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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1042**

State of Minnesota,
Respondent,

vs.

Travis Darnell Williams,
Appellant.

**Filed June 15, 2020
Affirmed in part, reversed in part, and remanded
Segal, Chief Judge**

Hennepin County District Court
File No. 27-CR-18-9557

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Sean P. Cahill, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

SEGAL, Chief Judge

In this direct appeal from the judgment of conviction for third-degree drug sale, appellant argues the district court erred (1) by denying appellant's motion to suppress one

of the statements he made to law enforcement because he was subject to custodial interrogation without being informed of his *Miranda* rights; and (2) by entering judgments of conviction for two controlled-substance crimes in violation of Minn. Stat. § 609.04 (2016). We affirm in part, reverse in part, and remand.

FACTS

On March 16, 2017, Brooklyn Center police officers executed a search warrant at the apartment of appellant Travis Darnell Williams and his roommate R.W., looking for heroin. After the officers entered the apartment, they handcuffed and detained both men for the duration of the search. No *Miranda* warning was given. One of the officers, Ryan Soliday, was put in charge of keeping watch on the two men and logging any items found during the search. The men were seated in the living room of the apartment and Officer Soliday was seated in the kitchen about ten to twelve feet away from the two men. The living room is open to the kitchen.

At the outset of the search, Officer Soliday asked the men “if there was anything dangerous such as weapons or anything of that nature” that the officers should know about. In response to Officer Soliday’s question, Williams said that there was a gun in the house and it was located in the south bedroom.

During the search, officers discovered a Hi-Point .45 caliber semi-automatic handgun and two magazines containing .45 caliber handgun rounds, along with .45 caliber ammunition located in the closet of the south bedroom. They also located a pair of jeans in the bedroom that contained a baggie with six packages of heroin totaling 6.61 grams in one pocket and \$2,160 in the other pocket. Additionally, a piece of mail with Williams’s

name on it was discovered in the south bedroom and the police report stated that the jeans were approximately Williams's size and too large to fit R.W. When an officer brought the heroin to be logged in by Officer Soliday, Williams stated "several times" that he would "take the gun" but denied any knowledge of the heroin that was recovered. Officer Soliday claimed that he did not ask Williams any questions while the officers were bringing him items to log.

Williams was arrested and charged with one count of third-degree intent-to-sell narcotics and one count of third-degree possession of heroin. At the pretrial hearing, Williams argued that his statements that there was a gun in the house and that he would "take the gun" should be suppressed because he had not been advised of his *Miranda* rights.¹ Both Officer Soliday and the officer who discovered the heroin testified at the pretrial hearing. The district court suppressed Williams's first statement that there's a gun in the house because he was in custody at the time the officer asked the question and he had not been provided a *Miranda* warning. The court noted that the question was "very specific" and was not a preliminary question. The district court denied the motion to suppress Williams's second statement on the grounds that it was spontaneous and was not prompted by any questions asked by Officer Soliday or the other officers involved in the search.

¹ For ease of reference, the initial statement about there being a gun in the south bedroom will be referred to as the "first statement" and the statements that Williams would "take the gun," but had no knowledge of the heroin will be referred to, in the singular, as the "second statement."

Williams submitted the case to the district court for a trial on stipulated facts and stipulated evidence pursuant to Minn. R. Crim. P. 26.01, subd. 3. The stipulated evidence included the testimony from the two officers at the pretrial hearing, the complaint, police reports, search warrants, the Minnesota Bureau of Criminal Apprehension lab report, and the photographs from the execution of the search warrant. The state and Williams submitted simultaneous written closing statements to the court. The district court found Williams guilty of both possession and intent-to-sell. At the sentencing hearing, the district court imposed the presumptive sentence for third-degree sale of 33 months in prison, but stayed the sentence and placed Williams on probation for three years. The warrant of commitment contains convictions for both offenses. This appeal follows.

D E C I S I O N

I. The district court did not err when it denied Williams’s motion to suppress the second statement.

“When reviewing a district court’s pretrial order on a motion to suppress evidence, ‘we review the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.’” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quoting *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007)). The Fifth Amendment to the United States Constitution and article I, section 7 of the Minnesota Constitution protect criminal defendants from compelled self-incrimination. In order to protect this right, a suspect’s statements made to law enforcement during a custodial interrogation are generally inadmissible in the absence of a *Miranda* warning. *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612 (1966). The question of what constitutes

a “custodial interrogation” for the purposes of *Miranda* turns on the determination of (1) whether the suspect was in custody and (2) whether the police conduct in question constitutes “interrogation.” *State v. Edrozo*, 578 N.W.2d 719, 724 (Minn. 1998).

Here, there is no dispute that Williams was “in custody” at the time he made the second statement. The only question is whether the statement was made while Williams was being interrogated.

The term “interrogation” in the context of a motion to suppress is not limited to whether the police have engaged in actual questioning. *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S. Ct. 1682, 1689 (1980). The term encompasses “any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect.” *Id.* at 301, 100 S. Ct. at 1689-90 (footnotes omitted). Appellate courts consider the totality of the circumstances when determining whether a law-enforcement agent’s questions are “reasonably likely to elicit an incriminating response,” and thus constitute an interrogation. *State v. Heinonen*, 909 N.W.2d 584, 589-90 (Minn. 2018). Because officers “cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response.” *Innis*, 446 U.S. at 301-02, 100 S. Ct. at 1690 (footnote omitted).

Williams argues that he was subject to interrogation because Officer Soliday “acted in a way that was reasonably likely to elicit an incriminating response when he chose not to advise Williams of his *Miranda* rights.” Williams claims that, even though Officer

Soliday testified that he did not question Williams before the second statement, he was subjected to the “functional equivalent” of interrogation because Williams was in custody while a search by a number of officers was taking place in his apartment and he had already been asked a question by Officer Soliday in violation of his *Miranda* rights. Williams also argues that his “second statement was consistent with his first statement because it told the police that he knew about the gun” and that the statement was thus the product of the initial unlawful question by Officer Soliday that resulted in the suppression of the first statement.

We conclude, however, that the district court’s ruling on the second statement is supported by the totality of the circumstances. Here, there was a break in time between the first statement, made before the search started, and the second statement that was made sometime later after officers began the search and started bringing items to Officer Soliday to catalogue. In addition, there is no evidence that any of the officers asked Williams any questions or otherwise directed comments to him when items found during the search were brought to Officer Soliday. The second statement, thus, appears to be spontaneous and not in response to the “functional equivalent” of interrogation. Inventorying items found during a search warrant in front of a suspect, without more, is not “reasonably likely to elicit an incriminating response.” *Heinonen*, 909 N.W.2d at 589-90. There must be a “measure of compulsion above and beyond that inherent in custody itself.” *State v. Tibiatowski*, 590 N.W.2d 305, 310 (Minn. 1999) (quotation omitted). Therefore, under the totality of the circumstances, Williams, even though in custody, was not under police interrogation when he spontaneously made the statement that he would “take the gun,” and the district court did not err in denying the motion to suppress Williams’s second statement.

II. Entering convictions on two controlled-substance crimes was error.

Williams argues that the district court erred by entering convictions for both third-degree sale and third-degree possession of narcotics. Under Minnesota law, a criminal defendant “may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1. The Minnesota Supreme Court has determined that “the proper procedure to be followed by the trial court when the defendant is convicted on more than one charge for the same act is for the court to adjudicate formally and impose sentence on one count only.” *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984). If the adjudicated conviction is later vacated, the remaining conviction can then be formally adjudicated. *Id.* An appellate court may “look to the official judgment of conviction in the district court file as conclusive evidence of whether an offense has been formally adjudicated.” *Spann v. State*, 740 N.W.2d 570, 573 (Minn. 2007) (quotations omitted).

The district court only sentenced Williams on the sale charge. However, the warrant of commitment lists convictions for both counts. Because third-degree possession is necessarily proven when third-degree sale is proven, the district court erred in entering a conviction on the warrant of conviction for both offenses. Therefore, we reverse and remand to the district court to vacate Williams’s conviction for third-degree possession.

Affirmed in part, reversed in part, and remanded.