COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

	§	
THE STATE OF TEXAS,		No. 08-15-00365-CR
	§	
Appellant,		Appeal from the
	§	
v.		Criminal District Court No. 1
	§	
STEVEN LEON,		of El Paso County, Texas
	§	
Appellee.		(TC# 20110D04233)
	§	

OPINION

In this interlocutory appeal, the State of Texas asks this Court to reverse a trial court order suppressing statements made by defendant Steven Leon. We will affirm.

BACKGROUND

Factual History

On September 21, 2011, El Paso Police Officer Andres Guerra stopped a red vehicle near 8400 Wells Road in El Paso, Texas, for failing to use a turn signal and running a stop sign. Three people were inside the vehicle; Leon was seated behind the driver in the car's back seat. Officer Guerra testified that all the vehicle's occupants seemed "real nervous" and were making "[f]urtive movement." For example, one passenger put her hands on the glove box before Officer Guerra told her to keep her hands to herself, where he could see them. Officer Guerra ordered all three occupants to step out of the car. Officer Guerra had the two female passengers

sit on the curb and put Leon into the back of his police car without handcuffs. After this, a female officer arrived at the scene and performed a pat-down of the two female passengers. Officer Guerra did not inform Leon of his *Miranda* rights at any time.

Officer Gabriel Corral then arrived with a canine about five minutes later, though it is unclear from the record who called him. Officer Corral testified that when he arrived, the driver and passenger of the car were on the curb, and Leon was in the back of the patrol car. Following a canine sweep, Officer Corral found a closed brown "purse type" cloth bag containing a brick of cocaine under the driver's seat. Officer Corral noticed that there were two numbers written on the cocaine, either a 6 or a 9 and a 7. Officer Corral left the bag inside the car, walked to the female passengers, and asked whose brown bag was in the car. One of the women answered that it was her bag. Officer Corral then went to the patrol car and asked Leon who the bag belonged to. According to Officer Corral, Leon allegedly responded, "The cocaine is mine." Officer Corral asked Leon what was on the cocaine, and Leon allegedly said the number 97. After this conversation, Officer Corral read Leon his *Miranda* rights and placed him under formal arrest.

Procedural History

Leon filed a pretrial motion to suppress both his statement and the cocaine. The suppression issue was initially assigned to Judge Susan Larsen, sitting by assignment in Criminal District Court No. 1. Following a hearing, Judge Larsen denied the defendant's motion to suppress. Later, after Leon moved for reconsideration, Criminal District Court Judge Diane Navarrete reversed Judge Larsen's decision in part and issued an order suppressing Leon's statement but still allowing the State to use the brick of cocaine at trial.

The State appealed Judge Navarrete's order. We have interlocutory jurisdiction. TEX.CODE CRIM.PROC.ANN. art. 44.01(a)(5)(West Supp. 2016).

DISCUSSION

In its sole issue on appeal, the State contends that we must reverse the trial court's suppression order because no reasonable person would believe that Leon, at the time he was questioned in the back of a police cruiser, had his freedom restrained to a degree objectively commensurate with a formal arrest. We disagree.

Standard of Review

We review a trial court's suppression ruling under a bifurcated standard, deferring to the trial court's findings of fact while evaluating the application of those facts to the applicable law *de novo*. *State v. Saenz*, 411 S.W.3d 488, 494 (Tex.Crim.App. 2013).

Complicating our review here is the fact that while Judge Larsen initially denied the motion to suppress after hearing testimony from the witnesses, Judge Navarrete reversed that decision and partially granted the motion to suppress without hearing from the witnesses. The State suggests that because Judge Navarrete did not hear witness testimony, her ruling could have only been purely a legal one not based on an evaluation of witness credibility or demeanor. Thus, under these circumstances, the State contends we should defer to the implicit fact-findings Judge Larsen made and review Judge Navarrete's ultimate conclusion on the legal merits of suppression *de novo*, since Judge Navarrete could have only ruled by applying already-determined facts to the legal standard. We need not resolve the issue of to whom we must defer as to determinations of historical fact. Neither side contests the sequence of events or what was said, meaning that no credibility or demeanor issues are in play. Our review of this issue is *de novo*. *Id*. at 494. Leon, as the prevailing party, "is afforded the strongest legitimate view of the evidence and all reasonable inferences that may be drawn from that evidence." *State v. Weaver*, 349 S.W.3d 521, 525 (Tex.Crim.App. 2011).

Applicable Law: Custodial Interrogation

A defendant seeking the suppression of a statement on *Miranda* grounds has the threshold burden of clearly establishing that his statements were given during custodial interrogation. *Herrera v. State*, 241 S.W.3d 520, 526 (Tex.Crim.App. 2007). A person is "in custody" for *Miranda* purposes when there is either (1) a formal arrest or (2) a restraint on the person's freedom of movement to the degree an objectively reasonable person would otherwise associate with a formal arrest. *Nguyen v. State*, 292 S.W.3d 671, 677 (Tex.Crim.App. 2009). The Court of Criminal appeals has "outlined at least four general situations which may constitute custody:"

> (1) when the suspect is physically deprived of his freedom of action in any significant way,
> (2) when a law enforcement officer tells the suspect that he cannot leave,
> (3) when law enforcement officers create a situation that would lead a reasonable person to believe that his freedom of movement has been significantly restricted, and
> (4) when there is probable cause to arrest and law enforcement officers do not tell the suspect that he is free to leave.

Dowthitt v. State, 931 S.W.2d 244, 255 (Tex.Crim.App. 1996).

We measure the existence of custody based on objective circumstances and not on the subjective perceptions of either the interrogator or the suspect, unless the interrogator conveys his subjective views to the suspect or otherwise makes them manifest. *State v. Saenz,* 411 S.W.3d 488, 496-97 (Tex.Crim.App. 2013). Once the defendant establishes that he was in police custody, the burden shifts to the State to prove that its interrogators either gave the defendant the appropriate *Miranda* warnings or else that they questioned the unwarned defendant pursuant to a valid *Miranda* exception. *Wilkerson v. State*, 173 S.W.3d 521, 532 (Tex.Crim.App. 2005); *Hutchison v. State*, 424 S.W.3d 164, 180 (Tex.App.--Texarkana 2014, no pet.)(discussing three recognized *Miranda* warning exceptions: the public safety exception, the undercover officer

exception, and the booking questions exception).

Although a traffic stop constitutes a seizure under the Fourth Amendment, a person who is subject to a traffic stop or other investigatory detention is not automatically considered to be "in custody" for purposes of *Miranda*. *Campbell v. State*, 325 S.W.3d 223, 233 (Tex.App.--Fort Worth 2010, no pet.). Still, a temporary investigative detention may escalate into full custody and trigger *Miranda* protections depending on the circumstances. "The standard for distinguishing between an investigative detention and an arrest is not always clear—both constitute seizures." *Id*. at 234. We make the determination of when an investigatory detention escalates into full custody on an ad hoc basis, taking into account the totality of the circumstances. *Saenz*, 411 S.W.3d at 496-97.

Analysis

Both Leon and the State agree that the only issue in this appeal is whether the traffic stop escalated into full custody before Leon made his statement claiming ownership of the cocaine. The State does not argue that Leon was properly Mirandized or given Article 38.22 warnings,[1] nor does it alternatively argue that Leon, if he was in custody, was interrogated pursuant to a valid *Miranda* exception.

In support of the trial court's ruling that he was subject to custodial interrogation, Leon emphasizes the fact that he was placed into the back of a police car with no interior handles,[2] which he maintains effectively resulted in confinement commensurate with formal arrest. He then points us to *Vessels v. State*, 938 S.W.2d 485 (Tex.App.--El Paso 1996, no pet.), in which

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[1] *See generally* TEX.CODE CRIM.PROC.ANN. art. 38.22 (West Supp. 2016).

[2] Although there is no evidence in the record, Leon asserts that it is common knowledge that the back doors on a police car do not have functional interior handles and cannot be opened from the inside. *See Douglas v. State*, No. 01-98-01151-CR, 2001 WL 1048533, at *4 (Tex.App.--Houston [1st Dist.] Aug. 31, 2001, pet. ref'd)(not designated for publication)(referencing a defendant's placement "in a police car with no inside rear door handles").

this Court noted that custody may arise "when the police physically deprive a suspect of his freedom in any significant way, such as when police take the suspect to the station or put him in the back of the patrol car[.]" *Vessels*, 938 S.W.2d at 488 (citing *Shiflet v. State*, 732 S.W.2d 622, 629 (Tex.Crim.App. 1985)). The State counters with two out-of-district cases from our sister court in Houston, contending that they establish that placing a defendant unhandcuffed into the back of a patrol car does not constitute an arrest. Both Houston cases are distinguishable from this case.

In *Francis v. State*, 896 S.W.2d 406, 411-12 (Tex.App.--Houston [1st Dist.] 1995, pet. ref'd), the Houston First Court of Appeals, using reasonableness as its touchstone, determined that detaining a burglary suspect walking in the neighborhood on foot, placing him in the back of a patrol car, and driving him a short distance back to the scene of the crime to be identified was not an arrest, but a restraint reasonably necessary to continue an investigatory detention. *Id.* The same situation repeated itself in *Hodge v. State*, No. 01-96-00714-CR, 1997 WL 81166, at *4 (Tex.App.--Houston [1st Dist.] Feb. 27, 1997, no pet.)(not designated for publication). There, a police officer came across a man fitting the description of a burglary suspect. The police there also placed the suspect in the back of the police car and drove him to another location for identification purposes, and again, the Houston First Court blessed the practice and held that there was no custody for *Miranda* purposes because the restraint was reasonably necessary to effectuate the purposes of the investigatory detention. *Id.*

Contrary to the State's assertion, both *Francis* and *Hodge* deal with more than just placing a suspect in the back of a police car; they implicate factors that are simply not present in this case. We agree with the State that police may place a suspect in the back of a police car as part of an investigatory detention without changing the fundamental nature of the stop—but only

if doing so is "reasonably necessary to effect the goal of the stop: investigation, maintenance of the status quo, or officer safety." *Rhodes v. State*, 945 S.W.2d 115, 117 (Tex.Crim.App. 1997). "If the degree of incapacitation appears more than necessary to simply safeguard the officers and assure the suspect's presence during a period of investigation, this suggests the detention is an arrest." [Internal citations omitted]. *State v. Sheppard*, 271 S.W.3d 281, 291 (Tex.Crim.App. 2008).

Here, at the time he was placed in the back of the police cruiser, Leon was not wandering near the scene of a crime on foot, as were the suspects in *Francis* and *Hodge*, but instead was a passenger in a vehicle seized during a routine traffic stop. Additionally, the suspects in *Francis* and *Hodge* were placed into the back of a police cruiser and driven a short distance in order to establish identity. The detention in this case differs both in degree and purpose. The detention in *Francis* and *Hodge* were brief and served specific, articulated law enforcement purposes.[3] Although the State characterizes the period of time that Leon spent in the back of the police car as being relatively short, we note that after Leon was put into the car but before he was asked any questions, officers questioned the female occupants, a female officer arrived to pat down the female occupants, a canine unit arrived about five minutes later, an officer did a drug sweep of the car with the canine, and the officer found and opened a purse containing a brick of cocaine. After that, an officer asked the female occupants about the purse and the cocaine before eventually turning his attention to Leon and asking questions. Under the strongest legitimate view of the evidence in Leon's favor, the detention was not a trivial one; he remained in the back

[3] *Francis* and *Hodge* were also decided on a defendant's post-conviction appeal challenging the admission of statements at trial, whereas this case involves a State interlocutory appeal challenging a suppression order granted *in favor* of the defendant. As we previously stated, the prevailing party on a suppression issue is entitled to the strongest legitimate view of the evidence in its favor. *Weaver*, 349 S.W.3d at 525. In *Francis* and *Hodge*, the party entitled to that presumption was the State because the State was the prevailing party. In this case, Leon was the prevailing party. We read and apply *Francis* and *Hodge* bearing this disparity in mind.

of the police car for some time while officers investigated for drugs.

Further, and most importantly, the State does not argue that placing Leon in the back of the car was necessary to effectuate some investigatory or law enforcement purpose, nor can we independently discern any reason such as officer safety or flight risk that would justify the restraint, as the State never once asked why placing Leon in the cruiser was necessary. Absent such evidence, and given the procedural posture we are in and the standard of review we must apply in favor of Leon, we can only conclude that the physical restraint on Leon's freedom of movement by placing him in the back of the police car went beyond that associated with a mere investigatory detention. *See Campbell*, 325 S.W.3d at 236 (where officer never testified he handcuffed a public intoxication suspect in residential area for "officer safety purposes, to continue his investigation, or to maintain the status quo," court of appeals found suspect was in custody and that his statements post-handcuffing should have been suppressed); *accord State v. Saenz*, No. 13-11-00328-CR, 2014 WL 3542092, at *5 (Tex.App.--Corpus Christi July 17, 2014, pet. ref'd)(mem. op., not designated for publication)(police restricted suspect's freedom to degree associated with formal arrest by placing him in back of locked police car for 12 to 18 minutes without an adequate investigatory justification). Leon was in custody, and his statements were the product of custodial interrogation.

CONCLUSION

Absent a reasonable nexus between the level of restraint used against Leon and a legitimate purpose served, *Francis* and *Hodge* do not apply. Viewing the evidence in Leon's favor and drawing all reasonable inferences therefrom, we determine that an objectively reasonable person would believe that Leon's placement into the back of the car was a physical restraint on freedom commensurate with formal arrest, and there is no evidence that reasonable

investigatory ends were served by the restraint. Because Leon was not given *Miranda* warnings before he was questioned, the trial court did not err in suppressing his statements.

Issue One is overruled. The judgment of the trial court is affirmed.

February 22, 2017

YVONNE T. RODRIGUEZ, Justice

Before McClure, C.J., Rodriguez, and Hughes, JJ.
Hughes, J., Not Participating

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