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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1249**

Mohamad Safraz Haniff, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 29, 2018
Reversed and remanded
Ross, Judge**

Dakota County District Court
File No. 19HA-CR-14-3693

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Deanna N. Natoli, Assistant County Attorney, Hastings, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

ROSS, Judge

After police learned that Mohamad Haniff reportedly sexually groped his ten-year-old niece's breast area and buttocks, without reading him a *Miranda* advisory they took

him into a room of his home, questioned him repeatedly, told him they believed the accusations, and pressed him at least 30 times to confess. He eventually did. Because a reasonable person in Haniff's shoes would have perceived that he was in police custody to the degree associated with formal arrest, the statements that police extracted from him without a *Miranda* warning should have been suppressed. And because the district court found that Haniff did not fully understand his *Miranda* rights when they were finally provided to him, his later statement to an investigator also should have been suppressed. We therefore reverse Haniff's conviction and remand for a new trial.

FACTS

Five Eagan police officers went to a home in October 2014 responding to a reported domestic disturbance. The home was being shared by extended family members, including Mohamad Haniff, who had arrived from Guyana five months earlier. Police learned that the disturbance arose when ten-year-old A.S. disclosed that Haniff, who is her uncle, had touched her breast area and buttocks.

Officers Brian Rezny and Logan Anderson asked Haniff to speak with them outside on the driveway, while other officers spoke with other family members inside. Haniff said that he had been living at the home for several months but that he intended to stay the night at an apartment because of the dispute. Other officers joined in the discussion outside the house with Haniff, whom the officers had difficulty understanding because of Haniff's apparently "broken English." One officer questioned Haniff about A.S.'s allegations, and Haniff said that he had inadvertently touched A.S.'s thigh as he tripped. An officer took

Haniff's identification card and radioed the dispatcher, requesting a check on Haniff while Haniff remained close by answering other officers' questions.

Officers repeatedly challenged Haniff's account. One demanded, "Look at me when you're talking; every time I ask you a question you look down at the ground." An officer challenged, "Is the ten-year-old a liar?" The various officers barraged Haniff with statements and questions to elicit his confession: "Why would she say this?" "It's been my experience that children don't lie about this stuff." "We just need you to tell us the truth so we can get you the appropriate help." "We're not saying that you're a bad guy." "Things happen." "I know that you want to tell me something." "If I go in there, is she going to tell me that you touched her breast, or her nipples?" "I can tell on your face right now . . . that you're holding something back." "What is she going to say when we talk to her?" "What is it that you want to get off your chest?" "Is there anything else that you want to tell us?" "I'm just asking for your complete honesty about what happened." "What is it that you want to confess?" "Sometimes people have urges that they just can't help, and I'm thinking in this situation that's maybe kind of what happened." "I believe that you probably did something inappropriate and I'm asking for your honesty about what happened." "That's not the story I'm getting." "Where else did you touch her?" "Did you ask her to have sex with you?" "She had no motivation to lie." "I'm just asking for complete honesty here." "We're trained to observe [body language], and you're not being truthful with us." "I'm telling you flat out that it's going to feel better to get it off your chest, come clean with the truth, and tell us what's going on so we can get you the help that you need." "I don't think you're being honest." "She's not lying about this; we all know that." "We just want to

know what your motivation is, if you're sorry about doing it." "How many times did you touch her on the outside of her clothes up on top?" "How many times did you try to go underneath her shirt?" "I believe her." "There's lots of people that do this stuff." "Honestly, I'm going to take her side at this point unless you have something more to tell us." "Do you have a problem? Is this a medical issue with you?" "We're trying to figure out your motivation for this." "I want some answers." "How would a ten-year-old know about sex?" "How many times did you touch her on her butt?" "Do you realize that you're not the first person I've talked to who does this stuff?" "We want the entire truth." "I can tell that you're about ready to cry and I know that you're embarrassed and I know that you're ashamed; but part of getting rid of the embarrassment and the shame is talking about it and coming clean." "I don't think that you're a bad guy. We just gotta get this stuff figured out." "Why would she tell us that?" "If I go in there, where is she going to tell me that [you were when] you touched her breast? . . . Where is she gonna say that that happened?" "You're not fully telling us the truth. What is the full truth?" "There's no way a 10-year-old girl can make up that kind of stuff." These represent only some of the officers' questions.

After more than 20 minutes of the officers' cascading questions, Haniff finally began to cry and said that he touched A.S.'s breast a single time. Officer David Streefland directed Haniff to show the officers the room where the acts occurred. After they all went inside and into the room, the officers' questioning continued. "What's been happening over the last couple of months? If you're going to lie to me, I don't want to hear it." "I'm not intimidating to you right now, am I?" "How many times did you touch her in the bedroom; she tells us it happened multiple times." "I'm asking for your reasoning and why; if you're

attracted to little kids that's fine, that's understandable." "We'd like to hear your side of the story." "How many times did you touch her breasts, and her buttocks, in this room?" "I appreciate you telling us partial truths, but we want the whole truth, if you don't mind." "This is your opportunity to tell us why you did what you did." "We're trying to get down to the bottom of this; and we have her story, and we believe her story, so I'm asking for your reasoning, and why." "I told you, you're not the only person I've ever talked to that has done this. . . . This is a common occurrence; this happens quite a bit, but we need to learn from this." "Your head's hung low; I know that there's more that you want to tell us. Just get the burden off your chest." "This is your opportunity to come clean."

Finally, after more questioning in the room, Haniff began to confess to the allegations and offer details to still more questioning and pressure. After 48 minutes of sustained questioning, the officers placed Haniff under arrest and took him to the police station. Detective William Cytryszewski advised Haniff of his *Miranda* rights. Haniff said he did not understand, and the detective read them again, line by line. The detective interrogated Haniff further, and Haniff confessed further to the same conduct.

The state charged Haniff with second-degree criminal sexual conduct. Haniff moved the district court to suppress all of his incriminating statements. The district court denied his motion, and Officers Rezny, Streefland, and Cytryszewski testified to his statements at trial. The jury found Haniff guilty. He sought postconviction relief again challenging the admission of his statements, and the district court denied his postconviction petition.

Haniff appeals.

DECISION

Haniff argues that he was improperly convicted in part because the state relied on statements he made while he was being interrogated without having been advised of his *Miranda* rights. “Statements made by a suspect during a ‘custodial interrogation’ are admissible only if the statement[s] [were] preceded by a *Miranda* warning.” *State v. Thompson*, 788 N.W.2d 485, 491 (Minn. 2010); *see also Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612 (1966). The state concedes that Haniff was interrogated before anyone advised him of his *Miranda* rights, so our answer hangs on whether the pre-arrest interrogation became custodial. The district court concluded that the answer is no. We review a district court’s factual findings regarding the circumstances surrounding an interrogation for clear error, and we independently review a district court’s legal conclusions regarding custody. *State v. Vue*, 797 N.W.2d 5, 11 (Minn. 2011).

We have no difficulty concluding that Haniff was in custody during the officers’ interrogation. “An interrogation is custodial if, based on all the surrounding circumstances, a reasonable person under the circumstances would believe that he or she was in police custody of the degree associated with formal arrest.” *Thompson*, 788 N.W.2d at 491 (quotation omitted). Some factors that suggest that a suspect was in custody to the degree associated with formal arrest include police interviewing the suspect at the police station; an officer telling the individual that he is the prime suspect; officers restraining the suspect’s freedom; the suspect making a significantly incriminating statement; the presence of multiple officers; and a gun pointing at the suspect. *Vue*, 797 N.W.2d at 11. On the other hand, some factors that tend to suggest that a suspect was not in custody to the degree

associated with formal arrest include police questioning the suspect in his home; police expressly informing the suspect that he is not under arrest; the suspect's leaving the police station without hindrance; the brevity of questioning; the suspect's ability to leave at any time; the existence of a nonthreatening environment; and the suspect's ability to make phone calls. *Id.*

While these factors are instructive, none is singularly dispositive. *Thompson*, 788 N.W.2d at 491. Several of the factors suggest that Haniff was in custody. The officers told him many times that they “knew” he was guilty, Haniff made incriminating statements during the interview, and multiple officers surrounded him and questioned him for a long period. But not all of the factors suggest custody. At least one factor—the questioning occurring in or near the home where Haniff was staying rather than at the police station—suggests that Haniff was not in custody. A preponderance of these factors tips against the district court's conclusion that Haniff was not in custody during the questioning. But the most significant factor leading us to reverse arises from the Supreme Court's decision in *Berkemer v. McCarty*, 468 U.S. 420, 422, 104 S. Ct. 3138 (1984). *See State v. Champion*, 533 N.W.2d 40, 43 (Minn. 1995) (“We follow the custody test adopted in *Berkemer*.”).

We find especially compelling the officers' long, relentless pressuring of Haniff for a confession along with their repeated insistence that he was guilty. *Berkemer* teaches courts to ask whether a reasonable person in the suspect's position would believe that “questioning [would] continue until he provide[d] his interrogators the answers they [sought].” *See Berkemer*, 468 U.S. at 438, 104 S. Ct. at 3149. Haniff denied or refused to answer the officers' accusations against him at least 30 times, and during this lengthy

period the officers continued to surround and accuse him of lying. Over and over and over they assured him that they believed his accuser and disbelieved him and that he must admit his offense. Every denial was followed by another question or statement and then yet another question or statement bulldozing Haniff toward a confession. Then they took him into the house and continued the same treatment, with at least three different officers in the group joining in at different times. In this circumstance, any reasonable person in Haniff's shoes would be convinced that the officers would not relent from their group interrogation until they got the confession they insisted upon. This, the *Berkemer* Court instructs, is tantamount to a formal arrest, constituting custody for purposes of *Miranda*.

Although the district court found that the officers never told Haniff that they considered him to be a suspect, the audio recording of the interrogation undermines the finding. We will disturb a district court's factual finding only when we are left with the firm and definite conviction that a mistake has been made, *Vue*, 797 N.W.2d at 12, and on this point, we conclude that a mistake has been made. It is true that the officers never used the term "prime suspect," but Haniff knew he was their *only* suspect in the single-offender accusation. And the officers did more than inform him that they *suspected* that he committed the crime; they told him repeatedly they were *certain* he committed the crime. This factor is relevant because people presumably understand that police take formal custody of their prime suspects. See *Stansbury v. California*, 511 U.S. 318, 325, 114 S. Ct. 1526, 1530 (1994); *State v. Wiernasz*, 584 N.W.2d 1, 4 (Minn. 1998). The interrogation recording leaves no doubt that the officers said unequivocally that they believed that Haniff

had sexually abused A.S. We therefore reverse the district court's finding that Haniff was not told that he was a suspect.

We also agree with Haniff that the district court erroneously concluded that the location of the interrogation weighed against a finding of custody. The supreme court observed that the fact that an interrogation occurs inside a defendant's home does not suggest that the interrogation is noncustodial when the home is a crime scene under investigation. *State v. Heden*, 719 N.W.2d 689, 695–96 (Minn. 2006). The officers here took Haniff into the home where he had been staying and into the girl's bedroom specifically because it was the location of the alleged illegal touching. Officer Streefland testified that, after he arrived and spoke with A.S.'s father, the disturbance call became an "investigation for criminal sexual conduct." We conclude that the home, and particularly the room where the officers took Haniff to continue their interrogation, was a crime scene under investigation. The location of the interrogation therefore does not weigh against a finding of custody.

Based on the circumstances as a whole, we hold that a reasonable person in Haniff's situation would believe that he was in custody to the degree associated with formal arrest before he admitted to inappropriately touching A.S. Because Haniff was subjected to custodial interrogation before any officer advised him of his *Miranda* rights, his unadvised admissions and statements in the driveway and bedroom should have been suppressed.

That Haniff was subjected to custodial interrogation before being advised of his *Miranda* rights does not automatically render inadmissible his later statements made to Detective Cytryszewski at the police department after the detective detailed the *Miranda*

warning for Haniff. Haniff had argued to the district court that the later statements should also be suppressed under the fruit-of-the-poisonous-tree doctrine. *See Wong Sun v. United States*, 371 U.S. 471, 487–88, 83 S. Ct. 407, 417 (1963); *United States v. Bayer*, 331 U.S. 532, 539, 67 S. Ct. 1394, 1398 (1947). The district court expressly declined to address Haniff’s poisonous-tree argument because it held that the pre-*Miranda* statements did not require the *Miranda* advisory. Haniff did not raise that argument in his postconviction petition, relying instead on his argument that his statement to Detective Cytryszewski should be suppressed because he never validly waived his *Miranda* rights before talking with the detective.

On appeal, Haniff again does not challenge the admissibility of his statement to Detective Cytryszewski based on any alleged taint carried over from the improper, earlier interrogation, which would have triggered an analysis under the Supreme Court’s developing standard (not under the fruit-of-the-poisonous-tree doctrine). *See Oregon v. Elstad*, 470 U.S. 298, 312–14, 105 S. Ct. 1285, 1294–96 (1985) (rejecting application of fruit-of-the-poisonous-tree doctrine under *Wong Sun* when analyzing the admissibility of a later *Miranda*-warned confession following an initial failure by police to administer the warning before an earlier statement); *see also Missouri v. Seibert*, 542 U.S. 600, 614–16, 124 S. Ct. 2601, 2612 (2004) (plurality) (reaffirming *Elstad* but holding postwarning statements inadmissible and failing to garner a majority of justices agreeing on any single standard by which to judge admissibility in two-stage interrogations). Haniff argues instead that his police-department statement should have been suppressed because he never validly waived his *Miranda* rights when he spoke to the detective.

Haniff's challenge to the admissibility of his statement to the detective has merit. A suspect may waive his Fifth Amendment right against compelled self-incrimination and his right to counsel only if his waiver is knowing, intelligent, and voluntary. *Miranda*, 384 U.S. 436 at 444, 86 S. Ct. 1602 at 1612. The state has the burden to prove that the defendant's waiver was valid. *State v. Fox*, 868 N.W.2d 206, 213 (Minn. 2015). The state usually carries this burden by showing that police gave the *Miranda* warning, the defendant said that he understood the warning, and the defendant gave a statement. *Id.* The state made the showing here, but the district court expressly found that "there is still reason to believe that [Haniff] did not truly understand every aspect" of the *Miranda* warning. The state has not challenged that finding as being clearly erroneous, and so we rely on it for our analysis.

The district court's factual finding that Haniff did not fully understand his *Miranda* rights is fatal to its conclusion that he validly waived those rights. The district court reasoned that Haniff's waiver was valid despite his lack of understanding because the court could not "conceive of what additional steps Detective Cytryszewski could have taken to ensure a valid waiver of [Haniff's] rights." Haniff lists several additional steps the detective could have taken, but we need not consider them because the district court's analysis misses the mark. The validity of a *Miranda*-rights waiver does not depend on the thoroughness of the officer's effort to help the defendant understand those rights. One cannot waive a right he does not understand, no matter how painstakingly the officer has tried to make the right understood. The district court was not satisfied that the state proved that Haniff understood his *Miranda* rights, and for that reason it had no factual basis to conclude that the state carried its burden to establish that he validly waived those rights before he confessed to

Detective Cytryszewski. Haniff's statement to the detective, like his statements to the officers, should have been suppressed as inadmissible evidence.

When evidence obtained in violation of a defendant's constitutional rights is admitted at trial, we must reverse the conviction unless the state establishes that the error was harmless beyond a reasonable doubt. *State v. Sanders*, 775 N.W.2d 883, 887 (Minn. 2009). An error is harmless beyond a reasonable doubt if the verdict was surely unattributable to the error. *Id.* The only evidence against Haniff apart from his confessions was A.S.'s statements, either in the form of her testimony at trial or as relayed by Officer Streefland and a social worker who interviewed her. It is true, as the state argues, that A.S.'s testimony could be sufficient to support a guilty verdict. But the state has not convinced us that this sufficient evidence is so compelling that the admission of Haniff's statements was harmless beyond a reasonable doubt. A "defendant's own confession is probably the most probative and damaging evidence that can be admitted against him," and it is likely to have a "profound impact" on the jury. *Arizona v. Fulminante*, 499 U.S. 279, 296, 111 S. Ct. 1246, 1257 (1991) (quotation omitted). Three police officers testified that Haniff had confessed to sexually abusing A.S., and the prosecutor highlighted the admissions in her closing argument. Because the jury's verdict was not surely unattributable to the erroneous admission of Haniff's statements, we reverse Haniff's convictions and remand for a new trial.

Reversed and remanded.