

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 11, 2002**

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. 02-0423-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 00-CT-165**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**RANDALL D. PETERSON,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Dunn County:  
WILLIAM C. STEWART, Judge. *Affirmed.*

¶1 CANE, C.J.<sup>1</sup> Randall Peterson appeals from a judgment convicting him of fourth offense operating a motor vehicle while under the influence of an intoxicant, contrary to WIS. STAT. § 346.63(1)(a). Peterson's appeal is based on

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

the trial court's order denying his motion to suppress statements he made to a police officer who had stopped to aid him at an accident scene. Peterson contends that he was in custody and should have been advised of his *Miranda*<sup>2</sup> rights prior to any questioning. Because Peterson was not in custody at the time of the questioning, the judgment is affirmed.

¶2 The underlying facts are undisputed. While on routine patrol during the early morning hours, Pepin County sheriff's deputy Joel Wener came upon an accident scene where he observed a car that had gone off the road into a yard. The right side of the car had sustained extensive damage and the passenger door was pushed in. The car's steering wheel was bent on the bottom, down and toward the engine compartment. Wener also observed two men walking in the yard, one of whom was Peterson covered with blood. Peterson had a severe cut to his left knee, both of his eyes were swollen and his face was covered with blood coming from his nose. It also appeared that Peterson's companion might be going into shock.

¶3 Wener testified that his primary intent at this time was to ensure the safety of these two men. Wener testified that he asked Peterson and his companion to lie down because he was not sure of the nature and extent of their injuries. He told them to lie down while he contacted the sheriff's department to request an ambulance. Peterson told Wener that he was having trouble breathing because of the blood running into his throat and that he thought both his nose and jaw were broken. Wener testified that after he had seen the steering wheel bent down, in order to assess Peterson's injuries and to advise the ambulance crew of

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<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

the injuries, he asked Peterson if he had hit the steering wheel or the windshield with his chest. Peterson said that he thought he had hit the steering wheel with his face. This answer was later helpful to the authorities in determining that Peterson was driving the car.

¶4 Wener also noticed the odor of intoxicants on both men's breath and found alcoholic beverages in the car. Wener did not advise Peterson of his *Miranda* rights, and at no time did he place Peterson under arrest. *See Miranda v. Arizona*, 384 U.S. 436, 478 (1966).

¶5 The circuit court found that Wener's primary intent in having the men lie down to ask them questions was to secure their safety and assess their injuries. Consequently, it concluded the men were not in custody and *Miranda* did not apply under these circumstances. We agree.

¶6 Whether Peterson was "in custody," requiring the officers to administer *Miranda* warnings before taking his statement, is a question of law which this court reviews de novo. *See State v. Buck*, 210 Wis. 2d 115, 124, 565 N.W.2d 168 (Ct. App. 1997). The police are required to administer *Miranda* warnings prior to conducting a "custodial interrogation" of an individual. To determine whether an individual is "in custody" and therefore entitled to the *Miranda* warnings, this court must consider whether, under the totality of the circumstances, "a reasonable person viewing the situation objectively would conclude that he was not free to leave but was in custody." *State v. Koput*, 142 Wis. 2d 370, 380, 418 N.W.2d 804 (1988). Stated differently, "The test is 'whether a reasonable person in the [suspect's] position would have considered himself [or herself] ... to be in custody, given the degree of restraint under the

circumstances.”” *State v. Gruen*, 218 Wis.2d 581, 593, 582 N.W.2d 728 (Ct. App. 1998) (citation omitted).

¶7 This court is satisfied that Peterson was not “in custody” when he in effect admitted that he had been driving the car just prior to the accident. At no time did Wener place Peterson under arrest. Wener’s sole purpose in having the men lie down was for their safety while he went to call for an ambulance. It obviously was not for the purpose of confining Peterson in an arrest-type situation. Wener’s questions, as the circuit court found, were again for medical reasons in assessing Peterson’s injuries and to advise the ambulance crew of the injuries. There is simply no evidence that Peterson was “in custody” at the time he gave the statement. *See State v. Clappes*, 117 Wis. 2d 277, 286, 344 N.W.2d 141 (1984) (recognizing “the majority view that questioning in hospitals is not custodial when the suspect is not under formal arrest.”).

¶8 While it is true that Peterson was immobilized by his injury, in *Clappes*, our supreme court clarified that a custodial interrogation or the type of deprivation of freedom requiring *Miranda* warnings must be “caused or created by the authorities.” *Clappes*, 117 Wis. 2d at 285. Here, Peterson’s confinement was created by his medical condition, not by the authorities. Therefore, because a reasonable person in Peterson’s position would not have considered himself to be in police custody, this court is satisfied that Wener was not required to administer *Miranda* warnings before asking Peterson about his injuries.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.



