STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1274

State of Minnesota,
Appellant,

vs.

Derek Charles Gall,
Respondent.

Filed December 10, 2012
Affirmed
Stauber, Judge

Hennepin County District Court
File No. 27CR124065

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Susan Segal, Minneapolis City Attorney, Paula J. Kruchowski, Assistant City Attorney, Minneapolis, Minnesota (for appellant)

Sharon E. Jacks, Minneapolis, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Stauber, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

In this pretrial appeal, the state argues that the district court erred by determining that respondent was "in custody" and concluding that his pre-*Miranda* statements were therefore inadmissible. Because the circumstances surrounding respondent's interaction with police amounted to being "in custody" for purposes of *Miranda*, the district court did not abuse its discretion by suppressing the evidence and we affirm.

FACTS

This state appeal arises out of an incident that took place during the Minneapolis Zombie Pub Crawl in the early-morning hours of October 9, 2011. Officer Michael Frye of the Minneapolis Police Department was working off-duty as security for the event in the Riverside area of Minneapolis when he was flagged down by witnesses claiming that an assault had taken place. When Officer Frye arrived at the scene, he found a person "laid out" on the ground being attended to by family and friends who were helping him try to stand up.

Officer Frye asked what happened, and the victim stated that a man had punched him for no apparent reason. The victim was not particularly coherent and did not say much else. Due to the large crowd and rowdy atmosphere, Officer Frye was unable to take a formal statement from any of the eyewitnesses to the incident. The victim's wife, however, was able to identify a man later identified as respondent Derek Charles Gall as the man who punched her husband.

Before Officer Frye arrived, the victim's wife had identified respondent as the assailant, and bar security instructed him to wait until police arrived. Officer Frye and another police officer approached respondent, separated him from a group, took his identification, and asked "[w]hat's your side of the story?" In response to the officer's questions, respondent admitted that he punched the victim after the victim had allegedly shoved respondent's wife. The record establishes that respondent was not arrested, placed in handcuffs, or placed in a squad car during his encounter with the police. The record is also clear that respondent was not given a *Miranda* warning.

Months later, respondent was charged with misdemeanor fifth-degree assault in violation of Minn. Stat. § 609.224, subd. 1 (2010). Respondent moved to suppress his statements to the police, arguing that the lack of a *Miranda* warning rendered the statements inadmissible. The state opposed the motion, arguing that the statements were spontaneous and that respondent was not in custody.[1] The district court granted respondent's motion, and this state appeal follows.

D E C I S I O N

"When reviewing pretrial orders on motions to suppress evidence, [an appellate court] may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). When the state appeals a pretrial suppression order, the state "must clearly and unequivocally show both that the [district] court's order will

[1] The state argued to the district court that respondent spontaneously confessed "[b]efore Officer Frye said a word." This argument was rejected by the district court and is not presented on appeal.

have a critical impact on the state's ability to prosecute the defendant successfully and that the order constituted error." *State v. Scott*, 584 N.W.2d 412, 416 (Minn. 1998) (quotation omitted).

Here, the district court suppressed respondent's admission that he punched the victim after the victim shoved respondent's wife. While the state had other evidence that, if believed, would allow a fact finder to conclude that respondent had committed an assault, critical impact is shown "not only in those cases where the lack of the suppressed evidence completely destroys the state's case, but also in those cases where the lack of the suppressed evidence significantly reduces the likelihood of a successful prosecution." *State v. Joon Kyu Kim*, 398 N.W.2d 544, 551 (Minn. 1987). Suppression of a confession generally satisfies this critical-impact requirement. *State v. Ronnebaum*, 449 N.W.2d 722, 724 (Minn. 1990) (reversing this court's conclusion that suppression of a confession would not significantly reduce the likelihood of successful prosecution in child-sex-abuse case). And respondent concedes that this element is satisfied. The state has therefore shown that the district court's order has a critical impact on the state's ability to successfully prosecute respondent.

Having found critical impact, we next address the state's argument that respondent was not entitled to a *Miranda* warning. "Statements made by a suspect during custodial interrogation are generally inadmissible unless the suspect is first given a *Miranda* warning." *State v. Edrozo*, 578 N.W.2d 719, 724 (Minn. 1998). "The *Miranda* warnings are required in order to protect a defendant's Fifth Amendment privilege against self-incrimination." *Id*. "If the police take a suspect into custody and then ask questions

without informing him of the rights enumerated in *Miranda*, his responses generally cannot be introduced into evidence to establish his guilt." *Id.* An appellate court reviews a district court's findings of fact for clear error. *State v. Miller*, 573 N.W.2d 661, 670 (Minn. 1998). The district court's determination regarding whether the defendant was in custody and therefore entitled to a *Miranda* warning, however, is reviewed de novo. *Id.*

In *Miranda*, the United States Supreme Court recognized that a criminal defendant has the right under the Fifth Amendment to not incriminate himself and to be informed of that right. *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612 (1966). The right to a *Miranda* warning applies only to custodial interrogation.[2] *Id.* "No bright line rule exists in determining whether a defendant was in custody." *In re Welfare of G.S.P.*, 610 N.W.2d 651, 657 (Minn. App. 2000) (quotation omitted). "The determination of whether a suspect is in custody is an objective inquiry—would a reasonable person in the suspect's situation have understood that he was in custody?" *Miller*, 573 N.W.2d at 670 (citing *State v. Hince*, 540 N.W.2d 820, 823 (Minn. 1995)).

On appeal, the state erroneously simplifies the issue, equating custody with being under arrest by arguing that the district court's finding that respondent was not arrested "is completely contrary to [its] conclusion that respondent was subjected to custodial

[2] Interrogation occurs "whenever a person in custody is subjected to either express questioning or its functional equivalent," meaning "any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Edrozo*, 578 N.W.2d at 724 (quotation omitted). Here, the state does not argue the interrogation-issue, rather focusing on whether respondent was in custody at the time the statements were made. As such, any argument as to whether respondent's confession was in response to interrogation is waived and we do not address it. *See State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997) (stating issues not briefed on appeal are waived), *review denied* (Minn. Aug. 5, 1997).

interrogation." But contrary to the state's assertion, the fact that respondent was not arrested does not require the conclusion that respondent was not in custody. "If a suspect has not yet been arrested, a district court must examine all of the surrounding circumstances and evaluate whether a reasonable person in the suspect's position would have believed he was in custody to the degree associated with arrest." *Miller*, 573 N.W.2d at 670 (citations omitted).

While no single factor is determinative as to whether a person is in custody, the supreme court has identified several factors that, in combination, may indicate that a suspect is in custody, including: "police interviewing the suspect at the police station; the officer telling the individual that he or she is the prime suspect; officers restraining the suspect's freedom; the suspect making a significantly incriminating statement; the presence of multiple officers (six); and a gun pointing at the suspect." *State v. Staats*, 658 N.W.2d 207, 211 (Minn. 2003). Conversely, factors such as questioning taking place in the suspect's home, police expressly informing the suspect that he or she is not under arrest, the suspect leaving the police station after the interview without hindrance, the brevity of questioning, a suspect's freedom to leave at any time, a nonthreatening environment, and the suspect's ability to make phone calls have been identified as factors tending to indicate that a suspect is *not* in custody. *Id.* at 212.

Here, the factors involved lead to a mixed result. Some factors support a finding that respondent was not in custody: he was neither placed under arrest nor physically restrained during the interrogation; while there were other police in the area, the record indicates that only Officer Frye and one other officer were involved in the questioning of

respondent; at no point did an officer draw a weapon during the interaction; and respondent was free to leave the scene following the questioning. Similarly, some factors support a finding that respondent was in custody: he had been identified as an assailant, which may have indicated to respondent that he was a suspect in a crime; before questioning respondent, Officer Frye separated him from a group, which the officer considered "detaining" respondent; and respondent made a significantly incriminating statement during the interrogation.

There are also factors that support neither a finding that respondent was in custody nor a finding that he was not in custody. While the state suggested at oral argument that respondent's encounter with the officers was brief, there is no information in the record indicating how long the interrogation lasted. The interrogation took place on a crowded street. And while Officer Frye did not place respondent under arrest, he also did not inform respondent that he was not under arrest.

While the applicable factors lead to a mixed result, we conclude that the district court did not err by concluding that a reasonable person in these circumstances would have believed he was in custody to the degree associated with an arrest. The district court therefore applied the proper legal standard, and its fact-specific resolution is therefore entitled to considerable deference. *See State v. Heden*, 719 N.W.2d 689, 696 (Minn. 2006) (affirming district court's conclusion that subject was not in custody and therefore not entitled to *Miranda* warning).

Affirmed.