

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

KAREN RENEE ESQUIVEL,
Defendant-Appellant.

Marion County Circuit Court
14C40664; A158431

Mary Mertens James, Judge.

Argued and submitted April 28, 2016.

Kyle Krohn, Deputy Public Defender, argued the cause for appellant. With him on the briefs was Ernest G. Lannet, Chief Defender, Criminal Appellate Section, Office of Public Defense Services.

Rolf C. Moan, Assistant Attorney General, argued the cause for respondent. With him on the brief were Ellen F. Rosenblum, Attorney General, and Paul L. Smith, Deputy Solicitor General.

Before Ortega, Presiding Judge, and Lagesen, Judge, and Garrett, Judge.

ORTEGA, P. J.

Reversed and remanded.

ORTEGA, P. J.

Defendant appeals a judgment of conviction for two counts of third-degree theft. Before trial, defendant moved to suppress her statement—“Fine, I’ll admit guilt”—made during a police interrogation at her home regarding recent thefts at a Safeway store. The court denied defendant’s motion, reasoning that defendant’s statement was not made in response to a question asked by the police officer, but was a response to being told that she was under arrest. Defendant assigns error to that ruling, asserting that her statement was made after she was interrogated under compelling circumstances and without required *Miranda* warnings. Reviewing for legal error, *State v. Smith*, 310 Or 1, 7, 791 P2d 836 (1990), we conclude that defendant’s statement was indeed made under compelling circumstances and that its admission was not harmless. Accordingly, we reverse and remand.¹

We state the relevant facts consistently with the trial court’s explicit and implicit factual findings. *State v. Ehly*, 317 Or 66, 74-75, 854 P2d 421 (1993). On February 5, 2014, Detectives Roberts and Myers went to defendant’s home to talk to her about recent thefts at a Safeway store. Both detectives were in uniform, wore badges, and drove marked patrol vehicles. Upon arrival, Roberts saw defendant’s car and went to her front door and knocked several times. Although no one responded, the detectives knew that someone was home because they peered through a window in defendant’s door and saw a woman who matched defendant’s description. They then called her phone twice and left her a voicemail. A few minutes later, dispatch called the detectives to tell them that defendant was attempting to reach them, so they called her back and asked her to come to the front door so they could interview her. She replied that she did not want to do that because she was naked and sick.

Roberts gave defendant two options. First, if she refused to answer questions at her door, he would obtain a

¹ Defendant also assigns error to the court’s imposition of \$322 in court-appointed attorney fees, arguing that their imposition was plainly erroneous because the record does not support a finding that she had the ability to pay them. Because we are reversing and remanding the case, we do not address that assignment of error.

warrant to arrest her in her home. Alternatively, she could talk to him at her door and receive a citation instead of being arrested. Defendant then agreed to speak with detectives at her door.

During the questioning, defendant remained in the doorway, and the officers stood a couple feet away from her outside the door. Roberts informed defendant that they were investigating two incidents of theft at a local Safeway store. Defendant denied stealing anything and continued to do so when asked repeatedly. Roberts then told defendant that there was physical evidence of the thefts and asked for her cooperation, chiding her for continuing “to say that she didn’t steal it even though there was video and a store manager *** witnessed her do both events.” Finally, after he told her that she was under arrest, defendant responded, “Fine, I’ll admit guilt.” Roberts asked defendant to clarify her statement and, according to the officer, she responded that he had “accused her of stealing twice so she was cooperating by admitting guilt,” and that she “wanted her ticket now.” Roberts then took defendant to jail.

At the conclusion of the pretrial hearing on her motion to suppress, defendant argued that her statement was made under compelling circumstances, because Roberts’s questioning was very aggressive and she did not feel that she was free to end the interrogation because she could not leave without being arrested. Although the trial court acknowledged that an interrogation had taken place before defendant made her admission, it concluded that the officers did not have an obligation to give *Miranda* warnings because, up until the arrest, defendant was neither “in custody” nor under “compelling circumstances.” The court explained that the threat to arrest defendant did not make the circumstances compelling, as they would be when a suspect is questioned for 14 hours without water or rest, or when police draw their weapons or even handcuff a suspect without placing her under arrest. The court found it significant that the detectives did not pull their guns, that there was no physical contact between them and defendant, and that the questioning lasted only about 15 minutes. The court reasoned that defendant had options for responding to the officers once she was arrested, including the option of continuing to deny her

guilt. Observing that defendant's statement was not offered in relationship to a question, the court declined to suppress it.

On appeal, defendant renews her arguments from the pretrial hearing. She contends that Roberts's threat of arrest if she did not cooperate created a police-dominated atmosphere that required *Miranda* warnings. Defendant asserts that even though the encounter happened at her home, she believed she could not terminate interrogation because of the pressure exerted on her to confess, and that the continuous knocking on her door, calls to her phone, and Roberts's promise to give her a citation rather than arrest her if she cooperated contributed to the police-dominated atmosphere.

The state does not argue that the circumstances were not compelling; rather, it asserts that defendant's statement was not elicited in violation of Article I, section 12, of the Oregon Constitution because she was not being interrogated at the time she made it. The state focuses on the court's factual finding that defendant made the statement after she was told she was under arrest, and not in response to a question. The state cites *State v. Doyle*, 262 Or App 456, 466, 324 P3d 598, *rev den*, 355 Or 880 (2014), defining interrogation as "only *** words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response." The state reasons that, unless a defendant's statement was in response to a question or to words or actions that the officers should have known were likely to elicit an incriminating response, it is not subject to suppression even if made under compelling circumstances.

We reject the state's argument. Even if the state is correct that the statement at issue was not made in response to interrogation, that is beside the point if a violation of defendant's *Miranda* rights occurred before she made her admission. That is, as we discuss, we must determine if, before she made her statement, defendant was interrogated under compelling circumstances giving rise to a need for *Miranda* warnings, and determine, if there was a constitutional violation, whether defendant's later statement derived

from that violation. *State v. Jarnagin*, 351 Or 703, 715-16, 277 P3d 335 (2012) (explaining the principle).

Under Article I, section 12, no person “shall be *** compelled in any criminal prosecution to testify against himself.” Consequently, a police officer must provide *Miranda* warnings to a suspect before interrogating her if she is either in full custody or under compelling circumstances. *State v. Magee*, 304 Or 261, 265, 744 P2d 250 (1987). A suspect is in full custody when placed in handcuffs on the streets or in her home; compelling circumstances arise when there is “questioning in another form or setting that judges would and officers should recognize as ‘compelling.’” *Id.*

To determine whether the circumstances before defendant’s arrest were compelling, we must examine “how a reasonable person in [defendant’s] position would have understood [the] situation.” *State v. Shaff*, 343 Or 639, 645, 175 P3d 454 (2007). If a reasonable person “would have felt compelled to answer a police officer’s questions,” then the circumstances are compelling. *State v. Bush*, 203 Or App 605, 610, 126 P3d 705 (2006). That inquiry requires us to consider the totality of the circumstances to determine “whether the officers created the sort of police-dominated atmosphere that *Miranda* warnings were intended to counteract.” *State v. Roble-Baker*, 340 Or 631, 641, 136 P3d 22 (2006). Factors to consider include (1) the location of the encounter; (2) the length of the encounter; (3) the amount of pressure exerted on the defendant; and (4) the defendant’s ability to terminate the encounter. *Id.* at 640-41. No single factor is dispositive, nor do we apply each factor mechanically. *Id.* at 641. As the trial court correctly observed, the first two factors do not weigh in favor of finding that the circumstances at issue here were compelling. However, the third factor requires more discussion.

We begin by addressing the first two factors. As to location, generally, questioning a suspect at a location familiar to her, as happened here, will tend not to be compelling. *See Smith*, 310 Or at 7-8; *see also Shaff*, 343 Or at 646 (concluding that questioning a suspect at home instead of a police station does not necessarily diminish the police-dominated atmosphere). Likewise, the length of

the encounter here—about 15 minutes—tends to suggest that circumstances were not compelling—though even in a short encounter, if the interaction between the police and the defendant was coercive, an encounter may be deemed compelling. *State v. Northcutt*, 246 Or App 239, 250, 268 P3d 154 (2011) (concluding that “any consideration of the durational factor *** [depends] on the character or quality of the interaction”). Nevertheless, as we explain, this case turns on the third factor—the amount of pressure exerted by Roberts during the interview—that is, whether Roberts created compelling circumstances when he told defendant that, if she “cooperated,” he would issue a citation as opposed to securing a warrant to arrest her. In a recent opinion, we addressed that very concern.

In *State v. Heise-Fay*, 274 Or App 196, 208-09, 360 P3d 615 (2015), we concluded that the defendant was under compelling circumstances when she was told to be “honest and cooperative” with the police officer questioning her because a reasonable person in her situation would have felt compelled to answer the questions.² There, the defendant was asked a series of questions by a detective regarding the location of a person of interest in a separate matter. *Id.* at 199. The defendant told the detective that the suspect was not at her house, but at that point, the other officers found the suspect hiding behind a woodshed. The defendant professed ignorance in response to follow-up questions, and the detective informed her that he knew she was lying, but that he did not intend to arrest her if she was honest and cooperative, though she “could be in trouble for hindering prosecution.” *Id.* The defendant then admitted that she had known that the suspect was at the house. *Id.* at 200. We concluded that, because of the amount of pressure exerted on the defendant, the questioning had occurred under compelling circumstances requiring *Miranda* warnings. *Id.* at 207-08.

In reaching that conclusion, we noted that a defendant is placed in compelling circumstances when “the officers

² We also took into consideration the number of police officers present at the scene as well as the presence of DHS to determine the pressure defendant felt to answer the police officer’s questions.

ha[ve] communicated that they believe[] that *** [the] defendant ha[s] committed a crime, that they ha[ve] probable cause to arrest, and that they intend[] to make an arrest or [are] strongly weighing the possibility of making an arrest.” *Id.* at 206 (quoting *State v. Stone*, 269 Or App 745, 753, 346 P3d 595 (2015)). In contrast, compelling circumstances do not exist “when an officer ha[s] asked open-ended questions during an investigation that were neither coercive nor based on an assumption of the defendant’s guilt.” *Id.*; see, e.g., *Stone*, 269 Or App at 753 (a single open-ended question that suggested that the officer suspected the defendant might be in possession of an unlawful item was not coercive).

Here, Roberts’ questioning was sufficiently coercive to give rise to compelling circumstances. Roberts explained to defendant that there was video of her committing the crime and that he believed he had enough evidence to secure a warrant for her arrest. Additionally, the “options” he presented to her demonstrated an intent to arrest her if she did not cooperate. Based on the totality of circumstances, we conclude that, by giving defendant the option of cooperating and receiving a citation or being arrested, Roberts created a coercive environment that made the circumstances compelling and created a need to administer *Miranda* warnings. The failure to do so violated Article I, section 12.

The trial court found that defendant’s statement, “Fine, I’ll admit guilt,” occurred some moments later, after Roberts indicated that she was under arrest. Nevertheless, we reject the state’s argument that the fact that defendant’s admission was not in response to a question ends our inquiry. Instead we must examine whether defendant’s later admission “derives from or is a product of that constitutional violation.” See *Jarnagin*, 351 Or at 713. We conclude that it did. At the time she made the admission, defendant was responding to continuing pressure to admit to the thefts and to the officer’s assertion that she must cooperate in order to receive a mere citation. Indeed, defendant followed her admission with the assertion that she “wanted her ticket now.” Under those circumstances, a reasonable person in defendant’s position would have felt compelled to cooperate with the officer in order to avoid going to jail, and defendant therefore remained in compelling circumstances.

We also conclude, after reviewing the trial evidence, that the error was not harmless—and indeed, the state does not assert otherwise. *Cf. Arizona v. Fulminante*, 499 US 279, 297, 111 S Ct 1246, 113 L Ed 2d 302 (1991) (“In the case of a coerced confession ***, the risk that the confession is unreliable coupled with [its] profound impact *** [on] the jury, requires a reviewing court to exercise extreme caution before determining that [its] admission *** was harmless.”).

Reversed and remanded.