DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

PAUL DAY,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D15-4361

[April 12, 2017]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Ilona Maxine Holmes, Judge; L.T. Case No. 13-CF-003715CF10A.

Carey Haughwout, Public Defender, and Peggy Natale, Assistant Public Defender, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Cynthia L. Comras, Assistant Attorney General, West Palm Beach, for appellee.

GROSS, J.

This case presents a novel issue under *Miranda v. Arizona*, 384 U.S. 436 (1966).

A common factual issue in *Miranda* cases is whether a suspect is in custody when police interrogation begins. If a suspect is in custody, the police "are required to advise the suspect of his or her *Miranda* rights" before commencing interrogation. *Caldwell v. State*, 41 So. 3d 188, 197 (Fla. 2010). It is well-settled that *"Miranda* warnings are not required in any police encounter in which the suspect is not placed under arrest or otherwise in custody." *Id.* 198.

The defendant in this case complains that he was given his *Miranda* warnings prior to all questioning but before he was placed "in custody."

The defendant voluntarily came to the police station to speak with a detective about injuries to his infant son. Before questioning the defendant, the detective fully advised the defendant of his *Miranda* rights.

The defendant repeatedly said that he understood his rights and agreed to speak with the detective without an attorney. The questioning went on for several hours; eventually the defendant said enough incriminating things to generate the reasonable belief that he had done something to harm the child.

As he argued in the motion to suppress filed below, the defendant contends that although he was not in custody at the outset of the questioning, once the interrogation became "confrontational and accusatory," the defendant was then placed in custody, such that the detective was required to re-administer the *Miranda* warnings.

The point of *Miranda* warnings is to allow a defendant to make an intelligent and knowing waiver of his right to counsel before speaking with the police. A defendant who is not in custody at the beginning of an interrogation is better equipped to intelligently make such a waiver than a defendant who has experienced the stress of being arrested, handcuffed, transported to a police station, and locked in an interrogation room. In this case, if we assume that the defendant was not in custody prior to questioning, the record supports the trial judge's conclusion that he freely and voluntarily waived his *Miranda* rights before questioning began and that waiver was effective even after the interrogation took on a more accusatory tone.

To agree with the defendant's argument would be to place law enforcement in an impossible position. If given too early, before custody began, *Miranda* warnings would be ineffective; if given too late, a constitutional violation would arise. Where the police administer warnings at the beginning of a non-custodial interview, it is unrealistic for the law to require them to determine the magical moment when custody commences, such that the warnings must be given again.

Affirmed.

CIKLIN, C.J. and KUNTZ, J., concur.

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Not final until disposition of timely filed motion for rehearing.