

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2003-031

JUNE TERM, 2003

	}	APPEALED FROM:
	}	
State of Vermont	}	District Court of Vermont, Unit No. 3,
	}	Essex Circuit
v.	}	
	}	
Scott Alan Clark	}	DOCKET NO.11-2-02 ExCr
	}	
	}	Trial Judge: Dennis R. Pearson
	}	

In the above-entitled cause, the Clerk will enter:

Defendant appeals from a judgment of conviction of DUI. He contends the trial court erred in denying a motion to suppress, claiming that he was subjected to a custodial police interrogation without the benefit of Miranda warnings. We agree, and reverse.

The facts may be briefly summarized. On the evening of January 27, 2002, an Essex County Deputy Sheriff received a call from the State Police dispatcher in Derby informing him that a car had gone off the roadway on Route 114 in Canaan and that the United States Border Patrol had picked up defendant while walking on the road. The deputy directed the dispatcher to tell the border patrol to take defendant to the Beecher Falls border station.

The deputy then drove to the Beecher Falls station, where he met defendant and asked him for his identification. The deputy observed that defendant walked unsteadily, smelled of alcohol, and had slurred speech. In response to the deputy's questions, defendant acknowledged that he was the driver of the car off the roadway. Based on this and his observations, the deputy believed that defendant was under the influence of alcohol. Defendant refused to submit to field sobriety tests or a preliminary breath test. The deputy testified that he then "detained [defendant] and brought him down to the Guildhall " to the Sheriff's office . . . for processing." \*

Upon arriving at the sheriff's office, the deputy "brought [defendant] in, sat him down, and started to process him." The deputy asked defendant whether he had been drinking and how many drinks he had consumed. Defendant responded that he had had three beers. The deputy also asked defendant the time of his last drink, and whether he had anything to drink after the accident. Defendant responded to these questions. The deputy then advised defendant of his Miranda rights, after which he refused to answer any further questions.

Defendant moved to suppress the answers that he gave to the deputy sheriff at the police station prior to the Miranda warnings. The trial court denied the motion, finding that "in view of defendant's refusal to submit to field sobriety tests or the preliminary breath test " transporting defendant to the sheriff's office for a Data Master breath test was the only way to dispel the officer's suspicions, and therefore that the questioning at the station was "functionally equivalent to the typical roadside stop" which we have held does not require Miranda warnings. See State v. Boardman, 148 Vt. 229, 231 (1987) (roadside interrogation during motor vehicle stop is not custodial interrogation requiring Miranda warnings). The court also found that the circumstances would not have suggested to a reasonable person that he or she was effectively in custody or under arrest at the sheriff's office, thereby requiring warnings before any questioning. Defendant entered a conditional nolo contendere plea to DUI. This appeal followed.

We review motions to suppress de novo. State v. Pierce, 173 Vt. 151, 152 (2001). In Boardman, we explained that the

typical roadside interrogation during a routine traffic stop does not constitute "custodial interrogation" requiring Miranda warnings because it generally occurs during a brief investigative detention on a public highway where the atmosphere is not "police dominated." 148 Vt. at 231. In State v. Garbutt, 173 Vt. 277, 284 (2001), we extended this principle to hold that preliminary police questioning of persons suspected of DUI "in public areas" of border stations "mirrored what would have occurred at the roadside" and therefore did not require Miranda warnings. The trial court here analogized the questioning at the sheriff's office to that at the border station in Garbutt, and thus held that Miranda warnings were similarly unnecessary. The trial court also noted that, as in Garbutt, the deputy here did not use force or handcuffs or manhandle defendant, or otherwise create the impression of a de facto arrest.

The comparison to Garbutt is unpersuasive. First, the deputy here made it clear that despite defendant's refusal to submit to field sobriety tests or a preliminary breath test, the officer had concluded that defendant was DUI and was detaining and transporting him to the sheriff's office for processing. Thus, the questions at the sheriff's office were not the functional equivalent of mere preliminary investigative questions during a traffic stop. Second, a law enforcement office is not comparable to the public area of a customs office at the border. Having been detained involuntarily and driven by a deputy sheriff for nearly an hour to the sheriff's office, brought inside, and seated at a table "for processing" a person in defendant's circumstances cannot objectively be expected to believe that he or she is not in custody, regardless of the absence of overt physical force. The record demonstrates that defendant was in custody, and Miranda warnings should have been given prior to questioning at the office. Accordingly, we conclude that the trial court erred in denying the motion to suppress the answers which defendant gave at the sheriff's office prior to the Miranda warnings.

Reversed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned

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#### Footnote

\* Although the trial court noted that the evidence was unclear as to the location where defendant answered the deputy's questions and refused to perform the field sobriety tests and submit to the preliminary breath test, both parties' briefs indicate that these events occurred at the border station, and this is consistent with the deputy sheriff's clear and uncontradicted testimony.