STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2244

State of Minnesota,
Respondent,

vs.

Gary Dean Schachtschneider,
Appellant.

Filed November 5, 2012
Affirmed
Schellhas, Judge

Hennepin County District Court
File No. 27-CR-10-43061

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Chutich, Presiding Judge; Schellhas, Judge; and Cleary, Judge.

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

SCHELLHAS, Judge

Appellant challenges his conviction of third-degree criminal sexual conduct, arguing that the district court erred by allowing admission of four statements made by appellant to police in violation of his *Miranda* rights. We affirm.

FACTS

On January 10, 2010, appellant Gary Schachtschneider and R.O. visited a jewelry store, where Schachtschneider purchased a three-carat diamond engagement ring for R.O. Afterward, they celebrated their engagement with friends, returning to the motel where Schachtschneider was staying at about 2:00 a.m. on January 11. R.O. was passed out when they arrived at the motel, and the motel desk clerk helped Schachtschneider get R.O. to Schachtschneider's room. At 11:00 a.m., Schachtschneider called 911 to report that R.O. was not breathing. Officer David Guderian and three other members of the Brooklyn Park Police Department responded to the call and found R.O. in full cardiac arrest. Fire fighters also responded to the medical emergency. The responders administered CPR to R.O. and used an automatic defibrillator. After the responders detected R.O.'s pulse, paramedics transported her to the hospital, where she died on January 12 from organ failure as a result of a drug overdose.

While emergency personnel addressed R.O.'s health emergency in the motel room, Officer Guderian directed Schachtschneider into the hallway because the room was crowded. In the hallway, without first advising Schachtschneider of his *Miranda* rights, Officer Guderian asked him several questions, including but not limited to whether R.O.

had ingested drugs and, if so, what drugs. Schachtschneider informed the officer that he and R.O. had used crack cocaine the previous night; had gone to a bar with friends, where R.O. used her sister's I.D. so that she could drink; R.O. was drunk when they left the bar; and R.O. smoked the residue from a Fentanyl patch on the way to the motel, causing her to go in and out of consciousness. Schachtschneider also told Officer Guderian that he had sex with R.O., whom he acknowledged probably was not aware but would not have had a problem with what transpired.

Without placing Schachtschneider under arrest, the police asked him if he would accompany them to the Brooklyn Park police station to provide a statement. He agreed. After they arrived at the station, the police arrested him in the lobby. While being placed in handcuffs, Schachtschneider spontaneously stated words to the effect that his conduct was "a bit borderline, I admit." That evening, Detective Scott Parsons conducted a taped interview of Schachtschneider, after first advising him of his *Miranda* rights.

Respondent State of Minnesota charged Schachtschneider with third-degree criminal sexual conduct under Minn. Stat. §§ 609.344, subds. 1(d), 2; .101, subd. 2, .3455 (2010). The district court denied Schachtschneider's motion to suppress several of his statements made to the police at the motel and in the police-station lobby upon his arrest. A jury convicted Schachtschneider of third-degree criminal sexual conduct.

This appeal follows.

D E C I S I O N

Noncompliance with Appellate Procedure

In reliance on Minn. R. Civ. App. P. 128.01, subd. 2, Schachtschneider submits almost the entirety of his argument to this court by incorporating by reference a memorandum submitted to the district court in support of his motion to suppress various statements. Rule 128.01, subdivision 2, permits an attorney on appeal "to rely upon memoranda submitted to the trial court supplemented by a short letter argument" but only if an attorney elects to rely on such memoranda "in the statement of the case." Minn. R. Civ. App. P. 128.01, subd. 2. Schachtschneider's attorney did not make that election in Schachtschneider's statement of the case. Because we observe no prejudice resulting from Schachtschneider's rule violation, we proceed in our discretion to review his arguments.

Lack of District Court Findings

Our review of Schachtschneider's appeal is impeded because, although the district court issued a written order denying Schachtschneider's motion to suppress statements made to the police, it did not make factual findings to support its ruling. Minnesota Rule of Criminal Procedure 11.07 provides that "[t]he court must make findings and determinations on the omnibus issues in writing or on the record within 7 business days of the Omnibus Hearing." Minn. R. Crim. P. 11.07. "[O]ne of the main reasons for requiring findings is to make it possible to ascertain from the record the basis for the trial court's ruling." *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983) (quotation omitted); *see State v. Wicklund*, 295 Minn. 402, 402–03, 201 N.W.2d 147, 147 (1972) (remanding,

noting that "because of the absence of any findings of fact . . . [w]e do not know if the trial court accepted as true all of the testimony on behalf of the state and nevertheless suppressed the evidence or if the conflicting testimony of defendant was the basis for the decision").

When faced with a lack of findings by a district court, some appellate courts have remanded, without reversing, for the district court to make factual findings when the absence of findings impeded judicial review.[1] But appellate courts need not remand when the absence of district court findings does not prejudice the defendant.[2] The absence of factual findings does not prejudice a defendant when "no conflict [exists] in the evidence at the omnibus hearing." *Maki*, 260 N.W.2d at 295; *see State v. Rainey*, 303 Minn. 550, 550, 226 N.W.2d 919, 921 (1975) (declining to remand, concluding that "because there was absolutely no conflict in the evidence at the Rasmussen hearing in this case, we find

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[1] *See, e.g.*, *State v. Kinn*, 288 Minn. 31, 34, 178 N.W.2d 888, 890 (1970) (remanding in a *Miranda* case, without reversing, due to absence of district court findings because "[w]e cannot agree, under the complicated circumstances of defendant's arrest and interrogation, that the trial court could properly rule on the admissibility of evidence relating to admissions and confessions without findings and by the broad conclusion contained in the order heretofore quoted"), *overruled on other grounds by State v. Herem*, 384 N.W.2d 880 (Minn. 1986) (overruling *Kinn*'s dictum regarding when a *Miranda* warning is necessary); *Whitman v. Comm'r of Pub. Safety*, 416 N.W.2d 476, 478 (Minn. App. 1987) ("remand[ing] to the trial court for a determination of . . . factual issues" when "[r]esolution of [an] issue depend[ed] upon an assessment of the credibility of the witness"); *but see State v. DeRose*, 365 N.W.2d 284, 286 (Minn. App. 1985) ("Ordinarily, we would remand this matter because the trial court did not make written or oral findings as required by Minn. R. Crim. P. 11.07. We do not believe, however, that the trial court's order in this matter could be sustained on the facts.").

[2] *See State v. Maki*, 260 N.W.2d 294, 295 (Minn. 1977) ("re-emphasiz[ing]" that rule 11.07 requires district courts to "make appropriate findings in writing or orally on the record" but not reversing or remanding, noting that "defendant was not prejudiced by the lack of findings").

no prejudice to defendant in the trial court's failure to provide findings of fact"); *State v. Ortiz*, 626 N.W.2d 445, 448 (Minn. App. 2001) (declining to remand in the absence of sufficient district court findings because "there was no conflicting testimony at all"); *see also Kvam*, 336 N.W.2d at 528–29 (declining to remand "[i]n the interests of judicial economy" when "even if the defendant's testimony was true there was no violation of the defendant's rights").

Despite the district court's lack of factual findings in its suppression order, we do not remand for further factual findings because the resolution of this case turns on undisputed facts and matters of law, and the absence of findings therefore does not prejudice either party.

Challenge to Statements in Evidence

On the grounds that they were (1) in response to interrogations (2) that were custodial, Schachtschneider challenges statements that he made to the police.[3] "[A] *Miranda* warning is required as a procedural safeguard to protect a suspect's Fifth Amendment rights when the police subject a suspect to custodial interrogation." *State v. Vue*, 797 N.W.2d 5, 10 (Minn. 2011) (emphasis omitted); *see Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612 (1966) ("Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed."); *see also* U.S. Const. amend. V (providing that "[n]o

[3] At trial, Schachtschneider challenged a fifth statement—"the statements made to police in a January 13, 2010 telephone conversation"—but on appeal he states that he "does not challenge the admissibility of the phone call."

person . . . shall be compelled in any criminal case to be a witness against himself"); Minn. Const. art. I, § 7 (same). "Statements stemming from custodial interrogation are inadmissible unless the suspect 'voluntarily, knowingly and intelligently' waives [his *Miranda*] rights." *State v. Ortega*, 798 N.W.2d 59, 67 (Minn. 2011) (quoting *Miranda*, 384 U.S. at 444, 476, 86 S. Ct. at 1612). The erroneous admission of statements stemming from custodial interrogation requires reversal unless "the error was harmless beyond a reasonable doubt, meaning the verdict was surely unattributable to that error." *State v. Thompson*, 788 N.W.2d 485, 491 (Minn. 2010) (quotation omitted). With these legal requirements in mind, we address each of the challenged admitted statements.

Motel-Hallway Statements

The district court allowed admission of Schachtschneider's pre-*Miranda* statements made in the motel hallway on January 11, 2010, in response to Officer Guderian's questions. Schachtschneider alleges that his statements were made in response to police interrogation. He challenges the following statements: (1) he "had had a relationship with [R.O.]" for "two years"; (2) he "knew that [R.O.] had a history of some pretty serious abuse of pharmaceutical drugs and pain killers"; (3) he "had a substance abuse issue in regards to cocaine"; and (4) he "had sexual intercourse with" R.O. on January 10, 2010.

Police questioning amounts to interrogation under *Miranda* when the police "'should know'" that their "'express questioning'" and "'words or actions . . . other than those normally attendant to arrest and custody . . . are reasonably likely to elicit an incriminating response from the suspect.'" *State v. Paul*, 716 N.W.2d 329, 336–37

(Minn. 2006) (footnote omitted) (quoting *Rhode Island v. Innis*, 446 U.S. 291, 300–01, 100 S. Ct. 1682, 1689 (1980)). "Our inquiry focuses on the perceptions of the suspect rather than on the intent of the police, and must consider the totality of the circumstances surrounding the suspect's custody." *State v. Ortega*, 813 N.W.2d 86, 96 (Minn. 2012) (quotation omitted); *accord Innis*, 446 U.S. at 301, 100 S. Ct. at 1690. Here, Officer Guderian and three other officers arrived at Schachtschneider's motel room in response to a 911 call. They found R.O. on the floor, not breathing, and in cardiac arrest. One officer started chest compressions and another administered oxygen. Officer Guderian then attached the automatic defibrillator to R.O. Officer Guderian testified that, after this activity, he asked Schachtschneider to accompany him to the motel hallway where he asked him questions

> to try and figure out what he knew about [R.O.], what he knew about [R.O.'s] history. Because there had been some indication about drug use, what he might have known about . . . what [R.O.] may have taken during the evening that could lead to the condition that she's in, the sequence of events, when he last spoke to her, when he last noticed her still breathing and when he noticed her no longer breathing, trying to pin that down.

We conclude that Officer Guderian's questioning constituted an interrogation because the officer should have known that his express questioning and actions were likely to elicit an incriminating response from Schachtschneider. But we also conclude that Officer Guderian's interrogation of Schachtschneider was noncustodial and therefore did not require a *Miranda* warning.

A *Miranda* warning is only required if a suspect is subject to interrogation and "in custody." *State v. Scruggs*, ___ N.W.2d ___, ___, 2012 WL 5232339, at *3 (Minn. Oct. 24, 2012). "[C]ustody" is "a term of art to specify circumstances that present a serious danger of coercion." *Scruggs*, 2012 WL 5232339, at *4 (citing *Howes v. Fields*, 132 S. Ct. 1181, 1189 (2012)). The test for determining whether an interrogation is custodial is "not merely whether a reasonable person would believe he or she was not free to leave," but rather whether, "based on all the surrounding circumstances, a reasonable person would believe he or she was in police custody to the degree associated with formal arrest." *Scruggs*, 2012 WL 5232339, at *4 (quotation omitted). Appellate courts "make an independent review of the district court's determinations regarding whether the defendant was in custody." *Id.*

> Factors indicating that an individual is in custody include: (1) the police interviewing the suspect at the police station; (2) the suspect being told he or she is a prime suspect in a crime; (3) the police restraining the suspect's freedom of movement; (4) the suspect making a significantly incriminating statement; (5) the presence of multiple officers; and (6) a gun pointing at the suspect.

Id. (quotation omitted).

> Conversely, factors that indicate a suspect is not in custody include: (1) questioning the suspect in his or her home; (2) law enforcement expressly informing the suspect that he or she is not under arrest; (3) the suspect's leaving the police station without hindrance; (4) the brevity of questioning; (5) the suspect's ability to leave at any time; (6) the existence of a nonthreatening environment; and (7) the suspect's ability to make phone calls.

Id. (quotation omitted).

Here, police responded to Schachtschneider's 911 call, reporting a medical emergency in his motel room and requesting medical assistance for R.O. The resulting police interrogation occurred just outside Schachtschneider's motel room. The record contains no evidence that police told Schachtschneider that he was a suspect in a crime, that police restrained Schachtschneider in any way, or that police made a show of force toward Schachtschneider. The totality of circumstances supports a conclusion that the interrogation was not custodial. *See id.*, 2012 WL 5232339, at *1, *5 (concluding that locking defendant in police-station interrogation room did not place defendant in custody in light of surrounding circumstances, even though surrounding circumstances included defendant arriving at interrogation room after four police officers found defendant in murder victim's apartment, one police officer drove defendant to police station, and two police officers interrogated defendant in interrogation room); *State v. Walsh*, 495 N.W.2d 602, 605 (Minn. 1993) (noting that a "handcuffing restraint, by itself, did not mean defendant was in 'custody' for purposes of *Miranda*"). Because the motel-hallway interrogation was not custodial, we conclude that the district court did not err by denying Schachtschneider's motion to suppress his statements made to Officer Guderian in the motel hallway.

We also conclude that, even if Officer Guderian's motel-hallway interrogation of Schachtschneider was custodial, Schachtschneider's statements made in response to that interrogation were admissible under the rescue doctrine. "[T]he rescue doctrine is applicable in emergency situations where exigent circumstances may excuse compliance with the *Miranda* rules in instances of overriding need to save human life or to rescue

persons whose lives are in danger." *State v. Provost*, 490 N.W.2d 93, 96–97 (Minn. 1992) (quotation omitted). "[T]hree factors that must be met to claim [that] limited exception" are "(1) urgency of need in that no other course of action promises relief; (2) the possibility of saving human life by rescuing a person whose life is in danger; and (3) rescue as the primary purpose and motive of the interrogators." *Id.* at 96.

In this case, all three factors were met. Here, when police arrived on the scene, only two people were present—Schachtschneider and R.O.—and Schachtschneider's primary concern was R.O.'s resuscitation. Officer Guderian immediately asked Schachtschneider to explain the circumstances, and Schachtschneider informed Officer Guderian that R.O. "had smoked some kind of a patch during the night" and that "within five minutes of calling 911 she had stopped breathing." Two paramedics and at least three firemen arrived at the room with additional equipment, two officers continued resuscitation efforts, and the fire department "step[ped] in." Officer Guderian and Schachtschneider then stepped out of the motel room and into the hallway. Officer Guderian testified that his "primary goal" in questioning Schachtschneider was to "get information that might help whatever medical course they could take to try to help [R.O.] survive." Even if the motel-hallway interrogation was custodial, Schachtschneider's statements were admissible under the rescue doctrine.

Statement Made during Police Transport to Police Station

Schachtschneider seems to challenge the admission of a statement that he made "while being transported to the Brooklyn Park police station." Upon our review of the record, we conclude that, even if the district court erred by denying Schachtschneider's

motion to suppress a statement that Schachtschneider made while being transported to the police station, that error is harmless beyond a reasonable doubt because no such statement was admitted at trial and therefore Schachtschneider suffered no prejudice as a result of the ruling. *See Thompson*, 788 N.W.2d at 491 (noting that the erroneous admission of statements stemming from custodial interrogation requires reversal unless "the error was harmless beyond a reasonable doubt, meaning the verdict was surely unattributable to that error" (quotation omitted)).

Statement Made during Arrest in Police-Station Lobby

Schachtschneider challenges the district court's admission of his statement made upon his arrest in the lobby of the Brooklyn Park police station. According to Officer Guderian's testimony, Schachtschneider "indicated words to effect, 'It was a bit borderline, I admit.'" Although Schachtschneider was in custody when he made this statement, *see Scruggs*, 2012 WL 5232339, at *4 (noting that "[f]actors indicating that an individual is in custody include . . . the suspect being told he or she is a prime suspect in a crime; . . . the police restraining the suspect's freedom of movement; . . . the suspect making a significantly incriminating statement; . . . [and] the presence of multiple officers"), we conclude that the district court did not err by declining to suppress it because the statement was a voluntary statement "not elicited by the officers." *State v. Mogler*, 719 N.W.2d 201, 209 (Minn. App. 2006) (concluding that, "[a]lthough [defendant] was in custody," district court did not err by admitting his statements because "the statements were not elicited by the officers"); *see State v. Tibiatowski*, 590 N.W.2d 305, 308 (Minn. 1999) ("Any statement given freely and voluntarily without any

compelling influences is, of course, admissible in evidence." (emphasis omitted) (quotation omitted)); *see also Miranda*, 384 U.S. at 478, 86 S. Ct. at 1630 ("The fundamental import of the privilege while an individual is in custody is not whether he is allowed to talk to the police without the benefit of warnings and counsel, but whether he can be interrogated. . . . Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today."); *State v. Edrozo*, 578 N.W.2d 719, 725 (Minn. 1998) ("Confessions of guilt, or self-incriminating statements, if not compelled by coercive police tactics, are inherently desirable." (quotation omitted)); *State v. Johnson*, 811 N.W.2d 136, 148 (Minn. App. 2012) (concluding that defendant's pre-*Miranda* silence "did not implicate the Fifth Amendment," even though defendant had been arrested, because defendant "was under no government-imposed compulsion to speak at the time of his silence"), *review denied* (Minn. Mar. 28, 2012).

Post-Miranda Statements during Taped Interview

Schachtschneider challenges the district court's admission of his post-*Miranda* statements made during his *Scales* custodial interview, arguing that the waiver of his *Miranda* rights that he gave to Detective Parsons was not knowing, intelligent, and voluntary, based on his "frame of mind at the time of the *Scales* interview." He argues that "[h]is fiancée was fighting for her life, and he was unable to be by her side"; "[t]hat was all he was concerned about at the time of the interview"; the *Scales* interview recording reveals that he was "barefooted and disheveled"; and "he had taken drugs earlier in the day."

"We review findings of fact surrounding an alleged *Miranda* waiver for clear error, and we review de novo the legal conclusions based on those facts to determine whether the waiver was knowing, intelligent, and voluntary." *State v. Anderson*, 789 N.W.2d 227, 233 (Minn. 2010). "The State has the burden of establishing, by a preponderance of the evidence, that a defendant's waiver of *Miranda* rights was knowing, intelligent, and voluntary." *Id*. "The State meets its burden of proving a knowing, intelligent, voluntary waiver of *Miranda* rights if it shows the *Miranda* warnings were given and that the individual stated that he or she understood those rights and then gave a statement." *Id.* (quotation omitted).

Detective Parsons obtained Schachtschneider's *Miranda* waiver at the beginning of the taped interview as follows:

> DETECTIVE PARSONS: . . . it's kind of a formality that because you're in custody, I got to read you your rights.
>
> SCHACHTSCHNEIDER: Yeah, okay. M-hmm, oh yeah.
>
> DETECTIVE PARSONS: Okay, that's why I don't want to talk too much before that okay? Um, so just let me read you your rights. The constitution requires that I inform you that you have the right to remain silent; anything you say, can and will be used against you in court; you have the right to talk to a lawyer now, and to have the lawyer present now or at anytime during questioning; if you cannot afford a lawyer, one will be appointed for you without costs. Do you understand those rights, Gary?
>
> SCHACHTSCHNEIDER: Right. Yeah, I do.
>
> DETECTIVE PARSONS: Okay.
>
> SCHACHTSCHNEIDER: Sure.

> DETECTIVE PARSONS: Do you wish to speak to me at this time about what happened?
>
> SCHACHTSCHNEIDER: Sure. Yeah I do.

Schachtschneider's argument that his *Miranda* waiver was not knowing, intelligent, and voluntary is unpersuasive.

> Where an appellant claims that there is credible evidence that a waiver was invalid, we make a subjective factual inquiry, look at the totality of the circumstances, and consider factors such as the defendant's age, maturity, intelligence, education, experience, ability to comprehend, lack of or adequacy of warnings, the length and legality of the detention, the nature of the interrogation, any physical deprivations, and limits on access to counsel and friends.

Id. at 233–34. Here, at the time of the *Scales* interview, Schachtschneider was between 50 and 60 years old and co-operated a business. Immediately prior to the interview, he had been in jail for several hours, so the effect of any drug usage would have been diminished. The record reflects that Detective Parsons began the interview at approximately 8:00 p.m. in casual clothing, was unarmed, and spoke in an audibly nonthreatening manner and tone of voice. The interview lasted approximately 40 minutes. *See State v. Fardan*, 773 N.W.2d 303, 315 (Minn. 2009) (concluding that defendant's *Miranda* waiver was knowingly, intelligent, and voluntary, with respect to an interrogation that lasted "only about 52 minutes"). Although the interview clearly reveals Schachtschneider's concern about R.O.'s condition, *see State v. Andrews*, 388 N.W.2d 723, 731 (Minn. 1986) (concluding that defendant was capable of giving a knowing, intelligent, and voluntary waiver, even though the defendant was "extremely upset and crying"), Detective Parsons testified, and the interview recording confirms, that

Schachtschneider was "of sound mind," "very cooperative," and "did not appear to be under the influence." And Schachtschneider does not allege that his detention was illegal or deprived him of any physical needs.

We conclude that the state satisfied its burden to prove that Schachtschneider's *Miranda* waiver was knowing, intelligent, and voluntary, and we conclude that the district court did not err by declining to suppress Schachtschneider's statements made during his *Scales* interview.

Affirmed.