STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOLLIE MARIA RICHARDSON,

Defendant-Appellant.

UNPUBLISHED
February 11, 2021

No. 351152
Washtenaw Circuit Court
LC No. 19-000038-FH

Before: CAVANAGH, P.J., and SERVITTO and CAMERON, JJ.

PER CURIAM.

Defendant appeals by right her jury conviction of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v). We affirm.

I. BACKGROUND

A baggy containing cocaine was left in a Walmart fitting room that defendant and an acquaintance had used. An officer approached defendant and her friend after they were found in the grocery aisle of the same store. Defendant admitted that the cocaine was hers.

Defendant moved to suppress her confession. At the evidentiary hearing on defendant's motion to suppress, the officer testified that he and a Walmart employee located defendant and her friend in the produce area of the store after he was dispatched to investigate the narcotics found in the fitting room. He said that no one was threatened or put in handcuffs, and that he was not blocking defendant's access to the store exit or touching her as he spoke to her from about five feet away. He believed that defendant understood him and that nothing was impairing her ability to communicate. The officer recalled telling the women that they had left drugs in a fitting room. He explained that according to departmental practice, he had the discretion to field test the suspected drugs and place the offender in jail, or to send the substance to the laboratory to process and release the offender. More specifically, he explained:

> I basically explained to them that at Pittsfield Township we do have a policy to field test narcotics – um, or we just send them up to the lab. If we send them up to

> the lab typically what happens is we just process and release them. As long as people are straight, honest with us we sort of have that -- that discretion.

According to the officer, he told the two women that he preferred to only arrest the one person responsible, and asked that they tell him the truth so that only one of them would have to be arrested. He denied that he made any promises not to arrest anyone, or about a potential sentence. He said that his interaction with the women lasted a little over a minute before defendant admitted that she was in the fitting room and possessed the cocaine. He arrested defendant and released her companion when they got to the police vehicle.

The trial court determined that the brief questioning was in an open area where defendant was not physically confined, that she was not intimidated, that she was not impaired and was familiar with questioning from a previous arrest, and that she was not deprived of her freedom to act in any significant way. The trial court stated that informing defendant of the departmental practice was not a promise to not prosecute. The trial court denied defendant's motion based on a determination that defendant was not in custody inside the store, and there was no coercion.

II. ANALYSIS

On appeal, defendant argues that the trial court erred by denying her motion to suppress her statements to the officer. She claims that her rights were violated because she was not given *Miranda*[1] warnings, and that her statements were given involuntarily because of a promise of leniency. We disagree.

A. STANDARD OF REVIEW

A trial court's ruling on a motion to suppress is reviewed de novo. *People v Steele*, 292 Mich App 308, 313; 806 NW2d 753 (2011). Factual findings are reviewed for clear error. *People v Elliott*, 494 Mich 292, 300-301; 833 NW2d 284 (2013). A factual finding is clearly erroneous if it leaves this Court with a firm and definite conviction that a mistake was made. *Steele*, 292 Mich App at 313.

B. CUSTODIAL INTERROGATION

"No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law." Const 1963, art 1, § 17. "The constitutional privilege against self-incrimination protects a defendant from being compelled to testify against himself or from being compelled to provide the state with evidence of a testimonial or communicative nature." *People v Burhans*, 166 Mich App 758, 761-762; 421 NW2d 285 (1988). The protections provided in *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966) are intended to protect defendants against self-incrimination during custodial interrogation, which is inherently coercive in nature. *People v Cheatham*, 453 Mich 1, 10-11; 551 NW2d 355 (1996). A person must be given a series of *Miranda* warnings "before being subjected to 'custodial interrogation' in order to protect his constitutional privilege against self-

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

incrimination." *People v Tanner*, 496 Mich 199, 207; 853 NW2d 653 (2014). A statement obtained from a defendant during a custodial interrogation is admissible only if the defendant voluntarily, knowingly, and intelligently waived those *Miranda* rights, i.e., the privilege against self-incrimination. *Id*. at 209 (quotation marks and citations omitted); see also *People v Daoud*, 462 Mich 621, 632-639; 614 NW2d 152 (2000).

Defendant claims that the officer questioned her during a custodial interrogation without informing her of her *Miranda* rights. "Generally, a custodial interrogation is a questioning initiated by law enforcement officers after the accused has been taken into custody or otherwise deprived of his or her freedom of action in any significant way." *Steele*, 292 Mich App at 316. The totality of the circumstances is examined to determine whether the defendant was in custody when questioned. *Id*. Whether a person is "in custody" is determined based on how a reasonable person in the accused's situation "would perceive his or her circumstances and whether the reasonable person would believe that he or she was free to leave." *People v Roberts*, 292 Mich App 492, 504; 808 NW2d 290 (2011). In *People v Barritt*, 325 Mich App 556; 926 NW2d 811 (2018), this Court listed the following relevant factors that a court should consider to determine whether a defendant was in custody: "(1) the location of the questioning, (2) the duration of the questioning, (3) statements made during the interview, (4) the presence or absence of physical restraints during the questioning, and (5) the release of the interviewee at the end of the questioning[.]" *Id*. at 562-563 (internal citations omitted).

In this case, an evaluation of the factors favors the conclusion that defendant was not in custody when she spoke with the officer in the store. The officer encountered defendant and her companion in an open area of the store. The encounter lasted a very brief time during which the officer explained the situation and asked who was responsible for the drugs. While defendant was not told that she could leave, there was no physical restraint or intimidation to limit defendant's movements. Defendant argues that the officer accused her of committing a crime and informed her that she would be arrested if he did not learn the truth, letting defendant know that she was not free to leave. However, "the fact that an individual has become the 'focus' of an investigation does not trigger the *Miranda* requirement." *People v Hill*, 429 Mich 382, 391; 415 NW2d 193 (1987).

During the brief time that the officer spoke with defendant in the store, he apparently did not know what was going to happen to defendant. He did not know if either defendant or her friend had possessed the drugs, or whether one of them would claim responsibility for having the drugs. He only knew that an employee had found a baggie of presumed drugs in the fitting room after the women left the room. He testified that he wanted to make sure that defendant and her friend were the women observed in the fitting room, wanted to ensure that the substance did not contain fentanyl because the employee had touched the baggie which potentially put her in danger, and he wanted to make sure that the proper person was taken into custody. Defendant was free to interact with the officer however she desired at that time, and could theoretically have left the interaction if she denied responsibility or implicated her friend. Defendant's freedom to leave ended when the officer learned that she had possessed the suspected drugs. Because the officer's brief interaction with defendant was a preliminary gathering of information in a public place where an acquaintance and others were present, and may have resulted in defendant's release—as it did for her companion—the trial court did not err in determining that the interaction was not a custodial interrogation.

C. LENIENCY

Next, defendant argues that her statement was coerced by the officer's promise of leniency. A confession induced by a promise of leniency is involuntary and inadmissible. *People v Conte*, 421 Mich 704, 739; 365 NW2d 648 (1984). To determine whether a promise of leniency was made, "[t]he inquiry will be whether the defendant is likely to have reasonably understood the statements in question to be promises of leniency." *Id*. at 740. Merely encouraging or urging a subject to tell the truth, without more, is insufficient to render a confession involuntary; these are not promises of leniency. *Id*.

Defendant asserts that she knew there were outstanding warrants for her friend's arrest and she understood that she could help her friend avoid trouble by claiming responsibility for possessing the drugs. Because a defendant may care more about what happens to a friend than what happens to herself, promises of leniency benefiting a third person may also be coercive. *Id*. at 742-743. However, the record does not establish that defendant knew her friend had outstanding warrants, and it appears the officer did not learn of any such warrants until after defendant had already confessed. Regardless, the record does not support a conclusion that the officer made a promise of leniency. The officer simply explained the discretion that he had based on departmental practice, advising that they could avoid a situation in which both would be arrested if one of them told the truth. Encouragements to tell the truth do not make a confession involuntary. *Id*. Based on what they were told, the best that could happen by confessing was that the party claiming responsibility would be processed and released. There was no promise of not prosecuting, of reduced charges, or of a reduced sentence. Thus, the statement was not a promise of leniency, but an explanation of the actual options depending on whether a subject claimed responsibility for possessing the suspected drugs.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto
/s/ Thomas C. Cameron