

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY ALVIN WARRINER,

Defendant-Appellant.

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UNPUBLISHED

February 19, 1999

No. 203075

Hillsdale Circuit Court

LC No. 00207526

Before: Murphy, P.J., and MacKenzie and Talbot, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of OUIL/per se, third offense, MCL 257.625(7)(d); MSA 9.2325(7)(d), resisting and obstructing a police officer, MCL 750.479; MSA 28.747, driving with a suspended driver's license, MCL 257.904(1)(b); MSA 9.2604(1)(b), and failing to report an accident, MCL 257.618; MSA 9.2318. Defendant appeals by right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)

On appeal, defendant argues he was deprived of effective assistance of counsel at trial because his trial attorney failed to move to suppress the statements he made to the police immediately prior to his arrest on grounds that those statements were not made voluntarily and were made in violation of defendant's *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 694 (1966)] warning rights. We disagree.

The obligation to give *Miranda* warnings to a person attaches only when the person is in custody, meaning that the person has been formally arrested or subjected to a restraint on freedom of movement of the degree associated with a formal arrest. *Stansbury v California*, 511 US 318; 114 S Ct 1526, 1528-1529; 128 L Ed 2d 293 (1994). In deciding if the defendant was in custody, this Court must look to the totality of the circumstances to determine whether defendant reasonably could have believed that he was not free to leave. *People v Mendez*, 225 Mich App 381, 382; 571 NW2d 528 (1997); *People v McElhaney*, 215 Mich App 269, 278; 545 NW2d 18 (1996).

Here, it is significant that the questioning took place at the home of defendant's mother, as opposed to a police station or other police-dominated setting. See *McElhaney, supra*; *People v Rogers*, 14 Mich App 207, 212-213; 165 NW2d 337 (1968). During the initial questioning, defendant was not told that he was under arrest or that he could not leave. Indeed, defendant's initial refusal to answer the officers' questions indicates that he did not feel coerced at the time. *Mendez, supra* at 383. Moreover, by the time defendant made the incriminating statements in question, defendant had already begun exhibiting a more cooperative and friendly attitude, granting the officers' request for permission to enter the home to use the telephone and telling the officers to "come on in out of the rain" or similar words to that effect. Contrary to defendant's argument, there is nothing in the record to indicate that the officers' request to use the telephone was a ruse.

With regard to the voluntariness of defendant's statements to the police officers, the test is whether "considering the totality of all the surrounding circumstances, the confession is 'the product of an essentially free and unconstrained choice by its maker,' or whether the accused's 'will has been overborne and his capacity for self-determination critically impaired.'" *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988). The mere fact that defendant was found incompetent to stand trial for a four-month period approximately two months after his arrest, without more, is insufficient to establish a lack of volition rendering his statements to the police inadmissible. The record in this case also fails to establish that the level of defendant's intoxication was such as to substantially reduce his willpower or impair his capacity for self-determination.

On this record, we conclude that defendant has failed to establish he was deprived of effective assistance of counsel.

Affirmed.

/s/ William B. Murphy  
/s/ Barbara B. MacKenzie  
/s/ Michael J. Talbot