

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-070133
	:	TRIAL NO. 06CRB-16168
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
VINCENT PANNELL,	:	
	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant the city of Cincinnati appeals from the trial court's entry granting defendant-appellee Vincent Pannell's motion to suppress his confession.

Pannell was a suspect in a theft that had occurred on the campus of the University of Cincinnati, and he had been identified by several witnesses to the theft. Several weeks after Pannell had been determined to be a suspect, University of Cincinnati Police Officer Sandra Readon asked Pannell to come to the university police station to speak with her. Pannell went voluntarily to the police station and spoke with Readon. After approximately an hour and a half of questioning, Pannell confessed to the theft. Following his confession, Readon read Pannell his *Miranda* rights.

Pannell filed a motion to suppress his confession, arguing that Readon had failed to warn him of his *Miranda* rights before he confessed. The city argued that

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

because Pannell had not been in custody at the time that he confessed, *Miranda* warnings had not been required.

Readon testified during the hearing on Pannell's motion to suppress that Pannell had not been under arrest when he came to the police station, and that he had been free to leave at any time. Readon further testified that she had interviewed Pannell in an enclosed room with a desk and two chairs. Readon had shut, but not locked, the door. She stated specifically, "The door was not locked. He could have walked out at anytime, and that's something that I do explain to people during the interview." Readon had not handcuffed or restrained Pannell. Pannell left the police station following the interview, and Readon filed charges against him several days later.

Pannell testified that he was 21 years old and had never been interviewed by a detective prior to his interview with Readon. Pannell further testified that he went voluntarily to the police station, and after waiting 10 to 20 minutes, the interview began. According to Pannell, he initially denied involvement in the theft, but confessed because he was afraid that Readon would press charges, and because Readon had informed him that, if he confessed, she would place him in a diversion program and keep his record clear. Pannell further testified that he had not believed that he had been free to leave the interview.

The trial court granted Pannell's motion to suppress. The court specifically stated, "The issue is whether Mr. Pannell believed that he was in custody during the time of the questioning. And these cases are always very fact specific and hinge on the facts. In this case, he was asked to come to the station and he did that voluntarily. But from there on, he was in an interrogation room. He believed that when the door closed, it was locked. * * * Mr. Pannell testified that he believed that he was not free to go and

that the only way the interview had ended was when—and he left was when she told him he could leave. Motion to suppress is granted.”

The city raises two assignments of error for our review, which we address out of order. In its second assignment of error, the city argues that that the trial court improperly applied a subjective standard to determine whether Pannell had been in custody during his interrogation, and hence whether *Miranda* warnings had been required.

Miranda warnings are not required in every situation. But when a suspect is subject to a custodial interrogation, the need to provide *Miranda* warnings arises.² A custodial interrogation is one that is “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.”³

To determine whether a defendant has been subjected to a custodial interrogation, an objective test is utilized. The inquiry must focus on “how a reasonable man in the suspect’s position would have understood his situation.”⁴ But in this case, it appears that the trial court utilized a subjective test based on whether Pannell had personally believed that he was free to leave. As we have already noted, the trial court acknowledged that “[t]he issue is whether Mr. Pannell believed that he was in custody during the time of the questioning.” The trial court might have believed that Pannell had been a reasonable person, but that is not apparent to this court from the record.

² *State v. Biros*, 78 Ohio St.3d 426, 440, 1997-Ohio-204, 678 N.E.2d 891, citing *Oregon v. Mathiason* (1977), 429 U.S. 492, 494-495, 97 S.Ct. 711.

³ *Miranda v. Arizona* (1966), 384 U.S. 436, 444, 86 S.Ct. 1602.

⁴ *State v. Biros*, supra, 78 Ohio St.3d at 440.

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Because the trial court did not apply the correct standard to determine whether Pannell had been subject to a custodial interrogation, the city's second assignment of error is sustained.

The city argues in its first assignment of error that the trial court erred in granting Pannell's motion to suppress. But because we have sustained the second assignment of error, this assignment of error is moot and need not be addressed.

Therefore, the judgment of the trial court is reversed, and this case is remanded for a new hearing on Pannell's motion to suppress so that the court can properly apply an objective, "reasonable person" standard to determine whether Pannell had been subject to a custodial interrogation.

A certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

PAINTER, P.J., HENDON and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on February 27, 2008
per order of the Court _____
Presiding Judge