

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF WAYNE        )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.        16AP0037

Appellee

v.

PAMELA RUSSELL

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF WAYNE, OHIO  
CASE No.        2015CRC-I000243

Appellant

DECISION AND JOURNAL ENTRY

Dated: September 29, 2017

---

HENSAL, Presiding Judge.

{¶1} Pamela Russell appeals the denial of her motion to suppress and her sentence for aggravated possession of drugs in the Wayne County Court of Common Pleas. For the following reasons, this Court reverses.

I.

{¶2} Officer Brian Waddell testified that he was on patrol on May 1, 2015, when he saw a vehicle turn into an alley near a known drug house. Upon running the vehicle’s license plate, Officer Waddell learned that there was an active warrant for its registered owner. After watching the vehicle pull into a garage, he got out of his cruiser and knocked on the garage door. When the door opened, he saw two women. One was the owner of the vehicle, who he recognized from her Bureau of Motor Vehicles picture. The other was Ms. Russell.

{¶3} According to Officer Waddell, he told the vehicle owner that there was an active warrant for her in a nearby county. After handcuffing her, he noticed that there were a couple of

cellophane wrappers on the ground near where the women had been standing when he first entered the garage. Because the wrappers looked like they could contain narcotics, he opened them and found a substance that appeared to be crystal methamphetamine. He asked the women whom it belonged to, but they both acted surprised by the discovery. According to Officer Waddell, as he talked with the women about the substance, Ms. Russell began pacing and repeatedly adjusting her hat. After about five minutes, and after telling the women that they would not be arrested if they were honest about the narcotics, Ms. Russell told Officer Waddell that she would “take the rap” for them. Officer Waddell testified that he told Ms. Russell that he did not want her to “take the rap” if the items were not hers, but she again claimed ownership. The officer testified that, “[a]fter [Ms. Russell] admitted ownership to the items my conversation was done. She was free to go. She walked away from the scene. I then transported [the owner of the vehicle] to a pick up location.”

{¶4} The Grand Jury subsequently indicted Ms. Russell for aggravated possession of drugs. Ms. Russell moved to suppress her statements to Officer Waddell, arguing that he failed to give her *Miranda* warnings before questioning her and, even if those warnings were not required, her statements were involuntary. Following a hearing, the trial court denied her motion. Ms. Russell then pleaded no contest to the offense, and the trial court found her guilty. It sentenced her to eight months imprisonment. Ms. Russell has appealed, assigning two errors.

## II.

### ASSIGNMENT OF ERROR I

#### THE TRIAL COURT ERRED BY DENYING MS. RUSSELL’S MOTION TO SUPPRESS.

{¶5} Ms. Russell argues that the trial court incorrectly denied her motion to suppress.

A motion to suppress presents a mixed question of law and fact:

When considering a motion to suppress, the trial court assumes the role of trier of fact and is therefore in the best position to resolve factual questions and evaluate the credibility of witnesses. Consequently, an appellate court must accept the trial court's findings of fact if they are supported by competent, credible evidence. Accepting these facts as true, the appellate court must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard.

(Internal citations omitted.) *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8.

{¶6} Ms. Russell argues that Officer Waddell needed to provide her with *Miranda* warnings before questioning her about the cellophane wrappers. “When a suspect is questioned in a custodial setting, the Fifth Amendment requires that [s]he receive *Miranda* warnings to protect against compelled self-incrimination.” *State v. Wesson*, 137 Ohio St.3d 309, 2013-Ohio-4575, ¶ 34, citing *Miranda v. Arizona*, 384 U.S. 436, 478-479 (1966). “Custody” for purposes of entitlement to *Miranda* rights exists only when there is a “‘restraint on freedom of movement’ of the degree associated with a formal arrest.” *California v. Beheler*, 463 U.S. 1121, 1125 (1983), quoting *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977). “Whether a suspect is in custody depends on the facts and circumstances of each case.” *State v. Butler*, 9th Dist. Summit No. 23786, 2008-Ohio-781, ¶ 27, quoting *State v. Dunn*, 9th Dist. Lorain No. 04CA008549, 2005-Ohio-1270, ¶ 24. “Relevant factors include the location of the questioning, its duration, statements made during the interview, the presence or absence of physical restraints during the questioning, and the release of the interviewee at the end of the questioning.” (Internal citations omitted.) *Howes v. Fields*, 565 U.S. 499, 509 (2012). The court must consider “whether, under the totality of the circumstances, a reasonable person would have believed that he was not free to leave.” *Butler* at ¶ 27, quoting *Dunn* at ¶ 24. If the individual’s freedom of movement was restrained, the court must then ask “the additional question whether the relevant environment

presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*.” *Howes* at 509.

{¶7} Ms. Russell argued in her motion to suppress that Officer Waddell had to give her *Miranda* warnings before questioning her. She also argued that, even if the warnings were not required, what began as a voluntary conversation was rendered involuntary by Officer Waddell’s threats and inducements. In its decision, the trial court found that Officer Waddell did not advise Ms. Russell of her *Miranda* rights. It also found that she was not formally arrested. It further found that Officer Waddell never placed Ms. Russell in handcuffs, never touched her, and did not prevent her from leaving the garage. It concluded that “[c]onsidering the totality of the circumstances, defendant’s statement about the cellophane wrappers was voluntary and it was not coerced.”

{¶8} The trial court’s analysis is incomplete. Despite noting that Officer Waddell did not formally arrest Ms. Russell, it does not appear from the court’s judgment entry that the court evaluated whether Ms. Russell was “in custody” for purposes of determining her entitlement to *Miranda* warnings. Although our review of legal conclusions is independent from the trial court’s, this Court generally will not resolve issues in the first instance. *State v. Doll*, 9th Dist. Wayne No. 13CA0041, 2015-Ohio-1875, ¶ 14. If we were to do so, we would be usurping the role of the trial court and exceeding our authority on appeal. *State v. Purk*, 9th Dist. Summit No. 28059, 2017-Ohio-7381, ¶ 15. Accordingly, we conclude that this matter must be remanded so that the trial court can determine in the first instance whether Officer Waddell was required to provide *Miranda* warnings before questioning Ms. Russell. See *State v. Horvath*, 9th Dist. Medina No. 13CA0040-M, 2014-Ohio-641, ¶ 10. Ms. Russell’s first assignment of error is sustained.

## ASSIGNMENT OF ERROR II

## THE TRIAL COURT ABUSED ITS DISCRETION BY IMPOSING A PRISON SENTENCE.

{¶9} Ms. Russell also argues that the trial court abused its discretion when it sentenced her to eight months in prison. In light of our determination of her first assignment of error, however, this issue is not ripe. Because any discussion of Ms. Russell's sentence would be premature, we decline to address her argument at this time.

## III.

{¶10} Ms. Russell's first assignment of error is sustained. Her second assignment of error is premature. The judgment of the Wayne County Court of Common Pleas is reversed, and this matter is remanded for further consideration of Ms. Russell's motion to suppress.

Judgment reversed,  
and cause remanded.

---

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

---

JENNIFER HENSAL  
FOR THE COURT

CARR, J.  
TEODOSIO, J.  
CONCUR.

APPEARANCES:

PATRICK L. BROWN, Attorney at Law, for Appellant.

DANIEL R. LUTZ, Prosecuting Attorney, and NATHAN R. SHAKER, Assistant Prosecuting Attorney, for Appellee.