

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT SEAN DWYER,

Defendant-Appellant.

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UNPUBLISHED

July 3, 2012

No. 301300

Ionia Circuit Court

LC No. 2010-014743-FH

Before: BECKERING, P.J., and OWENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant Robert Sean Dwyer appeals as of right his conviction of being a prisoner in possession of a weapon, MCL 800.283(4). The trial court sentenced defendant, as a second habitual offender, MCL 769.10, to 26 to 90 months' imprisonment. Because we find that the issues raised by defendant lack merit, we affirm.

The prosecution presented evidence that while housed at the Bellamy Creek Correctional Facility in Ionia, Michigan, defendant swung a padlock tied to a string into a crowd of inmates in the prison yard. Corrections officer Mark Farrar saw the incident and "hollered" at the inmates. Defendant looked at Officer Farrar, put the stringed padlock into his pocket, and walked out of the prison yard. Officer Farrar followed defendant back to his cell and saw defendant open the door to his food slot and throw something inside. Officer Farrar handcuffed defendant, and another officer opened the cell and retrieved the padlock. Defendant was placed in segregation. The correctional facility reported the incident to the Ionia State Police post and provided them with copies of the institution reports and a video from the prison that showed defendant passing something through the food slot of his cell. Three days later, Detective Sergeant Kate Trietch from the Ionia State Police post interviewed defendant. Defendant gave statements to Detective Trietch that were later used against him at trial where he was convicted by a jury.

Defendant first argues that the trial court erred by denying his motion to quash the statements he made to Detective Trietch because she did not give him *Miranda*<sup>1</sup> warnings before interviewing him. We disagree.

When we review a trial court's factual findings with respect to a motion to suppress, we defer to the trial court unless the court's findings are clearly erroneous. *People v Herndon*, 246 Mich App 371, 395; 633 NW2d 376 (2001). We review de novo a trial court's ultimate decision on a motion to suppress. *People v Lapworth*, 273 Mich App 424, 426; 730 NW2d 258 (2006).

Both the state and federal constitutions provide that no person shall be compelled to be a witness against himself in a criminal trial. See US Const, Am V; Const 1963, art 1, § 17; see also *People v Schollaert*, 194 Mich App 158, 164; 486 NW2d 312 (1992). This privilege has been extended beyond criminal trial proceedings "to protect persons in all settings in which their freedom of action is curtailed in any significant way from being compelled to incriminate themselves." *Miranda*, 384 US at 467. "The relevant inquiry for determining whether *Miranda* warnings are required is whether the person was 'subjected to police interrogation while in custody or deprived of his freedom of action in a significant way.'" *People v Honeyman*, 215 Mich App 687, 694; 546 NW2d 719 (1996), quoting *Schollaert*, 194 Mich App at 165. "When determining whether a defendant was 'in custody,' courts consider both whether a reasonable person in the defendant's situation would believe that he was free to leave and 'whether the relevant environment present[ed] the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*.'" *People v Elliott*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (Docket No. 301645, issued March 8, 2012), slip op at 4, quoting *Howes v Fields*, 565 US \_\_\_, 132 S Ct 1181, 1190; 182 L Ed 2d 17 (2012).

In a prison setting, determining whether a person is in custody for *Miranda* purposes requires an examination of the person's restrictions associated with the questioning. To conclude 'that any investigatory questioning inside a prison requires *Miranda* warnings ... could totally disrupt prison administration' and 'torture [*Miranda*] to the illogical position of providing greater protection to a prisoner than to his nonimprisoned counterpart.'" *Cervantes v Walker*, 589 F2d 424, 427 (CA 9, 1978); see also *Howes*, slip op at 1, 14-16 (holding that *Miranda* warnings were not required under the circumstances before questioning a prisoner about criminal activity that occurred outside the prison).

The concept of "restriction" is significant in the prison setting, for it implies the need for a showing that the officers have in some way acted upon the defendant so as to have "deprived (him) of his freedom of action in any significant way," *Miranda v. Arizona*, supra, 384 U.S. at 444, 86 S.Ct. at 1612 (footnote omitted). In the prison situation, this necessarily implies a change in the surroundings of the prisoner which results in an added imposition on his freedom of movement. Thus, restriction is a relative concept, one not determined

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<sup>1</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

exclusively by lack of freedom to leave. Rather, we look to some act which places further limitations on the prisoner.

In defining this concept we adhere to the objective, reasonable person standard and the same four factors we have employed under the “free to leave” test. See *United States v. Curtis*, [568 F2d 643, 646 (CA 9, 1978)]. Therefore, the language used to summon the individual, the physical surroundings of the interrogation, the extent to which he is confronted with evidence of his guilt, and the additional pressure exerted to detain him must be considered to determine whether a reasonable person would believe there had been a restriction of his freedom over and above that in his normal prisoner setting. Such a situation requires *Miranda* warnings. [*Cervantes*, 589 F2d at 428.]

At the evidentiary hearing on defendant’s motion to quash, Detective Trietch testified that she visited the prison three days after the incident in order to conduct an investigation. She and Inspector Douglas Welton met with defendant in a hearing office, which was “a small office off the officer’s bubble area” located in the segregation housing unit where defendant was housed at the time of the interview. Defendant was brought to her in restraints because he was in the segregation unit. The office where the interview took place had a door that closes “so that everyone in the hallway is not hearing what’s going on.” Detective Trietch testified that she informed defendant that he did not have to speak with her and that he would be escorted back to his cell if he chose not to speak with her. Defendant responded by telling Detective Trietch his version of the events.

The evidentiary hearing did not address what language was used to summon defendant to the meeting with Detective Trietch. It does not appear that defendant was confronted with evidence of his guilt before he began talking to her. Other than being handcuffed because he was being housed in the segregation unit, there is no evidence of additional pressure exerted to detain him. Although defendant was housed in segregation because of the padlock-throwing incident, there is no evidence that his prison-housing status was in any way dependent upon his interview with Detective Trietch. Detective Trietch advised defendant that he was free not to speak with her and that he would be escorted back to his cell if he chose not to speak to her. Under the totality of the circumstances, a reasonable person in defendant’s position would not believe that there was a restriction of his freedom beyond his normal prisoner setting, and the situation did not present the “same inherently coercive pressures as the type of station house questioning at issue in *Miranda*.” See *Howes*, slip op at 8-9. Accordingly, the trial court did not err in denying defendant’s motion to suppress.

Moreover, even assuming that the trial court erroneously admitted defendant’s statements to Detective Trietch, the error was harmless. “A preserved constitutional error is harmless if it is “clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error.” *Elliott*, slip op at 12, quoting *People v Hyde*, 285 Mich App 428, 447; 775 NW2d 833 (2009). Officer Farrar testified that he saw the following: (1) defendant possessing the stringed padlock; (2) defendant swinging the stringed padlock; (3) defendant turning to look at him when he “hollered” at the inmates after defendant swung the padlock; (4) defendant putting the stringed padlock into his pocket and walking out of the prison yard; and (5) defendant

throwing something inside the food slot of his prison cell. Furthermore, another officer found the padlock in defendant's prison cell shortly after defendant threw the object into the cell. Given this evidence, it is "clear beyond a reasonable doubt that a rational jury would have found . . . defendant guilty absent" his statements to Detective Trietch. See *id.*

Defendant next argues that he was denied a fair trial because the prosecutor improperly vouched for the credibility of a witness during closing argument by stating that Officer Farrar testified truthfully. We disagree.

A prosecutor may not argue facts not entered into evidence but may otherwise argue the evidence and all reasonable inferences it creates. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995); *People v Stanaway*, 446 Mich 643, 686; 521 NW2d 557 (1994). A prosecutor may not vouch for the credibility of a witness on the basis of special knowledge that is otherwise unavailable to the jury but may argue that a witness is worthy or unworthy of belief on the basis of the evidence. *Bahoda*, 448 Mich at 276; *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004).

The record reveals that the prosecutor during closing argument summarized Officer Farrar's testimony. The prosecutor emphasized that Officer Farrar did not recall having prior contact with defendant, there was no bad blood between them, and Officer Farrar had no reason to lie. During defense counsel's closing argument, defense counsel questioned Officer Farrar's credibility and his ability to accurately perceive the events. In response, the prosecutor argued during rebuttal argument that Officer Farrar was worthy of belief given his testimony. The prosecutor did not imply that she had special knowledge of Officer Farrar's truthfulness; instead, she made a permissible argument about why the evidence suggested that the witness was credible. See *Thomas*, 260 Mich App at 455.

Affirmed.

/s/ Jane M. Beckering  
/s/ Donald S. Owens  
/s/ Amy Ronayne Krause