

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37500

STATE OF IDAHO,)	2011 Unpublished Opinion No. 537
)	
Plaintiff-Respondent,)	Filed: June 29, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
JASON MICHAEL PATTERSON,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Michael R. McLaughlin, District Judge.

Judgment of conviction for felony driving under the influence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Spencer J. Hahn, Deputy Appellate Public Defender, Boise, for appellant. Spencer J. Hahn argued.

Hon. Lawrence G. Wasden, Attorney General; Mark W. Olson, Deputy Attorney General, Boise, for respondent. Mark W. Olson argued.

GUTIERREZ, Judge

Jason Michael Patterson appeals from the judgment entered upon his conditional guilty plea for felony driving under the influence. Specifically, he challenges the district court's order partially denying his motion to suppress. For the reasons set forth below, we affirm.

I.

BACKGROUND

Patterson was charged with felony driving under the influence, Idaho Code §§ 18-8004, -8005(5). Patterson thereafter filed a motion to suppress evidence obtained by police officers when they entered his house after he called 911 to seek medical attention for his girlfriend. In its memorandum decision, the district court summarized the background of the case as follows:

On August 21, 2009, the Defendant, Jason Michael Patterson, called Ada County Dispatch and requested the assistance of EMTs [Emergency Medical Technicians], indicating there had been an auto accident and his girlfriend had

fallen out of the car. He testified that he requested only EMTs however Boise City Officer Rose was not advised of this.¹ Both EMTs and Boise City Police responded to the address given. Upon arriving, there was no car and there was no indication that there had been an auto accident that was visible to the initial officer, Officer Rose. The Defendant maintains Officer Rose was behind the EMTs and that he did not acknowledge Officer Rose or know that Officer Rose was going to be coming in. However, the audio confirms that Officer Rose knocked on the door and that the Defendant answered the door by responding to Officer Rose. Officer Rose asked the Defendant if they, Officer Rose and the EMTs, could come in and the Defendant indicated that they could enter the residence. The Court will note that Officer Rose was in uniform.

The Court will find, first and foremost, that the Defendant, from the review of the tape and the later blood alcohol results, was very intoxicated. In weighing the credibility of Officer Rose and the Defendant, the Court will find that Officer Rose's observation skills and veracity are more credible than those of the Defendant. Thus, the Court will find that the Defendant, observing Officer Rose, invited him into the threshold of his home and ultimately into his home. The Court will find that this was a consensual entry into the residence. The Court finds further that after entering the residence, the EMTs went into a back room to focus on the injured girlfriend. The Court, through the audio, was able to hear a female voice complaining of pain and discomfort. Officer Rose went in, looked briefly at the woman and could discern that she was in considerable pain. He then went back into the living room where the Defendant was seated and engaged in a very appropriate, non-threatening and narrow conversation with the Defendant as to the facts and circumstances surrounding the condition of the woman in the bedroom.

At this point, Officer Rose had not seen an automobile thus he had concerns about the source of the woman's injuries and was inquiring of the Defendant as to what those injuries could be. In the back of Officer Rose's mind, he was concerned that this could be a potential domestic violence case based upon the girlfriend's injuries and no evidence of an auto accident. He asked a series of questions of the Defendant on this topic and the Defendant began to answer those questions. At one point, the Defendant said words to the effect "That's all [I'd like] to say." Officer Rose, in a very calm and non-coercive way, continued to ask questions and the Defendant continued to talk with the officer. During the course of that conversation, the Defendant was very agitated. From the slurring of his speech, to the tone of his voice, and the rambling nature of the conversation, it is clear to the Court that he was intoxicated.

During this conversation, Officer Rose, staying within the focus of his inquiry, was able to discern that the Defendant was impaired and had been driving a car shortly before he and the EMTs had arrived and that his passenger, the injured girl in the bedroom, had voluntarily jumped out of the car. Later in the

¹ According to the record, the officer testified that he was aware that Patterson requested no police, but stated that police always respond to crashes, especially when there is an injury involved.

conversation, the Defendant stated that he wanted to talk with his lawyer. Officer Rose replied that he would perhaps have to place the Defendant in custody when the Defendant made this statement. The Defendant continued to converse with Officer Rose after the Defendant requested counsel. Eventually, the Defendant was given field sobriety tests and arrested for D.U.I.

The district court granted Patterson's motion to suppress with regard to the statements he made after he requested a lawyer, but denied the motion in all other respects. Patterson entered a conditional guilty plea to felony DUI, but reserved the right to appeal the district court's partial denial of his motion to suppress.

II.

STANDARD OF REVIEW

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact which are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

III.

DISCUSSION

Patterson asserts that the district court erred when it concluded that the warrantless entry into his home and his arrest therein did not violate his Fourth Amendment right to be free from unreasonable searches and seizures.

The Fourth Amendment of the United States Constitution protects the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The "physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed. . . ." *United States v. United States Dist. Court for Eastern Dist. of Michigan, Southern Division*, 407 U.S. 297, 313 (1972). Establishing that a search is reasonable ordinarily requires that the government demonstrate probable cause to a neutral magistrate and obtain a particularized warrant authorizing the search. *State v. Purdum*, 147 Idaho 206, 208, 207 P.3d 182, 184 (2009). There are, however, limited exceptions to the warrant

requirement for intrusions that are reasonable under the circumstances, such as searches conducted with consent voluntarily given by a person who has the authority to do so. *Schneckloth v. Bustamonte*, 412 U.S. 218, 222 (1973); *State v. Stewart*, 145 Idaho 641, 644, 181 P.3d 1249, 1252 (Ct. App. 2008); *State v. Dominguez*, 137 Idaho 681, 683, 52 P.3d 325, 327 (Ct. App. 2002).

In denying Patterson's motion to suppress, the district court determined that the state met its burden in proving that Patterson consented to the officer entering his home. The district court stated:

Based on the audio tape, and the testimony of both the Defendant and Officer Rose, the Court concludes that after the Defendant opened the door, he was aware of Officer Rose's presence and that he was in fact a police officer. Although, the Defendant had previously indicated to the Ada County Dispatch that he did not want law enforcement, the Defendant invited Officer Rose and the EMTs [into] his home to assist with the treatment of his injured girlfriend.

Patterson initially argues that the district court made several erroneous factual findings. First, he argues that the district court's finding that "Officer Rose was not aware of this," with regard to the fact that Patterson had requested EMTs, but not police, is not supported by the record because Officer Rose testified that he knew Patterson had requested no police. Second, he argues that the district court's finding that "Officer Rose asked the Defendant if they, Officer Rose and the EMTs, could come in and the Defendant indicated that they could enter the residence," was incorrect because the officer arrived with firefighters, not EMTs, and there is no evidence that the officer actually identified himself while he was standing amongst the group of uniformed firefighters. Patterson further elaborates on this by arguing that there is no evidence in the record that he invited Officer Rose into his home knowing that he was a police officer, or that he observed him before he entered. The precise happenings surrounding Officer Rose's entry into Patterson's home are unclear. However, in making its factual determination, the district court considered the credibility of Patterson and Officer Rose, and found that Officer Rose was more credible at the time of the interaction. At the suppression hearing below, the state questioned Officer Rose about the arrival and entry into Patterson's home:

Q: What did you do when you arrived?

A: The firemen--well, first thing we did is we looked around the intersection to find the crash and didn't see the crash, and so we went to the address on the call, which was Mr. Patterson's address. And the--one of the

firemen went up and knocked on the door, and Mr. Patterson opened the door, and we went in.

Q: Now, I know you haven't reviewed your audio recently for this case, but did you start running your audio right away?

A: I would guess that I did pretty quick. I haven't listened to it at all, actually.

Q: Okay. I see. Now, Officer, when you--when you arrived at the door, were you right there with the officer--the firemen?

A: Yes.

Q: Were they firemen or paramedics?

A: I don't think the paramedics had actually showed up yet. I think it was just--it was the firemen. Because I actually parked behind the fire truck and--

Q: Okay. Now, so were you at the door when somebody opened the door to the home?

A: Yes.

Q: Okay. And who opened the door?

A: Mr. Patterson.

Q: Now, how did that contact go at the door?

A: Knocked on the door. He opened the door and said come in.

Q: All right. Did he invite you all in, then?

A: Yes.

Q: Did you go in at the same time the firemen did?

A: Yes.

Officer Rose went on to testify that he was the one who initially spoke to Patterson when Patterson opened the door. He indicated that the distance between them was so little that he smelled the odor of alcohol emanating from Patterson. Officer Rose further testified that Patterson said "come in." All of this occurred while Officer Rose was dressed in uniform. It is noted that once Officer Rose entered the house, Patterson never objected or asked him to leave. Based on Officer Rose's testimony, which, as we noted above, the district court found to be more credible, we conclude that Officer Rose's entry into Patterson's home was not unreasonable and did not violate Patterson's Fourth Amendment rights because the entry into the home was consensual. Because we conclude that the entry into the home was consensual, we need not address whether exigent circumstances allowed the officer to enter Patterson's home.

Patterson next asserts that the district court erred by allowing the use of his statements after he invoked his right to remain silent because the use of such statements as evidence violated his Fifth Amendment right to remain silent as enunciated by the United States Supreme Court in

Miranda v. Arizona, 384 U.S. 436, 467-68 (1966).² Patterson argues that he invoked his right to remain silent when he told the officer “[T]hat’s all I’d like to say.” The state counters that Patterson was not in custody for purposes of *Miranda*, and therefore his statements were admissible.

In order for *Miranda* rights to apply, the accused must first be subject to custodial interrogation by law enforcement officers. *Id.* If an individual in custody invokes the right to remain silent, that invocation must be scrupulously honored, police questioning must cease, and authorities may reinstate interrogation only after a “significant period of time” has passed. *Michigan v. Mosley*, 423 U.S. 96, 104-06 (1975); *State v. Blevins*, 108 Idaho 239, 242, 697 P.2d 1253, 1256 (Ct. App. 1985). For application of the *Miranda* rule, a person is in custody when they have been arrested or when their freedom of action “is curtailed to a degree associated with formal arrest.” *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984). In determining whether a suspect is in custody, the relevant inquiry is “how a reasonable man in the suspect’s position would have understood his situation.” *Id.* at 442. *See also State v. Myers*, 118 Idaho 608, 611, 798 P.2d 453, 456 (Ct. App. 1990). The totality of the circumstances must be examined, which may include the location of the interrogation, the conduct of the officers, the nature and manner of the questioning, the time of the interrogation, and other persons present. *State v. Medrano*, 123 Idaho 114, 117-18, 844 P.2d 1364, 1367-68 (Ct. App. 1992).

We conclude that Patterson was not in custody for purposes of *Miranda*. Patterson was questioned in his own home, as opposed to a more police-dominated environment. *See State v. Masseur*, 132 Idaho 163, 165, 968 P.2d 258, 260 (Ct. App. 1998) (holding that the defendant’s freedom was not restricted to a degree associated with formal arrest when he was questioned in the familiar surroundings of his own home and in the presence of his girlfriend). He was not handcuffed and no force was used against him. There were only two officers on the premises, and only one officer was questioning him. The officer did not tell Patterson that he was going to

² Patterson also asserts that the use of the statements violated his due process right to have involuntary statements excluded and cites *State v. Cordova*, 137 Idaho 635, 638, 51 P.3d 449, 452 (Ct. App. 2002) in support of his argument. In that case, this Court stated, “[i]n order to find a violation of a defendant’s due process rights by virtue of an involuntary confession, coercive police conduct is necessary.” As we will conclude later in this opinion, there was no coercive police conduct in this case, therefore Patterson’s due process rights were not violated.

arrest him until the end of the conversation.³ There were other people present in the home during the questioning, including the firefighters and emergency personnel, and Patterson's girlfriend. Finally, the duration of the conversation between Patterson and the officer up to this point was fairly short, about seven minutes, focusing on Patterson's report of a car accident to 911 and the circumstances surrounding the incident. Therefore, the totality of the circumstances establish that Patterson was not in custody for purposes of *Miranda*.

To the extent that Patterson argues that the law allows for anticipatory invocation of one's Fifth Amendment right to remain silent, the argument is without merit. *See State v. Hurst*, ___ Idaho ___, ___ P.3d ___ (Ct. App. May 18, 2011), *rev. pending* (holding that a suspect must be in custody in order to effectively invoke a Fifth Amendment right to counsel).

IV. CONCLUSION

Patterson has failed to show that the district court erred in determining that the officer's warrantless entrance into Patterson's house did not violate his Fourth Amendment right to be free from an unreasonable search and seizure because the entry was consensual. Moreover, Patterson has failed to show that the district court erred in partially denying his motion to suppress with regard to statements he made to the police officer because he was not in custody for purposes of *Miranda* at the time. Patterson's judgment of conviction for felony driving under the influence is affirmed.

Chief Judge GRATTON and Judge LANSING **CONCUR.**

³ At this point in the conversation, Patterson stated that he did not want to answer any more questions until he spoke with a lawyer. The officer told Patterson that he would have to arrest him and then continued questioning him. The district court suppressed all statements made after Patterson requested a lawyer.