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**DISTRICT I**

June 27, 2023

To:

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Electronic Notice

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Clerk of Circuit Court  
Milwaukee County Safety Building  
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Sara Lynn Shaeffer  
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You are hereby notified that the Court has entered the following opinion and order:

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2022AP118-CR

State of Wisconsin v. Scott Robert Handel (L.C. # 2019CF4134)

Before Brash, C.J., Dugan and White, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Scott Robert Handel appeals a judgment convicting him after a guilty plea of operating while intoxicated, as a sixth offense. The issue is whether Handel was in custody, and thus entitled to *Miranda*<sup>1</sup> warnings, when he told a police officer that he consumed two alcoholic drinks during a traffic stop. After reviewing the briefs and record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2021-22).<sup>2</sup> Upon review, we affirm.

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>2</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

The pertinent facts were found by the circuit court at the suppression hearing and are not disputed for purposes of appeal. City of West Allis Police Officer Jacob Kaye was assisting the West Milwaukee Police Department with a traffic stop at 1:00 a.m. A Dodge pick-up truck drove past the officers and someone in the truck said loudly, “What the fuck you looking at?” The truck then pulled into an alley and, after about fourteen seconds, accelerated down the alley, revving its engine and causing its tires to squeal. Officer Kaye called for information on the temporary license plate number on the Dodge truck and learned that the temporary license plate on the vehicle was invalid.

Officer Kaye pulled the car over. Handel was driving and there was a woman in the front passenger seat. Officer Kaye approached the truck with his gun drawn and noticed the smell of alcohol. Officer Kaye told Handel to turn off the car and get out. Officer Kaye then led Handel by the hand to the front bumper of the squad car, where he told Handel to sit down. Handel consented to a pat-down search before sitting on the front bumper. Handel was not handcuffed or restrained.

Officer Kaye asked Handel where he was coming from. Handel replied that he was at a birthday party at a friend’s house. Officer Kaye asked Handel how much he had to drink. Handel replied, “Nothing.” Officer Kaye said, “Oh, really?” Handel then said, “I maybe had two drinks. That’s all.” The circuit court found that Handel’s voice was slurred based on Officer Kaye’s video camera recording.

It is well established that police officers have authority to conduct an investigatory stop of a motor vehicle “without violating the Fourth Amendment’s ban on unreasonable search and seizures.” *Arizona v. Johnson*, 555 U.S. 323, 326 (2009); *Terry v. Ohio*, 392 U.S. 1 (1968).

However, before performing a custodial interrogation law enforcement officers are constitutionally required to provide a suspect with *Miranda* warnings—i.e., that the suspect has the right to remain silent, that anything the suspect says could be used against him or her in a court of law, that the suspect has the right to a lawyer and the right to have the lawyer present while the suspect is giving a statement or being questioned, and that a lawyer will be appointed for the suspect if he or she cannot afford one. *See Miranda v. Arizona*, 384 U.S. 436, 467-73 (1966). Whether a person is in custody for purposes of *Miranda* is a question of law that we review de novo. *State v. Dobbs*, 2020 WI 64, ¶28, 392 Wis. 2d 505, 945 N.W.2d 609.

“A person is in custody for *Miranda* purposes if ‘there is a formal arrest or restraint on freedom of movement of a degree associated with a formal arrest.’” *Dobbs*, 392 Wis. 2d 505, ¶53 (citation omitted). To determine whether the suspect’s freedom has been restrained to the degree associated with a formal arrest, we consider whether “a reasonable person would not feel free to terminate the interview and leave the scene” based on the totality of the circumstances. *State v. Martin*, 2012 WI 96, ¶¶33, 35, 343 Wis. 2d 278, 816 N.W.2d 270. “There are several factors we consider, including: ‘the defendant’s freedom to leave; the purpose, place, and length of the interrogation; and the degree of restraint.’” *Dobbs*, 392 Wis. 2d 505, ¶54.

When evaluating the “degree of restraint,” we look at “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.* (citation omitted).

We conclude that, under the totality of the circumstances, Handel was not “in custody” for purposes of *Miranda* when he answered Officer Kaye’s questions. Officer Kaye questioned Handel in a public location as part of a valid *Terry* traffic stop initiated to determine why Handel

was driving a truck without valid license plates. Although Officer Kaye initially had his gun drawn when he approached Handel's truck and conducted a consensual pat-down search for weapons, Officer Kaye did not handcuff or physically restrain Handel and did not place Handel in his squad car. Instead, Officer Kaye directed Handel sit on the front bumper of his police car while he assessed the situation. After only a few brief questions, Handel immediately admitted that he had been at a party and had been drinking alcohol. This is in stark contrast to the situation in *Dobbs*, where the officers questioned Dobbs for over an hour, while he was handcuffed and held in the back of a locked squad car. *See id.*, 392 Wis. 2d 505, ¶7. Under the totality of the circumstances, Office Kaye was not required to give Handel *Miranda* warnings prior to questioning him because a reasonable person would not have considered these circumstances a “restraint on freedom of movement of a degree associated with a formal arrest.” *Dobbs*, 392 Wis. 2d 505, ¶53.

Handel contends that he was “under arrest [for purposes of *Miranda*] the moment the police conducted the traffic stop and then approached his vehicle with guns drawn.” This argument is unavailing. “For the duration of a traffic stop ... a police officer effectively seizes ‘everyone in the vehicle,’ the driver and all the passengers,” *Johnson*, 555 U.S. at 327, but this brief investigative seizure of the driver and passengers is not equivalent to a custodial arrest.

IT IS ORDERED that the order of the circuit court is summarily affirmed.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*