FILED
09/21/2023
Clerk of the
Appellate Courts

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs September 7, 2023

STATE OF TENNESSEE v. RAGHU SINGH

Appeal from the Criminal Court for Shelby County
No. 19-00926 Chris Craft, Judge

No. W2022-01560-CCA-R3-CD

A Shelby County jury found the Defendant, Mr. Raghu Singh, guilty of two counts of driving under the influence and one count of reckless driving. The trial court sentenced the Defendant to an effective sentence of eleven months, twenty-nine days, after service of ten days in confinement. In this appeal, the Defendant argues that the evidence is legally insufficient to sustain his convictions for driving under the influence. He also asserts that the trial court erred (1) in finding that the State had established a proper chain of custody for his blood sample; and (2) by denying a motion to suppress statements he made at the scene. Upon our review, we respectfully affirm the judgments of the trial court.

Tenn. R. App. 3 Appeal as of Right;
Judgments of the Criminal Court Affirmed

TOM GREENHOLTZ, J., delivered the opinion of the court, in which ROBERT L. HOLLOWAY, JR., and J. ROSS DYER, JJ., joined.

Joseph McClusky, Memphis, Tennessee, for the appellant, Raghu Singh.

Jonathan Skrmetti, Attorney General and Reporter; Katherine C. Redding, Senior Assistant Attorney General; Amy P. Weirich, District Attorney General; and Vanessa R. Murtaugh, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

FACTUAL BACKGROUND

On February 14, 2019, the Shelby County grand jury charged the Defendant with two counts of driving under the influence of an intoxicant ("DUI") and one count of reckless driving. The incident arose from a one-car accident that was investigated by

Germantown Police Department Officers Christian Jefferson and Johnny Vo in March 2018.

The trial of the case began on May 9, 2022. On the morning of trial, the trial court heard a motion filed by the Defendant seeking to suppress statements he made to law enforcement officers at the scene. The Defendant argued that he was in custody and that officers did not administer *Miranda* warnings before asking him questions. After the hearing, the trial court denied the motion, concluding that the Defendant was not in custody and that *Miranda* warnings were not required.

At trial, the State first called Officers Jefferson and Vo to testify. The officers testified that they responded to the scene of an accident around 10:15 p.m. on March 3, 2018. When they arrived, the officers saw that a car had crashed into a brick mailbox. Officer Jefferson also saw a man, later identified as the Defendant, walking away from the vehicle.

Officer Jefferson began questioning the Defendant to determine his identity and ensure he was not injured. During the conversation, he noticed signs of intoxication, such as the smell of alcohol on the Defendant's breath, slurred speech, bloodshot and watery eyes, and an unsteady balance. The Defendant admitted to consuming alcohol earlier in the evening and that he had been driving the car and hit the mailbox. The officers confirmed that the Defendant owned the vehicle.

Officer Jefferson asked the Defendant to perform a series of standard field sobriety tests, including the walk-and-turn test and the one-legged stand test. According to Officer Jefferson, the Defendant could not keep his balance during the instructions and failed to follow test directions. The officer believed that the Defendant "did not perform successfully on the field sobriety tests," and he placed the Defendant under arrest for DUI.

The officers informed the Defendant of his *Miranda* rights before taking him to jail for booking. At the jail, Officer Vo obtained a warrant for a blood draw, and he transported the Defendant to Germantown Methodist Hospital for the procedure around 2:00 a.m. Officer Vo was present during the blood draw, though he was not involved in the procedure.

Officer Vo described the process of sealing and handling the blood samples for evidence. He stated that the Tennessee Bureau of Investigation ("TBI") had previously provided a "blood draw kit" to the department that included, among other things, two blood vials. He gave both vials from this kit to the hospital nurse, who drew the Defendant's blood. The officer received the blood-filled vials from the nurse, sealed them in the

evidence box, and completed the form paperwork. He then gave the evidence box to his supervisor, who placed it in an evidence locker. The supervisor or another officer later transported the box to the TBI for analysis.

The State also called TBI Special Agent Julian Conyers to testify. Special Agent Conyers stated that TBI took possession of the evidence box containing the Defendant's blood samples after Officer Jefferson left it in the TBI drop box. From there, TBI evidence technician Fallo Howard retrieved the samples and placed them in the evidence vault. The samples were labeled and refrigerated until Special Agent Conyers conducted the testing.

Special Agent Conyers testified that there was no indication that the evidence box had been tampered with or that the blood samples were contaminated. The agent stated that the blood alcohol concentration for the Defendant's blood samples was 0.13 grams percent ethyl alcohol. The agent confirmed that the Defendant's blood was drawn about four hours following the officers' first encounter with the Defendant. As such, at the time of the encounter, the Defendant may have had a blood alcohol concentration of between 0.17 percent and 0.21 percent, depending on the elimination rate used for the calculation.

Following the trial, the jury found the Defendant guilty as charged. After a sentencing hearing on September 2, 2022, the trial court merged the DUI convictions and sentenced the Defendant to serve an effective sentence of eleven months, twenty-nine days. The court suspended the sentence to probation after service of ten days in confinement and imposed a $500.00 fine.

The trial court denied the Defendant's motion for a new trial on October 7, 2022. The Defendant thereafter filed a timely notice of appeal on November 4, 2022.

ANALYSIS

On appeal, the Defendant raises three issues. First, he asserts that the evidence is legally insufficient to sustain his convictions for DUI.[1] He also argues that the State failed to establish a proper chain of custody for the blood evidence and that the trial court erred in denying his motion to suppress. We address each issue in turn.

[1] The Defendant does not challenge his conviction or sentence for reckless driving. As such, we do not address this conviction further. *See* Tenn. R. App. P. 13(b).

A. LEGAL SUFFICIENCY OF THE EVIDENCE

The Defendant first argues that the evidence is legally insufficient to support his convictions for DUI. More specifically, the Defendant argues that there was "no evidence that [the Defendant] was operating or in control of the vehicle at the time of the arrest." In addition, he argues that the State could not establish when he drank in relation to his driving and that this "uncertainty" could not sustain the verdicts. We respectfully disagree.

1. Standard of Appellate Review

"The standard for appellate review of a claim challenging the sufficiency of the State's evidence is 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. Miller*, 638 S.W.3d 136, 157 (Tenn. 2021) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This standard of review is "highly deferential" in favor of the jury's verdict. *See State v. Lyons*, 669 S.W.3d 775, 791 (Tenn. 2023). Indeed, this standard requires us to resolve all conflicts in favor of the State's theory and to view the credited testimony in a light most favorable to the State. *State v. McKinney*, 669 S.W.3d 753, 772 (Tenn. 2023). To that end, "[w]e do not reweigh the evidence, because questions regarding witness credibility, the weight to be given the evidence, and factual issues raised by the evidence are resolved by the jury, as the trier of fact." *State v. Shackleford*, __ S.W.3d __, No. E2020-01712-SC-R11-CD, 2023 WL 4537310, at *4 (Tenn. July 14, 2023) (citations omitted). "The standard of review is the same whether the conviction is based upon direct or circumstantial evidence." *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (internal quotations and citations omitted).

2. Driving Under the Influence

The Defendant was convicted of DUI under two separate theories: driving while under the influence of an intoxicant (DUI by intoxication) and DUI committed with a blood alcohol concentration of 0.08 percent or more (DUI per se). As is relevant to this case, Tennessee Code Annotated section 55-10-401 provides as follows:

> It is unlawful for any person to drive or to be in physical control of any automobile or other motor driven vehicle on any of the public roads and highways of the state, or on any streets or alleys, or while on the premises of any shopping center, trailer park, or apartment house complex, or any other premises that is generally frequented by the public at large, while:

> (1) Under the influence of any intoxicant, marijuana, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system, or combination thereof that impairs the driver's ability to safely operate a motor vehicle by depriving the driver of the clearness of mind and control of oneself that the driver would otherwise possess; [and]
>
> (2) The alcohol concentration in the person's blood or breath is eight-hundredths of one percent (0.08%) or more[.]

Although charged separately in this case, "DUI by intoxication and DUI per se are alternative means of committing the offense of DUI[.]" *See State v. Wilburn*, 647 S.W.3d 893, 900 (Tenn. Crim. App. 2021). If a jury finds a defendant guilty under both theories, the trial court should merge the convictions into a single judgment, as the trial court did here. *State v. Cooper*, 336 S.W.3d 522, 524 (Tenn. 2011).

Viewing the evidence in a light most favorable to the State, a reasonable juror could have found the essential elements of DUI under either theory beyond a reasonable doubt. When Officers Jefferson and Vo arrived on the scene, they encountered the Defendant walking away from a car that had been in an accident on a public road in a residential neighborhood. The Defendant admitted that the vehicle was his, that he had consumed alcohol, and that he had been driving and hit his neighbor's mailbox.

Officer Jefferson smelled alcohol on the Defendant's breath and observed that the Defendant's speech was slurred, his eyes were bloodshot and watery, and his balance was unsteady. Officer Jefferson also testified that the Defendant "did not perform successfully on the field sobriety tests," including being unable to keep his balance and failing to follow instructions. When the Defendant's blood was drawn some four hours later, the blood alcohol concentration was still 0.13 grams percent ethyl alcohol. Indeed, expert testimony established that the Defendant's blood alcohol concentration could have been between 0.17 percent and 0.21 percent when the officers first encountered the Defendant.

Although the Defendant acknowledges these basic facts, he argues that the officers could not determine when he drove in relation to his consuming alcohol. In other words, although the Defendant admitted that he drove his car, crashed into a brick mailbox, and drank at some point, he asserts that no reasonable jury could find that he drove while under the influence of alcohol. We respectfully disagree.

The Defendant's crash occurred across the street from his own house on a road with which he was presumably familiar. The nature of the crash itself is inconsistent with

unimpaired driving, and although the Defendant spoke with the officers, he did not offer any explanation, innocent or otherwise, for the crash. Moreover, the officers encountered the Defendant at the vehicle itself, and the jury could have reasonably inferred that the collision with the mailbox had occurred recently. Given that the Defendant's blood alcohol level could have been more than twice the legal limit at that time, a reasonable jury could have inferred that he did not wait until after the crash to drink enough alcohol to reach that level.

The standard of appellate review requires us to view all the direct and circumstantial evidence in a light most favorable to the State. It also requires us to draw all reasonable inferences from the evidence in the State's favor and to discard all countervailing evidence. When we do so, the evidence is easily sufficient for a reasonable juror to find the elements of DUI by intoxication and DUI per se beyond a reasonable doubt. As such, we conclude that the Defendant's convictions for DUI are supported by legally sufficient evidence.

B. CHAIN OF CUSTODY

The Defendant next argues that the State failed to establish a proper chain of custody for the blood samples tested by the TBI. More specifically, the Defendant asserts that the evidence does not show how the blood samples were delivered to the TBI. He argues that while Officer Vo collected the blood samples from medical personnel, the TBI's test kit reflected that Officer Jefferson "collected and delivered" the samples to the TBI. The Defendant also alleges that while Officer Jefferson may have delivered the blood samples to the TBI, neither Officer Jefferson nor anyone with the TBI testified to this fact. In response, the State argues that the chain of custody was properly established. We agree with the State.

All parties agree that the Defendant has waived this claim because it was not presented in the Defendant's motion for a new trial. *E.g.*, *State v. Thompson*, No. W2022-01535-CCA-R3-CD, 2023 WL 4552193, at *3 (Tenn. Crim. App. July 14, 2023) (recognizing that a party waives an evidentiary issue arising from a jury trial by failing to raise the issue in a motion for a new trial), *no perm. app. filed*. However, the Defendant specifically requests that we review this claim for plain error, though he includes limited argument on this issue aside from identifying the factors. Nevertheless, our supreme court has recognized that "[u]nlike plenary review, which applies to all claims of error that are properly preserved, plain error review is limited to those errors which satisfy five criteria." *State v. Vance*, 596 S.W.3d 229, 254 (Tenn. 2020). These criteria are as follows:

(a) the record must clearly establish what occurred in the trial court;

(b) a clear and unequivocal rule of law must have been breached;

(c) a substantial right of the accused must have been adversely affected;

(d) the accused did not waive the issue for tactical reasons; and

(e) consideration of the error is "necessary to do substantial justice."

See, e.g., *State v. Jones*, 589 S.W.3d 747, 762 (Tenn. 2019). Whether plain error exists "must depend upon the facts and circumstances of the particular case." *State v. Smith*, 24 S.W.3d 274, 282 (Tenn. 2000). Even then, however, the "plain error must be of such a great magnitude that it probably changed the outcome of the trial." *State v. Adkisson*, 899 S.W.2d 626, 642 (Tenn. Crim. App. 1994). As such, only "rarely will plain error review extend to an evidentiary issue." *State v. Haymer*, 671 S.W.3d 568, 578 (Tenn. Crim. App. 2023) (citation omitted).

Of course, the "defendant bears the burden of establishing all of these elements." *State v. Linville*, 647 S.W.3d 344, 354 (Tenn. 2022). As such, an appellate court "need not consider all of the elements when it is clear from the record that at least one [of] them cannot be satisfied." *State v. Reynolds*, 635 S.W.3d 893, 931 (Tenn. 2021). "Whether the plain error doctrine has been satisfied is a question of law which we review de novo." *State v. Knowles*, 470 S.W.3d 416, 423 (Tenn. 2015).

It is "well-established that as a condition precedent to the introduction of tangible evidence, a witness must be able to identify the evidence or establish an unbroken chain of custody." *State v. Scott*, 33 S.W.3d 746, 760 (Tenn. 2000) (citation and internal quotation marks omitted). The purpose of the rule is "to insure 'that there has been no tampering, loss, substitution, or mistake with respect to the evidence.'" *State v. Daniels*, 656 S.W.3d 378, 389-90 (Tenn. Crim. App. 2022) (quoting *Scott*, 33 S.W.3d at 760). As to the State's burden to prove a chain of custody, our supreme court has said:

> Even though each link in the chain of custody should be sufficiently established, this rule does not require that the identity of tangible evidence be proven beyond all possibility of doubt; nor should the State be required to establish facts which exclude every possibility of tampering. An item is not necessarily precluded from admission as evidence if the State fails to call all of the witnesses who handled the item. Accordingly, when the facts and circumstances that surround tangible evidence reasonably establish the

> identity and integrity of the evidence, the trial court should admit the item into evidence.

State v. Cannon, 254 S.W.3d 287, 296 (Tenn. 2008) (citations omitted). Of course, "[e]vidence should not be admitted if its identity and integrity cannot be demonstrated by chain of custody or other appropriate means." *State v. Johnson*, No. W2019-01133-CCA-R3-CD, 2022 WL 1134776, at *10 (Tenn. Crim. App. Apr. 18, 2022) (citing *Scott*, 33 S.W.3d at 760), *perm. app. denied* (Tenn. Aug. 4, 2022). We review a trial court's finding that a party has established a sufficient chain of custody for tangible evidence for an abuse of discretion. *State v. Watkins*, 648 S.W.3d 235, 271 (Tenn. Crim. App. 2021).

We have frequently examined these principles in the context of a blood sample taken for TBI forensic analysis in DUI cases. In that context, we have clarified that the State is not required to present every witness handling the blood sample to establish a proper chain of custody. Instead, a sufficient chain of custody for a blood sample used in forensic testing may be shown when:

- the investigating officer testifies that he or she watched the blood draw and received the sample from a nurse or phlebotomist;

- the investigating officer testifies that he or she then placed the sealed blood sample in a labeled, protective box and placed the box in an evidence locker for later delivery to the TBI;

- a TBI witness describes the procedures for the TBI's receipt and handling of the sample, including any notation of tampering or irregularities with the blood sample; and

- the TBI forensic scientist testifies that the sample showed no irregularity, tampering, or degrading during testing.

See, e.g., *State v. Parton*, No. E2018-01209-CCA-R3-CD, 2019 WL 2929076, at *6-7 (Tenn. Crim. App. July 8, 2019) (affirming chain of custody on these factors and citing extensive authorities for support), *no perm. app. filed*. Importantly, the absence of testimony from the officer transporting the sample to the TBI does not impair the chain of custody if the other parts of the chain identified above are present. *Id.*; *State v. Laning*, No. E2011-01882-CCA-R3-CD, 2012 WL 3158782, *3 (Tenn. Crim. App. Aug. 6, 2012), *no perm. app. filed.*

In this case, Officer Vo testified that he witnessed the blood draw and received the sealed vials from the nurse who drew the Defendant's blood. He testified about the procedures he followed afterward, including sealing the vials in a TBI evidence box and delivering the box to a supervisor for later delivery to the TBI.

The State also presented testimony from TBI Special Agent Conyers. The agent testified about how the TBI received blood samples and how an evidence technician cataloged and preserved the samples prior to testing. Special Agent Conyers testified that the technician would have specifically noted if the blood vials were not sealed and that no such notation appeared in this case. In addition, the agent testified to the testing procedures he performed to ensure that the Defendant's blood samples were not contaminated.

We conclude that the Defendant failed to establish plain error because he cannot show that a clear and unequivocal rule of law has been breached. The State established how local law enforcement and the TBI collected and preserved the evidence. It also established that the Defendant's blood samples showed no signs of irregularity, tampering, or degrading. We have affirmed the admission of blood evidence on nearly identical evidence establishing a chain of custody. *Daniels*, 656 S.W.3d at 391; *State v. Jones*, No. M2017-00769-CCA-R3-CD, 2018 WL 1182573, at *4-5 (Tenn. Crim. App. Mar. 7, 2018), *no perm. app. filed*. As such, because the State "reasonably establish[ed] the identity of the evidence and its integrity," *State v. Davis*, 141 S.W.3d 600, 630 (Tenn. 2004), we affirm that the trial court acted within its discretion in finding that a proper chain of custody had been established with respect to the Defendant's blood samples.

C. DEFENDANT'S STATEMENTS TO LAW ENFORCEMENT

Finally, the Defendant asserts that the trial court erred in denying his pretrial motion to suppress. As background for this issue, the Defendant filed a motion to suppress the statements he made at the scene to officers before his arrest.[2] More specifically, the Defendant argued that he was in custody and that Officer Jefferson did not administer *Miranda* warnings to him before asking any questions. The trial court held a hearing on the motion on the first day of trial before the venire entered the courtroom.

---

[2] The Defendant's motion to suppress also alleged that his warrantless seizure violated Article I, section 7 of the Tennessee Constitution and the Fourth Amendment to the United States Constitution. The parties litigated this possible ground for relief, but the trial court did not comment on it otherwise. The Defendant does not raise this issue as a ground for relief on appeal, and as such, we do not address it further. *See* Tenn. R. App. P. 13(b) ("Review generally will extend only to those issues presented for review.").

The only witness called by the parties was Officer Jefferson. The officer testified he responded to a call about a motor vehicle crash on March 3, 2018. Not knowing whether injuries were involved, the officer arrived with his emergency equipment activated. Once on the scene, he saw the Defendant getting out of a car that was involved in the accident. The officer questioned the Defendant, who appeared to be intoxicated based on the smell of alcohol on his breath, his bloodshot and watery eyes, and his unstable footing. In response to Officer Jefferson's questions, the Defendant admitted to drinking alcohol that night.

Officer Jefferson confirmed that the Defendant was not wearing shoes when the officers first approached him. The officers did not allow the Defendant to return to his house to retrieve his shoes or obtain his driver's license, though they allowed his wife to bring those items to him. Officer Jefferson did not administer *Miranda* warnings before questioning the Defendant before his arrest.

Following the hearing, the trial court denied the motion to suppress. The court noted that "[t]his was an accident where [the officer] arrived on the scene." As such, the court concluded that the questions asked by Officer Jefferson "were investigatory questions[,] and the defendant was not in custody for purposes of *Miranda*."

In this appeal, the Defendant argues that his statements were inadmissible under *Miranda v. Arizona*, 384 U.S. 436 (1966), and that the trial court erred in denying his motion to suppress. The State responds that because the Defendant was not in custody at the time of the officer's questioning, he is not entitled to relief. We agree with the State.

1. Standard of Appellate Review

In reviewing a trial court's ruling on a motion to suppress evidence, "we will uphold the trial court's findings of fact unless the evidence preponderates against those findings." *State v. Stanfield*, 554 S.W.3d 1, 8 (Tenn. 2018). The party prevailing in the trial court "is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing[,] as well as all reasonable and legitimate inferences that may be drawn from that evidence." *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996). "[I]n evaluating the correctness of a trial court's ruling on a pretrial motion to suppress, appellate courts may consider the proof adduced both at the suppression hearing and at trial." *State v. Henning*, 975 S.W.2d 290, 299 (Tenn. 1998).

Nevertheless, "[d]espite the deference given to [the] trial court's findings of fact, this court reviews the trial court's application of the law to the facts de novo with no presumption of correctness." *State v. Henry*, 539 S.W.3d 223, 232 (Tenn. Crim. App.

2017) (citing *State v. Montgomery*, 462 S.W.3d 482, 486 (Tenn. 2015)). In addition, "[d]etermining the existence of probable cause 'is a mixed question of law and fact that we review de novo.'" *State v. Reynolds*, 504 S.W.3d 283, 298 (Tenn. 2016) (citing *State v. Bell*, 429 S.W.3d 524, 529 (Tenn. 2014)).

2. Custodial Interrogation

The Fifth Amendment to the United States Constitution provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." A similar provision in our Tennessee Constitution states that "in all criminal prosecutions, the accused . . . shall not be compelled to give evidence against himself." Tenn. Const. art. I, § 9. Through these provisions, our federal and state constitutions protect a defendant's privilege against compelled self-incrimination. *State v. Blackstock*, 19 S.W.3d 200, 207 (Tenn. 2000).

To help ensure these protections, the United States Supreme Court held in *Miranda v. Arizona*, 384 U.S. 436 (1966), that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *State v. Walton*, 41 S.W.3d 75, 82 (Tenn. 2001). Indeed, "[s]tatements made during the course of a custodial police interrogation are inadmissible at trial unless the [S]tate establishes that the defendant was advised of his right to remain silent and his right to counsel and that the defendant then waived those rights." *State v. McCary*, 119 S.W.3d 226, 250 (Tenn. Crim. App. 2003).

Importantly, the prophylactic measures required by *Miranda* apply only "to the questioning of an individual who has been taken into custody or otherwise deprived of his freedom by the authorities in any significant way.'" *State v. Dailey*, 273 S.W.3d 94, 102 (Tenn. 2009) (quoting *Miranda*, 384 U.S. at 478). "Accordingly, *Miranda* warnings are only required when a suspect is (1) in custody and (2) subjected to questioning or its functional equivalent." *State v. Moran*, 621 S.W.3d 249, 257 (Tenn. Crim. App. 2020). And, "[a]bsent either one of these prerequisites, the requirements of *Miranda* are not implicated." *Walton*, 41 S.W.3d at 82.

A person is in "custody" for *Miranda* purposes when "'a reasonable person in the suspect's position would consider himself or herself deprived of freedom of movement to a degree associated with a formal arrest.'" *Moran*, 621 S.W.3d at 257 (quoting *State v. Anderson*, 937 S.W.2d 851, 855 (Tenn. 1996)). "The determination of whether a suspect is in custody at the time of an interrogation is a fact-specific inquiry that examines the totality of the circumstances surrounding the interrogation." *State v. Phillips*, No. W2016-

02087-CCA-R3-CD, 2018 WL 486002, at *5 (Tenn. Crim. App. Jan. 19, 2018), *no perm. app. filed*. The defendant has the burden to show that he or she was "in custody" for *Miranda* purposes. *Moran*, 621 S.W.3d at 258.

In the context of an investigatory traffic stop for driving under the influence, this Court has recognized that "[i]t is undeniable that a routine traffic stop significantly curtails the 'freedom of action' of the driver and passengers. The driver is certainly not free to leave or disobey a directive to pull over, and such a stop constitutes a seizure." *State v. Manzenberger*, No. E2020-00218-CCA-R3-CD, 2021 WL 2255502, at *4 (Tenn. Crim. App. June 3, 2021), *no perm. app. filed*. However, it is also true that the United States Supreme Court has held that persons temporarily detained pursuant to a routine traffic stop are generally "not 'in custody' for the purposes of *Miranda*." *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984); *see also Maryland v. Shatzer*, 559 U.S. 98, 113 (2010) ("[T]he temporary and relatively nonthreatening detention involved in a traffic stop or *Terry* stop does not constitute *Miranda* custody." (citations omitted)).

Instead, the motorist must be "subjected to treatment that renders him 'in custody' for practical purposes" beyond the mere fact of detention before he or she "will be entitled to the full panoply of protections prescribed by *Miranda*." *Manzenberger*, 2021 WL 2255502, at *5. Thus, in the totality of the circumstances, our courts have typically looked to the following types of factors:

- the length of the investigatory stop before the suspect's arrest;
- whether the stop was visible to the public and passersby;
- whether the suspect was informed that the stop would not be brief;
- whether the officer subjectively intended to take the suspect into custody and communicated this belief to the defendant;
- whether there was a limited police presence on the scene, such as one or two officers, particularly if the suspect primarily addressed only one officer;
- whether the officer's tone of voice or demeanor was overbearing or threatening;
- whether the arrest was made after the officer administered the field sobriety tests;

- whether the officer retained the suspect's driver's license; and
- whether the suspect was denied the opportunity to contact others.

See, e.g., *Manzenberger*, 2021 WL 2255502, at *5, *7 (citing authorities identifying several of these factors); *State v. Heffel*, No. M2009-01400-CCA-R9-CD, 2010 WL 1333152, at *3 (Tenn. Crim. App. Apr. 6, 2010), *perm. app. denied* (Tenn. Sept. 22, 2010); *State v. Green*, No. E1999-02204-CCA-R3-CD, 2000 WL 1839130, at *9 (Tenn. Crim. App. Dec. 14, 2000), *perm. app. denied* (Tenn. May 21, 2001).

In this case, the record shows that the Defendant was detained in an open area in his own neighborhood. Although two officers were present during the stop, the Defendant addressed Officer Jefferson primarily. The officers asked a modest number of questions, and they did not initiate an arrest until after completing the field sobriety tests.

Moreover, nothing in the record shows that the officers were overbearing or threatening. The officers did not indicate that the stop would be lengthy or that they intended to take the Defendant into custody. Finally, the record does not suggest that the officers denied the Defendant an opportunity to contact others. On the contrary, they allowed his wife to bring him shoes so he could participate in the field sobriety tests.

Considering the totality of the circumstances, we conclude that the trial court correctly found that the Defendant was not in custody during the investigatory stop before his arrest. Because the Defendant was not in custody before his formal arrest, "the requirements of *Miranda* are not implicated." *Walton*, 41 S.W.3d at 82. As such, the trial court acted within its discretion in denying the Defendant's motion to suppress.

CONCLUSION

In summary, we hold that the evidence is sufficient to support the Defendant's convictions for driving under the influence of an intoxicant. We also hold that the trial court acted within its discretion (1) in finding that the State established a proper chain of custody related to the Defendant's blood samples; and (2) in denying the Defendant's motion to suppress. We respectfully affirm the judgments of the trial court.

____

TOM GREENHOLTZ, JUDGE