

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

STEVEN JOHN BAGINSKI,

Defendant-Appellee.

UNPUBLISHED

July 25, 1997

No. 195446

Oakland Circuit Court

LC No. 95-DA-6424 AR

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

By leave granted, the Oakland Prosecutor argues that the lower courts erred in suppressing evidence based on asserted violation of defendant's *Miranda* rights. This case is being decided without oral argument pursuant to MCR 7.214(E).

The district court conducted an evidentiary hearing, but made no findings of fact. The testimony offered at that hearing was that of two Oakland County Sheriff's Deputies, and was essentially uncontradicted. The circuit court purported to find that a reasonable person in defendant's situation would have considered that his freedom of action was significantly curtailed, but the circuit court held no hearing and functioned as an appellate court, not a factfinding court. Any such findings by the circuit court are mixed findings of law and fact and subject to *de novo* review in this Court. *Thompson v Keohane*, 516 US ____; 116 S Ct 457; 133 L Ed 2d 383 (1995).

Defendant was under investigation for violating an ordinance prohibiting possession of intoxicants in the park, an ordinance authorized by §34(3) of the Liquor Control Act -- defendant was ultimately issued an appearance ticket. Defendant gave one deputy permission to search his truck, resulting in discovery of a minute but observable quantity of marijuana stems and seeds. While that deputy continued searching defendant's truck, a second deputy asked defendant a single question, ultimately leading to the present prosecution for possession of marijuana. The entire confrontation occurred in a public park, in the vicinity of defendant's playmates.

* Circuit judge, sitting on the Court of Appeals by assignment.

Miranda warnings were not required in this situation, unless defendant was in custody. *People v Hill*, 429 Mich 382, 384; 415 NW2d 193 (1987). The totality of the circumstances determines whether defendant was deprived of his freedom of action in a significant manner. *People v Williams*, 171 Mich App 234, 237; 429 NW2d 649 (1988). The key inquiry is how a reasonable person in defendant's position would have understood his situation. *Berkemer v McCarty*, 468 US 420, 442; 104 S Ct 3138; 82 L Ed 2d 317 (1984). Defendant was never placed under arrest nor subjected to restraints comparable to those associated with formal arrest at any time during this confrontation. Nor was defendant ever informed that his detention would be anything but temporary. Being asked a single question cannot fairly be characterized as the functional equivalent of formal arrest. *Berkemer v McCarty*, *supra*, 468 US at 436-438, 441-442. As *Miranda* warnings were not required, defendant's answer to the question, although incriminating, was not a product of violation of defendant's Fifth Amendment rights, and subsequent discovery of the marijuana on defendant's person is not the fruit of a poisonous tree.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Myron H. Wahls

/s/ Patrick R. Joslyn