**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A10-1504**

Mark Christopher Myhre, petitioner,
Appellant,

vs.

Commissioner of Public Safety,
Respondent.

**Filed June 6, 2011**
**Affirmed**
**Toussaint, Judge**

Dakota County District Court
File No. 19WS-CV-10-25

David J. Risk, Hillary B. Hujanan, Caplan Law Firm, P.A., Minneapolis, Minnesota (for appellant)

Lori A. Swanson, Attorney General, Paul R. Kempainen, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Toussaint, Judge; and Crippen, Judge. *

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

**TOUSSAINT**, Judge

Appellant Mark Christopher Myhre challenges the district court's decision affirming the revocation of his driving privileges. He argues that the district court erred by holding that he was not in custody when a police officer questioned him and therefore not entitled to a *Miranda* warning and that his later arrest was not supported by probable cause. Because appellant was not subjected to custodial interrogation and his later arrest was supported by probable cause, we affirm.

## D E C I S I O N

### I.

The United States and Minnesota Constitutions protect a person against compelled self-incrimination. U.S. Const. amend. V; Minn. Const. art. I, § 7. In order to protect this right, if a suspect is both "in custody" and subject to "interrogation," the suspect must be read his or her *Miranda* rights. *State v. Heden*, 719 N.W.2d 689, 694-95 (Minn. 2006). "Statements made during a custodial interrogation cannot be admitted into evidence unless the suspect is given the *Miranda* warning and . . . waives the right against self-incrimination." *State v. Caldwell*, 639 N.W.2d 64, 67 (Minn. App. 2002), *review denied* (Minn. Mar. 27, 2002).

> Whether a defendant was in custody at the time of an interrogation is a mixed question of law and fact, requiring the appellate court to apply the controlling legal standard to historical facts as determined by the trial court. The appellate court reviews the district court's findings of fact under the clearly erroneous standard of review but reviews de novo the district court's custody determination and the need for a *Miranda* warning.

*In re Welfare of D.S.M.*, 710 N.W.2d 795, 797 (Minn. App. 2006) (quotation and citation omitted).

Appellate courts apply an objective test to decide whether a person is in custody: "[W]hether the circumstances of the interrogation would make a reasonable person believe that he was under formal arrest or physical restraint akin to formal arrest." *Id*. at 797–98. While there is no bright-line rule for determining whether a defendant was "in custody," the behaviors exhibited by both the defendant and the law enforcement officers involved in the encounter are considered. *State v. Wiernasz*, 584 N.W.2d 1, 2–3 (Minn. 1998).

Handcuffing an individual does not necessarily constitute custody and may be a "reasonable [step] taken by the officers to safely conduct their investigation." *State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999). "General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact finding process is not affected by [the *Miranda*] holding." *Miranda v. Arizona*, 384 U.S. 436, 477, 86 S. Ct. 1602, 1629 (1966).

The district court determined that appellant was not subject to custodial interrogation where Eagan Police Officer Desiree Carlson handcuffed him for safety reasons and asked him investigatory questions. Officer Carlson had responded to a report of a fight at a private residence. Upon arrival, she observed appellant standing in the garage with a man she identified as the homeowner. Officer Carlson learned that appellant had attempted to enter the home and that the homeowner did not know who he was. It was later determined that appellant had been visiting a friend in a nearby home,

stepped outside to make a phone call, and attempted to enter the wrong home after becoming confused.

Officer Carlson placed appellant in handcuffs and directed him toward the rear of her squad car. Officer Carlson smelled alcohol on appellant, and she observed that appellant slurred his words and had difficulty walking on his own. While walking towards the squad car, Officer Carlson asked appellant where he was coming from. Appellant told Officer Carlson he had come from a restaurant at the Mall of America. Officer Carlson then asked how much he had to drink, and appellant responded that he had three glasses of wine. Officer Carlson then asked appellant how he had gotten to the residence, and appellant said that he drove. Appellant told Officer Carlson he had not had anything to drink at the residence.[1]

The district court found that Officer Carlson is "female and of smaller stature." The district court also found the Officer Carlson was alone at the scene and that when she arrived the "parties were breathing heavily and Officer Carlson could tell that there had been an argument." Based on these facts, we agree with the district court's determination that, under these circumstances, it was reasonable for Officer Carlson to handcuff appellant and remove him from the garage for officer safety reasons.

We also agree with the district court's determination that Officer Carlson's questions did not go beyond the scope of an initial investigation. After arriving at the

[1] Appellant also makes arguments concerning questions directed to him by officers who arrived on the scene after Officer Carlson. But the district court's order makes it clear that it only considered testimony regarding the interactions between appellant and Officer Carlson when making its decision.

scene, the officers quickly determined that appellant did not live at the residence and that he was not supposed to be there. Questions regarding where appellant was coming from and how he arrived at the residence were relevant to the initial investigation.

Because appellant was placed in handcuffs for officer safety reasons and because Officer Carlson's questions were initial investigatory questions, appellant was not subject to custodial interrogation for the purposes of *Miranda*. The district court therefore did not err by finding that appellant was not entitled to a *Miranda* warning.

**II**.

Appellant also argues that any probable cause for his arrest was obtained illegally, and that because Officer Carlson did not observe him driving, there was no legal basis to arrest him. But because we have determined that appellant's statements were not obtained illegally, his statements provide the basis for probable cause.

> In order to sustain the revocation of a person's driver's license under the implied consent laws, the state must prove by a preponderance of the evidence both (1) that the person was driving, operating, or in physical control of the motor vehicle, and (2) that the officer had probable cause to believe the person was driving, operating, or in physical control of the vehicle.

*Sens v. Comm'r of Pub. Safety*, 399 N.W.2d 602, 604 (Minn. App. 1987). "Probable cause exists [for DWI purposes] whenever there are facts and circumstances known to the officer which would warrant a prudent person in believing that the individual was driving or was operating a motor vehicle on the highway while under the influence of alcohol." *Graham v. Comm'r of Pub. Safety*, 374 N.W.2d 809, 810 (Minn. App. 1985). "In reviewing an officer's actions, the trial court should consider the totality of the

circumstances and should remember that trained law enforcement officers are permitted to make inferences and deductions that might well elude an untrained person." *Johnson v. Comm'r of Pub. Safety*, 366 N.W.2d 347, 350 (Minn. App. 1985) (quotation omitted).

The district court found that appellant appeared to be intoxicated and that he told Officer Carlson he had been drinking, he drove after drinking, and he had not consumed alcohol since arriving at the residence. These findings are enough to support a finding of probable cause that appellant drove while impaired, even though Officer Carlson did not observe him operate a vehicle.

**Affirmed.**