No. 112,329

IN THE COURT OF APPEALS OF
THE STATE OF KANSAS

STATE OF KANSAS
Plaintiff-Appellant

vs.

NORMAN C. BRAMLETT
Defendant-Appellee

BRIEF OF APPELLEE

INTERLOCATORY APPEAL FROM THE DISTRICT COURT OF JEFFERSON COUNTY, KANSAS
HONORABLE JUDGE GARY L. NAFZIGER
DISTRICT COURT CASE NO: 13 CR 187

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TABLE OF CONTENTS

ISSUES ON APPEAL

Issue I: **DEFENDANT'S STATEMENT TO LAW ENFORCEMENT WAS PROPERLY SUPPRESSED BY THE DISTRICT COURT DUE TO A MIRANDA VIOLATION**

Issue II: **DEFENDANT'S STATEMENT TO LAW ENFORCEMENT WAS PROPERLY SUPRRESED BY THE DISTRICT COURT AS INVOLUNTARY**

STATEMENT OF FACTS

Appellant's brief provides a brief statement of the factual allegations surrounding this case. Appellee would submit for purposes of this appeal, the factual basis which the State relies on for the purposes of charging the Appellee, hereinafter "Mr. Bramlett," with a crime are irrelevant. The issues on appeal address a *Miranda* violation and an issue of voluntariness. The alleged facts of the criminal charge are irrelevant for such purposes. Further, Mr. Bramlett would submit that the factual statements regarding details of the proceedings before the Magistrate Judge are also irrelevant as this is an appeal from the District Court Judge's ruling.

The relevant facts for this appeal begin in the morning of July 30, 2014, when Detective Vernon contacted Mr. Bramlett via cell phone advising him that his name had come up in an investigation. Detective Vernon told Mr. Bramlett he believed he had some information which would be of assistance to the investigation. **R.O.A. Vol III, p. 5.** Mr. Bramlett asked Detective Vernon, "what this was about?" **R.O.A. Vol III, p. 6.** In response, Detective Vernon advised he would not discuss it over the phone as the investigation was of a sensitive nature. **R.O.A. Vol III, p. 6**. Detective Vermon indicated

Mr. Bramlett repeatedly asked "what this was about," and he repeatedly told him he was not going to tell him over the phone. **R.O.A. Vol III, p. 6.** Further, Mr. Bramlett inquired whether or not he should bring an attorney with him. Detective Vernon indicated that "he couldn't respond to that" and he "would have to make his own decision about that." **R.O.A. Vol III, p. 12.** When specifically questioned about this issue by the Court, Detective Vernon stated that in response to Mr Bramlett's inquiry about needing an attorney he stated, "I cannot advise you whether you need an attorney or not. Your going to have to make that determination on your own." **R.O.A. Vol III, p. 12.** Vernon testified that "ultimately" the defendant said he would be there in a hour. **R.O.A. Vol III, p. 6.** Detective Vernon confirmed that at the time of the phone call the defendant was a suspect, but he did not advise the defendant of this status. Further, Detective Vernon did not advise Mr. Bramlett that he did not have to come to the police station. **R.O.A. Vol III, p. 15.**

Within the hour Mr. Bramlett drove himself to the police station. **R.O.A. Vol III, p. 6-7.** Prior to his arrival, Detective Vernon set up the recording equipment in the interview room. **R.O.A. Vol III, p. 7.** Detective Vernon met Mr. Bramlett in the lobby and walked him back to the interview room where the recording equipment was running. **R.O.A. Vol III, p. 7.** To reach the interview room, Mr. Bramlett had to be met in the lobby, escorted through the administration area (the door to which is locked by a key or fob), to the interview room, which is located in a short hallway between the administrative office and the jail. **R.O.A. Vol III, pp. 15-16.** Detective Vernon confirmed that once he went into that hallway, Mr. Bramlett was "locked in." **R.O.A. Vol III, p. 16.**

Mr. Bramlett was not handcuffed during the interview and his possessions were not taken from him. **R.O.A. Vol III, p. 7.** Detective Vernon testified that he was the only officer in the interview room, **R.O.A. Vol III, p. 7,** and the door to the room was open. **R.O.A. Vol III, p. 8.** The door to the interrogation room leads to a short hallway with the locked door to the administration area on one end and the locked "very secure steel door for the jail" visible on the other. **R.O.A. Vol III, pps. 18 and 19.**

The interview that ensued last approximately 38 minutes. **R.O.A. Vol III, p. 10.**

After questioning Mr. Bramlett and obtaining incriminating information, Detective Vernon advised that he was going to read him his *Miranda* Rights. **R.O.A. Vol III, p. 12 and Vol IV. Exhibit 1.** Detective Vernon read him his rights and advised him he was no longer free to go and was to be placed under arrest. **R.O.A. Vol IV, Exhibit 1.** Mr. Bramlett advised he did not wish to say anything else. **R.O.A. Vol IV, Exhibit 1.** Mr. Bramlett was arrested. **R.O.A. Vol IV, Exhibit 1.** The following day, Mr. Bramlett was charged with a single count of Aggravated Indecent Liberties with a Child. **R.O.A. Vol I, p. 6.**

Counsel for Mr. Bramlett filed a "Motion For Suppression of Confession" on March 10, 2014, alleging the confession was involuntarily given and the result of a *Miranda* violation. **R.O.A. Vol I, p. 19.**

At a hearing on the motion, eliciting the facts recited above, the District Court found that Mr. Bramlett was "locked in," during the interview; **R.O.A. Vol III, p. 16 and 31,** that the interrogation was conducted because Mr. Bramlett was a suspect, not a witness; **R.O.A. Vol III, p. 32,** that Mr. Bramlett was "summon"(ed) by law enforcement; **R.O.A. Vol III, p. 32,** and that when he specifically inquired if he needed

counsel, he was told he "couldn't be advised on that matter;" **R.O.A. Vol III, p. 32,** and he was arrested and detained immediately after the interview. **R.O.A. Vol III, p. 32.** Based on these findings, the Court ruled that the statement prior to *Miranda* being given was "not voluntary" and "was not freely given" and "violated the *Miranda* Warning requirement." **R.O.A. Vol III, p. 33.** The Court suppressed the statement. **R.O.A. Vol I p. 36.**

ARGUMENTS AND AUTHORITIES

Issue I: DEFENDANT'S STATEMENT TO LAW ENFORCEMENT WAS PROPERLY SUPPRESSED BY THE DISTRICT COURT DUE TO A MIRANDA VIOLATION

Standard of Appellate review: Mr. Bramlett concurs with the State's citation of the Standard of Appellate review.

It is well settled that law enforcement officers are required to provide *Miranda* warnings to those individuals whom they question which are (1) in custody and (2) subject to interrogation. *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, *reh. denied* 385 U.S. 890, 87 S.Ct. 11, 17 L.Ed.2d 121 (1966); *State v. Warledo,* 286 Kan. 927, 935, 190 P.3d 937 (2008). Under *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), pre-interrogation warnings are "required in the context of custodial interrogation given 'the compulsion inherent in custodial surroundings.' 384 U.S. at 458, 86 S.Ct. 1602." *Yarborough v. Alvarado,* 541 U.S. 652, 661, 124 S.Ct. 2140, 158 L.Ed.2d 938 (2004).

An appellate court reviewing a trial court's determination of whether an interrogation is custodial makes two distinct inquiries. First, the court determines the circumstances surrounding the interrogation, employing a substantial competent evidence

standard of review. In determining if there is substantial competent evidence supporting the existence of the circumstances found by the trial court, an appellate court does not reweigh evidence, assess the credibility of the witnesses, or resolve conflicting evidence. *State v. Edwards,* 291 Kan. 532, 545, 243 P.3d 683 (2010); *State v. Gant,* 288 Kan. 76, 80, 201 P.3d 673 (2009). The second inquiry employs a de novo standard of review to determine whether, under the totality of those circumstances, a reasonable person would have felt free to terminate the interrogation and disengage from the encounter. *State v. Schultz,* 289 Kan. 334, 340–41, 212 P.3d 150 (2009); *State v. James,* 276 Kan. 737, 751, 79 P.3d 169 (2003).

First Inquiry: Circumstances surrounding the interrogation.

The appellate court does not usually reweigh evidence, assess the credibility of the witnesses, or resolve conflicting evidence. *State v. Gant,* 288 Kan. 76, 80, 201 P.3d 673 (2009). Only when evidence is clearly incredible will a reviewing court reweigh evidence. See, *e.g., State v. Matlock,* 233 Kan. 1, 3–4, 660 P.2d 945 (1983); *State v. Naramore,* 25 Kan.App.2d 302, 321–22, 965 P.2d 211 (1998), *rev. denied* 266 Kan. 1114. Substantial evidence is evidence possessing both relevance and substance and which provides a substantial basis of fact from which the issues can reasonably be determined. Specifically, substantial evidence refers to legal and relevant evidence that a reasonable person could accept as being adequate to support a conclusion. *State v. Walker,* 283 Kan. 587, 594–95, 153 P.3d 1257 (2007).

The evidence regarding the circumstances surrounding the interrogation of Mr. Bramlett are simple, direct and appear to not be in dispute. At both the hearing in front of the Magistrate Judge as well as the hearing before the District Court Judge, only one

witness testified, the officer who questioned Mr. Bramlett. No contradictory or conflicting evidence was admitted. Further, the State's brief does not dispute the factual findings made by the District Court, but rather the application of those facts to the law.

Second Inquiry: De Novo review, reasonable person standard

Miranda defines a custodial interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom in any significant way." *Miranda,* 384 U.S. at 444, 86 S.Ct. 1602. The Kansas Supreme Court has stated, "Custodial interrogation has been described as the questioning (or its functional equivalent) of persons by law enforcement officers, initiated and conducted while such persons are held in legal custody or are otherwise deprived of their freedom of action in any significant way." *State v. Jones,* 283 Kan. 186, 194, 151 P.3d 22 (2007). A custodial interrogation is distinguished from an investigatory interrogation, which occurs as a routine part of the fact-finding process before the investigation has reached the accusatory stage. *State v. Jacques,* 270 Kan. 173, 185–86, 14 P.3d 409 (2000)

Whether a person is in custody within the meaning of the Fourth Amendment depends upon the circumstances of the interrogation and whether a reasonable person would feel at liberty to terminate the encounter. Factors a court may consider in analyzing the circumstances of the interrogation include:

(1) the place and time of the interrogation;

(2) the duration of the interrogation;

(3) the number of police officers present;

(4) the conduct of the officers and the person subject to the interrogation;

(5) the presence or absence of actual physical restraint or its functional equivalent, such as drawn firearms or a stationed guard;

(6) whether the person is being questioned as a suspect or a witness;

(7) whether the person being questioned was escorted by the police to the interrogation location or arrived under his or her own power; and

(8) the result of the interrogation, for instance, whether the person was allowed to leave, was detained further, or was arrested after the interrogation.

State v. Morton, 286 Kan. 632, 640, 186 P.3d 785 (2008).

These factors, however, "are not to be applied mechanically or treated as if each factor bears equal weight." *Id.* at 640. Every case must be analyzed on its own particular facts. *See State v. Schultz,* 289 Kan. 334, 341, 212 P.3d 150 (2009).

There is no "bright-line rule for determining when a person is in custody for purposes of whether *Miranda* warnings are required before questioning." *State v. Vanek,* 39 Kan.App.2d 529, 536, 180 P.3d 1087, *rev. denied* 286 Kan. 1185 (2008). Instead, the decision must be made on a case-by-case basis after looking at the totality of the circumstances. *Morton,* 286 Kan. at 642–43, 646–47, 186 P.3d 785.

The following analysis is applicable to the eight (8) factors as outlined by the Supreme Court:

(1) the place and time of the interrogation;

The interrogation in this matter took place at the Jefferson County Sheriff's Department during the late morning hours of July 30, 2014, approximately 11:30

a.m. The interrogation took place in the interview room which is in a locked, short hallway with a clear view of the secure steel door leading to the jail. At the other end of the hallway is a locked door leading to the administrative section of the Sheriff's department which requires a key fob for ingress or egress. There can be no doubt that the District Court's determination that Mr. Bramlett was "locked in" to this area is based on substantial, competent evidence. There is no doubt that Kansas Courts have repeatedly held that interviews can be noncustodial even though they are conducted at the police station. *See Morton,* 286 Kan. at 647. *State v. Whitt*, 46 Kan. App. 2d 570, 575 (2011). However, the Courts have also recognized that interrogations in police-dominated atmospheres have an aura of police authority. See *State v. Warrior*, 294 Kan. 484, 497, 277 P.3d 1111 (2012). In the instant case, it is clear that interrogation room was not just "at the police station," but rather was in a locked hallway adjacent to a large, secure steel door which clearly leads to the Jefferson County Jail. This interrogation took place in the interview room with an open door to this locked hallway, which contained entrance door to the jail. The Court determined that Mr. Bramlett was "locked in" this area.

(2) the duration of the interrogation;

The interrogation was less than an hour long.

(3) the number of police officers present;

The Court found there was only one officer who interrogated Mr. Bramlett; however, there were many other officers present at the law enforcement center. **R.O.A. VOL III, p 31.** Mr. Bramlett was led through the police station to reach

the interview room. Further, the door to the interview room was left open potentially allowing Mr Bramlett to see other law enforcement officials.

(4) the conduct of the officers and the person subject to the interrogation;

While the interview process was cordial, the District Court found that the process by which the defendant was summoned to the interview was problematic. There is no doubt that when Detective Vernon requested Mr. Bramlett come to the Sheriff's office that he drove there on his own accord within the hour. **R.O.A. Vol III, pp 6-7.** However, it is the deceptive nature of the phone conversation that renders this factor problematic: Upon contacting Mr. Bramlett, Detective Vernon advised him that he was "investigating a case and this his name had come up as a person who may have information in regards to the investigation." **R.O.A. Vol III, p. 5.** Clearly this is a somewhat deceptive statement as Detective Vernon did not advise Mr. Bramlett he was a suspect in the investigation, but rather someone that may have information. When Mr. Bramlett made inquiry as to what this was about, Detective Vernon refused to tell him citing the "sensitive" nature of the investigation. **R.O.A. Vol III, p. 6.** Detective Vernon advised Mr. Bramlett he needed to come in within the next day or two and "repeatedly" refused to tell him what the investigation concerned. **R.O.A. Vol III, p. 6.** Further, Mr. Bramlett made specific inquiry of Detective Vernon as to whether or not he needed an attorney with him. Detective Vernon advised, "I cannot advise you whether you need an attorney or not. Your going to have to make that determination on your own." **R.O.A. Vol III, pps. 11-12.** Further, it is clear from Detective Vernon's testimony that Mr. Bramlett offered some resistance to voluntarily coming to the

law enforcement center as he had to "repeatedly" decline to discuss the matter on the phone with Mr. Bramlett and Detective Vernon described Mr. Bramlett's acquiesecne to his request in terms of him "ultimately" agreeing to come in to the station. **R.O.A. Vol III, p. 6 .** The District Court found, based on the testimony received, that Mr. Bramlett was "summoned" to the police station and was "incredulous of appearing." . **R.O.A. Vol III, p. 32.**

(5) the presence or absence of actual physical restraint or its functional equivalent, such as drawn firearms or a stationed guard;

Mr. Bramlett was not restrained beyond being "locked in" as discussed in factor 1 above.

(6) whether the person is being questioned as a suspect or a witness;

Detective Vernon clearly testified that Mr. Bramlett was being questioned as a suspect. He was the only suspect in the case.

(7) whether the person being questioned was escorted by the police to the interrogation location or arrived under his or her own power;

It is clear Mr. Bramlett arrived under his own power; however, it is the circumstances surrounding his agreement to appear that are at issue. (see Factor 4 above)

(8) the result of the interrogation, for instance, whether the person was allowed to leave, was detained further, or was arrested after the interrogation.

As a result of this interrogation, Mr. Bramlett was immediately taken into custody. Further, and more importantly, it is clear that this was the goal of the

interrogation. Mr. Bramlett was the only suspect in the case, and Detective Vernon testified that the purpose of the interview was to acquire information from this defendant so he could be charged. **R.O.A. Vol III, p. 21.**

There is no clear cut test as to whether or not an individual is in custody for purposes of *Miranda*. The Court must analyze each case individually. While the State cites multiple cases, each with one or more of the "eight factors" similar to the case at bar, there is no one case that is factually the same as Mr. Bramlett's case. The Court must analyze this case independently and ascertain based on the factual findings made by the Court whether or not Mr. Bramlett was in custody. Mr. Bramlett would submit that the findings by the Court are supported by the evidence and demonstrate that he was in fact in custody. While no single factor is determinative of this issue, there are multiple factors in this case which the District Court found in totality resulted in a custodial interview. These factors include:

1. the failure of law enforcement to advise Mr. Bramlett that he was a suspect;
2. he was advised he needed to come to the station within the next day or two,
3. despite inquiry of Mr. Bramlett, regarding an attorney, Detective Vernon did not advise him of his right to have counsel present;
4. Mr. Bramlett "ultimately" agreed to come in, but was "incredulous" at the need to appear,
5. he was locked in a small hallway exposed to a large steel door entering into the jail;

6. he was the only suspect in the case;

7. he was advised of his rights as soon as he gave incriminating information;

8. he was taken into custody immediately after the completion of the Interview.

Mr. Bramlett submits these factor in totality warrant a finding that he was in custody.

Additionally, Mr. Bramlett would submit it is clear from the totality of circumstances that law enforcement deliberately created a situation wherein they could later attempt to claim this was a non-custodial interrogation. The sole purpose of this interrogation was to interview their sole suspect and obtain information for prosecution. But, when setting up the interview they did not advise him he was a suspect, they were purposefully evasive in discussing the purpose and scope of the interview. Then when asked about the need for counsel, Detective Vernon avoided the question by indicating he couldn't comment on it. There can be no doubt that the issue of counsel, although admittedly not the level of an unequivocal request for the same, was raised by Mr. Bramlett. The better practice would have been to address the issue of counsel by advising Mr. Bramlett of his rights. Instead law enforcement, skated on the edges and did not discuss this issue for the sole purpose of hoping to conduct the interrogation without the chance of Mr. Bramlett invoking once given the opportunity.

Mr. Bramlett submits a reasonable person would believe he was in custody at the time his statement was given. Despite the fact that he went to the Law Enforcement Center on his own accord, he was advised by law enforcement that they "needed" to visit with him in the next day or so, implying to a reasonable person that he could not refuse

law enforcement's request. The detective refused to answer his questions and once he "ultimately" complied, he was taken to a locked area of the Law Enforcement Center next to the secure entrance to the jail where he was questioned. Despite the fact that he was not handcuffed, he clearly was not free to leave the area where he was being held. At the very least his freedom was substantially restricted. His only methods of egress would be through the locked steel door to the jail or through the law enforcement administrative offices which required a key fob. The District Court made a clear finding of fact that was not disputed by Detective Vernon that Mr. Bramlett was "locked in," thus constituting deprivation of his freedom of action in a significant manner. The method by which he was summoned to the police station combined with the limitation on his freedom, would cause a reasonable person to believe they needed to acquiesce to the law enforcement request and once they were "locked in," they would not feel free to leave. While no one factor would necessarily elicit such a result, the totality of the circumstances is sufficient for this Court to determine that a reasonable person would not have felt free to terminate the interrogation and disengage from the encounter.

Issue II: DEFENDANT'S STATEMENT TO LAW ENFORCEMENT WAS PROPERLY SUPRRESED BY THE DISTRICT COURT AS INVOLUNTARY

Standard of Appellate review: Mr. Bramlett concurs with the State's citation of the Standard of Appellate review.

The District Court ruled that Mr. Bramlett's statement to law enforcement was involuntary because "he wasn't advised that he didn't have to give it." **R.O.A. Vol III, p. 37 and 39.** It is clear from the District Court's statements and a thorough reading of the

record that the Court did not find that there was coercion on the part of law enforcement. **R.O.A. Vol III, p. 33 and 34.**

Mr. Bramlett concurs with the Appellant's statement that: A pre-trial statement by the defendant is held involuntary "if elicited either through coercion or derived from a custodial interrogation without the benefit of *Miranda* warnings and a knowing and intelligent waiver of the privilege against self-incrimination." *State v. Mooney*, 10 Kan. App 2d 477, 480, 702 P.2d 328, 330 (1985).

In the instant case, it is clear that the District Court did not find coercive police tactics. **R.O.A. Vol III, p. 33 and 34.** Further, Mr. Bramlett did not argue that the police utilized coercive tactics. **R.O.A. Vol I, p. 19.** Accordingly, the District Court's finding of involuntariness is based solely on the failure of the officer to *Mirandize* during the custodial interrogation. The State maintains that *Miranda* warnings were not necessary as Mr. Bramlett was not in custody. **See Appellant's Brief p. 34.** Based on the above and foregoing arguments and authorities, Mr. Bramlett submits he was in custody and thus *Miranda* warnings and a subsequent knowing and intelligent waiver of the privilege against self-incrimination were necessary. Based on these arguments, it is unnecessary for the Appellee to brief the issue of police coercion. Accordingly, Mr. Bramlett would submit that based on the arguments raised above, *Miranda* warnings were required, but not given in this case, and thus the statement of the accused is rendered inadmissible pursuant to the case law cited above.

CONCLUSION

Mr. Bramlett respectfully requests that based on the foregoing evidence and legal arguments this Court find the District Court's ruling that Mr. Bramlett's statement was taken in violation of *Miranda* and was involuntary be affirmed.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 14 day of January, 2015, I filed with the clerk of the Appellate Court an original and 16 copies of the foregoing **BRIEF OF APPELLEE** and two (2) true and correct copies were served via depositing the same in the United States Mail, postage prepaid addressed to the following:

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