

STATE OF MINNESOTA
COUNTY OF LYON

IN DISTRICT COURT
FIFTH JUDICIAL DISTRICT

STATE OF MINNESOTA,

Plaintiff,

File No. 42-CR-08-220

vs.

OLGA MARNIA FRANCO DEL CID
aka ALIANISS NUNEZ MORALES,

Defendant.

FINDINGS OF FACT,
CONCLUSION OF LAW,
AND ORDER

The above-entitled matter came before this Court on April 22, 2008, for an Omnibus Hearing. Defendant was represented by Manuel Guerrero, Attorney at Law, St. Paul, Minnesota and Tamara Caban-Ramirez, Attorney at Law, Minneapolis, Minnesota. The State appeared through Rick Maes, Lyon County Attorney.

At the close of the hearing, the Court granted a continuance of the Omnibus Hearing to obtain more evidence regarding the statement obtained on February 21, 2008. Counsel agreed and the Court concluded that the evidence was submitted as related to the February 19, 2008 statement.

Based upon all the files and records herein, the Court makes the following:

FINDINGS OF FACT

1. On February 19, 2008, at approximately 3:45 p.m., Minnesota State Trooper Dana Larsen was notified of a vehicle crash at the intersection of Highway 23 and County Road 24, in Lyon County, Minnesota, resulting in deaths and injuries.
2. When Trooper Larsen arrived on the scene, the school bus was laying on its left side on the east side of the road.
3. A gray pickup truck was underneath the tipped school bus, and a maroon minivan was in the southbound lane of Highway 23.
4. The minivan had severe damage to its front end.
5. Defendant was found in the driver's seat of the minivan.
6. Later that evening, at approximately 7:15 p.m., Trooper Larsen, accompanied by Sergeant Dean Koenen, interviewed Defendant at the Avera Marshall Hospital.
7. Present during that interview was Trooper Larsen, Defendant, Sergeant Koenen, and Suzy Campos.
8. Trooper Larsen does not understand Spanish, however, Suzy Campos served as an interpreter; Campos is an interpreter for both the hospital and the Marshall Police Department.

9. Trooper Larsen and Sergeant Koenen were both in uniform.
10. Defendant was never told on February 19, 2008 that she was under arrest, either before or after Trooper Larsen interviewed her, and she was not placed under arrest on that date.
11. Defendant was also never explicitly told on February 19, 2008 that she was not under arrest or that she was free to leave.
12. The interview on that date was relatively brief; Defendant was asked 11 questions, and the transcript is less than five pages long.
13. Trooper Larsen testified that the purpose of the interview was "just investigative information so we can gather information for our crash investigation"; the questions posed were generally investigative in nature and non-confrontational; at no point were any threats, express or implied, made to Defendant.
14. During the interview on that date, Defendant appeared to understand the questioning that was posed to her (via the interpreter) and she gave appropriate responses (again, via the interpreter).
15. Defendant was never read a Miranda warning, or a functional equivalent, on that date.
16. The attached Memorandum is hereby incorporated into these Findings of Fact.

Based upon the above Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

- I. A Miranda warning was not necessary, as Defendant was not subject to custodial interrogation on February 19, 2008.
- II. The State has proven by a preponderance of the evidence that the statement given on February 19, 2008 was given by Defendant voluntarily.

Based upon the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED:

1. Defendant's Motion to Suppress the statement given to law enforcement on February 19, 2008 is DENIED.

Dated: MAY 6, 2008

BY THE COURT:



David W. Peterson
Judge of District Court

FILED IN THIS OFFICE
5-6-08
Karen J. Bierman
COURT ADMINISTRATOR
Marshall, Lyon County, Minnesota

MEMORANDUM

Defendant has been charged in the Amended Complaint with four counts of Criminal Vehicular Homicide, in violation of Minn. Stat. § 609.21, Subd. 1(1), seventeen counts of Criminal Vehicular Injury, in violation of Minn. Stat. § 609.21, Subd. 1(1), one count of False Name and Date of Birth to a Peace Officer, in violation of Minn. Stat. § 609.506, Subd. 2, one count of Stop Sign Violation, in violation of Minn. Stat. § 169.20, Subd. 3(a), and one count of No Minnesota Driver's License, in violation of Minn. Stat. § 171.02, Subd. 1. On February 19, 2008, the date of the vehicle crash, Trooper Larsen interviewed Defendant at the Avera Marshall Hospital. Defendant has made a Motion to Suppress the statement obtained on that date. Defendant asserts that the February 19, 2008 statement was a custodial interrogation and that Defendant was not advised of her Miranda rights.

The content of the statement on February 19, 2008 is accurately summarized as follows. Trooper Larsen asks whether Defendant has a driver's license. He asks her whose vehicle she was in. He asks when Defendant was supposed to be at work. He asks whether she was running late. He asks whether she remembers what happened, and then asks her to relate what happened. Trooper Larsen asks how long Defendant has worked at Norcraft. The phone rings, and Trooper Larsen asks whether Defendant wants to answer it. Sergeant Koenen asks whether Defendant always drives to work. He then asks how many times she has been on that road. After some conversation with the interpreter, Sergeant Koenen asks whether Defendant's boyfriend speaks English. Also in the transcript are conversations between Trooper Larsen, Sergeant Koenen, and the interpreter, but these do not contain questions that were translated to Defendant.

Miranda v. Arizona, 384 U.S. 436 (1966) dictates that a person in police custody and subject to interrogation must be advised of certain constitutional rights, and that a failure to so advise that person will render any statements made inadmissible. The issue then is whether Defendant was in custody and was being interrogated. A person is in “custody” when her freedom is curtailed to a degree associated with or the functional equivalent of arrest. See, Berkemer v. McCarty, 468 U.S. 420, 440 (1984); State v. Rosse, 478 N.W.2d 482, 485 (Minn. 1991). Preliminary on-the-scene questioning is not the functional equivalent of arrest. State v. VanWagner, 504 N.W.2d 746, 749 (Minn. 1993); State v. Walsh, 495 N.W.2d 602, 604-05 (Minn. 1993). A person is being “interrogated” when being expressly questioned as well as when police use any words or actions that they should know are likely to elicit an incriminating response from that person. Rhode Island v. Innis, 446 U.S. 291 (1980).

While Defendant was being “interrogated” within the meaning of the law, based upon the record, the Court concludes that the interrogation was not custodial.

“The determination of whether a suspect is in custody is an objective inquiry.” State v. Mellett, 642 N.W.2d 779, 787 (Minn. Ct. App. 2002), review denied (Minn. Jul. 16, 2002). A district court may determine that a person is in custody if “a reasonable person in the detainee's situation would have understood that [s]he was in custody.” State v. Hince, 540 N.W.2d 820, 823 (Minn. 1995) (citation omitted). If a suspect is not formally under arrest, this Court must consider all of the surrounding circumstances to assess whether a reasonable person in the suspect's position would have believed that she was in custody to the degree associated with arrest. State v. Champion, 533 N.W.2d 40, 43 (Minn. 1995); see State v. Staats, 658 N.W.2d 207, 212 (Minn. 2003) (non-custody

indications include questioning in suspect's home, suspect not under arrest, suspect free to leave, brevity of questioning, “nonthreatening environment,” and suspect's ability to make phone calls). A “coercive environment” that falls short of being custodial does not mandate a Miranda warning. Hince, 540 N.W.2d at 824.

The law is clear that questioning taking place in a hospital does not automatically transform into custodial interrogation. See State v. Hoskins, 193 N.W.2d 802, 813-14 (Minn. 1972) (defendant not in custody and no Miranda warning required when defendant in a hospital room and a deputy sheriff was posted outside the entire time); State v. Mitchell, 163 N.W.2d 310, 315-16 (Minn. 1969) (while hospitalized, defendant was not under arrest, freedom was not restrained by officers, and questioning was routine inquiry). More recently, other states have also held hospital interviews are not custodial interrogation. See, e.g. State v. Melton, 476 N.W.2d 842 (Neb. 1991) (per curiam) (defendant admitted to hospital for treatment, was not under formal arrest, and questioning was routine course of accident investigation); State v. Cain, 400 N.W.2d 582 (Iowa 1987) (officer spent nearly two hours with defendant, but actual conversation was short; defendant’s hospitalization was volitional); State v. Clappes, 344 N.W.2d 141 (Wis. 1984) (officer’s questions were about parties involved, circumstances of accident, and other information needed to complete law enforcement reports).

This Court finds persuasive the Court of Appeals decision in State v. Smith, No. A05-1651, 2006 WL 1605244 (Minn. Ct. App. June 13, 2006) (unpublished), review denied (Minn. Aug. 23, 2006). In that case, the Court of Appeals concluded that a Miranda warning was not necessary when a deputy sheriff questioned Smith in a hospital examination room even after the deputy had read Smith an implied consent advisory

(which indicated that Smith was either under arrest or had been involved in a motor vehicle accident). The Court of Appeals noted:

“Appellant was questioned in a hospital examination room, not a police station, and she had arrived there by ambulance, not by police car. The record shows that she had no contact with Deputy Wick prior to his appearance in the examination room. Hospital staff had closed the door of the room. Appellant was not placed under arrest when Wick approached her, she did not ask him to leave, and the questioning was brief and not coercive. Appellant declined to answer one question about what she had been drinking. She was not physically restrained.”

Id. at *2.

In the instant case, Defendant was not formally under arrest. The questioning occurred in Defendant’s hospital room, not the police station. This was the first time Defendant had been questioned by Trooper Larsen. While she was not told that she was free to leave, given that Defendant was in the hospital, telling her she would be free to leave would make little sense. Defendant never asked to leave, she never asked Trooper Larsen or Sergeant Koenen to leave, and Defendant was never told that she could not leave. The questioning here was relatively brief. There does not appear to have been anything coercive about the questioning or the environment generally. At no point did Trooper Larsen or Sergeant Koenen ever accuse Defendant of lying or misleading them. Nor is there anything in the transcript suggesting the troopers lied to or misled Defendant. While Trooper Larsen and Sergeant Koenen were in uniform, the fact that their questioning was filtered through the hospital interpreter lessens any inherent coercion that might attach to direct face-to-face questioning of law enforcement. The transcript indicates that the phone in the room rang at some point, and Trooper Larsen asked if Defendant wanted to answer the phone. This action alone is suggestive of the informal, non-coercive nature of the interview. Aside from being three to four hours after the

incident, and occurring at the hospital rather than the scene, the interview seems much more like preliminary on-the-scene questioning rather than custodial interrogation. A reasonable person in Defendant's position would not have thought they were in custody. Since the interrogation was not custodial, a Miranda warning was not required.

Even though a Miranda warning was not required, due process requires that statements be obtained voluntarily. A statement is voluntary so long as there is no showing of coercive police activity. State v. Miller, 573 N.W.2d 661, 673 (Minn. 1998). The Court must examine the totality of the circumstances in determining whether a statement was voluntarily given. Id. "The requisite factors include the defendant's age, maturity, intelligence, education, experience, and the ability to comprehend; the adequacy or lack of a warning; the length and legality of the detention; the nature of the interrogation; and whether the defendant was denied access to family and friends or deprived of physical needs." Id. The State must show by a preponderance of the evidence that a statement was voluntary. State v. Blom, 682 N.W.2d 578, 614 (Minn. 2004). Intoxication can implicate whether a statement is voluntarily given, as intoxication can increase a suspect's susceptibility to coercive interrogation. State v. Williams, 535 N.W.2d 277, 288 (Minn. 1995); State v. Garner, 294 N.W.2d 725, 727 (Minn. 1980).

While Trooper Larsen, on cross examination, testified that he did not know whether Defendant was under the influence of any drugs at the time of the interview, there is also no evidence that Defendant was under the influence of any drugs. Defendant is an employed adult. As already noted above, there was nothing coercive about the questioning. The testimony indicates that, with the aid of the interpreter, Defendant was

able to understand and make appropriate responses to inquiry. The questioning was relatively brief. Defendant was not deprived of any physical needs. There was no evidence of any threat, intimidation, or tricks. Given the evidence, under the totality of the circumstances, the State has shown by a preponderance of the evidence that the statement was voluntarily given. There is no evidence that Defendant lacks maturity or intelligence, and the answers to questions asked indicates that, even with a language barrier, Defendant was able to formulate answers that were responsive to the questions.

AMP
5-6-08