STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2080

State of Minnesota,
Appellant,

vs.

Alexander Ira Reed,
Respondent.

Filed May 9, 2011
Affirmed
Randall, Judge[*]

Hennepin County District Court
File No. 27-CR-10-29584

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

Susan L. Segal, Minneapolis City Attorney, Judd E. Gushwa, Assistant City Attorney, Minneapolis, Minnesota (for appellant)

Mark D. Nyvold, Special Assistant Public Defender, St. Paul, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Kalitowski, Judge; and Randall, 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

RANDALL, Judge

The state argues that the district court erred in suppressing respondent's statements, arguing that he was not in custody when initially interviewed and his statement was spontaneous, and he failed to request counsel during the jailhouse interview. We affirm.

FACTS

Officer Gretchen Bloss and her partner were dispatched to a hit-and-run accident. A witness provided the license-plate number of the vehicle that failed to stop after the accident, and the officers went to the address of the vehicle's registered owner, respondent Alexander Ira Reed.

When the officers arrived at respondent's address, they knocked on the door and respondent answered. Respondent stood at the threshold of the door and Officer Bloss asked him to step out into the hall where she conducted a pat-search for officer safety because respondent "was not very cooperative, and his voice was at a [louder] level." At this point, Officer Bloss believed that respondent was not free to leave. Following the pat-search, Officer Bloss questioned appellant; she asked him if he was the vehicle's registered owner, if he had been driving, and if anyone else had been in the vehicle with him. Respondent answered the officer's questions and then stated that he did not hit the boy, the boy ran into his vehicle, and he left because the boy appeared to be fine. Officer Bloss arrested respondent. Officer Bloss never read respondent a *Miranda* warning.

The next day, Officer Geoffrey Johnson went to the jail to interview respondent. Officer Johnson initially asked respondent biographical questions. The officer then asked respondent whether he was driving his vehicle on the day of the accident, if he had car insurance and through which insurer, if anyone was in the vehicle with him, his wife's name, and whether she lived with respondent. Then, officer Johnson informed respondent that he had the right to remain silent and that anything he said would be used against him in court, that he had the right to talk to an attorney now or at any time during questioning, and that if respondent could not afford an attorney, one would be appointed. Respondent indicated that he understood his rights. Officer Johnson then asked respondent: "Do you wish to talk to me at this time about this accident?" Respondent replied: "I don't know, like, I can still, if I need I get a lawyer so. What you need to know." Officer Johnson stated: "I'm just wondering [] if you want to talk to me about the accident right now or not, it's up to you." Respondent did not respond, and Officer Johnson stated: "Okay, I need a yes or no answer." Respondent replied: "Yeah, yeah we talk." The officer stated: "Okay." Respondent replied: "You know, it don't make a difference." And the officer asked: "Okay, so, do you understand, or you have an idea of why you were arrested?" Officer Johnson admitted that he never clarified whether respondent wanted an attorney present.

Respondent contested the admissibility of statements he made to the officers, and the district court granted respondent's motion to suppress his statements. The district court concluded that Officer Bloss subjected respondent to a custodial interrogation and should have read him a *Miranda* warning after she pat-searched him because at that point

he was in custody and not free to withdraw. The district court reasoned that if the officer believed that respondent was not free to leave, a reasonable person would not believe that he was free to leave. The district court concluded that Officer Johnson's questions that were not merely biographical prior to his reading respondent the *Miranda* warning were impermissible. The court further concluded that Officer Johnson failed to address respondent's equivocal request for counsel, finding that when respondent stated: "I don't know, like, I can still, if I need I get a lawyer so. What you need to know[,]" the officer was required to either cease questioning or ask follow-up questions to clarify whether respondent requested the presence of counsel. This appeal follows.

D E C I S I O N

The state argues that the district court erred in suppressing respondent's statements. "When reviewing a pretrial order on a motion to suppress evidence, we may independently review the facts and determine whether, as a matter of law, the district court erred in . . . suppressing the evidence." *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004).

Critical Impact

"To prevail [in a pretrial appeal] the state must 'clearly and unequivocally' show both that the [district] court's order will have a 'critical impact' on the state's ability to prosecute the defendant successfully and that the order constituted error." *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995) (quoting *State v. Kim*, 398 N.W.2d 544, 547 (Minn. 1987)). A pretrial order has a critical impact on the prosecution when it significantly reduces the likelihood of a successful prosecution. *Id*.

The state has established critical impact. Without respondent's statements that he owned and was driving the vehicle involved in the hit-and-run accident on the date of the accident, and his statement that he did not hit the child but, rather, the child ran into his vehicle and appeared to be fine, it is unlikely that the state will succeed in its prosecution. Other evidence may include witness statements, but based on the record, the witnesses were able to identify the driver only as a black male. Further, the record indicates that there was a discrepancy in the license-plate number dispatched. There is evidence that there was a mark and a handprint on the vehicle, but there is not support in the record linking the vehicle to the accident. Thus, without respondent's statements, the state will most likely not have a successful prosecution.

Statements Made in Apartment Building Hallway

The state argues that the district court erred in suppressing respondent's statements that he made in the hallway because it was not a custodial interrogation requiring a *Miranda* warning and because his statement that he did not hit the child was spontaneous.

Statements made by a suspect during a custodial interrogation are generally inadmissible unless the suspect was provided with the *Miranda* warning. *State v. Heden*, 719 N.W.2d 689, 694 (Minn. 2006). This court makes "an independent determination about whether a suspect was in custody," but defers to the district court's findings of fact relating to the issue unless clearly erroneous. *Id.* at 695. We give "considerable, but not unlimited, deference to a district court's fact-specific resolution of such an issue when the proper legal standard is applied." *State v. Champion*, 533 N.W.2d 40, 44 (Minn. 1995).

In determining when an encounter constitutes a custodial interrogation we consider "whether a reasonable person under the circumstances would believe that he . . . was in police custody of the degree associated with formal arrest." *Id.* at 43. We consider all of the surrounding circumstances in determining whether the restraints on an individual's freedom were comparable to those associated with a formal arrest. *State v. Hince*, 540 N.W.2d 820, 823 (Minn. 1995). Factors that may indicate custody include, "the police telling the individual that he . . . is the prime suspect; the police restraining the suspect's freedom; the suspect making a significantly incriminating statement; [and] the presence of multiple police officers." *Heden*, 719 N.W.2d at 695. Factors that may indicate that a suspect is not in custody include, "questioning taking place in the suspect's home; the police expressly informing the suspect that he . . . is not under arrest; the brevity of questioning; the suspect's freedom to leave at any time; a nonthreatening environment; and the suspect's ability to make phone calls." *Id.* No factor alone is determinative. *State v. Staats*, 658 N.W.2d 207, 211 (Minn. 2003). An interrogation that is noncustodial at the outset may become custodial if the police change the circumstances of the interrogation. *Champion*, 533 N.W.2d at 43.

We next determine whether the police conducted an interrogation. *State v. Edrozo*, 578 N.W.2d 719, 724 (Minn. 1998). The answer here is yes, they conducted an interrogation. "*Miranda* safeguards apply whenever a person in custody is subjected to either express questioning or its functional equivalent." *Id.* (quotation omitted). "'[F]unctional equivalent' . . . means 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." *Id.* (quotation omitted). "Such police conduct, to trigger *Miranda*, must reflect a measure of compulsion above and beyond that inherent in custody itself." *Id.* (quotation omitted).

Here, the officers did not read respondent a *Miranda* warning. The district court determined that one should have been read because respondent was subjected to a custodial interrogation after the pat-search. The district court did not err in this determination because respondent was confronted by two uniformed police officers, was asked to step outside of his apartment into the hallway, and was pat-searched. Officer Bloss believed that at this point respondent was not free to leave. The district court appropriately reasoned that if the officer believed that respondent was not free to leave, then a reasonable person under the circumstances would not have felt free to leave. Following the pat-search, respondent's freedom was impeded. The officer's questioning followed and the questions were of an interrogative nature. The officer asked respondent if the vehicle belonged to him, if he had been driving it recently, and if anyone else had been in the vehicle with him. The nature of these questions elicited incriminating information. The questioning and respondent's responses followed the pat-search when respondent was detained; the district court properly suppressed respondent's statements.

The state contends, however, that even if respondent was in a custodial-interrogation situation, his spontaneous statement is admissible. The state relies on *State v. Tuomi* as support for the admissibility of a spontaneous statement despite the proper suppression of a prior statement. 396 N.W.2d 847, 850 (Minn. App. 1986), *review denied* (Minn. Jan. 21, 1987). But in *Tuomi*, the officers who stopped the appellant were

unaware that he was being sought for fleeing an attempted-criminal-sexual-conduct attack, they asked innocuous questions regarding his excessive speed and where he was coming from, and they displayed no coercion. *Id.* at 849, 850-51. Here, the officers knew exactly why they were at respondent's apartment. And Officer Bloss's questions related to the vehicle that she believed was involved in a hit-and-run accident and whether respondent had been driving the vehicle that day, indicating that he was a suspect. The district court did not err in suppressing respondent's statement.

Statements Made During Jail Interview

The state argues that the district court erred in suppressing the statements that respondent made during the interview at the jail because respondent failed to invoke his right to counsel. The district court suppressed respondent's statements, concluding that the officer failed to address respondent's equivocal request for counsel after being read his *Miranda* rights.

The right to have counsel present during all custodial interrogations is undisputed and necessary to protect the suspect's right to remain silent. *State v. Ray*, 659 N.W.2d 736, 741 (Minn. 2003). "If an accused asserts his right to counsel, interrogation must cease unless the accused initiates further communication, exchanges, or conversations with the police and validly waives his earlier request for the assistance of counsel." *State v. Hannon*, 636 N.W.2d 796, 804 (Minn. 2001). Generally, a suspect must make a "clear and unequivocal" invocation of the right to counsel before police must cease their interrogation. *State v. Farrah*, 735 N.W.2d 336, 342 (Minn. 2007). But "when a suspect indicates by an equivocal or ambiguous statement, which is subject to a construction that

the accused is requesting counsel, all further questioning must stop except [] narrow questions designed to 'clarify' the accused's true desires respecting counsel." *State v. Robinson*, 427 N.W.2d 217, 223 (Minn. 1988); *see State v. Doughty*, 472 N.W.2d 299, 303 (Minn. 1991) (stating that defendant's question, "Shouldn't I have an attorney so you don't ask me any illegal questions?" was an equivocal request for counsel that required the officer to halt the interrogation or to "clarify with narrow questions" whether the defendant desired to have counsel present). The state bears the burden of proving by a preponderance of the evidence that a suspect waived his right to counsel. *Farrah*, 735 N.W.2d at 341. "We defer to a district court's factual determination of whether a defendant invokes the right to counsel during an interrogation unless that determination is clearly erroneous." *State v. Bradford*, 618 N.W.2d 782, 796 (Minn. 2000).

Officer Johnson informed respondent of his right to talk to counsel. Respondent indicated that he understood his rights, and the officer asked: "Do you wish to talk to me at this time about this accident?" Respondent replied: "I don't know, like, I can still, if I need I get a lawyer so. What you need to know." Officer Johnson stated: "I'm just wondering [] if you want to talk to me about the accident right now or not, it's up to you." The officer asked for a yes-or-no response and respondent replied: "Yeah, yeah we talk." The officer stated: "Okay." Respondent replied: "You know, it don't make a difference." And the officer asked: "Okay, so, do you understand, or you have an idea of why you were arrested?"

Respondent made an equivocal request for an attorney when he stated: "I don't know, like, I can still, if I need I get a lawyer so." Officer Johnson was required to either

halt the interrogation or ask narrow questions to determine whether respondent desired the presence of an attorney. But the officer's follow-up statements included: (1) "I'm just wondering [] if you want to talk to me about the accident right now or not, it's up to you" and (2) "I need a yes or no answer." These are not narrow follow-up questions to determine whether respondent desired the presence of counsel. The state failed to meet its burden of showing a valid waiver; the district court properly suppressed the statements respondent made during the interview conducted at the jail.

Affirmed.