STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0135

State of Minnesota,
Respondent,

vs.

Scott Wayne Srnsky,
Appellant.

Filed December 11, 2017
Affirmed
Connolly, Judge

Pennington County District Court
File No. 57-CR-15-546

Lori Swanson, Attorney General, Peter D. Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Alan G. Rogalla, Pennington County Attorney, Thief River Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Mark D. Nyvold, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Cleary, Chief Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant challenges his conviction of criminal vehicular homicide, arguing that the district court erred by denying his motion to suppress a statement that he made without receiving a *Miranda* warning. Because appellant was neither in custody for the instant offense nor interrogated, we affirm.

FACTS

On May 26, 2015, a Pennington County sheriff responded to a traffic incident on a two-lane highway in Pennington County, where he observed two vehicles badly damaged; a car on the south shoulder of the road and a pickup truck in a ditch on the south side of the road. A passerby was in the ditch assisting the truck driver, appellant Scott Srnsky. Fire Department officers found the car's driver still inside of it. He was pronounced dead at the scene. The sheriff retrieved the car driver's wallet and identified him as J.K. The sheriff reported that from the location of the vehicles, it appeared that they had collided on the south side of the highway, which ran east to west.

A Minnesota state trooper trained in basic crash investigations, Sergeant Bjerken, also responded to the crash. Sergeant Bjerken observed tire marks beginning in the eastbound lane and leading to the site of the crash at the south shoulder of the road. He saw no tire marks beginning in the westbound lane and going into the eastbound lane. Thus, Sergeant Bjerken concluded there was no indication that the vehicle that had been traveling eastbound (the car driven by J.K.) had been operating in the westbound lane.

A Minnesota state trooper trained in accident reconstruction, Trooper Eischens, reported to the accident scene later that day. Trooper Eischens concluded that when the crash occurred, appellant's vehicle was traveling westbound but operating in the eastbound lane and J.K.'s vehicle was travelling eastbound and operating in the eastbound lane. However, Trooper Eischens agreed with appellant's counsel that based off his analysis, it was not possible to determine in which lane appellant's vehicle was when appellant "perceived the threat" of a collision. Trooper Eischens said it was also not possible to determine in which lane J.K.'s car was when J.K. initially perceived the threat and responded to it.

Another crash reconstructionist, Gregory Gravesen, analyzed the data to reconstruct the collision. He concluded that J.K.'s car was in the wrong lane (the westbound lane while it was travelling eastbound) when the vehicles began swerving in attempt to avoid the collision. Gravesen concluded that the vehicles then turned toward the same direction (south), which resulted in the collision. Unlike Trooper Eischens, Gravesen took into account each driver's perception response time, which, appellant argues, allowed him to accurately conclude where each vehicle was when its driver perceived the danger of collision.

On June 30, 2015, Grand Forks, North Dakota police Sergeant Jennings stopped appellant's car because it had expired license tabs. After the officer discovered appellant was not from Grand Forks, the following encounter ensued:

> Q: Okay. So what brings you to Grand Forks tonight?
> A: I got doctor appointment in Fargo tomorrow . . . I got stitches in my foot . . . [inaudible].

Q: Okay, Okay, Okay.
Q: So the wheelchair is yours?
A: Yes.
Q: You're handicapped?
A: Well . . . I can't walk on my feet.
. . . .
Q: Okay. Okay. So are you paralyzed or just a foot injury?
A: No, I was in a car crash . . . .
Q: How long ago was that?
A: Ah, May 26th.
Q: Okay, so it was like a month ago.
A: Yeah, I just got out of the hospital like a week ago.
Q: Okay, I got you, okay.
. . . .
Q: Is your license current?
A: I think it's suspended.
Q: Okay.
A: I don't want to go to jail . . . .
Q: I understand. Nobody wants to go to jail.
A: I know, I've had bad luck in these situations.
Q: You don't have any warrants or anything for you do you, [appellant]?
A: No.
Q: Where was the accident that you were in?
A: Thief River.
Q: Thief? In town? In the country?
A: Out in the count[r]y, it was a head on collision.
Q: Okay. Alright, sit tight for a second and I'm going to check your license see what's up with that, okay? I'll come back and let you know what's up. I'm going to do what I can to keep you out of jail, but the problem is that you are from Thief River and not from around here, so okay, so just sit tight and don't go nowhere okay? I'll be right back with you.

The officer then learned of a warrant out of Fargo, North Dakota for appellant's arrest due to unpaid fines. Because of appellant's injury, the two discussed how to best get appellant from his car to the squad car. While the officer searched a pouch containing appellant's medications, appellant stated: "A week ago I could not lift my leg." Another conversation ensued:

Q: Really. You said you had crushed your heel and busted your pelvis?
A: [Inaudible]. Pelvis . . . .
Q: Yeah. You want me to push you or are you going to do [it] yourself?
A: [Inaudible].
Q: Alright.
A: There was a pin, that they plated the front, the front across here they put a plate or something like that . . . .
Q: You said it was a head on? What happened?
A: My best buddy hit me.
Q: Hit you head on?
A: [Inaudible]. *We were playing chicken.*
Q: Ahh sorry to laugh, but,
A: He's my best buddy and uh . . . he died.
Q: Oh, I'm sorry to hear that.

(Emphasis added.)

The officer then told appellant he had to handcuff him, but that he would cuff his hands in the front and remove them once they got to the jail. Appellant then stated, "My mom's a jailer too." The officer asked where, and appellant responded, "Linda, in Thief River. . . . did you see my record?" The officer responded, "No I haven't seen your record." Appellant then told the officer of his previous driving violations.

On July 1, 2015, the state filed a complaint against appellant for criminal vehicular homicide. The statement of probable cause in this complaint reported: (1) a BAC test revealed that appellant was under the influence of methamphetamine at the time of the car crash, (2) appellant and J.K. were roommates, (3) accident reconstruction revealed that appellant "clearly crossed into the opposite lane of traffic," and (4) during an unrelated incident, appellant told a Grand Forks police officer that he was "playing chicken" at the time of the car crash. Appellant filed a motion to suppress evidence obtained from:

(1) execution of a search warrant on June 11, 2015, seeking appellant's medical records, (2) the blood drawn from appellant on May 26, 2015, and (3) the statements appellant made to the officer on June 30, 2015. The district court granted defendant's motion to suppress everything except the statements. The district court found that when appellant made these statements, he was neither in custody for the purposes of this offense, nor was he interrogated.

After a jury trial, appellant was convicted of criminal vehicular homicide pursuant to Minn. Stat. § 609.2112, subd. 1(1) (2014) (gross negligence), and sentenced to 68 months in prison. Appellant challenges the denial of his motion to suppress the statement.

D E C I S I O N

A *Miranda* warning is required when a suspect "is both in custody and subject to interrogation." *State v. Thompson*, 788 N.W.2d 485, 491 (Minn. 2010). "When reviewing a district court's pretrial order on a motion to suppress evidence, [appellate courts] review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted). "An appellate court reviews a [district] court's findings of historical fact relating to the circumstances of the interrogation pursuant to the clearly erroneous test but makes an independent review of the [district] court[']s determination regarding custody and the need for a *Miranda* warning." *State v. Sterling*, 834 N.W.2d 162, 167-68 (Minn. 2013) (quoting *State v. Wiernasz*, 584 N.W.2d 1, 3 (Minn. 1998) (footnote omitted)). The district court found that, for *Miranda* purposes, appellant was neither in custody for the instant offense, nor subject to interrogation. We agree.

The Minnesota Supreme Court has held that custody for an unrelated offense is not necessarily custody for all *Miranda* purposes. *State v. Tibiatowski*, 590 N.W.2d 305, 309 (Minn. 1999). "The [district] court must look to the circumstances of the custody and determine whether it would cause a reasonable person to feel compelled or coerced to confess to the offense for which the interrogation is being conducted." *Id.*

The district court held that while appellant was in custody when he made the incriminating statement, he was not in custody for purposes of being asked how the crash had happened because appellant offered no evidence that he was subjected to restraint beyond that to which he was subject for having been arrested under the warrant. *See id.* (holding that an officer asking an incarcerated juvenile if there was anything he wanted to tell her amounted to no evidence of restraint on the juvenile's freedom other than that to which he was already subject by being in custody for an unrelated offense); *see also State v. Werner*, 725 N.W.2d 767, 770-71 (Minn. App. 2007) (holding that a defendant arrested on a warrant, placed in handcuffs, and then asked whether he had been drinking, was not subject to additional restraint for the suspicion of DWI; thus, he was not "in custody" for the DWI charge for *Miranda* purposes). We agree.

Appellant asks this court to infer that an officer would know that a person who had been in a serious car crash could later be charged with a crash-related offense. However, the officer specifically told appellant that he was only being arrested for the outstanding North Dakota warrant and that once appellant took care of that fine, he would be released:

> If you come up with the money you can post the bail here, and then they will call down to Fargo. . . and say he posted the

> money, give us a court date, and then Fargo will tell Grand Forks to release you[.]

The officer appeared reluctant to arrest appellant altogether:

> So my hands are tied my man, if it was just me stopping you for these tabs and your license is suspended as well. If it was just that I could stroke you a couple of tickets, set you a court date and you would be out of here.

Appellant also specifically asked the officer if the officer had seen appellant's record, to which the officer replied, "No, I haven't seen your record."

Since there is no evidence that appellant was subject to any additional restraint when he told the officer he was "playing chicken," the district court's finding that appellant was not "in custody" for purposes of *Miranda* when he made the statement was not clearly erroneous.

Further, appellant was not subject to interrogation for *Miranda* purposes. In determining whether an individual was interrogated, this court independently examines the totality of the circumstances based on the facts as found by the district court. *State v. Jackson*, 351 N.W.2d 352, 355 (Minn. 1984). Interrogation includes both express questioning and "its functional equivalent," meaning "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Rhode Island v. Innis*, 446 U.S. 291, 300-01, 100 S. Ct. 1682, 1689-90 (1980). "[E]ven express questions are not always interrogation" if not reasonably likely to elicit a response that is incriminating. *Tibiatowski*, 590 N.W.2d at 309. The crux of the inquiry is whether, from the suspect's perspective, the police conduct reflects "a measure of compulsion above and

beyond that inherent in custody itself." *State v. Edrozo*, 578 N.W.2d 719, 724-25 (Minn. 1998) (quotation omitted).

The district court concluded that the officer's asking appellant how the crash happened was not a question that could reasonably be expected to illicit an incriminating response because appellant had initiated conversations about the car crash multiple times and the officer was unaware of both the car crash and the possibility of appellant being charged for it.

Once again, the only argument appellant makes is that the officer likely knew that appellant could be facing criminal charges connected to the car crash. However, appellant offered no evidence to support this assertion, and the facts show the exact opposite. The district court's findings are supported by the record; thus, they were not clearly erroneous.

Affirmed.