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ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR09-426

	Opinion Delivered January 13, 2010
ANTWAN LAVAN FOWLER APPELLANT	APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT [NO. CR-07-1837]
V.	HONORABLE CHARLES E. CLAWSON, JR., JUDGE
STATE OF ARKANSAS APPELLEE	REVERSED and REMANDED

LARRY D. VAUGHT, Chief Judge

After entering a conditional guilty plea to the charge of possession of a firearm by certain persons, Antwan Fowler appeals the trial court's conviction and order denying his motion to suppress statements he made to a parole officer and evidence discovered at his home. We reverse and remand.

At approximately 7:25 a.m. on October 22, 2007, Conway police officers Paul Burnett and Shawn Schichtl were patrolling near a high school when they observed a male walking across the backyard of a nearby residence. The officers asked the individual to approach them and asked him his name. As the individual approached the officers, he had a "deer-in-the-headlights" look, blurted out an unintelligible name, and then ran from the officers. They chased the individual, and when they apprehended him, they arrested him immediately for misdemeanor fleeing and obstruction of justice. At the police station, the officers learned that the individual

was Fowler and that he was on parole. The officers did not question him. Instead, they called local parole officer Kelly Brock, advised her of the situation, and asked if they should release or hold Fowler. Brock asked the officers to place a "parole hold" on Fowler.

Brock arrived at the station just prior to 8:00 a.m., and soon thereafter interviewed Fowler, who told her that he did not have a travel pass permitting him to be in Faulkner County, that he was living in an apartment in Conway, that he ran from the officers, and that he had a gun and drugs in his apartment. With this information, Brock, accompanied by Officers Schichtl and Burnett, searched Fowler's apartment. The search revealed a gun, drugs, and drug paraphernalia. Fowler was charged with six felony counts—simultaneous possession of drugs and firearms, possession of firearms, maintaining a drug premises, possession with intent to deliver a controlled substance, possession of drug paraphernalia, and theft by receiving. He was also charged with two misdemeanors—fleeing and obstruction of justice.

Fowler moved to suppress the statements he made to Brock and all of the evidence that flowed from those statements (the items taken at his home) because the officers' stop and arrest were illegal, he was not *Mirandized* by the parole officer, and the warrantless search of his home was illegal. The trial court denied the motion to suppress, concluding that the officers' initial encounter was legal pursuant to Arkansas Rule of Criminal Procedure 2.2 and that the search of Fowler's apartment was performed under the authority of the parole officer. Fowler filed a motion for reconsideration; however, the trial court denied the motion. Thereafter, Fowler entered a conditional guilty plea to possession of a firearm by certain persons. This appeal followed.

We review suppression challenges de novo based on the totality of the circumstances, reviewing findings of historical facts for clear error and determining whether those facts give rise to reasonable suspicion or probable cause and giving due weight to inferences drawn by the trial court. *Davis v. State*, 351 Ark. 406, 411, 94 S.W.3d 892, 894 (2003). We reverse if the trial court's ruling is clearly against the preponderance of the evidence. *Boldin v. State*, 373 Ark. 295, 302, 283 S.W.3d 565, 570 (2008). Additionally, we defer to the trial court's superior position to judge the credibility of witnesses. *Id.*, 283 S.W.3d at 570.

Fowler argues on appeal that his statement to the parole officer that he had a gun and drugs at his home should be suppressed because he was not *Mirandized* by the parole officer. *Miranda* warnings[1] are required where there is a custodial interrogation. *Wofford v. State*, 330 Ark. 8, 28, 952 S.W.2d 646, 656 (1997). A person is "in custody" for purposes of *Miranda* warnings when he is "deprived of his freedom by formal arrest or restraint on freedom of movement of the degree associated with formal arrest." *Hall v. State*, 361 Ark. 379, 389, 206 S.W.3d 830, 837 (2005) (citing *Wofford*, 330 Ark. at 28, 952 S.W.2d at 656). In resolving the question of whether a suspect is in custody at a particular time, the only relevant inquiry is how a reasonable man in the suspect's shoes would have understood his situation. *Wofford*, 330 Ark. at 28, 952 S.W.2d at 656 (citing *Solomon v. State*, 323 Ark. 178, 186, 913 S.W.2d 288, 292 (1996)). The initial

[1]*Miranda* warnings, among other things, advise a defendant of his 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, 443 (1966).

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 interrogated. *Wofford*, 330 Ark. at 28–29, 952 S.W.2d at 656 (citing *State v. Spencer*, 319 Ark. 454, 457, 892 S.W.2d 484, 486 (1995)).

The Supreme Court of the United States, in *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980), stated that an "'[i]nterrogation' as conceptualized in the *Miranda* opinion, must reflect a measure of compulsion above and beyond that inherent in custody itself." Our supreme court has further stated that "the term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Hughes v. State*, 289 Ark. 522, 526, 712 S.W.2d 308, 310 (1986).

The facts in this case establish that *Miranda* warnings were required. Fowler was in custody when he was arrested. The deprivation of his freedom continued after the formal arrest because he was held at the station on a "parole hold" as requested by the parole officer. Moreover, Fowler was interrogated by the parole officer when asked, "[I]s there anything in [your] residence that is illegal or that shouldn't be there?" This question led to an incriminating response, which in turn resulted in the search of Fowler's home and the discovery of contraband. Because Fowler was questioned in the context of a custodial interrogation and was not read his *Miranda* rights prior to the questioning, we hold that Fowler's statement to the parole officer was illegally obtained and inadmissible.

Case law from other jurisdictions supports our holding. In *United States v. Cain*, the United

States District Court of Minnesota held that during a custodial interrogation, the requirement of *Miranda* warnings remains when a probation officer questions a probationer. *United States v. Cain*, 2008 WL 2498176, at * 11 n.5 (D. Minn. 2008). Likewise, in *United States v. Andaverde*, 64 F.3d 1305, 1311 (9th Cir. 1995), the Ninth Circuit stated that "custodial statements made to probation officers are subject to the same voluntariness analysis as statements made to other law enforcement officers." In *Minnesota v. Murphy*, 465 U.S. 420, 430 n.5 (1984), the Supreme Court suggested that a parolee in police custody being interviewed by a parole officer would be entitled to *Miranda* warnings. Finally, the Fifth Circuit in *United States v. Deaton*, 468 F.2d 541, 544 (5th Cir. 1972), affirmed the admission of a parolee's statement to a parole officer without *Miranda* warnings because evidence was cumulative but stated that "we have no doubt that the testimony was inadmissible unless the officer gave prior *Miranda* warnings. A parolee is under heavy psychological pressure to answer inquiries made by his parole officer, perhaps even greater than when the interrogation is by an enforcement officer."

Based on these persuasive authorities, we hold that Fowler, while in police custody and being interrogated by the parole officer, was entitled to *Miranda* warnings. Because he was not read his *Miranda* rights, his statement that he had a gun and drugs in his home is inadmissible. Therefore, the trial court erred in denying Fowler's motion to suppress, and we reverse and remand on this point.[2]

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[2]While we hold that Fowler should have been *Mirandized* prior to speaking to the parole officer and that Fowler's statement to the parole officer is inadmissible in this criminal action, we point out that our holding has no effect on our general rule that a probationer's statement obtained by probation officers without first advising the probationer of his *Miranda* rights is admissible in revocation proceedings. *Fitzpatrick v. State*, 7 Ark. App. 246, 250, 647

Moreover, because we hold that Fowler's statement about the gun and drugs in his home should have been suppressed, we must consider whether the evidence seized from Fowler's home was "fruit of the poisonous tree." In *Summers v. State*, 90 Ark. App. 25, 203 S.W.3d 638 (2005), a consensual search of the appellant's home was based upon statements to the police made by the appellant following his illegal seizure. We held that the fruits of the consensual search were poisoned by the officers' unlawful seizure because there was no break in time between the seizure and the inculpatory statements he made that led to the search. *Summers*, 90 Ark. App. at 37, 203 S.W.3d at 645. In other words, "the primary taint of the unlawful seizure had not been sufficiently attenuated or purged." *Id.*, 203 S.W.3d at 645.

In the case at bar, Fowler consented to the warrantless search of his home when he signed his conditions of parole.[3] However, the search of his home immediately followed his illegally obtained statement that he had a gun and drugs there. As in *Summers*, there was no break in time between Fowler's illegally obtained inculpatory statement and the consensual search of his home; therefore, the "the primary taint of the unlawful [statement] had not been sufficiently attenuated or purged." *Summers*, 90 Ark. App. at 37, 203 S.W.3d at 645. On this record, one can only speculate that a search of Fowler's home would have occurred had Fowler not made the confession about the contraband at his home. Accordingly, we hold that the items seized from

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647 S.W.2d 480, 482 (1983).

[3]At the suppression hearing, the State offered into evidence the conditions of Fowler's parole release, which provided: "You must submit your person, place of residence, and motor vehicles to search and seizure at any time, day or night, with or without a search warrant, whenever requested to do so by any Department of Community Punishment officer."

Fowler's home are the "fruit of the poisonous tree" and should have been suppressed.

Based on our holding that this case must be reversed and remanded because Fowler was not *Mirandized* prior to his custodial interrogation, we need not address the lawfulness of the initial encounter with police, his subsequent arrest, or the warrantless search of his home.

Reversed and remanded.

GLOVER and MARSHALL, JJ., agree.