

**IN THE COURT OF APPEALS OF IOWA**

No. 1-089 / 10-0953  
Filed March 30, 2011

**STATE OF IOWA,**  
Plaintiff-Appellant,

**vs.**

**OUNHEAUN CAM,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Sioux County, Robert J. Dull,  
District Associate Judge.

The State appeals the trial court's ruling suppressing evidence.

**REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant  
Attorney General, Coleman McAllister, County Attorney, and Jared E. Weber,  
Assistant County Attorney, for appellant.

Jonathan J. Blum of Crary, Huff, Inkster, Sheehan, Ringgenberg, Hartnett  
& Storm, P.C., Sioux City, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.  
Tabor, J., takes no part.

**EISENHAUER, J.****I. Background Facts and Proceedings.**

Ounheun Cam, his wife Rebecca Serven, and his sixteen-year-old stepdaughter walked into the Sioux Center police station around 11:00 a.m. on October 15, 2009. Serven explained: "I asked my husband to leave the house, and he said he wanted to go to the police station." Cam testified he approached Officer Halma at the front desk and stated: "I'm not sure. I think I may have sexually assaulted my [step]daughter this morning."

Cam and Serven were asked to accompany Officer Halma to an office next to the lobby. Officer Halma, Cam, and Serven agree Cam was not arrested and agree Officer Halma read Cam his *Miranda* rights. However, the parties disagree about the events after Officer Halma read the rights and before videotaped interviews started. Cam states he asked for an attorney before his interview started while Officer Halma disputes this claim.

The record includes a recording of Officer Halma's thirteen-minute interview of Cam, followed by forty-six minutes of Serven's and Cam's stepdaughter's<sup>1</sup> interviews. Cam waited unsupervised in the police station after his interview. Cam was not handcuffed or restrained. After the interviews, Officer Halma told Cam he would be in touch after he asked the county attorney some questions. Cam and his family left the police station.

On October 25, 2009, Cam was charged with assault with intent to commit sexual abuse. On December 21, 2009, Cam moved to suppress his interview

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<sup>1</sup> Cam's wife, but not Cam, was present when Officer Halma spoke with Cam's stepdaughter.

statements arguing his constitutional rights were violated when he asserted his right to counsel *before* “the custodial interrogation” and was refused by Officer Halma. On January 14, 2010, a hearing was held on Cam’s motion. Officer Halma testified:

A. When I asked him to sign [the waiver of rights form], Mr. Cam asked, and he kind of looked at it, and I told him that he didn’t need to sign it if he didn’t want to, and he decided not to sign it.

Q. At any time did he say he didn’t want to talk to you?

A. No.

Q. Did he say after reading that form, I’d like to talk to an attorney? A. Not at that time, no.

Q. Did he later inquire about an attorney? A. Yes.

Q. Was that after conversation had ensued between the two of you? A. Yes.

.....

A. . . . I read the statement of rights, and then I remembered that I needed to put the video camera on. And then I thought it was best to interview him alone, so I asked [his wife] to then step outside so I could talk to Mr. Cam by himself.

.....

Q. But it’s your testimony that you asked him if he wished to sign it? A. Yes. What I do in this procedure is I’ll give it to him. I say go ahead and read the bottom part and sign that if you could. He looked at it and put it down. I asked him, you don’t have to sign it if you don’t want to. And he decided not to.

.....

Q. Did Mr. Cam tell you that he wished to waive his rights?

A. No.

.....

Q. Okay. Once you started the interrogation of Mr. Cam, did you explain to him that he was free to leave at any moment?

A. Did I tell him he was free to leave at any moment?

Q. Yes. A. No, I did not.

Q. Was the door closed? A. Yes.

.....

Q. Were you wearing a side arm while you conducted the interview? A. Yes.

Q. Do you recall Mr. Cam requesting an attorney? A. He asked if he needed to have an attorney at the end of the interview.

Q. Did he ask you if he needed to have an attorney at the beginning of the interview? A. No, he did not.

Q. Is it your testimony that he did not ask you any questions about the waiver of rights form that you put in front of him? A. No, he did not ask me any questions.

Q. What indication did you have that he had waived his rights at that point? A. No indication. He did not refuse. He wanted to tell me what had happened earlier in the day.

....

Q. Even after he requested an attorney? A. He never requested—he asked me if he needed an attorney, and I said that was totally up to him.

In contrast, Cam stated Officer Halma read him his rights, but Cam never saw the paper from which Officer Halma was reading and he was not asked to sign the bottom portion of the form. Cam testified:

Q. After Officer Halma read you your rights, did he ask you if you wished to waive your rights? A. No.

Q. Did you indicate to him in any way that you wished to waive your rights and answer his questions? A. No.

Q. What did you say to him? A. I asked him if I needed a lawyer.

Q. What was his response? A. He said, we're just trying to find out what happened. No, we're just trying to find out what happened.

Q. And did you say anything in response to that? A. I said I feel like I need a lawyer. Can I get a lawyer?

Q. And what was his response? A. He said I don't think that's necessary right now. We're just talking.

Q. And did this happen prior to your interview with Officer Halma? A. Yes.

....

Q. Did you feel like you had to answer Officer Halma's questions? A. Yes.

Q. At this point prior to starting the interview, did you still feel like you needed an attorney? A. Yes.

....

Q. Did you tell the officer whether or not you had ever been in trouble with the law before? A. Yes.

Q. And what did you tell him? A. I told him that I had never been arrested or been in any situation like this before.

....

Q. Why did you speak with the officer at that point? A. I didn't have any choice.

....

Q. And when you came in [the police station], you told [Officer] Halma . . . ? A. I told him that I needed to speak with somebody.

Q. It was your choice to come in there and want to talk? A. Yes.

Q. And [Officer] Halma never placed you in handcuffs or held you or told you [that] you had to talk? Did he ever say that to you? A. No.

. . . .  
Q. Did you ever ask [Officer Halma] when he was reading [your rights] to stop, I don't understand you? A. No, I was afraid to.

Q. Why were you afraid? A. He's a police officer. I didn't want to interrupt what he was saying.

. . . .  
Q. Well, who did you want to talk to at the police [station] besides the police? A. Well, I didn't know it was going to be Officer Halma, so it's not like I planned to come and speak to Officer Halma.

Q. Did you want to speak to somebody other than a police officer? A. No.

Q. After he read all the different things to you, did you ever say could you repeat one part of it or could you repeat the whole thing? You never asked for any type of clarification question? A. No.

Q. And once the . . . conversation started [in the interview room] . . . [d]id you ever ask him to go back over the rights again? A. No.

Q. Did you ever ask him to stop, can I leave? A. No.

Serven also testified Cam asked if he needed a lawyer before Cam's videotaped interview.

On April 1, 2010, the court granted Cam's motion to suppress, finding Cam was in custody and his waiver of rights was not knowingly, intelligently, and voluntarily made. On June 28, 2010, the Iowa Supreme Court granted the State's application for discretionary review.

## **II. Merits.**

The State argues Cam was not in custody at the time of his videotaped interview; therefore, *Miranda* warnings and a waiver of rights were not required

prior to the interview. We review this constitutional claim de novo. *State v. Harris*, 741 N.W.2d 1, 5 (Iowa 2007). We independently evaluate “the totality of the circumstances as shown by the entire record.” *State v. Miranda*, 672 N.W.2d 753, 758 (Iowa 2003).

In *Miranda v. Arizona*, 384 U.S. 436, 479, 86 S. Ct. 1602, 1630, 16 L. Ed. 2d 694, 726 (1966), the United States Supreme Court ruled the Fifth and Fourteenth Amendments require police to inform a suspect of his right to remain silent and his right to the presence of counsel before beginning custodial interrogation. Additionally, “[s]tatements made by a suspect during a custodial interrogation are inadmissible unless a suspect is specifically warned of his or her *Miranda* rights and freely decides to forgo those rights.” *State v. Ortiz*, 766 N.W.2d 244, 251 (Iowa 2009). Therefore, the constitutional privilege against self-incrimination applies to “‘custodial interrogation’ by police.” *Iowa Miranda*, 672 N.W.2d at 758 (stating the critical issue is whether handcuffed defendant was in custody when police asked who owned the marijuana). Further, “*Miranda* warnings are not required unless there is both custody and interrogation.” *Id.* at 759 (quoting *State v. Countryman*, 572 N.W.2d 553, 557 (Iowa 1997)).

Here, even if we accept Cam’s claim he asked, “[c]an I get a lawyer” before the interview started, this request would not require suppression of his interview statements if Cam was not “in custody.” *See id.* We therefore first consider whether Cam was ever in custody when he made statements to the police. Our Iowa Supreme Court has ruled:

The *Miranda* safeguards “become applicable as soon as a suspect’s freedom of action is curtailed to a ‘degree associated with

formal arrest.” “[T]he ultimate inquiry is simply whether there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.”

*Id.* (citations omitted). We apply an objective test and evaluate four factors to determine whether “a reasonable man” would have understood his situation to be a deprivation of “freedom of action in *any* significant way.” *Ortiz*, 766 N.W.2d at 251. The four factors are:

- (1) the language used to summon the individual;
- (2) the purpose, place, and manner of interrogation;
- (3) the extent to which the defendant is confronted with evidence of [his] guilt; and
- (4) whether the defendant is free to leave the place of questioning.

*Id.* at 252. Analyzing the facts here using these factors, we conclude Cam was not in custody “as articulated in *Miranda* and its progeny.” See *Iowa Miranda*, 672 N.W.2d at 759.

First, Cam was not “summoned” by the police. We recognize “[c]ustodial interrogation [means] questioning *initiated* by law enforcement officers.” *Id.* (quoting *United States v. Griffin*, 922 F.2d 1343, 1351 (8th Cir. 1990)). It is undisputed Cam voluntarily entered the police station and approached Officer Halma at a public location.

Further, our review of the videotape shows Cam was anxious to tell the police about the morning’s events. For example, Serven explained she thought Cam needed to stay in a different place and not come around the house when she was not there, but Cam thought her requests were unreasonable. Serven then stated: “He’s like . . . you’re not going to treat me like I’m a criminal. I’ll just go in and if I’m a criminal I’m a criminal, the end.” Cam explained Serven wanted

to work it out, but she wanted him to leave the house and he did not know what to do or where to go, so he told her, “what I got to do is . . . just turn myself in.” Therefore, the record does not support a finding of *any type* of summons by the police leading to a custodial interrogation.

Second, the “purpose” of the interview was to follow-up on Cam’s voluntary statement upon arrival: “‘I’m not sure. I think I may have sexually assaulted my [step]daughter this morning.” The “place” was an office with a shut, unlocked door with videotaping capability. Cam knew the conversation was being recorded. The “manner” was a short interview in which Cam explained the morning’s events and attempted to justify his assault as not being sexual in nature. The tape shows Cam speaking in a quiet, calm, and measured voice. Cam volunteered background events to put his own actions in context. When Officer Halma asked whether anything “like this” had ever happened before, Cam replied “Yes. This happened one other time.” Cam then described a past incident. These conversations all occurred in the first eight minutes of the interview and before Cam asked: “Do I need to have, do I need a lawyer?” Officer Halma replied: “Well, that’s that’s kind of up to you.” See *Harris*, 741 N.W.2d at 5 (asking whether counsel is needed is not sufficient to invoke right to counsel).

Our review of the videotape shows Officer Halma’s questioning was not aggressive and he was responsive to the questions posed by Cam. Cam left the room and was unsupervised while his other family members were interviewed.



Therefore, the second factor does not support a finding of a custodial interrogation.

Third, Cam was not “confronted with evidence of his guilt” by Officer Halma. Rather, Cam voluntarily came to the police station intending to describe the morning’s events. The police had no evidence with which to confront Cam and he was not the subject of any ongoing investigation. Cam admits he was never told he was under arrest. Cam testified at the suppression hearing:

Q. Well, who did you want to talk to at the police [station] besides the police? A. Well, I didn’t know it was going to be Officer Halma, so it’s not like I planned to come and speak to Officer Halma.

Q. Did you want to speak to somebody other than a police officer? A. No.

Cam exited the interview room after his short interview. This was neither a “marathon” routine of questioning nor a “brief interrogation where the questioning is of a sort where ‘the detainee is aware that questioning will continue until he provides [the officer] the answers [he] seek[s].’” See *Iowa Miranda*, 672 N.W.2d at 760. Accordingly, the third factor does not support a finding of a custodial interrogation.

Finally, we consider “whether the defendant is free to leave the place of questioning.” *Ortiz*, 766 N.W.2d at 252. Cam was not handcuffed, was not arrested, was never placed in a locked room, and was not restrained in any manner. As noted above, Cam left the interview room and was unsupervised while Officer Halma spent a longer period of time interviewing his other family members. Not only was Cam free to leave the police station he voluntarily entered, he actually did leave the police station at the conclusion of all the

interviews. Therefore, the fourth and final factor does not support a finding of a custodial interrogation.

Cam's admissions were not the product of a custodial interrogation and we conclude there was no restraint on his "freedom of movement of the degree associated with a formal arrest." See *Countryman*, 572 N.W.2d at 557–58. Accordingly, the district court erred in granting Cam's motion to suppress.

**REVERSED AND REMANDED.**