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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-190

Filed: 7 January 2020

Guilford County, No. 17 CRS 68022

STATE OF NORTH CAROLINA

v.

SAROY PHOEUN

Appeal by defendant from judgments entered 8 February 2018 by Judge R. Stuart Albright in Guilford County Superior Court. Heard in the Court of Appeals 19 September 2019.

*Attorney General Joshua H. Stein, by Special Deputy Attorney General John A. Payne, for the State.*

*The Law Offices of H.A. (Alec) Carpenter IV, by Harvey A. (Alec) Carpenter, IV, for defendant-appellant.*

ZACHARY, Judge.

Defendant Saroy Phoeun appeals from judgments entered upon his convictions for trafficking in heroin and possession of heroin with intent to sell or deliver. Defendant argues that the trial court erred in denying his motion to suppress (1)

evidence obtained from the search of his hotel room, and (2) his statements to police. We affirm.

### **Background**

On 31 January 2017, officers with the Greensboro Police Department received a tip concerning a female juvenile who was alleged to have been forced into prostitution by a man named “Ratchet.” The juvenile was said to be located at the InTown Suites on Lanada Road in Greensboro. Six officers, including Corporal A.L. Hill and Officer B.A. Bowman, traveled to the InTown Suites to investigate.

Upon their arrival at the hotel, the officers were directed to room 230, and they knocked on the door. A woman answered and indicated that the juvenile who the officers sought was not there. However, the officers noticed a strong odor of marijuana coming from the room, and saw a man sitting on the bed with his hands under his legs. The officers immediately recognized the man as Defendant. The officers were familiar with Defendant because he was working with Officer Bowman as a confidential informant at the time.

The officers instructed Defendant to raise his hands and approach the door. Defendant complied; however, he stood up slowly and in a manner that caused the officers to believe that “there was something under the covers.” The officers then instructed Defendant to exit the room in order to speak with Officer Bowman and “help clarify what [was] going on.” Defendant acquiesced, and he and Officer

Bowman spoke alone in the hallway. The remaining officers entered the hotel room, shut the door behind them, and began to clear the room to ensure that neither Ratchet nor the juvenile were inside.

In the hallway, Defendant told Officer Bowman that he had recently smoked marijuana, which explained the odor in the room. Officer Bowman testified that he and Defendant then “began to talk back and forth about this . . . girl and what was going on with this girl,” which Officer Bowman identified as the “main focus” of their conversation.

Meanwhile, during their sweep of the hotel room, the other officers observed a spoon and scale in plain view, along with “needles everywhere, laying on the counter.” Corporal Hill notified Officer Bowman of the potential presence of heroin paraphernalia and reentered the room to begin preparing a search warrant application. Officer Bowman asked Defendant whether there was heroin inside of the room, and Defendant confessed that there was “a quarter on a spoon of heroin.” Officer Bowman requested Defendant’s permission to search the room. Defendant looked at the ground, but did not respond.

Shortly thereafter, Corporal Hill left the hotel room to apply for the search warrant. Officer Bowman again asked Defendant, “Can we search your room? I need to know yes or no, or we can go and apply for a search warrant.” Officer Bowman testified that Defendant responded, “Go ahead, man. Go ahead. Do what you’ve got

to do.” Once again, Officer Bowman asked Defendant for permission to search the room, and Defendant replied, “Go ahead. It’s on the bed.”<sup>1</sup>

In executing the search, Officer Bowman then discovered a large quantity of heroin under the covers of the bed where Defendant was sitting when the officers arrived. Defendant was arrested and charged with trafficking in heroin by possessing 28 grams or more of heroin, a Schedule I controlled substance, and possession of heroin with intent to sell or deliver.

Defendant filed a motion to suppress, seeking to exclude (i) the evidence obtained from the search of the hotel room on the grounds that his “consent to search the room was not validly given”; and (ii) his incriminating statements to Officer Bowman, in that they were the product of a custodial interrogation and were made without the benefit of Defendant having been informed of his *Miranda* rights. The trial court denied Defendant’s motion to suppress by order entered 11 January 2018.

Defendant’s jury trial commenced on 5 February 2018 in Guilford County Superior Court, the Honorable R. Stuart Albright presiding. At trial, Defendant objected to the introduction of the evidence obtained from the search of the hotel room. At the trial’s conclusion, the jury found Defendant guilty of both trafficking in heroin and possession of heroin with the intent to sell or deliver. The trial court

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<sup>1</sup> At the hearing on his motion to suppress, Defendant testified that he did not consent to the search, but the trial court made findings consistent with the officers’ accounts.

sentenced Defendant to concurrent terms of 90 to 120 and 11 to 23 months, respectively, in the custody of the North Carolina Division of Adult Correction.

Defendant appeals the denial of his motion to suppress.

### **Standard of Review**

On appeal from the trial court's denial of a defendant's motion to suppress, this Court considers "whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law." *State v. McCrary*, 237 N.C. App. 48, 52, 764 S.E.2d 477, 479 (2014), *aff'd in part and disc. review improvidently allowed in part*, 368 N.C. 571, 780 S.E.2d 554 (2015). The trial court's conclusions of law are reviewed *de novo*. *Id.* at 52, 764 S.E.2d at 479-80.

### **Discussion**

Defendant first argues that the trial court erred in denying his motion to suppress the incriminating statements that he made to Officer Bowman outside of the hotel room. Defendant maintains that the statements were the product of a custodial interrogation, and made without the benefit of Defendant having been read his *Miranda* rights. We disagree.

It is axiomatic that "the rule of *Miranda* applies only where a defendant is subjected to custodial interrogation." *State v. Gaines*, 345 N.C. 647, 661, 483 S.E.2d 396, 404, *cert. denied*, 522 U.S. 900, 139 L. Ed. 2d 177 (1997). A "custodial interrogation" is defined as "questioning initiated by law enforcement officers after a

person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” *Id.* at 661-62, 483 S.E.2d at 405. Whether a custodial interrogation has occurred is entirely objective, and requires the reviewing court to determine whether, based on the totality of the circumstances, “there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.” *State v. Buchanan*, 353 N.C. 332, 339, 543 S.E.2d 823, 828 (2001) (quotation marks omitted). The circumstances must “go beyond those supporting a finding of temporary seizure and create an objectively reasonable belief that one is actually or ostensibly ‘in custody.’” *Id.*

Moreover, it is well established that

[a] noncustodial situation is not converted to one in which *Miranda* applies simply because a reviewing court concludes that, even in the absence of any formal arrest or restraint on freedom of movement, the questioning took place in a “coercive environment.” Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer *Miranda* warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. *Miranda* warnings are required only where there has been such a restriction on a person’s freedom as to render him “in custody.” It was *that* sort of coercive environment to which *Miranda* by its terms was made applicable, and to which it is limited.

*Id.* at 337, 543 S.E.2d at 826-27 (italics supplied) (citation omitted).

The determination of whether a defendant was in custody at the time he provided statements to law enforcement officers, thereby triggering the requirement for *Miranda* warnings, is a question of law. *State v. Johnston*, 154 N.C. App. 500, 502, 572 S.E.2d 438, 440 (2002), *appeal dismissed*, 356 N.C. 687, 578 S.E.2d 320 (2003).

In the instant case, Officer Bowman’s testimony revealed that he was the only officer conversing with Defendant in the hallway,<sup>2</sup> and that at various times during that conversation, both men were leaning up against the wall, whispering into each other’s ears, and Defendant’s hands were in his pockets. Officer Bowman testified that Defendant “ke[pt] [saying], ‘Come on, Bowman. Come on, Bowman.’ And I’m, like, ‘What are you talking about? What’s going on here? What exactly is going on in this room?’ Like, do you—and that’s where we—we just kept—he was never detained at all, I mean, or anything like that.”

The trial court found that “[a]t all relevant times when Defendant made statements or gave consent to search the room, he was standing in the breezeway outside the room in question, engaged in conversation with the [o]fficers with whom he was familiar.” The trial court further found that Defendant was “acquainted” with

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<sup>2</sup> Officer Bowman testified that at one point, another sergeant approached, at which point Officer Bowman “informed [the sergeant] it appeared his camera was on and I reminded [him] this is an informant, to watch his camera because I didn’t want to have him on camera, talking or giving information at all.” The sergeant then backed away.

the officers questioning him “based on prior police encounters,” and that “Defendant was presently cooperating with Officer Bowman as an active drug informant.” The trial court also found that Defendant was not “handcuffed or physically restrained at any time during the encounter,” which “remained conversational and nonconfrontational.”<sup>3</sup>

The trial court’s findings are supported by competent evidence, and are sufficient to support the trial court’s conclusion that Defendant had been subject to neither a formal arrest, nor a restraint on his freedom of movement of the degree associated with a formal arrest, at the time he provided his statements to the officers. *See Buchanan*, 353 N.C. at 339, 543 S.E.2d at 828 (“Circumstances supporting an objective showing that one is ‘in custody’ might include a police officer standing guard at the door, locked doors or application of handcuffs.”); *Gaines*, 345 N.C. at 662-63, 483 S.E.2d at 405 (upholding the trial court’s conclusion that the defendant “did not undergo custodial interrogation for *Miranda* purposes,” due in part to the Defendant’s “previous experience with the criminal justice system”).

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<sup>3</sup> Indeed, at trial, Officer Bowman described his encounter with Defendant as follows:

I personally was looking at [Defendant] asking him, “What in the world? Why are you here?” I couldn’t believe, you know, that he was here in this room that smelled like marijuana, you know. While we were there, I was just shocked. I was like—I couldn’t believe—like, “Why? Why are you here? What in the world?”



Accordingly, the requirements of *Miranda* were not triggered by the circumstances of this case, and we therefore affirm the trial court's denial of Defendant's motion to suppress his statements to the officers.

Lastly, Defendant argues that the trial court erred in denying his motion to suppress the evidence obtained from the search of the hotel room, in that Defendant's purported consent was not "clear and voluntary," as is constitutionally required. *See State v. Powell*, 297 N.C. 419, 425, 255 S.E.2d 154, 158 (1979) ("It is beyond dispute that a search pursuant to the rightful owner's consent is constitutionally permissible without a search warrant as long as the consent is given freely and voluntarily, without coercion, duress or fraud.").

We need not reach this issue, however, because in denying Defendant's motion to suppress the evidence obtained from the search of the hotel room, the trial court additionally concluded that, "given the plain smell and plain view discoveries made during the initial encounter between the officers and the occupants of the room, there was a substantial basis for probable cause to search the room for contraband." Indeed, Corporal Hill had prepared to apply for a search warrant at the time that Defendant provided his consent. The trial court therefore concluded that "had [Defendant] not provided consent, the contraband would have been seized inevitably upon officers securing and executing a search warrant for the premises and thus the inevitable discovery rule applies." *See State v. Wells*, 225 N.C. App. 487, 490, 737

S.E.2d 179, 181 (2013) (“Under the inevitable discovery doctrine, evidence which is illegally obtained can still be admitted into evidence as an exception to the exclusionary rule when the [evidence] ultimately or inevitably would have been discovered by lawful means.” (quotation marks omitted)).

Because Defendant does not challenge this alternative basis for the trial court’s ruling, we affirm the trial court’s denial of Defendant’s motion to suppress the evidence obtained from the search of the hotel room. *See* N.C.R. App. P. 28(a) (“Issues not presented and discussed in a party’s brief are deemed abandoned.”).

### **Conclusion**

For the foregoing reasons, we affirm the trial court’s denial of Defendant’s motion to suppress his statements to officers and the evidence obtained from the search of the hotel room.

AFFIRMED.

Judge HAMPSON concurs.

Judge ARROWOOD concurs in the result only without separate opinion.

Report per Rule 30(e).