

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

DAVID ELLIOT JEFFERSON,

Appellant.

No. 65432-2-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: September 12, 2011

Leach, A.C.J. — A trial court must suppress a defendant’s incriminating statement if the defendant made it during a custodial interrogation conducted without the safeguards set forth in Miranda v. Arizona.¹ Here, David Elliot Jefferson was not in custody when police questioned him about his presence in a restricted Metro transit area. Therefore, the trial court did not err by admitting a statement he made to the officers in response to their questions. We affirm.

Background

On August 27, 2009, King County Sheriff Detective Jason Escobar and Deputy Thomas Collins were conducting a routine check of a Metro transit station’s restricted street, or “bus way,” when they saw two people walking through the restricted area. Escobar and Collins, both in uniform, left their

¹ 384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

marked patrol vehicle and approached the two individuals, whom they later identified as Jefferson and Wafa McDaniel. Escobar informed them that they were trespassing in an area restricted to pedestrians and asked them what they were doing there. Jefferson replied, “[We] were taking a shortcut to the bus shelter at Royal Brougham Street.”

Escobar asked Jefferson for his identification and requested radio dispatch to run Jefferson’s name through its database. Dispatch advised Escobar that Jefferson was the respondent on several no-contact orders. Escobar also learned that the protected person on those orders was McDaniel. After the officers identified Jefferson’s companion as McDaniel, they placed Jefferson under arrest for violating the order.

The State charged Jefferson with domestic violence felony violation of a court order. Before trial, Jefferson moved under CrR 3.5 to suppress the statement he made to officers that he and McDaniel were taking a shortcut through the bus way. After considering Escobar’s testimony at a CrR 3.5 hearing, the trial court ruled that Jefferson’s detention was not custodial and denied the motion.

Escobar recited Jefferson’s statement during the State’s case in chief. A jury found Jefferson guilty as charged.

Jefferson appeals.

Analysis

Jefferson contends the trial court should have suppressed the statement

he made to Escobar, claiming he made the statement during a custodial interrogation that required Miranda warnings. We must determine, therefore, whether Jefferson was in custody for the purposes of Miranda when Escobar questioned him. “We review a trial court’s custodial determination de novo.”²

An individual has the right to be free from compelled self-incrimination while in police custody.³ To protect this right, law enforcement must provide Miranda warnings any time they take a person into custody and interrogate him.⁴ The parties here agree that law enforcement subjected Jefferson to interrogation. Therefore, the only issue before us is whether the interrogation was custodial.

“Custodial interrogation” is “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.”⁵ We determine whether an interrogation is custodial using an objective standard: “whether a reasonable person in the individual's position would believe he or she was in police custody to a degree associated with formal arrest.”⁶ A defendant must show some objective facts indicating restriction or curtailment of movement or action.⁷

A Terry⁸ stop is not “custody” for purposes of determining whether

² State v. Lorenz, 152 Wn.2d 22, 36, 93 P.3d 133 (2004).

³ U.S. Const. amend. V; Miranda, 384 U.S. at 478-79.

⁴ Miranda, 384 U.S. at 479.

⁵ Miranda, 384 U.S. at 444.

⁶ Lorenz, 152 Wn.2d at 36-37 (citing Berkemer v. McCarty, 468 U.S. 420, 440, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984)).

⁷ State v. Post, 118 Wn.2d 596, 607, 826 P.2d 172 (1992).

⁸ Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

statements made during the stop are admissible under Miranda, even though a suspect may not be free to leave when the statements are made.⁹ “The reason is that, unlike a formal arrest, a typical Terry stop is not inherently coercive because the detention is presumptively temporary and brief, is relatively less ‘police dominated’, and does not easily lend itself to deceptive interrogation tactics.”¹⁰ “Thus, a detaining officer may ask a moderate number of questions during a Terry stop to determine the identity of the suspect and to confirm or dispel the officer’s suspicions without rendering the suspect ‘in custody.’”¹¹

Here, a reasonable person in Jefferson’s position would not have believed his freedom was curtailed to a degree associated with formal arrest when Escobar asked him, “What are you doing here?” After officers detained him, the prearrest questioning and detention were brief, and the atmosphere was not coercive or police dominated. Jefferson was in public, as opposed to at a police station. Escobar’s questioning did not involve deceptive interrogation tactics designed to elicit an incriminating response. Escobar immediately informed Jefferson why he stopped him (he was trespassing) and asked him what he was doing on the bus way. Additionally, the officers did not draw their weapons or search Jefferson. Neither did the officers physically detain him. Escobar did not handcuff Jefferson, order him to the ground, or place him in his patrol vehicle. If anything, the circumstances were analogous to a Terry stop.

⁹ Berkemer, 468 U.S. at 440.

¹⁰ State v. Walton, 67 Wn. App. 127, 130, 834 P.2d 624 (1992).

¹¹ State v. Heritage, 152 Wn.2d 210, 218, 95 P.3d 345 (2004).

Because a reasonable person in Jefferson's position would not have felt that his or her freedom was curtailed to a degree associated with formal arrest, the questioning did not rise to the level of a custodial interrogation. Therefore, the trial court did not err by admitting Jefferson's statement to police.

Jefferson argues that a reasonable person would not have felt "free to leave." Contrary to Jefferson's assertion, the test is not whether a reasonable person would believe he was free to leave.¹² Otherwise, it would be improper to interrogate a suspect during a Terry stop without first providing Miranda warnings.¹³ Rather, the test is whether a reasonable person would believe that his freedom was curtailed to the degree associated with formal arrest. As discussed above, the circumstances did not warrant that belief. We therefore find Jefferson's argument unavailing.

In a statement of additional grounds, Jefferson claims that the officers did not have probable cause to stop him for suspicion of criminal trespass because there was no evidence that Jefferson knew the area was off limits to pedestrians when he entered the bus way. Probable cause must support a custodial arrest.¹⁴ But because we hold that Jefferson's initial detention was not custodial, the officers were not required to have probable cause. Jefferson's claim fails.

Conclusion

Because Jefferson was not in custody for the purposes of Miranda when

¹² See Heritage, 152 Wn.2d at 218.

¹³ See State v. Kennedy, 107 Wn.2d 1, 4, 726 P.2d 445 (1986) (noting that an investigative stop is a seizure).

¹⁴ See State v. Solberg, 122 Wn.2d 688, 696, 861 P.2d 460 (1993).

Escobar asked him what he was doing walking along the bus way, we affirm.

Leach, A.C.J.

WE CONCUR:

Schiveller, J.

Becker, J.