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NO. COA01-417

NORTH CAROLINA COURT OF APPEALS

Filed: 5 March 2002

STATE OF NORTH CAROLINA

v.

Wayne County
No. 99 CRS 001786

DAVID POLLARD SNYDER

Appeal by defendant from judgment dated 6 November 2000 by Judge James E. Ragan, III in Wayne County Superior Court. Heard in the Court of Appeals 12 February 2002.

Attorney General Roy Cooper, by Special Deputy Attorney General Isaac T. Avery, III and Assistant Attorney General Patricia A. Duffy, for the State.

Barnes, Braswell & Haithcock, P.A., by Glenn A. Barfield, for defendant-appellant.

GREENE, Judge.

David Pollard Snyder (Defendant) appeals a judgment dated 6 November 2000 entered after he pled no contest to driving while impaired.

On 30 January 1999, Defendant was issued a citation charging him with unlawfully and willfully operating a motor vehicle while subject to an impairing substance. Defendant filed a motion on 13 August 1999, to suppress any statements he made while "in the custody of any law[-]enforcement officer . . . [without] the required Miranda warnings."

At the hearing on Defendant's motion to suppress, Sergeant Dean Roscoe (Roscoe) of the Wayne County Sheriff's Office testified that on 30 January 1999 at approximately 4:30 p.m., he received a call from the dispatch center to check on an accident in the Stevens Mill area of Wayne County near the Johnston County line. At the scene of the accident, Roscoe observed a vehicle overturned in a ditch and a rescue truck, along with several bystanders. Considering the position of the vehicle and the skid marks apparently made by the vehicle, the vehicle came out of Johnston County and was heading toward Goldsboro. Although Roscoe did not observe any body in the vehicle, rescue personnel and bystanders told him they had observed a "white male[] walking away from the scene of the accident with a cut somewhere on his face." After receiving the information, Roscoe "started to drive down the road" and was "given more information that the subject . . . had [gone] down a dirt path back toward[] some chicken houses." The chicken houses were located approximately two-to-three hundred yards from the scene of the accident. After driving around to the back of the chicken houses, Roscoe saw Defendant and asked him to come back through a fence to Roscoe's patrol vehicle. When Defendant arrived at Roscoe's patrol vehicle, Roscoe instructed him to have a seat in the patrol vehicle. Roscoe asked Defendant "where he was going," and Defendant stated he was headed to Goldsboro. Roscoe drove back to the scene of the accident and at the scene, started a general conversation with Defendant. Defendant asked Roscoe what would happen to his vehicle and after learning it would be towed, asked

to remove property from the vehicle. Roscoe retrieved a briefcase belonging to Defendant from the wrecked vehicle and remained outside of his patrol vehicle while Defendant sat in Roscoe's unlocked patrol vehicle with the door open. Roscoe testified he was at the scene approximately fifteen-to-thirty minutes while "[w]aiting for Highway Patrol to get there to investigate the wreck." Roscoe never placed Defendant under arrest or put him in handcuffs, but did observe Defendant was "obviously impaired" as his speech was slurred, he was unsteady on his feet, and he had an odor of alcohol on him.

On cross-examination, Roscoe testified he did not know if anyone else walked away from the vehicle prior to his arrival. While there was nothing about the condition of the vehicle to indicate who was the driver, the cut on Defendant's lip and his appearance suggested he had at least been in the vehicle when the accident occurred. Had Defendant continued to flee at the point Roscoe asked him to stop and come back, Roscoe would have kept following him. During the time Defendant was in Roscoe's patrol vehicle, Roscoe did not tell him he was free to leave and never advised him of his Miranda rights. Roscoe's purpose in taking Defendant back to the scene of the accident was to investigate the accident. When Defendant requested to remove some personal items from the vehicle, Roscoe personally removed those items to protect his safety.

Sergeant Jerry Maxwell (Maxwell) with the North Carolina Highway Patrol testified that on 30 January 1999, he was called to

the scene of an accident on Stevens Mill Road. When Maxwell arrived at the scene of the accident, Roscoe told him Defendant was the operator of the vehicle. Maxwell then asked Defendant if the vehicle was his, and if so, Maxwell needed his driver's license and vehicle registration. Defendant confirmed the vehicle was his and handed Maxwell his driver's license and told him the vehicle registration could be found inside the vehicle. After running a check with the Department of Motor Vehicles, Maxwell confirmed the vehicle belonged to Defendant. When Maxwell asked Defendant to step back to his patrol vehicle so he could obtain information pertaining to the accident, he noticed Defendant was very unsteady on his feet. Once Maxwell assisted Defendant into his patrol vehicle, he asked Defendant questions concerning the address on his driver's license, the direction in which he had been traveling, and the name of his insurance agent. After being in Defendant's presence for less than an hour, Maxwell determined Defendant was impaired and placed him under arrest. Maxwell did not further question Defendant after placing him under arrest.

On cross-examination, Maxwell testified that at no time did he advise Defendant of his Miranda rights prior to placing him under arrest. At the time Maxwell assisted Defendant into his patrol vehicle, his purpose was to investigate the accident. Upon being advised of his Miranda rights, Defendant elected to exercise those rights and remain silent.

The trial court concluded that statements made to Roscoe were voluntary responses and Defendant had not been placed under arrest

by Roscoe. With respect to Maxwell, the trial court concluded Defendant had been detained for the purpose of investigating the nature and extent of the accident and the information secured by Maxwell was for the purpose of completing the accident investigation report. The trial court denied Defendant's motion to suppress.

The dispositive issue is whether Defendant was in custody at the time he gave his statements to Roscoe and Maxwell.

"*Miranda* warnings and waiver of counsel are only required when a defendant is being subjected to custodial interrogation." *State v. Gwaltney*, 31 N.C. App. 240, 242, 228 S.E.2d 764, 765, *disc. review denied*, 291 N.C. 449, 230 S.E.2d 767 (1976). In determining whether a defendant is in custody for *Miranda* purposes, the "ultimate inquiry" is "whether a reasonable person in [the] defendant's position, under the totality of the circumstances, would have believed that he was under arrest or was restrained in his movement to the degree associated with a formal arrest." *State v. Buchanan*, 353 N.C. 332, 339-40, 543 S.E.2d 823, 828 (2001). "[T]he initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned.'" *Id.* at 341, 543 S.E.2d at 829 (quoting *Stansbury v. California*, 511 U.S. 318, 323, 128 L. Ed. 2d 293, 298 (1994)). Generally, a defendant is not in custody and *Miranda* warnings are not required when an investigation of an automobile accident is

being conducted. *State v. Seagle*, 96 N.C. App. 318, 321-22, 385 S.E.2d 532, 534 (1989); *Stalls v. Penny*, 62 N.C. App. 511, 512, 302 S.E.2d 912, 913 (1983); *Gwaltney*, 31 N.C. App. at 242, 228 S.E.2d at 765. It makes no difference whether the investigation is conducted at the scene of the accident or elsewhere. *Stalls*, 62 N.C. App. at 512, 302 S.E.2d at 913. "Accidents involving damage and injury to property or persons, and possible violations of the law, must be investigated," and this investigation does not violate any rights of the defendant. *Id.* at 514, 302 S.E.2d at 914. This is so because "[s]uch questioning is necessary for the purpose of preparing the official accident report which is required to be filed. [The questions] are investigatory and not accusatory." *Gwaltney*, 31 N.C. App. at 242, 228 S.E.2d at 765.

In this case, at the time Defendant was being questioned by Roscoe and Maxwell, he was not in custody for purposes of Miranda. The questioning was necessary to investigate an accident and prepare the official accident report. At no time were the questions accusatory and at no time was Defendant restrained or placed under arrest. During the questioning by both Maxwell and Roscoe, Defendant sat in the front passenger seat of each officer's patrol vehicle and was free to move about. Accordingly, the trial court did not err in denying Defendant's motion to suppress his statements.

Affirmed.

Judges McGEE and THOMAS concur.

Report per Rule 30(e).