1-31-2018

State v. Andersen Appellant's Reply Brief Dckt. 45042

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45042**
Plaintiff-Appellant,	)	
	)	**Kootenai County Case No.**
v.	)	**CR-2016-19399**
	)	
BRIANNA NICOLE ANDERSEN,	)	
	)	
Defendant-Respondent.	)	
	)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

HONORABLE BENJAMIN R. SIMPSON
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

KALE D. GANS
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR PLAINTIFF-APPELLANT

ANDREA W. REYNOLDS
Deputy State Appellate Public Defender
322 E. Front St., Ste. 570
Boise, Idaho 83702
(208) 334-2712

ATTORNEY FOR DEFENDANT-RESPONDENT

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

CASES **PAGE**

ARGUMENT

I.
The District Court Erred In Partially Granting Andersen's Suppression Motion

The district court granted Andersen's motion to suppress in part as to her statements, finding that she "was rather forcefully told to sit down and stay," and that "based upon that, she was in custody." (03/16/2017 Tr., p. 5, Ls. 1-2.) The court therefore suppressed "all of her statements made to law enforcement after that fact or after that statement." (03/16/2017 Tr., p. 5, Ls. 3-6.)

This was an error. A detention—even forcefully articulated—does not necessarily rise to the level of custody equivalent to an arrest. Instead, the test for whether an individual is in custody for purposes of Miranda[1] is whether, in light of all the circumstances surrounding the interrogation, there was a "'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." See California v. Beheler, 463 U.S. 1121, 1125 (1983) (quoting Oregon v. Mathiason, 429 U.S. 492, 495 (1977)). A person who is detained, while not "free to leave," is not necessarily in custody for purposes of Miranda. State v. Silver, 155 Idaho 29, 32, 304 P.3d 304, 307 (Ct. App. 2013) ("The freedom-of-movement inquiry is, however, only a necessary and not a sufficient condition for *Miranda* custody."). To determine whether a defendant was in custody, courts therefore "*must* consider all of the circumstances surrounding the interrogation," and it is the defendant's burden to show custody for the purposes of Miranda. Id. (emphasis added); State v. James, 148 Idaho 574, 577, 225 P.3d 1169, 1172 (2010).

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

Andersen responds that "[c]onsidering the number and nature of the questions asked, the presence of multiple officers, and the forceful and repetitive nature of the questioning, it is clear Ms. Andersen was subjected to a custodial interrogation." (Respondent's brief, pp. 8-9.) She avers that, "[m]ost tellingly," she twice attempted to stand, and "was twice instructed to stay seated," and that consequently "her freedom of movement was restrained to the degree associated with a formal arrest." (Respondent's brief, p. 9.)

But Andersen fails, first of all, to show that this comprehensive analysis was the analysis the district court actually performed. In its custody analysis, the district court did not look to the number of questions that were asked, or "the presence of multiple officers," or the repetitiveness of the questioning. (See 03/16/2017 Tr., p. 4, L. 23 – p. 5, L. 6.) Nor did the court look to a variety of other factors identified by courts examining the totality of circumstances showing custodial arrest. (Compare 03/16/2017 Tr., p. 4, L. 23 – p. 5, L. 6 with Silver, 155 Idaho at 34-35, 304 P.3d at 309-10 (looking to whether law enforcement drew weapons; whether the defendant was placed in a police car; whether the defendant was handcuffed; whether the defendant was told the detention would be more than temporary; whether the detention took place in a "publicly visible location"; and the length of the detention)).

Instead of looking at the totality of the circumstances, the court here explicitly found, based solely on the "rather forceful[]" instruction to "sit down and stay," that Andersen was in custody:

> Okay. The Court finds from a review of the CD at time stamp 1550 approximately, the defendant attempted to get up during the interview. *She was rather forcefully told to sit down and stay.* The Court finds *based*

> *upon that, she was in custody. Based upon that*, I'm going to suppress all of her statements made to law enforcement *after that fact or after that statement*. So those will not be used against her.

(03/16/2017 Tr., p. 4, L. 23 – p. 5, L. 6 (emphasis added).)

As a result, Andersen has failed to show the court applied the proper test. The court looked to one factor which would have been sufficient to show a *detention*—and could have been *relevant* to the custody inquiry—but which was insufficient on its own to show custody. Because courts "*must* consider all of the circumstances surrounding the interrogation," and the district court explicitly based its ruling on a single factor, it erred. Silver, 155 Idaho at 32, 304 P.3d at 307 (emphasis added); see also Beheler, 463 U.S. at 1125.

Second, even if the district court's holding was somehow implicitly based on "the number and nature of the questions asked, the presence of multiple officers, and the forceful and repetitive nature of the questioning" (Respondent's brief, p. 8), Andersen failed to meet her burden below to show these factors created the equivalent of a custodial arrest.

In this case Andersen was forcefully told to sit, during a mutually heated discussion with two officers who had been questioning her for some 15 minutes, while other officers walked in and out of the room, occasionally engaging in the conversation. (See Video Ex., 02:52-15:59.) Andersen was not handcuffed, physically restrained, placed in a police car, or transported to a police station. (See id.) Under these circumstances an objective observer would not think Andersen was under arrest. And while Andersen presents a compelling case that she was *detained*, she does not show that this particular detention was the equivalent of a formal arrest. Consequently, even if the

district court did consider all of the factors at issue here, Andersen fails to meet her burden to show that based on these factors, she was in a custodial interrogation.

Andersen also appears to suggest, apparently in the alternative, that even if the district court relied on a single factor in concluding Andersen was in custody, it did not err:

> *In a close case, the district court might be expected to discuss in some detail the various factors weighing in favor of, or against, a finding of custody. But this was not a close case.* The fact that Ms. Andersen was, in the district court's words, "rather forcefully told to sit down and stay," is certainly relevant to, *and perhaps all but determinative of,* a finding that she was subjected to a custodial interrogation."

(Respondent's brief, p. 9 (quoting 03/16/17 Tr., p. 5, Ls. 1-12, emphasis added).)

This argument fails. Assuming that a single factor showing a detention is "perhaps all but determinative" of custodial interrogation reveals that Andersen, like the district court, is applying the test for *detention*, and not custodial interrogation. While a single factor could show a detention, it could not be "all but determinative" of the custody question, because detention alone is insufficient to show custody, and the court "must consider all of the circumstances surrounding the interrogation" to determine whether the defendant was in custody. Silver, 155 Idaho at 32, 304 P.3d at 307; see also Beheler, 463 U.S. at 1125. Because the district court relied entirely on a single insufficient factor rather than the totality of the circumstances, it erred, and Andersen only repeats the error in her response.

Moreover, declaring that this was a "close case"—and one therefore exempt from a thorough analysis of all the factors—begs the question. Whether or not this is a "close case" *depends* on whether or not Andersen was in custody. And that depends on a multi-

factor inquiry. Avoiding a review of all of the factors based on the "closeness of the case" amounts to skipping the correct analysis because the answer has already been presumed.[2]

Properly resolving the custody question, on the other hand, requires an inquiry into all of the circumstances. Silver, 155 Idaho at 32, 304 P.3d at 307, see also Beheler, 463 U.S. at 1125. To the extent the district court did not consider all the factors it should have, it erred. Moreover, because the correct application of the law to the facts shows that Andersen was not in custody, this was a reversible error.

Andersen failed to meet her burden below to show that her freedom of movement was restrained to a degree associated with a formal arrest. Because Andersen was only detained, was not in a custodial interrogation, the district court erred by suppressing her statements under Miranda.

II.
The District Court Erred By Concluding Andersen's Statements Were Not Voluntary

The use of a defendant's involuntary statements against the defendant violates the due process clause. State v. Hays, 159 Idaho 476, 485-86, 362 P.3d 551, 560-61 (Ct. App. 2015). "In determining whether a statement was involuntary, the inquiry is whether the defendant's will was overborne by police coercion." Id. (citing Arizona v.

[2] And on the subject of "close cases," one can readily imagine closer cases than this one. Andersen could have been handcuffed, otherwise physically restrained, subjected to an interrogation over hours, placed in a police car, taken to the police station, and so on. C.f. Silver, 155 Idaho at 34–35, 304 P.3d at 309–10 (examining whether factors such as these were present there). All of these facts would create a far closer case that Andersen had been restrained to a degree associated with an arrest. Because none of these things happened here, Andersen has failed to show this was a close case at all, much less one that is so close that forsaking the proper analysis would be excusable.

Fulminante, 499 U.S. 279, 286 (1991); Colorado v. Connelly, 479 U.S. 157, 177 (1986); State v. Doe, 131 Idaho 709, 713, 963 P.2d 392, 396 (Ct. App. 1998); State v. Davila, 127 Idaho 888, 892, 908 P.2d 581, 585 (Ct. App. 1995 In determining the voluntariness of a confession, courts consider the characteristics of the accused and the interrogation itself, including whether Miranda warnings were given; the accused's age, education and intelligence; the length of the detention and whether it was repeated or prolonged; and whether the accused was deprived of food or sleep. Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973).

As the state argued in its opening briefing, the district court erred by looking to a single, insufficient factor—the "fairly forceful," yet progressively "more conversational" tone of the questioning—to determine that Andersen's admissions were involuntary. (03/16/2017 Tr., p. 8, Ls. 18-23.) This was an error because the court did not address, much less rely on, any other of the coercive factors identified in Schneckloth. (See 03/16/2017 Tr., p. 8, Ls. 18-23.) Moreover, a fairly forceful, increasingly conversational dialogue would not have been an involuntary confession.

Andersen argues in response that "the initially forceful nature of the encounter is clearly not the only factor the district court considered":

> As discussed above, the district court reviewed the video recording of the incident and the transcript of the preliminary hearing prior to the suppression hearing. (3/16/17 Tr., p.3, Ls.14-16.) The district court reached its decision based on more than just the initial disposition of the officers. Defense counsel argued to the district court that Ms. Andersen answered the officers' questions "because she felt threatened by [them]." (3/16/17 Tr., p.8, Ls.12-16.)

(Respondent's brief, p. 12 (brackets in original).)

However, this argument, sentence by sentence, fails to show the district court relied on anything but the "forceful nature" of the conversation. Sentence one simply shows the district court reviewed the video recording; but it does not show which facts the court relied on. Sentence two—explaining that "the district court reached its decision based on more than just the initial disposition of the officers"—conspicuously lacks any citation to the record, and fails to mention exactly what "more" it was that the district court based its decision on. And sentence three only reflects the argument that Andersen made to the district court—not what the district court *itself* thought.

Of course, the best evidence of the district court's analysis is what the district court said. And the court made it plain that it was considering only the "fairly forceful" nature of the conversation to determine Andersen's confessions were involuntary:

> *I think initially [the officers] were fairly forceful*. The farther they went into it, the more conversational it became. *But I'm going to find that her statements were not voluntary.* They're not useful for any purpose. They're constitutionally prohibited.

(03/16/2017 Tr., p. 8, Ls. 18-23 (emphasis added).) It is clear that the court did not rely on any other facts in summarily arriving at this conclusion. And it is just as clear that this was an error: a "fairly forceful," increasingly "conversational" exchange would not be enough to show that Andersen's statements were involuntarily made.

Finally, Andersen argues "[t]he State does not cite any authority for the proposition that a person's will cannot be overborne when they are yelled at only briefly, or when they respond to yelling by yelling." (Respondent's brief, p. 12.)

The authority that supports this proposition is a common-sense application of the legal standard: if someone is being yelled at, and responds by yelling back instead of

demurring, that is good evidence that their will has not been "overborne" by coercion. It is self-evident that when someone reciprocates to forceful yelling with forceful yelling of their own, that they are freely exercising their willpower by responding in kind. In other words, the fact that Andersen forcefully spoke for herself, speaks for itself.

An initially forceful, progressively conversational exchange, with no other coercive factors identified by the court or shown by the evidence, fails to show Andersen's will was overborne or her statements were involuntary. The district erred by concluding Andersen's statements were involuntary and constitutionally prohibited.

CONCLUSION

The state respectfully requests this Court reverse the order of the district court and remand for further proceedings.

DATED this 31st day of January, 2018.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31st day of January, 2018, served a true and correct copy of the foregoing REPLY BRIEF OF APPELLANT by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

KDG/dd