ADVANCE SHEET HEADNOTE
September 9, 2024

2024 CO 59

No. 22SC952, *People v. Eugene*—Criminal Law—Illegally Obtained Evidence—Custodial Interrogation—Custody—Warnings.

In this case, the supreme court addresses whether a defendant's statements, which the defendant gave without being informed of his rights under *Miranda v. Arizona*, 384 U.S. 436, 478–79 (1966), were the product of an unconstitutional custodial interrogation. The court concludes that the defendant was not in custody for *Miranda* purposes. Accordingly, the court reverses the judgment of the court of appeals.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2024 CO 59

Supreme Court Case No. 22SC952
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 19CA2267

Petitioner:

The People of the State of Colorado,

v.

Respondent:

Terrence Kenneth Eugene.

Judgment Reversed
en banc
September 9, 2024

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JUSTICE HOOD delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE BOATRIGHT**, **JUSTICE GABRIEL**, **JUSTICE HART**, **JUSTICE SAMOUR**, and **JUSTICE BERKENKOTTER** joined.

JUSTICE HOOD delivered the Opinion of the Court.

¶1 Police officers questioned the defendant, Terrence Kenneth Eugene, about his suspected involvement in a road-rage incident. The officers didn't inform Eugene of his rights under *Miranda v. Arizona*, 384 U.S. 436, 479 (1966). At trial, the prosecution introduced Eugene's statements into evidence and a jury convicted him of second and third degree assault. A division of the court of appeals reversed Eugene's convictions, concluding that his statements to the officers were the product of an unconstitutional custodial interrogation. *People v. Eugene*, 2022 COA 99, ¶¶ 22, 25, 28, 521 P.3d 663, 668–69. We conclude that Eugene was not in custody for *Miranda* purposes and reverse the judgment of the court of appeals.

I. Facts and Procedural History

¶2 One morning on Colfax Avenue in Aurora, Colorado, a vehicle occupied by two men changed lanes in front of Eugene and his wife. Eugene honked. The other driver responded by slamming on his brakes. Eventually, Eugene, his wife, and the two men from the other car exited their vehicles. A fight between Eugene and the other driver ensued, and the other driver suffered cuts to his face and back. After the fight, Eugene and his wife drove away while the passenger from the other car took down Eugene's license plate number and called 911.

¶3 Officers Spanos and Thivierge, with the Aurora Police Department, visited Eugene at his apartment two days later. It was mid-afternoon when they arrived, and Officer Thivierge took the lead as the interrogating officer. Officer Thivierge's body-worn camera recorded the encounter.

¶4 The video begins with Officer Thivierge knocking on the apartment door and asking Eugene if he would be willing to talk outside the building. Eugene agreed to do so. Once outside, Officer Thivierge asked Eugene if he had any weapons. Eugene responded that he was on probation and wasn't allowed to carry weapons, and Officer Thivierge confirmed that Eugene was unarmed by conducting a brief pat-down search.

¶5 Moments later, Officer Thivierge asked Eugene who owned and drove the car parked next to them. Eugene said the car belonged to his wife and that he never drove it. By this time, Eugene's wife had followed the men outside. Officer Thivierge then shifted his questioning to the alleged road-rage incident. Eugene and his wife initially denied involvement in an altercation, at which point Officer Thivierge interrupted, "Stop . . . how do you think we found you?" The couple admitted that Eugene and another driver "had words" but insisted that the encounter never turned physical. Eventually, however, Eugene told Officer Thivierge that he pushed the other driver away after the other driver attempted to punch him. Eugene denied using a weapon during the fight.

¶6 Officer Thivierge then asked Eugene's wife to step inside so he could speak with Eugene alone. Eugene closed the door behind his wife, and Officer Spanos stood by the door with one hand on its handle. While fielding Officer Thivierge's next questions, Eugene lit and smoked a cigarette. According to Eugene, he pushed the other driver but never punched him or used a weapon. Officer Thivierge said he didn't believe Eugene and asked him "what if" there was a video showing Eugene cutting the other driver with a knife and driving away. Eugene stuck to his story, only changing the fact that he, not his wife, drove away after the incident. Eugene also agreed with Officer Thivierge that he should have stayed at the scene to call the police.

¶7 Next, Officer Thivierge stated that he was going inside to talk with Eugene's wife. Before Officer Thivierge was fully inside, Eugene asked if he could go to the bathroom. Officer Thivierge responded, "In a second, I'm just going to talk to her real quick." For the next fourteen minutes, Eugene waited outside with Officer Spanos, who made small talk but didn't question Eugene about the alleged road-rage incident. During this time, a third officer arrived and remained outside with Eugene and Officer Spanos.

¶8 When Officer Thivierge resurfaced, Eugene was leaning against the hood of the car. Eugene began reenacting how the other driver hit the back of Eugene's head with keys. After a few more questions, Officer Thivierge accused Eugene of

lying, and Eugene admitted to punching the other driver, causing the driver to drop to the ground. Eugene maintained he was not the initial aggressor but nevertheless agreed with Officer Thivierge that he shouldn't have gotten out of his car or hit the other driver. Officer Thivierge turned off his body-worn camera, made a call, and then left without arresting Eugene. The entire encounter lasted roughly twenty-seven minutes. At no point did any officer read Eugene his *Miranda* rights.

¶9 The prosecution charged Eugene with two counts of second degree assault. Before trial, Eugene moved to suppress his statements to Officer Thivierge. He asserted that he had been subjected to a custodial interrogation and that *Miranda* therefore required Officer Thivierge to read Eugene his rights. The trial court denied Eugene's motion, concluding that he was not in custody under *Miranda*. In support of this conclusion, the trial court found that

- Eugene's movement was not restricted;
- the officers stood four to five feet away from Eugene;
- the interrogation was conversational, and Officer Thivierge didn't yell, threaten, or coerce Eugene, even though he used "assertive mannerisms or language";
- Eugene smoked a cigarette during the interrogation;
- no weapons "were drawn or even gestured to";
- Eugene was responsive, understood what was happening, and never asked for an attorney or to cease questioning; and

- Eugene was not formally arrested.

¶10 A jury convicted Eugene of second and third degree assault.

¶11 Eugene appealed and argued, as pertinent here, that the trial court erred by denying his suppression motion. A split division of the court of appeals agreed, concluding that Eugene was in custody for *Miranda* purposes. *Eugene*, ¶ 22, 521 P.3d at 668. The division majority also concluded that the prosecution failed to show that the trial court's error was harmless. *Id.* at ¶ 27, 521 P.3d at 668–69. Judge Bernard dissented. In his view, the trial court properly determined that Eugene was not in custody. *Id.* at ¶ 87, 521 P.3d at 676–77 (Bernard, J., dissenting).

¶12 The prosecution asks us to reverse the division's judgment for two reasons: first, Eugene was not in custody; and second, even if he was, the trial court's failure to suppress Eugene's statements was harmless.[1]

II. Analysis

A. Standard of Review

¶13 "Whether a person is in custody for *Miranda* purposes presents a mixed question of law and fact." *People v. Garcia*, 2017 CO 106, ¶ 18, 409 P.3d 312, 316.

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[1] We granted certiorari to review the following issues:

1. Whether the court of appeals misapprehended and misapplied the test for assessing whether a defendant is in custody for purposes of *Miranda v. Arizona*, 384 U.S. 436 (1966).
2. Whether the court of appeals compounded its custody analysis error when it failed to apply harmless error analysis.

We defer to a trial court's findings of fact that are supported by the record and review de novo the ultimate custody determination. *Id.*

B. "Custody" Under *Miranda*

¶14 The Fifth Amendment to the United States Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. "In order to protect this right, police must provide a suspect in custody with certain warnings before subjecting him or her to interrogation." *People v. Holt*, 233 P.3d 1194, 1197 (Colo. 2010). Namely, law enforcement "must advise the subject that he has the right to remain silent; that anything he says may be used against him; that he has the right to the presence of an attorney; and that if he cannot afford one, one will be appointed for him." *People v. Matheny*, 46 P.3d 453, 462 (Colo. 2002). If law enforcement fails to give these warnings, the prosecution may not introduce the suspect's statements during its case-in-chief. *People v. Cline*, 2019 CO 33, ¶ 15, 439 P.3d 1232, 1236–37. For these protections to apply, however, "a person must both be in custody for *Miranda* purposes and be subjected to police interrogation." *Garcia*, ¶ 19, 409 P.3d at 317.

¶15 All involved agree that Eugene was interrogated, but the parties dispute whether he was in custody. A person is in custody if he is formally arrested or "if, under the totality of the circumstances, a reasonable person in the suspect's position would have felt that her freedom of action had been curtailed to a degree

associated with formal arrest." *Id.* at ¶ 20, 409 P.3d at 317. We consider a non-exhaustive list of factors to determine whether a suspect was subjected to circumstances commensurate with formal arrest:

> (1) the time, place, and purpose of the encounter;
>
> (2) the persons present during the interrogation;
>
> (3) the words spoken by the officer to the defendant;
>
> (4) the officer's tone of voice and general demeanor;
>
> (5) the length and mood of the interrogation;
>
> (6) whether any limitation of movement or other form of restraint was placed on the defendant during the interrogation;
>
> (7) the officer's response to any questions asked by the defendant;
>
> (8) whether directions were given to the defendant during the interrogation; and
>
> (9) the defendant's verbal or nonverbal response to such directions.

Mumford v. People, 2012 CO 2, ¶ 13, 270 P.3d 953, 957 (citing *Matheny*, 46 P.3d at 465–66). "A court may consider many factors, but no single factor is determinative, and a court is not limited in the number of factors it may consider." *People v. Minjarez*, 81 P.3d 348, 353 (Colo. 2003).

¶16 With these guidelines in mind, we turn to the facts at hand.

C. Application

¶17 Under the totality of the circumstances in this case, we conclude that Eugene was not in custody during Officer Thivierge's investigation.

¶18 In concluding otherwise, the division partitioned Eugene's encounter with the police into three parts: Officer Thivierge's (1) initial encounter with Eugene and his wife outside the apartment building, (2) time interviewing Eugene's wife inside, and (3) subsequent interrogation of Eugene outside. *Eugene*, ¶ 15, 521 P.3d at 666. The division reasoned that by the third phase, the following factors weighed in favor of custody:

- Eugene had been detained outside his apartment for twenty-two minutes;
- Officer Thivierge remained "calm" but used a confrontational and accusatory tone;
- Officer Thivierge "directed and maintained" Eugene's separation from his wife;
- Officer Thivierge told Eugene to wait to use the apartment bathroom;
- Officer Thivierge suggested to Eugene that a video showed him committing the alleged crime (when apparently no such video existed); and
- three officers were near Eugene, with one standing between Eugene and the apartment door.

Id. at ¶¶ 21, 24, 521 P.3d at 667–68. Eugene echoes many of these points and adds that he was in custody because

- Officer Thivierge patted him down;
- Officer Thivierge asked pointed (rather than open-ended) questions about the road-rage incident;
- the officers' purpose for the investigation was to obtain a confession; and

- Officer Thivierge never told Eugene that he was free to leave or that he was not under arrest.

¶19 Although some of these individual circumstances may weigh in favor of custody, the totality does not. None of these facts—when viewed alongside the remaining circumstances of this interrogation—"present [the] serious danger of coercion" that is required to conclude a suspect was in "custody" for *Miranda* purposes. *People v. Davis*, 2019 CO 84, ¶ 17, 449 P.3d 732, 737–38 (quoting *Howes v. Fields*, 565 U.S. 499, 508–09 (2012)).

¶20 To start, the time and place of the interaction—outside Eugene's apartment in broad daylight—strongly suggest that Eugene was not in custody. *See Cline*, ¶ 21, 439 P.3d at 1238 (listing cases in which police–suspect encounters that occurred outside the suspect's home weighed against a custody determination); *Garcia*, ¶¶ 21–22, 409 P.3d at 317 (same). "*Miranda* warnings were expressly developed as an added protection against '*incommunicado interrogation* of individuals in a police-dominated atmosphere.'" *People v. Figueroa-Ortega*, 2012 CO 51, ¶ 7, 283 P.3d 691, 693 (emphasis added) (quoting *Miranda*, 384 U.S. at 445); *see also Matheny*, 46 P.3d at 462 ("*Miranda* identified the principal threat to the privilege against self-incrimination as the compulsive effect of psychological coercion applied during incommunicado interrogation.").

¶21 This daytime, public encounter at a "neutral" location is a far cry from the type of coercive environment at issue in *Miranda*. *Mumford*, ¶ 19, 270 P.3d at 958;

see Holt, 233 P.3d at 1199. Indeed, the public nature of the encounter "offsets the 'aura of authority surrounding an . . . officer,'" *People v. Sampson*, 2017 CO 100, ¶ 30, 404 P.3d 273, 278–79 (quoting *Berkemer v. McCarty*, 468 U.S. 420, 438 (1984)), and can affect the suspect's "peace of mind," which in turn provides a greater "ability to withstand psychological compulsion," *Garcia*, ¶ 22, 409 P.3d at 317; *see also People v. Begay*, 2014 CO 41, ¶ 22, 325 P.3d 1026, 1031 (explaining that when encounters occur in public, "the potential that police will use coercive tactics to compel a confession is diminished"); *People v. Pleshakov*, 2013 CO 18, ¶ 32, 298 P.3d 228, 236 (noting that the environment, "daylight . . . on a sidewalk, in plain view of any person who might be passing by," weighed against custody).

¶22 The location is particularly important here, given Eugene's reliance on a handful of our past custody cases. For example, Eugene points to *Minjarez*; *People v. Elmarr*, 181 P.3d 1157 (Colo. 2008); and *Effland v. People*, 240 P.3d 868 (Colo. 2010), to assert that he was in custody because of the separation from his wife and Officer Thivierge's accusatory questions. But in each of those cases, unlike this one, the interrogation occurred in a small, closed-door room. *See Minjarez*, 81 P.3d at 351; *Elmarr*, 181 P.3d at 1164; *Effland*, 240 P.3d at 875. Of course, there is no categorical rule requiring such circumstances before a suspect is in custody; but here, the lack of a similarly coercive environment renders these cases unpersuasive.

¶23 Furthermore, the officers here barely restrained Eugene—let alone to a degree commensurate with a formal arrest. *See People v. Breidenbach*, 875 P.2d 879, 886 (Colo. 1994) ("One well-recognized circumstance tending to show custody is the degree of physical restraint used by police officers to detain a citizen."). What little restraining force the officers did impose—monitoring Eugene from a comfortable distance, making him wait to go to the bathroom, and briefly frisking him for weapons—is not force "traditionally associated with concepts of 'custody' and 'arrest.'" *People v. Polander*, 41 P.3d 698, 705 (Colo. 2001) (quoting *Breidenbach*, 875 P.2d at 886). The officers didn't brandish weapons, lay hands on Eugene, handcuff or otherwise physically restrain him, nor did they demand he stay in one place. *See Mumford*, ¶ 17, 270 P.3d at 958; *Breidenbach*, 875 P.2d at 886. Instead, Eugene was able to move about freely in the parking lot—even lighting and smoking a cigarette. *See People v. Willoughby*, 2023 CO 10, ¶ 36, 524 P.3d 1186, 1194 ("No one who had their freedom of movement restrained to the degree associated with a formal arrest would reasonably feel like they could smoke a cigar, let alone without asking for permission.").

¶24 Plus, as the trial court and Judge Bernard correctly observed, several additional circumstances further cut against custody: the officers did not yell at or threaten Eugene; the entire encounter spanned less than a half hour, with questioning of Eugene lasting just twelve or so minutes; Eugene agreed to exit his

building and speak with the officers; Eugene did not seem distressed or intimidated; and he never sought to terminate the encounter.

¶25 This case is therefore more akin to our decisions in *Cline* and *Figueroa-Ortega*, where we concluded that the suspects were not in custody. In *Cline*, the officers denied a suspect access to his residence and limited his movement for ninety minutes while they searched it. ¶ 31, 439 P.3d at 1239. Further, the lead officer interrogated the suspect about illegal drugs discovered during this search. *Id.* at ¶ 33, 439 P.3d at 1239. Despite concluding that those circumstances "support[ed] a finding of custody," we concluded that the suspect wasn't in custody because there—as here—the encounter "took place in the parking area outside . . . of Cline's residence" in broad daylight, the tone of the encounter was conversational, and the officers didn't make any show of force beyond their presence. *Id.* at ¶¶ 21–30, 439 P.3d at 1238–39.

¶26 Similarly, in *Figueroa-Ortega*, a single officer interviewed a suspect "for about twenty minutes . . . just outside his front door," and the officer accused the suspect of burglary, confronted him with evidence of his role in that burglary, and told him he would be charged. ¶ 4, 283 P.3d at 692. Even so, we determined that the encounter didn't rise to the level of a de facto arrest because of "the short duration of the interview"; the dearth of "threats or promises or demands"; and "the fact that it was conducted in broad daylight and public view, by a single

officer in civilian clothes, who neither offered any show of force nor restricted the defendant's freedom of movement in any way." *Id.* at ¶ 9, 283 P.3d at 693.

¶27 Because the record does not reflect a "significant curtailment of [Eugene's] freedom of action," *People v. Stephenson*, 159 P.3d 617, 620 (Colo. 2007), we conclude that a reasonable person in his position would not have felt restrained to the degree associated with formal arrest. Because Eugene was not in custody, *Miranda*'s strictures did not apply to the interrogation, and the division erred by concluding otherwise.[2]

III. Conclusion

¶28 We reverse the judgment of the court of appeals, reinstate the trial court's suppression ruling, and remand this case to the court of appeals to consider any remaining issues.

[2] Because we conclude that the trial court didn't err, we need not reach the prosecution's assertion that the division's harmless error analysis was flawed.