FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed February 28, 1978
vs.	)	316
HERMAN PAUL ZYLSTRA,	)	60025
Appellant.	)	

Appeal from O'Brien District Court - James H. Andreason, Judge.

Appeal from conviction for assault with intent to commit murder alleging error in not suppressing statements made by defendant prior to Miranda warnings being given. - Affirmed.

Michael L. Zenor, Spencer, for Appellant.

Richard C. Turner, Attorney General of Iowa, Mark Beckman, Assistant Attorney General, Richard T. Smith, O'Brien County Attorney and Thomas J. Whorley, Assistant County Attorney, for Appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendant appeals his conviction for assault with intent to commit murder in violation of § 690.6, The Code. Defendant was charged under § 690.6 when he shot Richard Lode in the back with a homemade shotgun pistol while both were riding their respective motorcycles. Defendant and Lode had been arguing over religion for several years and defendant alleged he was only attempting to scare him when the gun accidentally discharged, shooting Lode in the back at very close range.

Prior to trial, defendant moved to suppress all physical evidence and all statements obtained from him on July 27, 1975, the day of the alleged crime. The motion was grounded on the involuntariness of his statement and his fear of continuous and intimidating interrogations at the police station. Defendant also alleged he was not informed of his **Miranda** rights until after he was interrogated and that he reasonably believed he was in custody when he was directed to get into the sheriff's patrol car. At the suppression hearing, defendant testified his statement was involuntary and that several times he had asked if he needed an attorney and was told "maybe not" and all the police wanted to do was to "straighten it out."

In overruling defendant's motion, the trial court found there was no custodial interrogation at defendant's residence, nor any physical or psycholcgical overpowering. It found the sheriff was not even sure he had the right "Herman Zylstra" when the parties left for the police station. Further, the court found defendant accompanied the officers to the police station voluntarily and that he voluntarily and intelligently waived his **Miranda** rights prior to being placed under arrest and prior to making his written statement to the police. Finally, the trial court found no evidence defendant indicated in any manner a desire to avail himself of his **Miranda** rights or that he was tricked, cajoled or threatened into waiving those rights.

On appeal, defendant alleges the trial court erred in failing to suppress evidence obtained while he was allegedly "in custody" without having been informed of his Miranda rights. Specifically, defendant asks this court to decide whether he was in custody at his residence or when he was asked to accompany the officers to

the police station. Defendant also alleges the illegal custodial statements tainted later statements given after proper warnings rendering the later statements inadmissible. At the outset, we note these alleged errors are preserved for appellate review without the need for renewal by objection during the course of trial. State v. Rockhold, 243 N.W.2d 846, 848 (Iowa 1976).

Defendant's first contention is that he was "in custody" when the sheriff questioned him at his residence (farm) so as to render his responses to official interrogation inadmissible in the absence of **Miranda** warnings. Since these assignments of error present federal constitutional issues, we make an independent evaluation of the totality of circumstances from which the assertions of unconstitutionality arise. We review the evidence de novo. State v. Russell, 261 N.W.2d 490, 492 (Iowa 1978); State v. Snethen, 245 N.W.2d 308, 311 (Iowa 1976); State v. Conner, 241 N.W.2d 447, 453 (Iowa 1976).

The narrow issue before the court in **Miranda** was presented in the opening paragraph of that opinion--"the admissibility of statements obtained from an individual who is subjected to custodial police interrogation." Beckwith v. United States, 425 U.S. 341, 345, 96 S. Ct. 1612, 1615 (1976), 48 L.Ed.2d 1, 7. The prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self incrimination. State v. Davis, 261 Iowa 1351, 1357, 157 N.W.2d 907 (1968); **Miranda v. Arizona**, infra. "The evil aimed at in Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, 10 A.L.R.3d 974, is incommunicado interrogation of individuals in a police dominated atmosphere." State v. McDonald, 190 N.W.2d 402, 404 (Iowa 1971).

Defendant's argument in support of suppression is that he was in custody when the sheriff questioned him at his farm home. A determination of whether a **Miranda** warning is required is not based on the interrogation or whether the questioning took place in a "coercive environment". Rather, the warnings are required only where there has been such a restriction on a person's freedom as to render him "in custody". Oregon v. Mathiason, 429 U.S. 492, 495, 97 S. Ct. 711, 714 (1977), 50 L.Ed.2d 714, 719; **Beckwith,** supra. "By custodial interrogation, we mean

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." **Mathiason,** supra; Orozco v. Texas, 394 U.S. 324, 327, 89 S. Ct. 1095 (1969), 22 L.Ed.2d 311, 315; **Miranda,** supra; State v. Kyseth, 240 N.W.2d 671, 673 (Iowa 1976); **Davis,** supra.

From a review of the record we find the evidence supports the trial court's ruling that defendant was not "in custody" when questioned at his farm residence by the Sheriff. After the shooting, Lode went to a nearby farmhouse for assistance and an ambulance was called. The sheriff arrived after the ambulance left for the hospital and was informed by the officer on the scene that Lode told the ambulance driver he had been shot by "Herman Zylstra". The sheriff thought there were at least two such persons in the area and after consulting a plat book, went to defendant's home first.

The sheriff and his deputy arrived at the Zylstra home at about 6:00 p.m. The sheriff first asked defendant if he was in fact Herman Zylstra. After an affirmative response he next asked defendant if he owned a motorcycle and whether he had ridden it lately. Defendant responded that he had ridden the cycle about two and one-half hours earlier. When the sheriff and the deputy checked the motorcycle, the tailpipe was still very hot, indicating it had been used recently. Defendant was then asked if he owned any guns, to which he affirmatively responded. Zylstra showed two shotguns to the officers, although neither was the homemade pistol. Because of the commotion with defendant's mother and sister, the sheriff asked defendant if he would be willing to continue the discussion at the police station. Defendant agreed. Defendant was never arrested and no **Miranda** warnings were given.

Nothing in the record indicates defendant had been arrested or otherwise in custody. Cf. **Orozco v. Texas,** supra. Neither was defendant deprived of freedom of action in any significant way. **Miranda** was never meant to preclude police from carrying out their traditional investigatory functions. Bizzett v. State, #60551, filed February 22, 1978; **McDonald,** supra. Although the focus of the officers' investigation of the shooting may have been on defendant, this is not determina-

tive. It is the custodial nature of the investigation which triggers the necessity for adherence to the **Miranda** warnings. Beckwith v. United States, 425 U.S. at 346-7, 97 S. Ct. at 1616, 48 L.Ed.2d at 7-8. No such custodial interrogation existed in the instant case. The trial court did not err in overruling defendant's motion to suppress. See **Bizzett v. State**, supra.

Defendant's second assignment of error, that subsequent statements given at the police station were impermissibly tainted by prior statements made at the farm in violation of **Miranda**, is predicated on a resolution of his first assignment in defendant's favor. As this issue was resolved adverse to defendant we need not consider defendant's second assignment of error.

In passing, we note that from a review of the record in the suppression hearing, it is clear that defendant was given his **Miranda** warnings prior to any custodial interrogation in the police station. It is equally clear from the record that defendant's waiver of rights was intentionally, knowingly, voluntarily and intelligently done. State v. Hilpipre, 242 N.W.2d 306, 311 (Iowa 1976). The trial court did not err in overruling defendant's motion on these grounds also.

AFFIRMED.