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DISTRICT III

July 8, 2025

To:

Hon. George L. Glonek
Circuit Court Judge
Electronic Notice

Michele Wick
Clerk of Circuit Court
Douglas County Courthouse
Electronic Notice

Kathleen A. Lindgren
Electronic Notice

Jacob J. Wittwer
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You are hereby notified that the Court has entered the following opinion and order:

2024AP30-CR State of Wisconsin v. Bobby Harold Hall (L. C. No. 2022CF301)

Before Stark, P.J., Hruz, and Gill, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Bobby Hall appeals from a judgment convicting him, based upon a guilty plea, of burglary of a building or dwelling as a party to the crime. Hall contends that statements he made to law enforcement outside the residence where he was staying without having been provided ***Miranda*** warnings should have been suppressed.[1] *See generally* ***Miranda v. Arizona***, 384 U.S. 436, 458 (1966). Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm on

[1] WISCONSIN STAT. § 971.31(10) (2023-24) authorizes review of a suppression ruling following a guilty plea. All references to the Wisconsin Statutes are to the 2023-24 version.

the ground that Hall was not "in custody" within the meaning of ***Miranda***, so no warnings were required.

When reviewing a motion to suppress evidence, we will uphold the circuit court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2); ***State v. Harris***, 2017 WI 31, ¶9, 374 Wis. 2d 271, 892 N.W.2d 663. We will independently determine, however, whether the facts found by the court satisfy applicable constitutional provisions. ***Harris***, 374 Wis. 2d 271, ¶9.

Law enforcement officers are constitutionally required to inform suspects of their rights to remain silent and to have an attorney present during custodial interrogations. ***Miranda***, 384 U.S. at 458. The ***Miranda*** safeguards are aimed at dispelling the compulsion inherent in a custodial setting, and they therefore do not apply unless a suspect is in custody. ***State v. Bartelt***, 2018 WI 16, ¶30, 379 Wis. 2d 588, 906 N.W.2d 684. A person is in custody for ***Miranda*** purposes when there has been a formal arrest or a restraint on movement to a degree associated with arrest. ***Id.***, ¶31. A court looks at the totality of the circumstances to determine whether a reasonable person in the suspect's position would have felt free to terminate the interview and leave the scene. ***Id.***

The totality of the circumstances surrounding an interrogation includes the degree of restraint; the purpose, place, and length of the interrogation; and what has been communicated to the suspect by the police. ***Id.***, ¶32. Factors relevant to the inquiry into the degree of restraint are: "whether the suspect is handcuffed, whether a weapon is drawn, whether a frisk is performed, the manner in which the suspect is restrained, whether the suspect is moved to another location, whether questioning took place in a police vehicle, and the number of officers

involved." ***Id.*** (citation omitted). When the totality of the circumstances demonstrates that a reasonable person in the suspect's position would not feel free to leave, a court should then consider whether the environment of the interview "presents the same inherently coercive pressures as the type of station house questioning at issue in ***Miranda***." ***Bartelt***, 379 Wis. 2d 588, ¶33 (citation omitted).

Here, the facts found by the circuit court following an evidentiary hearing were supported by the testimony of a law enforcement officer and footage from that officer's body camera.[2] They are not clearly erroneous. Information from a victim of a crime led law enforcement to believe that Hall and his girlfriend, Maryna Plonka, may have been involved in burglarizing the victim's residence. Law enforcement had additional information that Hall and Plonka were staying in the basement of a house, near to which pings from the victim's cell phone were emanating, and three or four uniformed law enforcement officers, including Sergeant Jeffrey Harriman, were dispatched to the house.

Upon arriving at the house, one of the officers made visual contact with Hall in the basement through the front door. The officer stated: "Hi. Superior Police Department. Come here. Come upstairs. Who else is downstairs? Who else is downstairs? Come outside. What's your name?" Hall and Plonka then came outside, and the officers conducted a pat-down search of them for weapons.

[2] Hall cites some additional facts from the complaint and his own suppression motion in his appellate brief, but we do not consider any facts that were not in evidence.

While they were standing in the yard beside the house, Harriman proceeded to ask Hall and Plonka a series of questions about their potential involvement in the burglary. Harriman said that he did not know at that time how some of the burglary victim's property may have gotten into the house where Hall and Plonka were residing or if they had been involved in the burglary. However, in order to gain admissions, Harriman lied to the suspects by telling them that a neighbor's video had captured them going into the victim's house. Hall then made incriminating statements.

The questioning lasted only about five minutes. Hall and Plonka were not separated from one another, and neither one was handcuffed during the questioning. They were never told that they were not free to leave or prevented from walking away. No officer drew a weapon or made any threat or use of force against either Hall or Plonka during the encounter. Hall never objected to being asked questions or asked for the interview to end, and he appeared to answer Harriman's questions willingly and cooperatively.

We conclude that under the totality of these circumstances, a reasonable person would not feel that they were being restrained to a degree associated with arrest. The yard where the questioning occurred in no way resembled a custodial setting. The lack of restraints or any use of weapons or threats of force significantly reduced the coercive nature of the contact. The fact that only one officer was questioning two suspects together, the conversational tone of the questioning, the very short duration of the questioning, and the fact that the officer never told Hall he was not free to leave are all more in line with an investigatory stop than an arrest. These factors do not impose the same coercive effect as a custodial interrogation, even taking into account the pat down search and the direction to Hall and Plonka that they come outside to speak

with the officers. Therefore, the circuit court correctly denied Hall's suppression motion on the ground that Hall was not "in custody" for ***Miranda*** purposes.

Upon the foregoing,

IT IS ORDERED that the judgment of conviction is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals