STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1890

State of Minnesota,
Respondent,

vs.

Michael Thomas Buchanan,
Appellant.

Filed April 12, 2011
Affirmed
Shumaker, Judge

Otter Tail County District Court
File No. 56-CR-08-682

Lori Swanson, Attorney General, St. Paul, Minnesota; and

David J. Hauser, Otter Tail County Attorney, Ryan C. Cheshire, Assistant County Attorney, Fergus Falls, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Shumaker, Presiding Judge; Halbrooks, Judge; and Schellhas, Judge.

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

SHUMAKER, Judge

Appellant challenges the district court's order denying his petition for postconviction relief for ineffective assistance of counsel. A jury convicted appellant of

drug-related offenses, and appellant contends he would not have been convicted had his attorney moved to suppress pre-*Miranda* statements he made to police. We affirm.

FACTS

On February 27, 2008, police officers executed a no-knock-entry search warrant at the home of appellant Michael Thomas Buchanan and seized drugs, drug paraphernalia, and a police radio. As a result of the search, the state charged Buchanan with third-degree controlled-substance crime, possession of a police radio during commission of a crime, and receiving stolen property.

The search warrant was based upon information gathered during a February 20, 2008, controlled buy at Buchanan's residence in Vining, Minnesota. A confidential reliable informant (CRI) purchased methamphetamine at Buchanan's residence from a woman, Danielle Vizenor, and two men, Joel and Jesse McManigle. Police applied for a search warrant and executed it one week later, on February 27, 2008. During the search, Buchanan made incriminating statements to police, who had not informed Buchanan of his *Miranda* rights.

When police entered Buchanan's residence, Buchanan was in the first-floor living room, and the McManigles and Vizenor were in the two upstairs bedrooms. Officers handcuffed all occupants, escorted the McManigles and Vizenor from the residence, and seated Buchanan in a chair in the living room. Jess Schoon, a special agent, showed Buchanan the search warrant during a conversation he audio recorded, while officers continued protective sweeps of the residence and evidence collection.

During the conversation, Officer Schoon introduced himself to Buchanan and explained that officers were at the residence because of suspected narcotics sales. At that point, and without further questioning, Buchanan told Officer Schoon, "I have no idea what's in this house. I live down here." Officer Schoon later informed Buchanan that he was not under arrest, was only in handcuffs for security reasons, and would not be taken into custody if he cooperated. Buchanan later admitted that there was marijuana in his bedroom before officers gave him his *Miranda* rights. Officers discovered marijuana and two smoking pipes in Buchanan's bedroom, one with traces of methamphetamine.

Buchanan was arrested and charged with third-degree controlled substance crime, possession of a police radio while committing a felony, and receiving stolen property. Buchanan's trial attorney did not move to suppress Buchanan's allegedly pre-*Miranda* statements to Officer Schoon, but did raise two other issues during the pretrial proceedings. A jury convicted Buchanan on all charges, and he was sentenced to 45 months in prison.

Buchanan petitioned the district court for postconviction relief, alleging ineffective assistance of counsel. He contended that he was subjected to custodial interrogation by Officer Schoon during which he made incriminating statements about the location of his bedroom, where evidence of drugs was found. Buchanan contended that if his trial attorney had moved to suppress his pre-*Miranda* statements, he would not have been convicted because there would have been no evidence his bedroom was the one with marijuana and evidence of methamphetamine in it. The district court held an evidentiary hearing, at which Buchanan's trial attorney testified that she did not raise this pretrial

issue because her trial strategy was to acknowledge that Buchanan lived on the first floor of the house and did not use the upper level, where evidence of the McManigles' more serious crimes had been found. The district court concluded that Buchanan was not subjected to custodial interrogation by Officer Schoon and denied Buchanan's petition for postconviction relief, and ruled that he had received effective assistance of counsel. This appeal followed.

D E C I S I O N

Custodial Interrogation

The threshold question in this appeal is whether Buchanan was subjected to custodial interrogation when he made incriminating statements. The district court found that Buchanan was not subjected to custodial interrogation. "Statements made by a suspect during custodial interrogation are generally inadmissible unless the suspect is first given a *Miranda* warning." *State v. Edrozo*, 578 N.W.2d 719, 724 (Minn. 1998). On appeal, "[w]e make an independent determination about whether a suspect was in custody," but we defer to the district court's findings of fact relating to the issue unless clearly erroneous. *State v. Heden*, 719 N.W.2d 689, 695 (Minn. 2006). Determining whether there has been custodial interrogation is a two-prong test. *Id.*

Custody

The first prong is whether a suspect was in custody at the time of questioning. *Edrozo*, 578 N.W.2d at 724. The question to ask is "how a reasonable [person] in the suspect's position would have understood his situation." *Id.* When SWAT officers entered Buchanan's residence, they handcuffed him and ordered him to sit in a chair in

the living room. After making contact with and showing the search warrant to the other suspects, Officer Schoon engaged Buchanan in conversation by introducing himself and showing Buchanan the search warrant. During this conversation, officers were struggling to restrain one of the McManigle brothers and escort him from the residence, and officers were continuing to conduct a protective sweep of the residence to ensure no one else was present.

Buchanan contends he was in custody at this point because his freedom of action was deprived in a significant way by being handcuffed. He cites *State v. Sickels* as support. 275 N.W.2d 809 (Minn. 1979). But *Sickels* is distinguishable. Specifically, the supreme court held that Sickels was not in custody when officers suspected Sickels committed the crime for which he was convicted and questioned him at his estranged wife's home. *Id.* at 873. It was only when officers removed Sickels from the home and took him to a detoxification center that his freedom was significantly deprived and that the detention became custodial. *Id.* Further, the act of handcuffing a defendant for general questioning has been held not to be custodial in itself. *State v. Walsh*, 495 N.W.2d 602, 605 (Minn. 1993) (stating that "[t]he handcuffing restraint, by itself, did not mean defendant was in 'custody' for purposes of *Miranda*, and the deputy even told defendant he was not necessarily under arrest"). That Buchanan was detained during the search with handcuffs does not necessarily mean that he was in custody, especially since Officer Schoon told him that he was not under arrest.

Ultimately, the test to determine whether a person is in custody "is *not* whether a reasonable person would believe he or she was not free to leave." *State v. Champion*,

533 N.W.2d 40, 43 (Minn. 1995) (emphasis added). A valid warrant to search for contraband "implicitly carries with it the limited authority to detain the occupants of the premises while a proper search is conducted." *Michigan v. Summers*, 452 U.S. 692, 705, 101 S. Ct. 2587, 2595 (1981). Officer Schoon testified that Buchanan was handcuffed while officers conducted a protective sweep of the residence to ensure no one else was present and while officers escorted the McManigles and Vizenor from the residence. Officer Schoon even told Buchanan that he was only in handcuffs for "security reasons" and that if Buchanan cooperated, he was "not going to be tak[en] into custody." Officer Schoon did not handcuff Buchanan because he was suspected of selling narcotics but for security reasons that made the issuance of a no-knock-entry search warrant proper.

We therefore agree with the district court that Buchanan was not in custody at this time. Because we have determined that Buchanan was not in custody during his conversation with Officer Schoon, we need not reach the question of whether he was subjected to interrogation. *See Rhode Island v. Innis*, 446 U.S. 291, 300, 100 S. Ct. 1682, 1689 (1980) (stating that *Miranda* applies "whenever a person in custody" is subjected to interrogation).

Ineffective Assistance of Counsel

Buchanan contends that his trial attorney should have moved to suppress his statements to police and that if the attorney had, he would not have been convicted. A postconviction decision on a claim of ineffective assistance of counsel involves mixed questions of law and fact and is reviewed de novo. *Opsahl v. State*, 677 N.W.2d 414, 420 (Minn. 2004). A court must allow a "strong presumption that counsel's conduct falls

within the wide range of reasonable professional assistance." *Bell v. Cone*, 535 U.S. 685, 702, 122 S. Ct. 1843, 1854 (2002).

Deficient Performance

The test to determine ineffectiveness of counsel has two parts. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984). First, an attorney's performance must be deficient. *Id.* Buchanan contends that because the McManigles and Vizenor had already pleaded guilty to drug-related charges, and because he had not been charged with the sale of drugs, his trial counsel should have moved to suppress his pre-*Miranda* statement claiming ownership of the bedroom with drugs in it. He contends that suppression of this statement would have left a jury unable to conclude his was the bedroom with marijuana and other drug evidence in it. The district court concluded that Buchanan's trial attorney did not give a deficient performance. Because we have determined that Buchanan was not subjected to custodial interrogation, we agree that trial counsel's failure to make this motion was not deficient.

Prejudice

Second, an attorney's deficient performance must have prejudiced the defense and altered the outcome of his case. *Id.* Buchanan "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694, 104 S. Ct. at 2068.

The district court concluded that there was sufficient evidence to corroborate Buchanan's statement that the bedroom was his so that, even without the admission, a fact-finder could have concluded the bedroom, and therefore the drug paraphernalia, were

his. It was established at trial that Buchanan owned the residence in which he lived with the McManigles and Vizenor. Also, officers found the McManigles and Vizenor during the search in the upstairs bedrooms, along with their personal identification cards. Further, during the controlled buy, the CRI entered the residence on the first floor, had a conversation with Buchanan that was unrelated to drugs or a drug deal, and then went upstairs with Vizenor, while Buchanan remained downstairs, where the McManigles were waiting to sell methamphetamine. There is sufficient corroborative evidence of Buchanan's allegedly pre-*Miranda* statement that he occupied the downstairs bedroom, and that would have made a suppression motion unsuccessful even had there been an arrest. *See State v. Grover*, 402 N.W.2d 163, 166 (Minn. App. 1987) (concluding that attorney's decision not to contest validity of search warrant was not ineffective assistance of counsel where attorney could have thought contesting the warrant would have been futile). Therefore, Buchanan has not shown any prejudice resulting from counsel's failure to move to suppress the evidence.

Affirmed.