NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 KA 0122

STATE OF LOUISIANA

VERSUS

RESHOD OWENS

Judgment Rendered: June 8, 2007.

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On Appeal from the
22nd Judicial District Court,
in and for the Parish of Washington,
State of Louisiana
Trial Court No. 05 CR3 93833

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BEFORE: CARTER, C.J., WHIPPLE, AND McDONALD, JJ.

CARTER, C.J.

The defendant, Reshod D. Owens, was charged by bill of information with one count of possession of MDMA, a violation of LSA-R.S. 40:966C, and initially pled not guilty. Following the denial of his motion to suppress his confession/statement, he withdrew his former plea and pled guilty reserving his right to seek review of the court's ruling on the motion to suppress. See **State v. Crosby**, 338 So.2d 584 (La. 1976). He was sentenced to five years at hard labor, suspended, and five years probation subject to general and special conditions. The defendant now appeals, designating one assignment of error. We affirm the conviction and sentence.

ASSIGNMENT OF ERROR

The trial court erred in denying the defendant's motion to suppress his confession after the arresting officer admitted that the defendant's confession was made after he was in custody, but prior to **Miranda** warnings being given.

FACTS

While investigating a complaint of drug trafficking on a street corner, Bogalusa Police Officer Shonda Morris encountered the defendant sitting on the back seat of a vehicle. After checking to make sure there were no outstanding warrants for the defendant and his friends, Officer Morris told them that they could leave. Officer Morris obtained consent to look into the vehicle from the vehicle's driver/owner and subsequently located four pills of MDMA on the back seat of the vehicle. The driver of the vehicle indicated the pills "were probably [the defendant's]." Thereafter, the defendant was brought back to Officer Morris by Lake Charles police officers on the scene, and she asked him if the pills belonged to him. The defendant made an incriminating statement prior to the advice of his **Miranda** rights.

MOTION TO SUPPRESS

In his sole assignment of error, the defendant contends because Officer Morris admitted that the defendant was a suspect and was "in custody" when he was brought to her by Lake Charles police officers, he should have been advised of his **Miranda** rights before being questioned about the pills.

A three-tiered analysis governs the Fourth Amendment's application to interactions between citizens and police. At the first tier, mere communications between officers and citizens implicate no Fourth Amendment concerns where there is no coercion or detention. **State v. Caples**, 05-2517 (La. App. 1 Cir. 6/9/06), 938 So.2d 147, 154.

At the second tier, the investigatory stop recognized by the United States Supreme Court in **Terry v. Ohio**, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), the police officer may briefly seize a person if the officer has an objectively reasonable suspicion, supported by specific and articulable facts, that the person is, or is about to be, engaged in criminal conduct or is wanted for past criminal acts. Louisiana Code of Criminal Procedure article 215.1A provides that an officer's reasonable suspicion of crime allows a limited investigation of a person. However, reasonable suspicion is insufficient to justify custodial interrogation even though the interrogation is investigative. **Caples**, 938 So.2d at 154.

Lastly, at the third tier, a custodial "arrest," the officer must have "probable cause" to believe that the person has committed a crime. Louisiana Code of Criminal Procedure article 213(3) uses the phrase "reasonable cause."[1] The "probable cause"

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[1] The "reasonable cause" standard of Article 213(3) is equivalent to "probable cause" under the general federal constitutional standard. To read Article 213 as allowing an arrest on less than probable cause would put the article afoul of the Fourth Amendment. **Caples**, 938 So.2d at 154 n.3.

or "reasonable cause" needed to make a full custodial arrest requires more than the "reasonable suspicion" needed for a brief investigatory stop. **Caples**, 938 So.2d at 154.

The Louisiana Supreme Court has recognized that in regard to brief investigatory stops, the level of suspicion required to justify the stop need only rise to the level of some minimal level of objective justification. In determining whether sufficient suspicion existed for the stop, a reviewing court must consider the totality of the circumstances, giving deference to the inferences and deductions of a trained police officer that might well elude an untrained person, while also weighing the circumstances known to the police, not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement. **Caples**, 938 So.2d at 154-55.

A person questioned by law enforcement officers after being "taken into custody or otherwise deprived of his freedom of action in any significant way" must first "be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." **Miranda v. Arizona**, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966). Statements elicited in noncompliance with this rule may not be admitted for certain purposes in a criminal trial. An officer's obligation to administer **Miranda** warnings attaches, however, only where there has been such a restriction on a person's freedom as to render him in "custody." In determining whether an individual was in custody, a court must examine all of the circumstances surrounding the interrogation, but the ultimate inquiry is simply whether there was a "formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest. **Stansbury v. California**, 511 U.S. 318, 322,

114 S.Ct. 1526, 1528-29, 128 L.Ed.2d 293 (1994) (quoting **Oregon v. Mathiason**, 429 U.S. 492, 495, 97 S.Ct. 711, 714, 50 L.Ed.2d 714 (1977)(*per curiam*)).

The initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned. **Stansbury**, 511 U.S. at 323, 114 S.Ct. at 1529. An officer's knowledge or beliefs may bear upon the custody issue if they are conveyed, by word or deed, to the individual being questioned. Those beliefs are relevant only to the extent they would affect how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her "freedom of action." Even a clear statement from an officer that the person under interrogation is a prime suspect is not, in itself, dispositive of the custody issue, for some suspects are free to come and go until the police decide to make an arrest. The weight and pertinence of any communications regarding the officer's degree of suspicion will depend upon the facts and circumstances of the particular case. **Stansbury**, 511 U.S. at 325, 114 S.Ct. at 1530.

The defendant moved to suppress his confession/statement, arguing he was in custody and had not been advised of his **Miranda** rights when he made his incriminatory statement. Following a hearing, the motion was denied.

Bogalusa Police Officer Shonda Morris testified at the hearing on the motion to suppress. On September 17, 2005, at approximately 1:30 p.m., Officer Morris and other officers responded to a complaint concerning drug trafficking on the corner of Fourth Street and Florence. A large group of people were on the corner, including the defendant who was seated on the back seat of a 1994 Mitsubishi Gallant, with its door open. Officer Morris and her colleagues asked the people on the corner for identification and checked for outstanding warrants. She asked the defendant why

he was "hanging out" on the corner. The defendant replied he was with some of his friends, and Officer Morris told the defendant and his friends that they could leave. As the driver of the Gallant walked away, and before the defendant had exited the vehicle to leave, Officer Morris asked the driver who owned the vehicle. As the driver informed Officer Morris that he owned the vehicle, the defendant exited the vehicle and began walking away. Officer Morris asked the driver if he minded if Officer Morris looked into the car, and the driver indicated he had no objection. Officer Morris found a "baggy" containing four pills, later identified as MDMA, in the fold of the back-seat cushion in the area where the defendant had been seated. Officer Morris asked the driver if the pills belonged to him. The driver replied negatively, but indicated the pills "were probably [the defendant's]." Officer Morris asked some Lake Charles police officers assisting at the scene to try to locate the defendant. The officers located the defendant and returned him to Officer Morris. Officer Morris asked the defendant if the pills belonged to him. The defendant replied, "Yeah. They belong to me. I was going to tell you guys they belonged to me if you located them." Officer Morris then advised the defendant of his **Miranda** rights, handcuffed him, placed him into her police unit, and transported him to the Bogalusa Police Department.

Officer Morris indicated the defendant was "a suspect," but was not under arrest prior to the time he made his statement. When asked if the Lake Charles police officers had the defendant "in their custody" when they brought him back to her, Officer Morris responded affirmatively.

There was no error in the denial of the motion to suppress the confession/statement. There was at least a minimal level of objective justification for a **Terry** stop of the defendant at the time he made his incriminatory statement.

Officer Morris found four pills in the area where the defendant had been seated, the driver of the vehicle denied that the pills belonged to him, and the driver of the vehicle indicated the pills "were probably [the defendant's]." **Terry** stops are not subject to the dictates of **Miranda**. See **Berkemer v. McCarty**, 468 U.S. 420, 440, 104 S.Ct. 3138, 3150, 82 L.Ed.2d 317 (1984).

Moreover, until the defendant was placed under arrest, he was not subjected to restraints comparable to those associated with a formal arrest. Only a short period of time elapsed between his being returned to the scene and his arrest. Further, at no point during this interval was he informed that his detention would not be temporary. Additionally, he was asked only one question and was never removed from a location open to public view until after his arrest. See **Berkemer,** 468 U.S. at 441-42, 104 S.Ct. at 3151; **State v. Manning**, 03-1982 (La. 10/19/04), 885 So.2d 1044, 1073, cert. denied, 544 U.S. 967, 125 S.Ct. 1745, 161 L.Ed.2d 612 (2005) ("[A]n individual's responses to on-the-scene and non-custodial questioning, particularly when carried out in public, are admissible without **Miranda** warnings.").

This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.