the Massachusetts Declaration of Rights.

On a motion to suppress, "[t]he initial burden is on the defendant to produce evidence tending to show that his statement was involuntary; if he satisfies this burden, the Commonwealth is required to prove beyond a reasonable doubt that the statement was voluntarily made." Commonwealth v. Montoya, 464 Mass. 566, 577 (2013). "In determining whether the defendant's statements were voluntary, we consider whether the statements were the product of a rational intellect and a free will" (quotations and citation omitted). Commonwealth v. Woodbine, 461 Mass. 720, 729 (2012). A host of factors may be relevant in this determination, including "promises or other inducements, conduct of the defendant, the defendant's age, education, intelligence and emotional stability, experience with and in the criminal justice system, physical and mental condition, the initiator of the discussion of a deal or leniency (whether the defendant or the police), and the details of the interrogation, including the recitation of Miranda warnings." Commonwealth v.

Tolan, 453 Mass. 634, 642 (2009), quoting Commonwealth v. Mandile, 397 Mass. 410, 413 (1986).

Here, in concluding that all of the defendant's statements were involuntary, the motion judge appears to have considered only the officers' failure to provide Miranda warnings from the outset of their first interview with the defendant. No other basis for her conclusion is apparent in her sparse findings.[7] Even assuming that the absence of Miranda warnings alone would render these statements involuntary, we conclude that Miranda warnings were not required when officers spoke to the defendant at his apartment.

The defendant has not met his burden of setting forth evidence to call into question the voluntariness of those statements. There is no indication that police officers employed coercion or deception to elicit any of his statements. To the contrary, the defendant was forthcoming and offered statements without prodding from the officers. Nor was this cooperation clearly a result of a complete lack of familiarity with the criminal justice system; as the judge found, police previously had recovered a skull from the defendant that had been removed from a Hartford cemetery. Based on the judge's

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[7] After discussing the relevant standard, the motion judge concluded, "Hence, the questioning of [the defendant] was a custodial interrogation. And Miranda was required but not provided. And [the defendant's] statement was not voluntary."

factual findings, there is no indication that the defendant's statements at the apartment were anything but the product of his own free will and rational intellect.

Without evidence tending to show that these statements were involuntary, the statements should not have been suppressed on this ground. Given the absence of any findings about the voluntariness of similar statements at the police station, the motion to suppress should not have been allowed.

Order allowing motion
to suppress reversed.