IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON LEE HARTSHORN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56900

FILED

JUL 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a judgment of conviction entered pursuant a guilty plea of aiding a prisoner to escape. Fifth Judicial District Court, Nye County; Fifth Judicial District Court Dept. 1, Judge.

Appellant Brandon Lee Hartshorn contends that the district court erred by denying his suppression motion because his statements were the product of a custodial interrogation that was conducted without a valid Miranda warning and waiver.[1] See Miranda v. Arizona, 384 U.S. 436 (1966). We review a district court's purely historical factual findings pertaining to circumstances surrounding a custodial interrogation for clear error and the district court's legal determinations of whether a person was in custody for Miranda purposes and whether the actions of the police constituted an interrogation de novo. See Rosky v. State, 121 Nev. 184, 190, 111 P.3d 690, 694 (2005).

The district court conducted a suppression hearing, found that Hartshorn was subjected to a felony traffic stop and placed in custody, and

[1]This contention was preserved for appeal pursuant to NRS 174.035(3).

determined as a matter of law that Hartshorn was in custody for Miranda purposes. We conclude that the district court did not err in this regard. See State v. Taylor, 114 Nev. 1071, 1082, 968 P.2d 315, 323 (1998) (holding that a person is in custody when "there has been a formal arrest, or where there has been a restraint on freedom of movement of the degree associated with a formal arrest so that a reasonable person would not feel free to leave").

The district court did not make factual findings pertaining to the deputy's actions after Hartshorn was placed in custody, see Rosky, 121 Nev. at 191, 111 P.2d at 695; however, it determined as a matter of law that there was no interrogation. The incident report provides the only evidence regarding the actions of the deputy. It reveals that after placing Hartshorn in custody, and without advising him of his Miranda rights, the deputy asked Hartshorn "where he was coming from," stated "that the vehicle that he was driving fits the description which possibly assisted in the escape of a prisoner," showed him a photo of the escapee and asked if he knew the escapee, stated that his "female passenger was pretending that she was sleeping inside the passenger's seat after the felony traffic stop and [the] talking on the PA," "stated to him that he was not being truthful," "asked him how he knows of [the escapee]," "asked him if he just got out of prison himself," stated that he "found [it] a coincidence that he just got out of prison approximately 30 days ago," "asked him again how he knows [the escapee]," and, asked Hartshorn "why" after Hartshorn stated that he knew the escapee and went to the area of the conservation camp to drop off a pair of blue jeans for the escapee. We conclude that the deputy should have known that these questions, words, and actions were reasonably likely to elicit an incriminating response and therefore his

actions constituted an interrogation. See Rhode Island v. Innis, 446 U.S. 291, 301-02 (1980) (defining "interrogation" as direct questioning and "any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response").

The State contends, as an independent ground for affirming the judgment of conviction, that Hartshorn waived his Fifth Amendment right against self-incrimination by virtue of having been released on parole from prison less than a month before committing the instant offense. We conclude that this contention is without merit.

Having determined that Hartshorn was subjected to a custodial interrogation without a valid Miranda warning and waiver, we conclude that the district court erred by denying his suppression motion, and we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.

Saitta, J.
Saitta

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Fifth Judicial District Court Dept. 1
Christopher R. Arabia
Nye County District Attorney
Attorney General/Carson City
Nye County Clerk