[Cite as *State v. Isaac*, 2004-Ohio-4683.]

IN THE COURT OF APPEALS FOR GREENE COUNTY, OHIO

STATE OF OHIO :

Plaintiff-Appellee : C.A. CASE NO. 2003-CA-91

vs. : T.C. CASE NO. 03CR341

TONY ISAAC: (Criminal Appeal from Common Pleas Court)

Defendant-Appellant :

. . . . . .

O P I N I O N

Rendered on the 3rd day of September, 2004.

. . . . . .

William F. Schenck, Pros. Attorney; Andrew J. Hunt, Asst. Pros. Attorney, 61 Greene Street, Xenia, Ohio 45385, Atty. Reg. No. 0073698

Attorney for Plaintiff-Appellee

J. Allen Wilmes, 4428 N. Dixie Drive, Dayton, Ohio 45414

Attorney for Defendant-Appellant

. . . . . .

GRADY, J.

{¶1} Defendant, Tony Isaac, appeals from his conviction and sentence for the forcible rape of a child under ten years of age.

{¶2} Defendant was indicted on thirteen counts of forcibly raping a child under ten years of age. R.C.

2907.02(A)(1)(b). Those offenses require mandatory life sentences. Defendant was also indicted on seven counts of gross sexual imposition involving a child under ten years of age. R.C. 2907.05(A)(4). Defendant requested competency and sanity evaluations, and filed a written plea of not guilty by reason of insanity. After both parties subsequently stipulated to Dr. Susan Perry-Dyer's competency evaluation report, the trial court found Defendant competent to stand trial.

{¶3} Defendant filed a motion to suppress statements he made to police during an interview at the police station because those statements were not preceded by *Miranda* warnings. Following a hearing, the trial court concluded that Defendant's statements were voluntary and that Defendant was not in custody during the interview, and thus there was no need for *Miranda* warnings. The trial court overruled Defendant's motion to suppress his statements.

{¶4} Defendant withdrew his not guilty by reason of insanity plea and, pursuant to a plea agreement, entered pleas of no contest to three counts of forcibly raping a child under ten years of age. In exchange, the State dismissed the remaining charges. Both parties also agreed that Defendant's three mandatory life sentences would be served concurrently.

{¶5} The trial court accepted Defendant's no contest pleas and found him guilty. The trial court imposed concurrent life sentences on each of the rape charges as

recommended by the parties. The trial court also designated Defendant a sexual predator.

{¶6} Defendant has now timely appealed to this court from his conviction and sentence.

FIRST ASSIGNMENT OF ERROR

{¶7} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY FAILING TO SUPPRESS APPELLANT'S STATEMENTS WHICH WERE ILLEGALLY OBTAINED AND THE PRODUCT OF POLICE COERCION."

{¶8} Defendant claims that the trial court erred in refusing to suppress the statements he made during an interview at the police station because police did not advise him of his *Miranda* rights, and because his statements were not voluntary.

{¶9} When considering a motion to suppress, the trial court assumes the role of the trier of facts and, as such, is in the best position to resolve conflicts in the evidence and determine the credibility of the witnesses and the weight to be given to their testimony. *State v. Retherford* (1994), 93 Ohio App.3d 586. The court of appeals must accept the trial court's findings of fact if they are supported by competent, credible evidence in the record. *Id.* Accepting those facts as true, the appellate court must then independently determine, as a matter of law and without deference to the trial court's legal conclusion, whether the applicable legal standard is satisfied. *Id.*

{¶10} The facts found by the trial court are as follows:

{¶11} "Officer Dennis Evans of the Ashland Police Department was requested to be involved in an interview of the Defendant regarding allegations of sexual misconduct. The Defendant was contacted through his cell phone and asked to come to the police department for an interview. The Defendant voluntarily came to the police department and was escorted back to the interview room. The Defendant asked why he was there and the officer advised him of the allegations, the Defendant smiled and laughed and indicated that he had been through this before. At the beginning of the interview the Defendant was not advised of his *Miranda* rights. However, he was advised he was not under arrest and he could leave the interview room at any time. The Defendant was clear in his understanding of the fact that he was not under arrest. During the course of the interview the Defendant was not threatened in any way, he was not offered any leniency, promises, or other inducements to make a statement. The door was not locked and during the interview the Defendant was left alone once. The Defendant demonstrated that he had a background with the military police which the Court finds adds to an understanding of the process he was undergoing at that time. The interview process was approximately an hour. The officer was dressed in plain clothes during the course of the interview and the Court finds that the interview was easy, casual and friendly in its demeanor. Detective Major of the Ashland Police Department continued the interview and during her interview,

again, no offers of leniency were made, no promises made, and no threats to the Defendant were made, and further the Defendant was again advised he was not under arrest during the interview process. Again, the door was unlocked and the Defendant was aware of the fact he could leave at any time

{¶12} "During the interview process the Defendant appeared very normal and did not make any requests to receive anything during the interview. Detective Major, likewise, was dressed in civilian clothes and the interview with her was subdued and non-confrontational. At the conclusion of the interview the detectives obtained a statement from the Defendant and after consulting with their supervisor, the Defendant was later placed under arrest."

{¶13} Based upon these facts the trial court found that Defendant was not in custody during his interview at the police station and therefore *Miranda* warnings were not required. We agree. *In State v. Hopfer* (1996), 112 Ohio App.3d 521, 545-546, this court observed:

{¶14} "The United States Supreme Court in *Miranda v. Arizona* (1966), 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694, 706, defined a custodial interrogation as 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.' Custodial interrogation is measured by an objective standard, not by the subjective understanding of the suspect.

{¶15} "'A policeman's unarticulated plan has no bearing

on the question whether a suspect was "in custody" at a particular time; the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation.' *Berkemer v. McCarty* (1984), 468 U.S. 420, 442, 104 S.Ct. 3138, 3151, 82 L.Ed.2d 317, 336."

{¶16} The facts in this case are similar to those in *State v. Mason*, 82 Ohio St.3d 144, 153-154, 1998-Ohio-370, wherein the Ohio Supreme Court stated:

{¶17} "On February 10, Detective Dennis Potts stopped by Mason's house, drove him to the police station, asked him questions for eighteen minutes, then drove him home after driving by the Youngs' residence. On February 12, Potts again stopped at Mason's house and asked whether he would go to the police station for further interviews. Mason again voluntarily agreed. The ensuing conversations, all recorded, began at 11:29 a.m. and lasted until 3:24 p.m. Mason was cooperative and talked freely throughout.

{¶18} "Around 4:00 p.m., police advised Mason of his Miranda rights, and his parole officer (who had secretly observed the interview) arrested him for violating the conditions of his parole by drinking and associating with felons. After Mason asked for an attorney, police stopped further questioning.

{¶19} "Until he was told that he was under arrest, detectives never told Mason that he could not leave, and he was never handcuffed. Mason acknowledged that he was left alone two or three times, the door was not locked, and that

the first time he understood that he would be arrested and could not leave was around 4:00 p.m.

{¶20} "Only a custodial interrogation triggers the need for a Miranda rights warning. *Berkemer v. McCarty* (1984), 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317. The evidence supports the trial court's finding that Mason was not in custody when questioned.

{¶21} "The fact that a suspect is being interviewed at a police station does not, per se, require a Miranda rights warning. Rather, the determination as to whether a custodial interrogation has occurred requires an inquiry into 'how a reasonable man in the suspect's position would have understood his situation.' *Berkemer v. McCarty*, 468 U.S. at 442, 104 S.Ct. at 3151, 82 L.Ed.2d at 336. '[T]he ultimate inquiry is simply whether there is a "formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest.' *California v. Beheler* (1983), 463 U.S. 1121, 1125, 103 S.Ct. 3517, 3520, 77 L.Ed.2d 1275, 1279, quoting *Oregon v. Mathiason* (1977), 429 U.S. 492, 495, 97 S.Ct. 711, 714, 50 L.Ed.2d 714, 719."

{¶22} Because Mason was not in custody, police were not required to advise him of his *Miranda* rights. See *Oregon v. Mathiason*, 429 U.S. 492, 97 S.Ct. 711, 50 L.Ed.2d 714; *California v. Beheler*, 463 U.S. at 1123, 103 S.Ct. at 3519, 77 L.Ed.2d at 1278; *State v. Biros* (1997), 78 Ohio St.3d 426, 440, 678 N.E.2d 891, 904.

{¶23} In this case Defendant voluntarily drove himself

to the police station at the request of police. The police interview of Defendant lasted only two hours. During that time Defendant was seated in an interview room. The door was closed but not locked, and Defendant was not handcuffed. Both Officer Evans and Det. Mager each told Defendant that he was not under arrest and was free to leave at anytime. Defendant assured the officers he understood that he was free to leave. The interview was conducted in a reasonably relaxed, non-confrontational atmosphere. Neither Officer Evans nor Detective Mager were armed, and both wore civilian clothes rather than a police uniform. No threats or promises were made to Defendant.

{¶24} At various times during the interview the door to the interview room was open and police left Defendant alone in the room. Defendant was not arrested, and police never expressed any such intention until the conclusion of his interview with Det. Mager, after Defendant had given a full and detailed confession about his sexual conduct with two young female victims.

{¶25} We conclude that a reasonable person in Defendant's position during this police interview would have understood that he was free to walk away from the questioning by police and leave, despite being at the police station. *Mason, supra*.

{¶26} The mere fact that Defendant confessed to the crime during the interview, leading to his arrest at the conclusion of the interview, does not convert a non-

custodial interview into one which is custodial. *Id.*; *Oregon v. Mathiason* (1977), 429 U.S. 495. Defendant was not in custody during his interview with police, and therefore police did not violate his rights by failing to give him *Miranda* warnings before questioning. *Mason, supra*.

{¶27} The trial court also concluded that Defendant's statements to police were voluntary, there being no improper police coercion or inducements. We agree.

{¶28} "As a threshold matter, 'coercive police activity is a necessary predicate to finding that a confession is not voluntary within the Fifth Amendment, on which *Miranda* was based.' *State v. Dailey* (1990), 53 Ohio St.3d 88, 91-92, 559 N.E.2d 459, 463, citing *Colorado v. Connelly* (1986), 479 U.S. 157, 170, 107 S.Ct. 515, 523, 93 L.Ed.2d 473, 486. Without police coercion, circumstances such as the defendant's minority or low I.Q. do not negate the voluntariness of the confession. *Dailey* at 92, 559 N.E.2d at 463. In deciding whether Hopfer's confession was involuntary, 'the court should consider the totality of the circumstances, including the age, mentality, and prior criminal experience of the accused; the length, intensity, and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement.' (Emphasis sic.) *State v. Edwards* (1976), 49 Ohio St.2d 31, 40-41, 3 O.O.3d 18, 23, 358 N.E.2d 1051, 1059, citing *Brown v. United States* (C.A.10, 1966), 356 F.2d 230, 232. Promises of leniency by the police, such as

probation upon conviction, are improper and render an ensuing confession involuntary. *State v. Arrington* (1984), 14 Ohio App.3d 111, 116, 14 OBR 125, 130-131, 470 N.E.2d 211, 216-217. However, 'admonitions to tell the truth directed at a suspect by police officers are not coercive in nature.' *State v. Wiles* (1991), 59 Ohio St.3d 71, 81, 571 N.E.2d 97, 112, *State v. Cooey* (1989), 46 Ohio St.3d 20, 28, 544 N.E.2d 895, 908." *Hopfer, supra*, at 548.

{¶29} The totality of the facts and circumstances in this case demonstrate that Defendant's statements were voluntary. Defendant was thirty-three years old and had completed twelve years of school. He had been a military policeman for ten years, and thus had familiarity and experience with police interrogations. The questioning only lasted two hours, and during which time Defendant never requested anything, including refreshments or a bathroom break. Defendant was never threatened or physically mistreated, nor were any promises or inducements offered in exchange for his statements. On these facts, we cannot find that Defendant's free will was overcome by the behavior of the police. Defendant's statements were therefore voluntary and admissible.

{¶30} The first assignment of error is overruled.

SECOND ASSIGNMENT OF ERROR

{¶31} "THE TRIAL COURT ACCEPTED A 'NO CONTEST' PLEA WITHOUT ADVISING APPELLANT OF A SERIOUS CONSEQUENCE, VIZ, HIS BEING CLASSIFIED AS A SEXUAL PREDATOR AND DID NOT CURE

THIS FAILING BY A PASSING REFERENCE AT A SUBSEQUENT SENTENCING HEARING."

{¶32} Defendant complains that the trial court violated Crim.R. 11(C)(2) when it accepted his no contest pleas without first advising him that upon conviction for a sexually oriented offense he would be placed into one of three categories as a sexual offender, with applicable reporting and registration requirements per Chapter 2950 of the Ohio Revised Code. According to Defendant, the trial court's failure to advise him of this serious consequence of his pleas rendered those pleas invalid because they were not entered knowingly, intelligently and voluntarily. We disagree.

{¶33} We have previously held that because the registration and reporting requirements imposed by Chapter 2950 of the Ohio Revised Code upon defendants who are convicted of a sexually oriented offense are remedial and not punitive in nature, the trial court is not obligated per Crim.R. 11(C)(2) to explain those requirements to a defendant before accepting his or her plea of guilty or no contest. *State v. Hill* (July 24, 1998), Montgomery App. No. 16791. Accord: *State v. Perry* (November 26, 2003), Cuyahoga App. No. 82085, 2003-Ohio-6344.

{¶34} Furthermore, the record in this case affirmatively refutes the notion that Defendant would not have entered his no contest pleas had he known that his conviction for a sexually oriented offense would result in a sexual offender

classification with applicable registration and reporting requirements. At the commencement of the sentencing hearing, which occurred just three days after Defendant had entered his pleas, the court explained to Defendant the sexual offender classification procedure that would take place, including the various categories and applicable reporting, registration, and community notification requirements. After ascertaining that Defendant understood these matters, the trial court specifically asked Defendant whether he still wanted the court to accept his no contest pleas, knowing that this would be yet another consequence of his pleas. Defendant replied: "Yes, sir." Clearly, the knowing and voluntary character of Defendant's pleas was not impacted by his sexual offender classification.

{¶35} The second assignment of error is overruled. The judgment of the trial court will be affirmed.

FAIN, P.J. and BROGAN, J., concur.

Copies mailed to:

Andrew J. Hunt, Esq.
J. Allen Wilmes, Esq.
Hon. Stephen A. Wolaver