STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RAYMOND DESHA DAVIS,

Defendant-Appellee.

UNPUBLISHED
December 18, 2008

No. 282886
Wayne Circuit Court
LC No. 06-014376

Before: Borrello, P.J., and Davis and Gleicher, JJ.

PER CURIAM.

The prosecution appeals as on leave granted the trial court's order granting defendant's motion to suppress.[1] We affirm.

At issue are two statements defendant gave to police during a police raid on a residence in Detroit where the police were executing a search warrant. At the commencement of the raid, defendant jumped out of a back window and attempted to run away, only to be stopped and brought back into the house by an officer outside. Narcotics and firearms were found in the house. Defendant was placed in handcuffs, as were the three other people found in the house. Detroit Police Officer Robert Gadwell began obtaining the detainees' "names, birth dates, addresses" and social security numbers pursuant to "standard procedure," and he also asked the group "who lives here." Defendant volunteered that he did. After the residence was "cleared" by the officers, the three other detainees were issued "tickets" and released; defendant was placed under arrest. Defendant was then given his *Miranda*[2] warnings, which he indicated that he understood, and again asked various questions, including whether he lived at the residence. Defendant again stated that he did, and he furthermore explained that he ran from the police because he "had some weed and [he] was scared." The interview stopped when defendant stated

[1] This Court initially denied leave "for failure to persuade the Court of the need for immediate appellate review." *People v Davis*, unpublished order of the Court of Appeals, entered February 22, 2008 (Docket No. 282886). The prosecution applied for leave to appeal with our Supreme Court. In lieu of granting leave to appeal, our Supreme Court remanded this matter "for consideration as on leave granted." *People v Davis*, 481 Mich 888; 749 NW2d 740 (2008).

[2] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

that he "d[id]n't want to say anything" in response to an inquiry into what he planned to do with the marijuana.

The trial court held an evidentiary hearing regarding whether to suppress defendant's statements. The only individual to testify at the hearing was Officer Gadwell, but the trial court also considered the transcript from defendant's preliminary examination. The trial court held that defendant was in custody at all relevant times, so all of defendant's statements were in response to custodial interrogation. The trial court further found that an experienced narcotics officer would understand asking "who lives here" to be reasonably calculated to evoke an incriminating response for the purpose of establishing constructive possession, and it was "preposterous" to suggest otherwise. Therefore, it found that defendant's pre-*Miranda* response was inadmissible. The trial court further found Officer Gadwell to lack credibility when testimony from other officers at the preliminary investigation were considered, and it found that Officer Gadwell's reading of defendant's *Miranda* rights, followed by asking him again whether he lived here, constituted an impermissible attempt to retroactively "launder" an inadmissible statement. The trial court finally held that defendant's statement that he had weed was inadmissible because the prosecution failed to establish that defendant waived his rights.

We review a trial court's conclusions of law and application of the law to the facts regarding its decision to suppress a confession de novo, *People v McBride*, 273 Mich App 238, 249; 729 NW2d 551 (2006), rev'd in part on other grounds 480 Mich 1047 (2008), while reviewing its factual findings for clear error, *id*. A finding of fact is clearly erroneous if, after a review of the entire record, we are left with a definite and firm conviction that a mistake was made. *Id*.

Generally, a defendant's statements made during a "custodial interrogation" may not be introduced into evidence unless the prosecution demonstrates that, prior to any questioning, the accused was read his *Miranda* rights, and voluntarily, knowingly and intelligently waived those rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). An accused is considered to be in "custody" if he could reasonably believe that he was not free to leave. *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999). The evidence established that, after defendant jumped out of a window and attempted to flee, he was brought back by police officers, handcuffed, and informed that he was being detained before he made his first statement. We conclude that, even though defendant was not formally under arrest until his later statements, he could reasonably have believed he was not free to leave. The trial court did not commit clear error in finding that defendant was in "custody" when he made his first challenged statement. *Zahn, supra* at 449.

Police conduct constitutes "interrogation" when the police knew or reasonably should have known that their conduct was likely to invoke an incriminating response. *People v Anderson*, 209 Mich App 527, 532-533; 531 NW2d 780 (1995). Conversely, "general on-the-scene questions" or "routine booking questions," such as asking for an individual's identity or address, are not always "designed to elicit incriminatory admissions," and thus, are not always considered "interrogation." See *Pennsylvania v Muniz*, 496 US 582, 600-602; 110 S Ct 2638; 110 L Ed 2d 528 (1990); *People v Ish*, 252 Mich App 115, 118; 652 NW2d 257 (2002).

Officer Gadwell testified that his questioning was purely administrative. However, we defer to the trial court's assessment of a witness's credibility, and the trial court found Officer

Gadwell not credible. *People v Sexton* (*After Remand*), 461 Mich 746, 752; 609 NW2d 822 (2000). In addition, (1) the police were executing a search warrant for illegal narcotics, (2) defendant had just been detained after attempting to flee the residence, and (3) one of the two reasons given for defendant's subsequent arrest was because he admitted that he resided at the residence. We do not find that the trial court clearly erred in concluding, on the basis of the above circumstances, that Gadwell either knew or should have known that his question was likely to invoke an incriminating response, and thus, constituted "interrogation," *Anderson, supra* at 532-533. Accordingly, the trial court did not err when it granted defendant's motion to suppress his pre-*Miranda* statement. *Miranda, supra* at 444.

Defendant's second set of statements is a closer question. Defendant was unambiguously in custody at the time. Officer Gadwell testified that defendant was advised of his *Miranda* rights and that, although he refused to sign or write anything, defendant indicated that he understood those rights. Nevertheless, suppression is warranted if there is a "causal connection" between the first, improper statements and the subsequent statements given after a defendant is advised of his rights. See *People v Coomer*, 245 Mich App 206, 222; 627 NW2d 612 (2001). Defendant was arrested shortly after, and in part because of, defendant's statement that he lived at the residence; his second questioning occurred shortly after his arrest. We find that there was at least some causal connection between the two sets of statements.

Furthermore, we must again defer to the trial court's assessment of the credibility of witnesses before it. Where prior un-*Mirandized* custodial interrogation is not coercive, such questioning does not preclude the admission of a post-*Miranda* statement. *Oregon v Elstad*, 470 US 298, 308, 310-318; 105 S Ct 1285; 84 L Ed 2d 222 (1985). At the other extreme, a plurality[3] of the United States Supreme Court held that deliberately withholding *Miranda* warnings in order to obtain an unwarned confession for later use in obtaining the same information after giving warnings renders the subsequent statements inadmissible. *Missouri v Seibert*, 542 US 600, 600-602; 124 S Ct 2601; 159 L Ed 2d 643 (2004). The trial court's findings reflect a factual scenario somewhere in between, where Officer Gadwell's two-stage interview may not have been "systematic, exhaustive, and managed with psychological skill," *Seibert*, but it was, at a minimum, disingenuous.

When we consider the trial court's credibility assessment in conjunction with the causal connection between defendant's unwarned statement and his subsequent statements, and the fact that we "presume that a defendant did not waive his rights" unless the prosecution shows otherwise, *North Carolina v Butler*, 441 US 369, 373; 99 S Ct 1755; 60 L Ed 2d 286 (1979), we are not left with a definite and firm conviction that the trial court made a mistake. We are therefore unable to find that the trial court erred in suppressing defendant's post-arrest statements.

[3] A "plurality opinion of the Supreme Court, in which the reasoning is not supported by a majority of the justices, is not binding on this Court." *Jackson Drain Com'r v Village of Stockbridge*, 270 Mich App 273, 285; 717 NW2d 391 (2006).

Affirmed.

/s/ Stephen L. Borrello
/s/ Alton T. Davis
/s/ Elizabeth L. Gleicher