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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff-Respondent,) NO. 45148
)
 v.) ADA COUNTY NO. CR-FE-2016-9934
)
 NILES BRAD HARLOW,)
)
 Defendant-Appellant.)
 _____)

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

HONORABLE STEVEN HIPPLER
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Niles Brad Harlow appeals from his judgment of conviction for possession of a controlled substance, challenging the district court's denial of his motion to suppress. The district court denied Mr. Harlow's motion to suppress, concluding he was not required to be advised of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1996), because he was not subjected to a custodial interrogation. The district court erred. A reasonable person in Mr. Harlow's position would have understood his freedom of movement was restrained to the degree associated with a formal arrest when, in the dark of night, he was handcuffed in front of a patrol car, told he was being detained, left to wait almost twenty minutes while officers searched his truck, and then told, "I know this is your methamphetamine," and "I can prove this." This Court should vacate Mr. Harlow's conviction and reverse the district court's order denying his motion to suppress.

Statement of Facts and Course of Proceedings

At approximately 1:47 a.m. on April 16, 2016, police officer Ian Hale observed a Ford Ranger pull off the road into a pull-out area near a parked semi-trailer. (R., p.84.) Officer Hale was concerned the driver might have stopped to steal exposed pallets from the semi-trailer, so he made a U-turn and parked his patrol car approximately 25 feet behind the truck. (R., p.84.) Officer Hale approached the truck from the passenger's side, and observed Mr. Harlow in the driver's seat. (R., p.84.) Officer Hale asked Mr. Harlow if everything was okay, and Mr. Harlow said he was having car trouble and his vehicle had been smoking. (R., p.84.) Officer Hale walked around the back of the truck, intending to approach from the driver's side, but Mr. Harlow exited his truck and met Officer Hale outside the truck. (R., p.84.) As Officer

Hale was speaking with Mr. Harlow, he observed a plastic bag containing a white crystalline substance near Mr. Harlow's feet. (R., p.84.) Officer Hale testified at the suppression hearing that as soon as he saw the plastic bag, he "immediately . . . could tell it was meth." (2/9/17 Tr., p.13, Ls.10-21.) At that point, the encounter transferred from a routine stop into a drug investigation.

Officer Hale told Mr. Harlow to "keep his hands where I could see them." (2/9/17 Tr., p.13, L.23 – p.14, L.1) He "had [Mr. Harlow] walk towards the back of his vehicle with his hands behind his back" and "told him [to] sit on the bumper" while he called for a canine assist. (2/9/17 Tr., p.14, Ls.1-6.) After the canine officer arrived, Officer Hale patted Mr. Harlow down, handcuffed him, and told him he was being detained. (R., p.84; 2/9/17 Tr., p.14, Ls.24-25, p.15, L.25 – p.16, L.1.) He then had Mr. Harlow walk to the front of his patrol vehicle and wait there while he collected the bag he suspected contained methamphetamine. (2/9/17 Tr., p.16, Ls.4-9.) At some point, a third patrol car and a third uniformed officer arrived on scene. (R., p.85, note 2.) Mr. Harlow waited, handcuffed in front of Officer Hale's patrol car, while the canine officer led his dog around Mr. Harlow's truck, and then the canine officer and Officer searched his truck. (2/9/17 Tr., p.16, Ls.2-9.)

After searching Mr. Harlow's truck and finding nothing incriminating inside, Officer Hale turned off his on-body video camera, and then talked to Mr. Harlow about possibly being a confidential informant. (2/9/17 Tr., p.20, L.24 – p.21, L.2.) The officer described the conversation as follows:

I basically went up to him and told him, hey, listen, I know this is your methamphetamine, you look like you're on methamphetamine, you're jittery, speaking very fast, agitated. I told him I can prove this, I can fingerprint this, but I gave him some options about, hey, you can keep denying and that's fine, but if you want to work with us, there's people we can contact and see if we can make – [catch] a big fish out of a small fish.

(2/9/17 Tr., p.17, Ls.3-10.) Officer Hale explained at the suppression hearing, “I said you’re caught, are you willing to work with us? He said yes. I took the handcuffs off of him and I said, ‘this is your meth, time to be honest,’ and he shook his head yes.” (2/9/17 Tr., p.18, Ls.11-14.) At the suppression hearing, the officer confirmed he did not remove Mr. Harlow’s handcuffs until after he showed interest in being a confidential informant. (2/9/17 Tr., p.21, Ls.16-18.) Officer Hale acknowledged he never advised Mr. Harlow of his *Miranda* rights. (2/9/17 Tr., p.24, Ls.15-18.)

Mr. Harlow did not become a confidential informant, and was ultimately charged by Information with one count of felony possession of a controlled substance. (R., pp.41-42.) He filed a motion to suppress the statements he made to law enforcement under the United States and Idaho Constitutions because he was subjected to a custodial interrogation without being advised of his *Miranda* rights. (R., pp.54-60.) Following a hearing, the district court issued a memorandum decision and order denying Mr. Harlow’s motion to suppress. (R., pp.83-91.) The district court concluded Mr. Harlow did not meet his burden of showing he was subjected to a custodial interrogation. (R., p.89.) The case proceeded to trial, and a jury found Mr. Harlow guilty of the charged offense. (R., pp.94-97, 126.) The district court sentenced Mr. Harlow to a unified term of six years, with two years fixed, and then suspended the sentence and placed Mr. Harlow on probation for a period of five years. (4/24/17 Tr., p.277, Ls.10-17.) The judgment of conviction was entered on May 5, 2017, and Mr. Harlow filed a timely notice of appeal on May 31, 2017. (R., pp.128-36, 142-45.)

ISSUE

Did the district court err in denying Mr. Harlow's motion to suppress?

ARGUMENT

The District Court Erred In Denying Mr. Harlow's Motion To Suppress

A. Introduction

In *Miranda v. Arizona*, the Supreme Court held a person must be informed of his Fifth Amendment privilege against self-incrimination prior to being subjected to a custodial interrogation; otherwise, any incriminating statements made by the person are inadmissible at trial. 384 U.S. at 444-45; *see also State v. Henson*, 138 Idaho 791, 795 (2003) (discussing *Miranda*). The only issue in this case is whether Mr. Harlow was in custody for purposes of *Miranda* at the time he was interrogated by Officer Hale. The district court erred in concluding Mr. Harlow was not in custody. A reasonable person in Mr. Harlow's position would have understood his freedom of movement was restrained to the degree associated with a formal arrest when, in the dark of night, he was handcuffed in front of a patrol car, told he was being detained, left to wait almost twenty minutes while officers searched his truck, and then told, "I know this is your methamphetamine," and "I can prove this."

B. Standard Of Review

"In reviewing a district court order granting or denying a motion to suppress evidence, the standard of review is bifurcated." *State v. Purdum*, 147 Idaho 206, 207 (2009) (citation omitted). "This Court will accept the trial court's findings of fact unless they are clearly erroneous. However, this Court may freely review the trial court's application of constitutional principles in light of the facts found." *Id.* (citations omitted). "At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw

factual inferences is vested in the trial court.” *State v. Aguirre*, 141 Idaho 560, 562 (Ct. App. 2005) (citations omitted).

C. The District Court Erred In Concluding Mr. Harlow Was Not Subjected To A Custodial Interrogation Because A Reasonable Person In His Position Would Have Understood His Freedom Of Movement Was Restrained To The Degree Associated With A Formal Arrest

In *State v. Huffaker*, the Idaho Supreme Court explained that “*Miranda* warnings are required where a suspect is in custody.” 160 Idaho 400, 404 (2016) (citation omitted). “Custody is . . . determined by whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.” *Id.* (quotation marks and citations omitted). “The test to determine whether a defendant is in custody is objective.” *Id.* at 405. “The only relevant inquiry is how a reasonable man in the suspect’s position would have understood his situation.” *Id.* (quotation marks and citation omitted). In determining whether a person is in custody, “[a] court must consider all of the circumstances surrounding the interrogation.” *State v. Silver*, 155 Idaho 29, 32 (Ct. App. 2013) (citations omitted). Specific factors to be considered may include the degree of restraint on the person’s freedom of movement including whether the person is placed in handcuffs, the location and visibility of the interrogation, the duration of the interrogation, the time of the interrogation, the number of officers present, and the nature and manner of the questioning. *See id.* The defendant has the burden of showing custody. *Id.*

Here, a reasonable person in Mr. Harlow’s position would surely have understood his freedom of movement was restrained to the degree associated with a formal arrest when Officer Hale asked him whether he wanted to work as a confidential informant. Mr. Harlow had already been patted down, handcuffed, and made to wait almost 20 minutes while officers searched his

vehicle in the dark of night.¹ Officer Hale approached Mr. Harlow and told him, “I know this is your methamphetamine,” and “I can prove this.” (2/9/17 Tr., p.17, Ls.3-10.) As he described it at the suppression hearing, Officer Hale told Mr. Harlow, “[Y]ou’re caught, are you willing to work with us?” (2/9/17 Tr., p.19, Ls.11-13.) Mr. Harlow was not free to go either prior to or during this conversation, as he was still handcuffed and detained. Officer Hale testified at the suppression hearing that even after he removed Mr. Harlow’s handcuffs, he was still not free to go. (2/9/17 Tr., p.39, L.16 – p.40, L.6.) This was a custodial interrogation.

We know that people stopped in ordinary traffic stops are generally not “in custody” for purposes of *Miranda*. See *State v. James*, 148 Idaho 574, 577 (2010). However, a motorist who has been detained in a traffic stop can be subjected to treatment that renders him “in custody” for practical purposes. See *id.* That is precisely what happened in this case. Mr. Harlow was not in custody when Officer Hale first approached him, but the treatment he was subjected to rendered him “in custody” as the encounter progressed.

Though not determinative, it is significant that a reasonable person in Mr. Harlow’s position would have understood he was going to be arrested if he did not agree to be a confidential informant. See *Silver*, 155 Idaho at 33 (stating “an officer’s statement that a person will be arrested is not sufficient *alone* to establish custody” but “may be considered . . . in conjunction with other circumstances, insofar as it affects how a reasonable person would understand his situation”). Officer Hale testified that early in the encounter, he believed he had

¹ The video recording of the initial part of the encounter between Officer Hale and Mr. Harlow was introduced into evidence at trial, and reflects that Mr. Harlow was made to wait in front of Officer Hale’s patrol car for almost 20 minutes. (State’s Ex. 1, at 5:50-24:50.) The video recording does not include the conversation where Officer Hale questioned Mr. Harlow as to whether he wanted to be a confidential informant because Officer Hale turned off his camera prior to this conversation. (2/9/17 Tr., p.20, L.5 – p.21, L.2.)

enough information to arrest Mr. Harlow for possession of a controlled substance. (2/9/17 Tr., p.29, Ls.7-10.) He testified that where a person is found to be in possession of methamphetamine, they are arrested “[m]ore often than not.” (2/9/17 Tr., p.30, Ls.9-13.) Officer Hale also testified that if Mr. Harlow had said he was not willing to be a confidential informant, he would have been arrested that night. (2/9/17 Tr., p.40, Ls.7-12.) When considered in conjunction with all of the circumstances, Officer Hale’s statement to Mr. Harlow that he knew it was Mr. Harlow’s methamphetamine and “can prove this” transformed the interrogation into a custodial encounter.

Considering all of the circumstances, a reasonable person in Mr. Harlow’s position would have understood his freedom of movement was restrained to the degree associated with a formal arrest when Officer Hale questioned him about being a confidential informant. Thus, he was in custody for purposes of *Miranda* and should have been provided with *Miranda* warnings. The district court erred in denying Mr. Harlow’s motion to suppress and its decision should be reversed.

CONCLUSION

Mr. Harlow respectfully requests that this Court vacate his judgment of conviction, reverse the district court’s order denying his motion to suppress, and remand this case to the district court for further proceedings.

DATED this 7th day of February, 2018.

_____/s/_____
ANDREA W. REYNOLDS
Officer State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 7th day of February, 2018, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

NILES BRAD HARLOW
6267 DEERFLAT ROAD
NAMPA ID 83686

STEVEN HIPPLER
DISTRICT COURT JUDGE
E-MAILED BRIEF

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ADA COUNTY PUBLIC DEFENDER
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E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas