STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED July 18, 2013
v	No. 311971 Bay Circuit Court
LINDA SUE LUMBRERAS, Defendant-Appellee.	LC No. 12-010369-FH

Before: SAWYER, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

In lieu of granting leave to appeal, the Michigan Supreme Court remanded this case to this Court for consideration as if on leave granted. *People v Lumbreras*, 493 Mich 958; 828 NW2d 391 (2013). Plaintiff appeals the circuit court's order suppressing incriminating statements provided by defendant, allegedly in violation of *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966). For the reasons set forth, we reverse.

In April 2012, a police officer stopped defendant's vehicle for an apparent "busted tail light" and a "vision obstruction" (a "dream catcher") hanging from the rearview mirror. Defendant provided her license, registration, and proof of insurance upon request, but the officer noted that she appeared to be unusually nervous. Defendant explained that she and her passenger had visited her mother in Saginaw, but she was unable to identify her mother's address. The officer conducted a LEIN (law enforcement information network) check, which revealed that defendant was on probation and had multiple drug convictions. After the officer returned defendant's documents, he requested to speak with her in his patrol vehicle. Defendant agreed, and she sat in the front passenger's seat of the patrol vehicle while the officer sat in the driver's seat. The officer told defendant that he thought that she and her passenger had purchased narcotics in Saginaw. The officer also told defendant that if she was cooperative, he would only issue appearance citations "if it's just possession." Defendant informed the officer that her passenger had cocaine in his pocket, and she consented to a search of her car. With defendant remaining in the police vehicle, the officer approached and handcuffed the passenger. After a second officer arrived on the scene, the first officer conducted a search incident to arrest, which uncovered .77 grams of cocaine in a pocket of the passenger. As the first officer searched the car, the police allowed defendant to walk her dog nearby. The search revealed no additional contraband.

After the search, the first officer and defendant again sat in the front of the officer's patrol vehicle. Upon questioning by the officer, defendant explained that she and the passenger purchased the cocaine in Saginaw and that the passenger intended to share the cocaine with her. The officer decided to issue appearance citations to defendant and the passenger for possession of crack cocaine. Dispatch records indicated that the traffic stop lasted approximately 15 minutes.

Before the preliminary examination, defendant moved to suppress incriminating statements made by her as obtained in violation of the Fourth Amendment of the United States Constitution. The district court denied the motion. Defendant renewed her motion in the circuit court, and she additionally asserted that the incriminating statements were obtained in violation of *Miranda*. The circuit court reviewed the transcript of the officer's testimony and granted the motion in part. The circuit court explained that three separate interrogations occurred during the stop: the initial interrogation in and nearby defendant's car, the first interrogation in the patrol vehicle, and the second interrogation in the patrol vehicle. The circuit court concluded that the first two interrogations were noncustodial, but that the third interrogation was custodial. The circuit court suppressed the statements provided during the third interrogation because defendant was not advised of her *Miranda* rights. The circuit court reasoned that because defendant witnessed the passenger being placed in handcuffs and was then requested to reenter the patrol vehicle, "that does create a situation where a reasonable person would not feel at liberty to leave or to terminate the interrogation."

On appeal, plaintiff argues that the circuit court erred in determining that defendant was in custody for *Miranda* purposes during the third interrogation. We review de novo the determination whether a defendant was in custody for purposes of *Miranda*. *People v Steele*, 292 Mich App 308, 316; 806 NW2d 753 (2011). We review the trial court's underlying factual findings for clear error. *Id*. at 313.

Plaintiff argues that the circuit court clearly erred in finding that defendant witnessed the passenger being placed in handcuffs. Plaintiff argues that the first officer could not testify about what *defendant* witnessed and that, therefore, the trial court should not have given credence to the officer's testimony related to this point. However, a trial court may rely on reasonable inferences when acting as a finder of fact. See, generally, *People v Earl*, 297 Mich App 104, 109; 822 NW2d 271 (2012), lv granted on other grounds ___ Mich ___; 828 NW2d 359 (2013). The first officer agreed that after he stopped defendant's car, he approached it from an angle that allowed him to see inside the vehicle. From his testimony, the circuit court could have reasonably inferred that there were no obstructions between the two vehicles. Also, the officer would have had an understanding of defendant's vantage point from the front passenger's seat of his patrol vehicle. Thus, the circuit court could have further inferred that defendant could see what was happening at her vehicle as she sat in the front passenger seat of the patrol vehicle, including witnessing the passenger being handcuffed.

In *Berkemer v McCarty*, 468 US 420, 436, 440; 104 S Ct 3138; 82 L Ed 2d 317 (1984), the United States Supreme Court held that although "a traffic stop significantly curtails the

'freedom of action' of the driver and the passengers, if any," persons who are "temporarily detained pursuant to such stops are not 'in custody' for the purposes of *Miranda*." The Court explained that "the usual traffic stop is more analogous to a so-called '*Terry* stop'[1] than to a formal arrest." *Id*. at 439 (citation omitted). Consequently, the Court explained, an ordinary traffic stop has a relatively "nonthreatening character" and a "noncoercive aspect." *Id*. at 440. The Court ultimately held that "[i]f a motorist who has been detained pursuant to a traffic stop thereafter is subjected to treatment that renders him 'in custody' for practical purposes, he will be entitled to the full panoply of protections prescribed by *Miranda*." *Id*. To determine whether a motorist is subject to "the functional equivalent of formal arrest" and thus "in custody" for *Miranda* purposes, "the only relevant inquiry is how a reasonable [person] in the [motorist's] position would have understood his situation." See *id*. at 442.

In this case, it is true that defendant was not "free to leave" during the traffic stop, which is usually the touchstone of "custody" for *Miranda* purposes. *People v Coomer*, 245 Mich App 206, 219; 627 NW2d 612 (2001). However, roadside questioning during a traffic stop is somewhat unique; the focus is whether, under the "reasonable person" test, see *Berkemer*, 468 US at 442, the "suspect's freedom of action is curtailed to a degree associated with formal arrest." See *People v Burton*, 252 Mich App 130, 139; 651 NW2d 143 (2002) (citations and internal quotation marks omitted). It is necessary to consider "the totality of the circumstances" in determining whether a suspect is in custody for *Miranda* purposes. *Steele*, 292 Mich App at 316.

We conclude that the circuit court erroneously suppressed the challenged statements provided during the third interrogation because defendant was not in custody for purposes of *Miranda* at the time. *Id*. at 316-317. Although defendant was questioned in the patrol vehicle, she was sitting in the front passenger's seat. The first officer also informed her that she would only receive a citation, in lieu of being taken to jail, if she cooperated, and the record shows that defendant was cooperative. Moreover, defendant was never handcuffed. *Burton*, 252 Mich App at 140. In fact, defendant walked her dog during the search of her vehicle. In addition, a person seeing that an associate was being handcuffed while she was not would reasonably understand that the situations of the two were qualitatively different. A reasonable person would understand that a handcuffed individual is in custody, and the absence of such restraint sends the opposite message. It is also significant that a relatively short period of time elapsed between the initial traffic stop and the third interrogation. See *State v Padidham*, 310 Ga App 839, 841; 714 SE2d 657 (2011) (when a driver's freedom was "only temporarily curtailed" pending an eight-to-ten minute investigation, the driver was not in custody for *Miranda* purposes).

Moreover, we conclude that the officer's asking defendant to reenter the patrol vehicle after she had been informed that she could possibly be arrested if she did not cooperate did not curtail her "freedom of action . . . to a degree associated with formal arrest." *Burton*, 252 Mich App at 139 (citations and internal quotation marks omitted). Whether defendant made the challenged statements because of an implicit threat might be relevant in determining whether the

[1] *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 LEd2d 889 (1968).

challenged statements were voluntary, but, under the totality of the circumstances, it does not affect whether defendant was in custody for *Miranda* purposes. See *State v James*, 148 Idaho 574, 578; 225 P3d 1169 (2010) (indicating that "the threat of lawful arrest alone does not transform non-custodial questioning into the functional equivalent of arrest" and stating that such a threat "cannot be said to have objectively modified the degree of restraint on [the suspect's] freedom of movement").

The parties dispute whether the circumstances objectively indicated that defendant was suspected of committing a crime. "An officer's knowledge or beliefs may bear upon the custody issue if they are conveyed, by word or deed, to the individual being questioned." *Stansbury v California*, 511 US 318, 325; 114 S Ct 1526; 128 L Ed 2d 293 (1994). The first officer told defendant during the second interrogation that he believed that defendant and the passenger "were down in Saginaw purchasing narcotics." However, "[e]ven a clear statement from an officer that the person under interrogation is a prime suspect is not, in itself, dispositive of the custody issue, for some suspects are free to come and go until the police decide to make an arrest." *Id*. The relevance of any such statement depends on the facts and circumstances of the individual case. *Id*. On balance, and for the reasons discussed above, we conclude that a reasonable person in defendant's position would not believe they were under the functional equivalent of a "formal arrest" when the incriminating statements were made.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Patrick M. Meter
/s/ Pat M. Donofrio