

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WILLIAM GUERRA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89166-COA

FILED

JUN 03 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

William Guerra appeals from a judgment of conviction, entered pursuant to a jury verdict, of four counts of sexual assault against a child under the age of 14 years. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Guerra argues the district court erred by denying his motion to suppress statements made during his police interview because he was in custody but not informed of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). The question of whether statements to police were made while in custody presents a mixed question of law and fact. *Belcher v. State*, 136 Nev. 261, 264, 464 P.3d 1013, 1021 (2020). The district court's factual findings are given deference if supported by the record, but the district court's legal conclusion regarding whether a defendant was in custody is reviewed de novo. *Id.*

"A defendant is 'in custody' under *Miranda* if he or she has been formally arrested or his or her freedom has been restrained to the degree associated with a formal arrest so that a reasonable person would not feel free to leave." *Id.* (internal quotation marks omitted). Courts consider the totality of the circumstances to determine whether a defendant was in

custody, including the interrogation site, the length and form of the questioning, and any objective indicia of arrest. *Id.*

Guerra contends the interrogation site weighs in favor of concluding he was in custody because the statements were made at a police station and Sergeant Lynch (the detective investigating the case) testified during the evidentiary hearing held on Guerra's motion that officers are instructed to get a suspect into a "controlled environment" prior to questioning. The district court found that Lynch and Officer Pintor, who served as a Spanish-language interpreter for the interview, first went to Guerra's house, where he gave them permission to enter. There, Guerra was informed he was not under arrest and was not required to answer questions. Thereafter, Guerra was asked if he was willing to come to the police station to discuss the case. Lynch offered Guerra a ride to the station in his unmarked patrol car but also offered Guerra the opportunity to drive himself if he wanted. Guerra declined to drive himself and instead rode in the front seat of Lynch's car. Once inside the interview room, Guerra was again informed he was not under arrest and was not obligated to answer questions. These findings are supported by the record.¹ Further, the record reflects that Guerra was neither handcuffed nor searched prior to or during the interview. We conclude that Guerra's decision to voluntarily accompany officers to the station after the interaction at his house weighs against his being in custody when he spoke with police, notwithstanding the fact the

¹Some of the facts relied on by the district court in denying Guerra's motion to suppress were derived from Pintor's body camera video. Guerra did not include the video for our review on appeal. Because it is the appellant's burden to ensure that a proper appellate record is prepared, *see Greene v. State*, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980), we presume that the missing body camera video supports the district court's decision to deny Guerra's motion, *cf. Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007).

interview was ultimately conducted at a police station. *See California v. Beheler*, 463 U.S. 1121, 1125, (1983) (holding that an interrogation is not necessarily custodial because it occurred at a police station); *Silva v. State*, 113 Nev. 1365, 1370, 951 P.2d 591, 594 (1997) (“*Miranda* rights need not be provided simply because the questioning took place at the police station or because appellant was the person the police suspected of the crime.”)

Next, Guerra contends the “objective indicia of arrest” and “length and form of questioning” factors weigh in his favor because: (1) police drove him several miles from his home to a secure police facility, where he was questioned in a small, windowless room with the officers sitting between him and the door; (2) the questioning was police dominated; (3) Guerra was ultimately arrested at the end of the interview; and (4) the police used deception by falsely telling him they possessed physical evidence of the crime. Objective indicia of arrest include:

- (1) whether the suspect was told that the questioning was voluntary or that he was free to leave;
- (2) whether the suspect was not formally under arrest;
- (3) whether the suspect could move about freely during questioning;
- (4) whether the suspect voluntarily responded to questions;
- (5) whether the atmosphere of questioning was police-dominated;
- (6) whether the police used strong-arm tactics or deception during questioning; and
- (7) whether the police arrested the suspect at the termination of questioning.

State v. Taylor, 114 Nev. 1071, 1082 n.1, 968 P.2d 315, 323 n.1 (1998).

With respect to factors (1), (2) and (4), Guerra concedes he was told he was free to leave, he was not formally under arrest during the interview, and he voluntarily responded to the officers’ questions. With respect to factors (3) and (5), the district court found that, in the interview room, the officers did not block Guerra’s path to the door, he was not handcuffed, and the officers’ demeanor did not suggest restraint and that

Lynch credibly testified he would have escorted Guerra through the police station and driven him home had Guerra chose not to answer their questions. The district court further found that "even though the interview occurred at a police station, there was not a subtle shade of police-dominated coercion, particularly because of Detective Lynch's respectful and mostly understated style." These findings are supported by the record and weigh against a conclusion that Guerra was in custody when he spoke with police.

Factors (6) and (7) appear to weigh in Guerra's favor. The police used deception during Guerra's interview, and he was ultimately arrested at the end of the interview. However, with respect to factor (6), the district court acknowledged Lynch told Guerra about evidence that did not exist, but the court concluded this "permissible deception" did not lead to a false confession. Guerra does not challenge this finding on appeal. With regard to factor (7), the district court found Guerra was only arrested after voluntarily making incriminating statements. This finding is supported by the record. Because it was ultimately Guerra's decision to voluntarily speak with officers at the police station, and because Guerra was not under arrest and was free to terminate the interview at any time, we conclude factors 6 and 7—while facially weighing in Guerra's favor—do not dictate a conclusion that the objective indicia of arrest ultimately weigh in Guerra's favor. Rather, for the reasons mentioned above, we conclude the objective indicia of arrest weigh against a conclusion that Guerra was in custody when he spoke with police.

Regarding the length and form of questioning, the district court found that the length of the interview was short, Lynch acted professionally, and the presence of two officers was not coercive because Pintor was there to assist Guerra with translation. These findings are supported by the record. Accordingly, we conclude the length and form of the questioning

weigh against a conclusion that Guerra was in custody when he spoke with police.

Finally, Guerra contends he was in custody at the time of his interview because he was the sole focus of the investigation. While Lynch testified at the evidentiary hearing that Guerra was the only suspect at the time of the interview, "this focus was not the equivalent of 'focus' for *Miranda* purposes, which involves 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." *Avery v. State*, 122 Nev. 278, 287, 129 P.3d 664, 670 (2006) (internal quotation marks omitted); *see also Minnesota v. Murphy*, 465 U.S. 420, 431 (1984) ("The mere fact that an investigation has focused on a suspect does not trigger the need for *Miranda* warnings in noncustodial settings."). Considering the totality of the circumstances, we conclude that Guerra was not in custody during his interview with police and, thus, that the district court did not err by denying his motion to suppress his statements to police. Therefore, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. David A. Hardy, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk