[Cite as *State v. Hambrick*, 2016-Ohio-3395.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 15CA3497
vs.	:	
TRENTON J. HAMBRICK,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Timothy Young, Ohio Public Defender, and Chase R. Carter, Assistant State Public Defender, Chillicothe, Ohio, for Appellant.

Matthew S. Schmidt, Ross County Prosecuting Attorney, and Pamela C. Wells, Ross County Assistant Prosecuting Attorney, Chillicothe, Ohio, for Appellee.

CRIMINAL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED: 6-3-16
ABELE, J.

{¶ 1} This is an appeal from a Ross County Common Pleas Court judgment of conviction and sentence. The trial court found Trenton J. Hambrick, defendant below and appellant herein, guilty of drug possession in violation of R.C. 2925.11. Appellant assigns the following error for review:

> "THE TRIAL COURT ERRED BY OVERRULING DEFENDANT'S MOTION TO SUPPRESS EVIDENCE SEIZED AS PART OF THE TRAFFIC STOP AS MR. HAMBRICK WAS NEVER MIRANDIZED."

{¶ 2} On January 24, 2012, Chillicothe Police Officer Michael Short observed appellant seated in a vehicle in a gas station parking lot and engaged in, what the officer believed to be,

drug activity. The officer subsequently learned that appellant's driver's license was under suspension and he further observed appellant fail to use his turn signal within one hundred feet of turning. Officer Short decided to stop appellant's vehicle. During the stop, appellant admitted that he had "some weed" in the vehicle. Officer Short then searched the vehicle and located not only marijuana, but also cocaine.

{¶ 3} On July 27, 2012, a Ross County grand jury returned an indictment that charged appellant with drug possession. Appellant entered a not guilty plea.

{¶ 4} On August 20, 2014, appellant filed a motion to suppress the evidence obtained as a result of the traffic stop. In particular, appellant claimed that the officer recovered the evidence in violation of appellant's right against self-incrimination. Appellant alleged that when he informed the officer that he had "some weed" in the vehicle, appellant was "in custody" and entitled to be advised of his Miranda[1] rights. Appellant thus argued that because he admitted to having "some weed" without being advised of his Miranda rights, the trial court should suppress any evidence uncovered as a result of his admission.

{¶ 5} The trial court held a hearing to consider appellant's motion to suppress evidence. At the hearing, Officer Short stated that before the traffic stop, he noticed appellant seated in a vehicle at a gas station parking lot. Officer Short testified that he observed another individual approach appellant's driver's side window, lean into the vehicle, and "look[] around." The officer believed that he had witnessed appellant and the other individual engage in a drug transaction. Officer Short explained that he knew appellant from high school, so he decided to

[1] Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

check appellant's information through the law enforcement automated data system and he soon learned that appellant's driver's license had been suspended.

{¶ 6} Officer Short further stated that when appellant left the gas station parking lot, he followed appellant. A short time later, the officer observed appellant make a turn without signaling within one hundred feet of the turn. Officer Short then decided to stop appellant's vehicle.

{¶ 7} Officer Short stated that he initially informed appellant that he stopped the vehicle because (1) appellant's license was suspended, (2) appellant failed to use his turn signal within one hundred feet, and (3) appellant engaged in suspicious behavior at the gas station. The officer also asked appellant "if he had any drugs, knives or guns in the vehicle." Appellant admitted that "he had some weed."

{¶ 8} Officer Short explained that after appellant's admission, the officer requested appellant to exit the vehicle and searched him. The officer then went to the vehicle and found the marijuana. He then searched the vehicle for other contraband and located in the driver's seat a plastic bag that contained white powder. Officer Short then advised appellant of his Miranda rights.

{¶ 9} Appellant testified that the officer told appellant that the officer "has means to search the vehicle because of this activity at the gas station." Appellant informed the officer that "if you're searching the vehicle, you know I have a bag of weed in the car." Appellant stated that he went to high school with the officer and that he "didn't want to cause him no problems[;] I wanted to make his job easier." He told the officer about the marijuana "[b]ecause I was informed that he was going to search the car."

{¶ 10} After hearing the evidence, the court overruled appellant's motion to suppress evidence. Appellant subsequently entered a no contest plea and the court found him guilty of the charges. This appeal followed.

{¶ 11} In his sole assignment of error, appellant asserts that the trial court erred by overruling his motion to suppress the evidence that the officer discovered while searching appellant's vehicle. In particular, appellant contends that Officer Short obtained the evidence in violation of appellant's right against self-incrimination. Appellant argues that at the time he informed the officer that he possessed marijuana, appellant was "in custody" and thus entitled to receive Miranda warnings.

A

STANDARD OF REVIEW

{¶ 12} Generally, appellate review of a trial court's ruling on a motion to suppress evidence presents a mixed question of law and fact. State v. Codeluppi, 139 Ohio St.3d 165, 2014–Ohio–1574, 10 N.E.3d 691, ¶7; State v. Wesson, 137 Ohio St.3d 309, 2013–Ohio–4575, 999 N.E.2d 557, ¶40; State v. Burnside, 100 Ohio St.3d 152, 2003–Ohio–5372, 797 N.E.2d 71, ¶8; State v. Moore, 2013–Ohio–5506, 5 N.E.3d 41 (4th Dist.), ¶7. The Burnside court explained this standard as follows:

> "When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard."

Id. (citations omitted).

B

MIRANDA

{¶ 13} The Fifth Amendment to the United States Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself." To safeguard a suspect's Fifth Amendment privilege against self-incrimination, law enforcement officers seeking to perform a custodial interrogation must warn the suspect "that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." Miranda, 384 U.S. at 479. In the absence of these warnings, a suspect's incriminatory statements made during a custodial interrogation are inadmissible at trial. Michigan v. Mosley, 423 U.S. 96, 99–100, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975) (footnote and citation omitted) ("[U]nless law enforcement officers give certain specified warnings before questioning a person in custody, and follow certain specified procedures during the course of any subsequent interrogation, any statement made by the person in custody cannot over his objection be admitted in evidence against him as a defendant at trial, even though the statement may in fact be wholly voluntary."); Miranda, 384 U.S. at 479 (stating that no evidence stemming from result of custodial interrogation may be used against defendant unless procedural safeguards employed); State v. Maxwell, 139 Ohio St.3d 12, 2014–Ohio–1019, 9 N.E.3d 930, ¶113 (stating that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination."). Moreover, under Section 10, Article I of the Ohio Constitution "evidence obtained as the direct result of

statements made in custody without the benefit of a Miranda warning should be excluded." State v. Farris, 109 Ohio St.3d 519, 529, 2006♥Ohio♥3255, 849 N.E.2d 985, 996, ¶49. But see United States v. Patane, 542 U.S. 630, 124 S.Ct. 2620, 159 L.Ed.2d 667 (2004) (holding that violation of Miranda does not require suppression of nontestimonial evidence).

{¶ 14} Miranda does not, however, protect every individual who is subjected to police questioning. State v. Hoffner, 102 Ohio St.3d 358, 2004–Ohio–3430, 811 N.E.2d 48, ¶26; State v. Biros, 78 Ohio St.3d 426, 440, 678 N.E.2d 891 (1997), citing Oregon v. Mathiason, 429 U.S. 492, 494, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977). "'Nor is the requirement of warnings to be imposed simply because * * * the questioned person is one whom the police suspect.'" Biros, 78 Ohio St.3d at 440, quoting Oregon v. Mathiason, 429 U.S. at 494. Instead, "[o]nly custodial interrogation triggers the need for Miranda warnings." Id. at 440 (citations omitted).

{¶ 15} Miranda defined "custodial interrogation" as "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." 384 U.S. at 444; accord Stansbury v. California, 511 U.S. 318, 322, 114 S.Ct. 1526, 128 L.Ed.2d 293 (1994); Oregon v. Mathiason, 429 U.S. 492, 495, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977) (stating that the Miranda protection attaches "only where there has been such a restriction on a person's freedom as to render him in 'custody' "). "In order to determine whether a person is in custody for purposes of receiving Miranda warnings, courts must first inquire into the circumstances surrounding the questioning and, second, given those circumstances, determine whether a reasonable person would have felt that he or she was not at liberty to terminate the interview and leave." State v. Hoffner, 102 Ohio St.3d 358, 2004–Ohio–3430, 811 N.E.2d 48, ¶27, citing Thompson v. Keohane, 516 U.S. 99,

112, 116 S.Ct. 457, 133 L.Ed.2d 383 (1995); accord J.D.B. v. North Carolina, 564 U.S. 261, 131 S.Ct. 2394, 2402, 180 L.Ed.2d 310 (2011). "Once the factual circumstances surrounding the interrogation are reconstructed, the court must apply an objective test to resolve 'the ultimate inquiry' of whether there was a '"'formal arrest or restraint on freedom of movement'"' of the degree associated with a formal arrest." Id., quoting California v. Beheler, 463 U.S. 1121, 1125, 103 S.Ct. 3517, 77 L.Ed.2d 1275 (1983), quoting Oregon v. Mathiason, 429 U.S. 492, 495, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977). Whether an individual is in custody is an objective inquiry. J.D.B. v. North Carolina, 564 U.S. 261, 131 S.Ct. 2394, 2402, 180 L.Ed.2d 310 (2011).

{¶ 16} An individual temporarily detained as part of a routine traffic or investigatory stop ordinarily is not "in custody" and is not, therefore, entitled to Miranda warnings. State v. Farris, 109 Ohio St.3d 519, 2006-Ohio-3255, 849 N.E.2d 985, ¶13, citing Berkemer v. McCarty, 468 U.S. 420, 439-440, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984) (noting that investigative stops are not subject to Miranda requirements and holding that Miranda not implicated during traffic stop for swerving when officer questioned driver about his drinking). Id. at 439. Thus, "most traffic stops and accompanying investigatory questioning do not constitute custodial interrogations warranting the right to Miranda warnings." State v. Brocker, 11th Dist. Portage No. 2014-P-0070, 2015-Ohio-3412, ¶17 (citations omitted); see State v. Jackson, 9th Dist. Summit No. 27132, 2015-Ohio-5246 (determining that Miranda did not apply to traffic stop during which officer asked defendant where he had been and whether he had purchased any items at the store where he had been); State v. Campbell, 2nd Dist. Montgomery No. 26497, 2015-Ohio-3381, (determining that Miranda not implicated during investigate stop to ascertain whether eighteen-year-old defendant had been drinking when no evidence that defendant handcuffed,

informed that he was under arrest, or detained in police car); State v. Smoot, 2nd Dist. No. 26297, 2015-Ohio-2717, 38 N.E.3d 1094, 1112-13, ¶41 (determining that defendant not in custody for purposes of Miranda when officer asked defendant about the contents of his vehicle during traffic stop); State v. Vineyard, 2nd Dist. Montgomery No. 25854, 2014-Ohio-3846 (determining that defendant not in custody during traffic stop even though officer asked defendant to exit his vehicle and asked defendant whether he had any weapons); State v. Ware, 8th Dist. Cuyahoga No. 89945, 2008-Ohio-2038 (concluding that Miranda not applicable during routine traffic stop in which officer asked defendant if he had any weapons, drugs, or contraband in the vehicle); State v. Leonard, 1st Dist. Hamilton No. C–060595, 2007-Ohio-3312 (holding that Miranda warnings not required when officer removed defendant from his vehicle and placed defendant in front passenger seat of officer's patrol vehicle for questioning). However, during a traffic or investigative stop circumstances may change and render an individual "in custody" for practical purposes and, thus, "'entitled to the full panoply of protections prescribed by Miranda.'" Farris at ¶13, quoting Berkemer, 468 U.S. at 440.

{¶ 17} In the case sub judice, we believe that the evidence adduced at the hearing fails to establish that appellant was "in custody" when he made the incriminating statement. Instead, the officer conducted an ordinary traffic stop and asked routine questions. The officer stated that appellant made the incriminating statement within the first few moments of the encounter, and in response to the question he typically asks during any traffic stop–whether there are any "drugs, knives, or guns in the vehicle." Thus, the officer's questioning was routine and nonthreatening. Additionally, before the incriminating statement, appellant remained in his vehicle and Officer Short displayed no actions that would have led a reasonable person to believe

that his freedom was curtailed to a degree associated with a formal arrest. Biros, 78 Ohio St.3d at 440. Simply because the officer suspected that appellant had engaged in drug activity did not transform the encounter into a custodial interrogation subject to Miranda's protections. Biros, supra; see Berkemer, 468 U.S. at 442 (stating that an officer's "unarticulated plan [to arrest] has no bearing on the question whether a suspect was 'in custody' at a particular time"). In fact, the Berkemer court specifically noted that investigative stops (i.e., Terry[2] stops) are not subject to Miranda's requirements. Id. at 440 (noting "the absence of any suggestion in our opinions that Terry stops are subject to the dictates of Miranda"). Thus, even if the officer primarily stopped appellant to investigate whether appellant had engaged in drug activity, the officer was not required to advise appellant of his Miranda rights before asking questions. Appellant was not, therefore, entitled to Miranda warnings before he made the incriminating statement that led to the discovery of cocaine.

{¶ 18} Appellant, however, asserts that he was "in custody," because he "was ordered from the car, ordered to stand with another officer, and questioned at length in regards to the drug activity, not the traffic offenses." Even if true, and even if these facts show that appellant was "in custody," these circumstances did not precede appellant's incriminating statement. Rather, appellant made the incriminating statement during the first few moments of the stop, while still seated in his vehicle. Thus, even if later circumstances could arguably show that appellant was "in custody," he had already made the incriminating statement.

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

{¶ 19} Therefore, because appellant was not "in custody" at the time he made the incriminating statement, Officer Short was not required to advise appellant of his Miranda rights and the subsequent discovery of the cocaine was not an unlawful product of appellant's un-Mirandized statement. Consequently, the trial court did not err by overruling appellant's motion to suppress evidence.

{¶ 20} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J. & McFarland, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.