[Cite as *State v. Nowell*, 2002-Ohio-3919.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee : C.A. CASE NO. 19076

vs. : T.C. CASE NO. 00-CR-2698

LLOYD THOMAS NOWELL : (Criminal Appeal from Common Pleas Court)

Defendant-Appellant :

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O P I N I O N

Rendered on the 2nd day of August, 2002.

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GRADY, J.

{¶1} Defendant, Lloyd Nowell, appeals from his conviction and sentence for felonious assault.

{¶2} Defendant was indicted on one count of felonious assault in violation of R.C. 2903.11(A)(1). Defendant filed a motion to suppress the statements he made to police. Following a hearing, the trial court overruled Defendant's motion.

{¶3} After new counsel was appointed to represent Defendant, the motion to suppress Defendant's statements was renewed. Another hearing was held, following which the trial court once

again overruled Defendant's motion to suppress his statements.

{¶4} Defendant was subsequently tried before a jury and found guilty. The trial court sentenced Defendant to five years imprisonment.

{¶5} Defendant timely appealed to this court, challenging the trial court's overruling of his motion to suppress.

ASSIGNMENT OF ERROR

{¶6} "THE DEFENDANT'S MOTION TO SUPPRESS HIS CONFESSION WAS DENIED IN ERROR BY THE TRIAL COURT."

{¶7} On September 6, 2000, at 12:30 a.m., Dayton police officers were dispatched to 100 North Jefferson Street, Apartment 405, following a 911 call reporting that a woman at that location was being severely beaten. Upon arrival, the officers knocked on the apartment door. Defendant opened the door, stepped out into the hallway, and immediately said: "I f_____ up. She's in the bedroom." Defendant then placed his hands behind his back, apparently expecting that the officers would handcuff him. Up to that point, the officers had asked Defendant no questions.

{¶8} One of the officers asked Defendant if they could come inside. Defendant said they could. Once Defendant and the officers entered the apartment, and before the officers said anything more, Defendant stated: "I f_____ up. She's in there," and Defendant motioned toward the bedroom. One of the officers then entered the bedroom and discovered a partially clad woman sitting on the bed, exhibiting severe trauma to her head, face and chest. Once again, before the officers said anything,

Defendant stated: "I f_____ up. I admit it." Defendant was then arrested.

{¶9} The officers sat Defendant on the couch. Before being asked any questions, Defendant said: "I was drunk. I did that to her. I admit it." Officer Pauley then asked Defendant his name, date of birth, social security number, etc., which are routine booking questions. Defendant provided that information. He also volunteered, without any other questions about what had happened to the woman being asked, that he would probably go to prison for fifteen or twenty years for what he had done.

{¶10} While officers remained in the living room with Defendant, Officer Trick was in the bedroom talking to the victim. Defendant overheard that conversation and remarked: "Yes, I admit it. I poured grease and Wesson oil on her. Whatever she says I did to her, I did it." Defendant had still not been asked any questions about the assault.

{¶11} At the crime scene Defendant was very calm. The officers observed no signs that Defendant was intoxicated. While at the crime scene police did not advise Defendant of his *Miranda* rights. Defendant was subsequently taken to jail.

{¶12} Later, at around 9:00 a.m. that same morning, Det. Gross interviewed Defendant at the police station. Det. Gross utilized a pre-interview form to advise Defendant of his rights. Defendant acknowledged his understanding of each and every one of his rights. Defendant not only signed the waiver of rights but also expressly indicated in writing on the pre-interview form his willingness to waive his rights and talk to police without an

attorney present. Defendant then gave police a statement about the assault in this case.

{¶13} Defendant argues that the trial court should have suppressed the statements he made to police at the crime scene because police failed to advise him of his Miranda rights.

{¶14} The duty of police to advise a suspect of his rights pursuant to *Miranda v. Arizona* (1966), 384 U.S. 436, arises only when the suspect is subjected to "custodial interrogation." *Id*; *State v. Gumm* (1995), 73 Ohio St.3d 413, 1995-Ohio-24; *State v. Durham* (June 22, 2001), Montgomery App. No. 18586. The record amply demonstrates that all of the various admissions of guilt Defendant made to police while at the crime scene were unsolicited, volunteered statements. They were not the product of any questioning or interrogation by the police. Hence, the fact that police did not advise Defendant of his *Miranda* rights before he made those is of no consequence. His volunteered statements are admissible against him.

{¶15} Regarding the statement Defendant gave to Det. Gross, the record demonstrates that Defendant was properly advised of all of his *Miranda* rights, that he said that he understood his rights, and that he knowingly, intelligently, and voluntarily waived his rights and agreed to talk to police. No violation of Defendant's *Miranda* rights is demonstrated on this record.

{¶16} Defendant additionally argues that the State failed to prove that his statements to police were voluntary. In deciding that question the totality of the circumstances must be examined. A finding of involuntariness requires some form of police

overreaching: the use of some inherently coercive tactic. *Colorado v. Connelly* (1986), 479 U.S. 157, 107 S.Ct. 515; *State v. Clark* (1988), 38 Ohio St.3d 252, 261.

{¶17} Defendant does not allege, nor does this record show, that he was in any way physically abused or mistreated, deprived of sleep, food or medical treatment, threatened, promised anything, or otherwise coerced in any manner by the police officers. Such matters may support a finding of involuntariness even after *Miranda* rights are waived. See *State v. Waldo* (Sept. 21, 2001), Champaign App. No. 99CA24, 2001-Ohio-1349. However, no coercive measures of that kind are demonstrated here.

{¶18} To support his claim that his statements to police were involuntary, Defendant further asserts that he was frightened and in a state of shock, that he was intoxicated, and that he did not appreciate the severity of the situation. The record refutes these claims. The police officers testified that Defendant was very calm and soft spoken. None of the officers observed any signs that Defendant was intoxicated. No smell of alcohol, no red, glassy eyes, no slurred speech, no impaired coordination was noted. Defendant's claim that he did not appreciate the severity of his situation is contradicted by his statement to police that he would probably go to prison for fifteen to twenty years for what he had done. On the totality of these facts and circumstances, we agree that Defendant's statements to police were voluntary. Therefore, the trial court did not err when it overruled his motions to suppress evidence.

{¶19} The assignment of error is overruled. The judgment of

the trial court will be affirmed.

FAIN, J. and YOUNG, J., concur.

Copies mailed to:

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Hon. A. J. Wagner