

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 16, 2005**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2004AP1210-CR**

**Cir. Ct. No. 2002CF1012**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**LAWRENCE LEON RATLIFF, JR.,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Outagamie County: JOSEPH M. TROY, Judge. *Affirmed.*

Before Deininger, P.J., Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Lawrence Ratliff, Jr., appeals a judgment convicting him of taking and driving a motor vehicle without the consent of the owner, as a party to a crime. The issue is whether Ratliff was in custody when Officer Gary Lewis asked him why the license plate on the vehicle Ratliff was

driving did not match the car. We conclude that Ratliff was not in custody. Therefore, we affirm.

¶2 “A person is in custody for purposes of *Miranda* if the person is either formally arrested or has suffered a restraint on freedom of movement of the degree associated with a formal arrest.” *State v. Goetz*, 2001 WI App 294, ¶11, 249 Wis. 2d 380, 638 N.W.2d 386. “The test for custody is an objective one.” *Id.* We must ask “whether a reasonable person in the suspect’s position would have considered himself or herself to be in custody.” *Id.* “In general, a person is ‘in custody’ for purposes of *Miranda* when he or she is ‘deprived of his [or her] freedom of action in any significant way.’” *State v. Armstrong*, 223 Wis. 2d 331, 353, 588 N.W.2d 606 (1999). We will consider “the totality of the circumstances, including such factors as: the defendant’s freedom to leave; the purpose, place, and length of the interrogation; and the degree of restraint.” *State v. Morgan*, 2002 WI App 124, ¶12, 254 Wis. 2d 602, 648 N.W.2d 23. The degree of restraint depends on “whether the suspect is handcuffed, whether a weapon is drawn, whether a frisk is performed, the manner in which the suspect is restrained, whether the suspect is moved to another location, whether questioning took place in a police vehicle, and the number of officers involved.” *Id.*

¶3 In reviewing the circuit court’s decision that a person was not in custody, we will affirm the circuit court’s findings of fact unless they are clearly erroneous. See *State v. Cunningham*, 144 Wis. 2d 272, 281-82, 423 N.W.2d 862 (1988); WIS. STAT. § 805.17(2) (2003-04).<sup>1</sup> However, the ultimate determination

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

of whether the facts show that a person was in police custody is a question of law that we decide independently of the circuit court. *See id.*

¶4 We first note that the circuit court incorrectly applied a subjective test when it decided that Ratliff was not in custody. Even so, we affirm the circuit court's decision because we conclude, applying an objective test to the circuit court's factual findings, that Ratliff was not in custody. Ratliff voluntarily entered the backseat of the squad car to get out of the cold weather. While it is true that, once inside the police car, Ratliff could not open the door to get out because the door could only be opened from the outside, Ratliff could have asked the police officer to open the door and let him out when the officer returned from talking to the other people in Ratliff's vehicle. Ratliff was not told that he was suspected of any criminal activity. Ratliff was not handcuffed, was not frisked before he entered the squad car, and was in the car for only five to ten minutes.

¶5 *State v. Gruen*, 218 Wis. 2d 581, 582 N.W.2d 728 (Ct. App. 1998), is instructive. Like Ratliff, Gruen was invited into a police van due to the cold weather outside. *Id.* at 596. The van could not be opened from the inside. *Id.* at 597. He was detained and questioned for ten or fifteen minutes. *Id.* at 598. We held that Gruen was not in custody under those circumstances. Here, too, we believe that under all of the facts and circumstances, a reasonable person would not have believed they were in custody because the restraint on Ratliff was minimal—the fact that the police car door could not be opened from the inside—and Ratliff would have been free to go had he asked after the police officer returned to the squad car.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE  
809.23(1)(b)5.

