COURT OF APPEALS
DECISION
DATED AND FILED

October 2, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP915-CR **Cir. Ct. No. 2013CM5**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JODY A. BOLSTAD,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Crawford County: JAMES P. CZAJKOWSKI, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.[1] Jody Bolstad appeals a judgment of conviction on three counts of failing to tag a deer carcass, pursuant to WIS. STAT.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2010-11). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

§ 29.347(2) and one count of possession of a deer during closed season, pursuant to WIS. STAT. § 29.055. Bolstad argues on appeal that his Fifth Amendment rights were violated when he was questioned by a Department of Natural Resources Warden inside a DNR vehicle without first being informed of his ***Miranda***[2] rights. The circuit court denied Bolstad's motion to suppress the statements he made to the Warden. The only issue raised on appeal is whether Bolstad was in custody and thus entitled to a ***Miranda*** warning. We affirm.

BACKGROUND

¶2 The following facts are taken from the transcript of the suppression hearing and the circuit court's finding of facts in its written decision denying the motion to suppress. While patrolling a deer decoy in Crawford County, DNR Warden Tyler Strelow observed a pickup truck drive down a nearby road, stop suddenly, and reverse course towards the decoy. Warden Strelow noticed two passengers inside the truck. While stopped, the passenger of the truck retrieved and loaded a rifle. Warden Strelow observed the passenger lay over top of the driver, aim the rifle barrel out the window of the driver's side door, and fire a round at the decoy.

¶3 Following the firing of the rifle, Warden Strelow made radio contact with Warden Dale Hochhausen who was parked in a DNR vehicle a short distance from the decoy. Both wardens were in full DNR uniform and the DNR vehicle, while unmarked, contained a police radio, computer, gun rack, and a box for documents. Warden Hochhausen stopped the truck and identified the passenger

[2] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966).

and shooter of the rifle as Jody Bolstad and the driver as David Myhre. Warden Hochhausen recognized Bolstad and knew that his privileges to obtain hunting licenses were currently under revocation.

¶4 During the traffic stop, Warden Hochhausen asked Bolstad to step out of the truck and conducted a pat-down search for weapons. Warden Hochhausen did not find any weapons on Bolstad as a result of the frisk. Bolstad was not handcuffed or restrained. Shortly after, Warden Strelow arrived.

¶5 Warden Hochhausen asked Bolstad to come sit in the DNR vehicle and told him he wanted to speak with him about "some stuff from the past deer season." Following this request, Bolstad voluntarily walked over to the DNR vehicle and sat in the passenger seat while Warden Hochhausen went to the driver's side seat. Warden Hochhausen told Bolstad he was not under arrest, that he was free to leave, that he did not have to answer any questions, and that he could stop questioning at any point. Bolstad said he understood and agreed to answer questions.

¶6 While inside the DNR vehicle, Warden Hochhausen questioned Bolstad. Bolstad's answers were the basis of a "voluntary statement" drafted by the Warden and then signed by Bolstad following his review of the statements. During the interview, Bolstad admitted to illegal hunting with a firearm on prior occasions and illegal possession out of season. At no time did Warden Hochhausen provide Bolstad with a ***Miranda*** warning. Following the interview, Warden Hochhausen told Bolstad he was free to leave the vehicle and Bolstad left the scene with the driver of the truck. The circuit court's finding of fact determined that the questioning in the vehicle lasted between one and one-half hours to two and one-half hours.

¶7 Based on the written "voluntary statement," the State charged Bolstad with four counts of illegal deer hunting, pursuant to WIS. STAT. § 29.971(11). Bolstad filed a motion seeking to suppress the statements made to the Warden in the DNR vehicle, arguing that his Fifth Amendment rights were violated when he was not provided a ***Miranda*** warning.

¶8 Following a hearing on the motion, the circuit court ruled that Bolstad was not in custody while inside the DNR vehicle. The court concluded that Bolstad was not deprived of freedom of action in any significant way and that a reasonable person under the circumstances would have concluded he was free to terminate the interview at any time and leave. Bolstad entered no contest pleas, and appeals the circuit court's judgment of conviction of those charges and the court's order denying his motion to suppress his statements.

DISCUSSION

¶9 Bolstad argues his Fifth Amendment rights were violated when he was frisked and interrogated at length by a law enforcement officer inside a law enforcement vehicle, without first being informed of his ***Miranda*** rights. The State responds by arguing that Bolstad was not in custody because under the totality of the circumstances, it cannot be said that a reasonable person would believe that he or she could not terminate the interview and leave. The State points to the fact that Bolstad was asked and not forced to speak with the Warden inside the vehicle, and that Bolstad was told he was free to leave, was not under arrest, and could stop answering questions at any time. The State maintains Bolstad voluntarily gave a statement, and while the interview lasted between one and one-half to two and one-half hours, the Warden had told Bolstad that "there was a lot of stuff to cover." The State also argues that Bolstad was never

restrained, never handcuffed, and never threatened. While the State concedes that Bolstad was frisked, the State maintains that the frisk occurred only because there had been an illegal shooting of the deer decoy just minutes before the traffic stop, and that the frisk was necessary to protect the safety of the wardens.

¶10 The only disputed issue on appeal is whether Bolstad was in custody when Warden Hochhausen questioned him inside the DNR vehicle.[3] We conclude that Bolstad was not in custody because under the totality of the circumstances, a reasonable person in the defendant's position would not have considered himself in custody and would have felt free to terminate the interview and leave the scene.

¶11 Under ***Miranda***, police may not interrogate a suspect in custody without first advising the suspect of his or her constitutional rights. ***Miranda v. Arizona***, 384 U.S. 436, 444 (1966). Statements obtained in violation of ***Miranda*** must be suppressed. ***State v. Torkelson***, 2007 WI App 272, ¶11, 306 Wis. 2d 673, 743 N.W.2d 511. When reviewing a circuit court's decision on a motion to suppress, we will uphold the circuit court's findings of fact unless clearly erroneous. ***State v. Mosher***, 221 Wis. 2d 203, 211, 584 N.W.2d 553 (Ct. App. 1998). "However, whether a person is in custody for ***Miranda*** purposes is a question of law, which we review de novo." ***Id.***

¶12 The test to determine whether an individual is in custody is an objective one, and the inquiry is "whether there is a formal arrest or restraint on freedom of movement of a degree associated with a formal arrest." ***State v.***

[3] In its brief-in-chief, the State does not dispute Bolstad's two other arguments that the questioning inside the DNR vehicle amounted to an interrogation or that Warden Hochhausen was a law enforcement officer.

Leprich, 160 Wis. 2d 472, 477, 465 N.W.2d 844 (Ct. App. 1991) (citing ***New York v. Quarles***, 467 U.S. 649, 655 (1984)). In other words, if "a reasonable person would not feel free to terminate the interview and leave the scene," then that person is in custody for ***Miranda*** purposes. ***State v. Martin***, 2012 WI 96, ¶33, 343 Wis. 2d 278, 816 N.W.2d 270. Several factors are relevant in this inquiry, including "the defendant's freedom to leave; the purpose, place, and length of the interrogation; and the degree of restraint." ***Id.***, ¶35.

¶13 The circuit court rested its conclusion that Bolstad was not in custody during the interrogation on the following facts. Wardens Hochhausen and Strelow interviewed both Bolstad and Myhre after Strelow observed Bolstad aim and shoot a rifle at a deer decoy from the passenger side of a pickup truck. Bolstad's interview took place immediately after the traffic stop following the shooting of the decoy. Warden Hochhausen asked Bolstad to sit in the DNR vehicle. Once seated, Bolstad was told he was not under arrest and that he could stop questioning at any time. Warden Hochhausen asked Bolstad if he would answer questions, and Bolstad agreed. The interview resulted in the drafting of a voluntary statement, which Bolstad reviewed and voluntarily signed. The statement contained language stating the statement was voluntary, and freely made without duress or promise. Prior to making the statement, Bolstad was told that he could leave at any time and that he was not under arrest. Bolstad was not taken to the county jail for an interview, no weapons were drawn, and no handcuffs or other restraints were used. The length of the interview was between one and one-half to two and one-half hours, which the court found to be reasonable. Bolstad was not given ***Miranda*** warnings orally or in writing by either warden.

¶14 Bolstad lists several factors which, considered together, he claims weigh in favor of a finding that he was in custody: the length of the interrogation;

the frisk after Bolstad exited the truck and before the Warden asked Bolstad to sit in the DNR vehicle; the location of the questioning, which Bolstad asserts "was akin to interrogation inside a police station, as this DNR squad truck operated as a mobile office"; and the presence of a second warden outside the vehicle while Bolstad was interrogated. Bolstad also argues the purpose of the questioning, which was to discuss incidents from the previous deer season, is another factor in favor of custody. Finally, Bolstad argues that his separation from his friend, Myrhe, indicates he was in custody. We are not persuaded.

¶15 We begin by noting that Bolstad ignores the circuit court's factual findings in arguing that certain factors favor a conclusion that he was in custody for ***Miranda*** purposes. Significant here, Bolstad ignores the court's findings that Bolstad was told before he made his statements that he was free to leave, that he was not under arrest, and that he could stop answering questions at any time. This proves critical because these facts standing alone support the conclusion that Bolstad was not in custody. *See*, *e.g.* ***Mosher***, 221 Wis. 2d at 214 (quoting factors identified as indicia of custody). In addition, Bolstad fails to take into account all of the facts the court considered in determining that he was not in custody. The test, as we have explained, requires the court to consider the "totality of the circumstances," in determining if an individual is in custody for ***Miranda*** purposes. *See* ***Martin***, 343 Wis. 2d 278, ¶33. Bolstad's analysis does not consider the "totality of the circumstances," but rather focuses only on those facts that support his position that he was not in custody. *See also* ***Torkelson***, 306 Wis. 2d 673, ¶18 ("This test is not … a matter of simply determining how many factors add up on each side. Rather, these factors are reference points that help to determine whether ***Miranda*** safeguards are necessary.").

¶16 We now turn to the factors Bolstad argues support a conclusion that he was in custody. First, Bolstad points to the length of the interrogation. In support, Bolstad cites ***Torkelson***, and argues that, unlike in ***Torkelson***, where the defendant was briefly questioned, here, his interrogation was lengthy. Bolstad also cites ***United States v. Scheets***, 188 F.3d 829, 841 (7th Cir. 1999). In ***Torkelson***, this court stated that length is one factor used to determine whether the totality of the circumstances presents a risk that a law enforcement official "may coerce or trick captive suspects into confessing" or show that a suspect is subject to "compelling pressures generated by the custodial situation itself." ***Torkelson***, 306 Wis. 2d 673, ¶18. Bolstad does not argue that the length of his interrogation presented such risks. Bolstad does not present a factual discussion showing that he was coerced or tricked into confessing, or that he was subject to "compelling pressure" to confess because of the length of the interrogation.

¶17 Bolstad next argues that the location of the interrogation, inside the DNR vehicle, supports a finding he was in custody. As we indicated, Bolstad argues the questioning inside the vehicle was "akin to interrogation inside police station" based one Warden Hochhausen's testimony that the DNR vehicle was "in effect a mobile office." In ***Torkelson***, we stated that interrogation inside a police vehicle is a factor that may show whether a suspect's freedom to act is restricted to a degree associated with formal arrest. ***Id.***, ¶17. The circuit court's factual findings, which Bolstad does not dispute, do not support an inference that Bolstad was restrained to a "degree associated with formal arrest." *See* ***id.***, ¶20. The court found that Bolstad voluntarily entered the DNR vehicle and at all times during the interrogation understood that he was not under arrest. Furthermore, it is undisputed that Bolstad was not handcuffed or otherwise restrained and there is no evidence to suggest that he could not have exited the vehicle at any time.

Additionally, no weapons were drawn, Bolstad was not taken to the county jail, and he was not physically restrained. *See, e.g.*, ***Morgan***, 2002 WI App 124, ¶12, 254 Wis. 2d 602, 648 N.W.2d 23. Based on all the facts and circumstances here, a reasonable person in Bolstad's position would not believe his freedom was restricted to a "degree associated with formal arrest." ***Torkelson***, 306 Wis. 2d 673, ¶20.

¶18 Bolstad next argues that the frisk prior to the questioning weighs in favor of a finding that he was in custody. Bolstad cites ***Priddy v. State***, 55 Wis. 2d 312, 198 N.W.2d 624 (1972), in support of this assertion but fails to demonstrate how this case supports his argument. The State concedes that Bolstad was frisked, but maintains that the frisk occurred following "an illegal shooting of the deer decoy just minutes before the traffic stop," and therefore the frisk was reasonable to protect the wardens' safety. Bolstad fails to develop an argument for why the frisk weighs in favor of custody given the fact that an illegal shooting had occurred minutes before he was interrogated. This argument is undeveloped and we decline to address undeveloped arguments on appeal. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App 1992).

¶19 Bolstad argues that the presence of another warden outside the DNR vehicle supports his claim that a reasonable person would not feel free to leave the scene. The circuit court found that a reasonable person would have concluded that he was free to terminate the interview and leave, despite the presence of the second warden. Based on the circuit court's factual findings, there is no evidence to suggest that the warden's presence outside of the DNR vehicle prevented Bolstad from terminating the interview, exiting the vehicle, and leaving the scene. As discussed previously, Bolstad was told he was not under arrest, was not handcuffed, no weapons were drawn, and he was not physically restrained while

inside the DNR vehicle. These factors indicate that Bolstad was not in custody. *See* ***Morgan***, 254 Wis. 2d 602, ¶12.

¶20 Bolstad also argues that the subject matter of the interrogation concerning incidents from the past deer season support his claim that he had reason to believe he was in custody. The circuit court found that Warden Hochhausen knew that Bolstad had committed a crime when he interrogated Bolstad and that the Warden intended to question Bolstad about additional crimes and obtain incriminating statements. Following this finding, the circuit court concluded that Bolstad was not in custody because he was told he was free to leave at any time, was not taken to the county jail, was not handcuffed or ordered to the ground at gunpoint, and was told he was not under arrest. Bolstad does not challenge the court's findings on this topic, but instead claims that "Warden Hochhausen confronted [him] with evidence of an unresolved hunting incident which prompted [him] to confess" and as such, he "was alerted that he was a suspect" and "thus had reason to believe he was in custody." We are unpersuaded.

¶21 The circuit court's factual findings do not indicate that Bolstad was subjected to "compelling pressures generated by the custodial setting itself." ***Torkelson***, 306 Wis. 2d 673, ¶20. Additionally, Bolstad's belief that he was the main focus of an investigation is not determinative of custody. *See* ***State v. Lonkoski***, 2013 WI 30, ¶34, 346 Wis. 2d 523, 828 N.W.2d 552. The custody inquiry is an objective test, and Bolstad's subjective fear that he was a suspect is therefore irrelevant. *See* ***id.***, ¶¶34-35. Rather, the facts demonstrate that a reasonable person in Bolstad's position would understand that he or she was not under arrest, was free to leave, and could cease questioning about the prior hunting incidents at any time.

¶22 Bolstad also maintains that the separation from his friend, Dave Myhre, indicates that he was in custody. The circuit court's findings reveal that Bolstad voluntarily separated from his friend when Warden Hochhausen asked him to sit in the DNR vehicle. Bolstad does not challenge this finding and thus this factor does not support Bolstad's position that he was in custody. In addition, Bolstad was told before questioning began that he was not under arrest, and stated he understood he could cease questioning at any time. The circuit court concluded that a reasonable person in Bolstad's situation would not have believed he was in custody considering the totality of circumstances presented in this case and this court does not find that determination was erroneous. Based on the totality of circumstances this court concludes that Bolstad was not in custody.

CONCLUSION

¶23 In sum, we conclude, based on the totality of the circumstances, that Bolstad was not in custody while inside the DNR vehicle and therefore his Fifth Amendment rights were not violated when he was not given a ***Miranda*** warning. Based on the foregoing, we affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.