

[Cite as *State v. Wynne*, 2010-Ohio-3900.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 23727
Plaintiff-Appellee	:	
	:	Trial Court Case No. 09-CR-1344
v.	:	
	:	
BRYANT Y. WYNNE, SR.	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

.....
OPINION

Rendered on the 20th day of August, 2010.

MATHIAS H. HECK, JR., by R. LYNN NOTHSTINE, Atty. Reg. #0061560,
Montgomery County Prosecutor’s Office, Post Office Box 972, Dayton, OH 45422
Attorney for Plaintiff-Appellee

MARSHALL LACHMAN, Atty. Reg. #0076791, 75 North Pioneer Boulevard,
Springboro, Ohio 45066
Attorney for Defendant-Appellant

FAIN, J.

{¶ 1} Defendant-appellant Bryant Y. Wynne, Sr., appeals from his conviction and sentence, following a no-contest plea, for Aggravated Burglary. He contends that the trial court erred by overruling his motion to suppress statements he made to police officers.

{¶ 2} We conclude that evidence in the record supports the trial court’s

conclusion that the statements Wynne made to police before warnings were administered in accordance with *Miranda v. Arizona* (1966), 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, were made while he was not in custody, and the statements he later made while in custody were made after proper *Miranda* warnings had been administered. Therefore, the trial court did not err in overruling Wynne's motion to suppress, and the judgment of the trial court is Affirmed.

I

{¶ 3} In overruling Wynne's motion to suppress, the trial court made the following findings of fact:

{¶ 4} "On April 24, 2009, officers were dispatched to 856 Brown St., apartment 1 in Dayton, Ohio concerning a disturbance. Upon arrival, the occupants of apartment 2 reported that their neighbor, who lived in apartment 6, kicked in their door, waived [sic] a knife at them, and demanded more money for furniture he had sold them. After getting the report, the officers headed toward apartment 6. As they went in the direction of that particular apartment, they saw a man, later identified as the Defendant, sitting in an inner courtyard or patio.

{¶ 5} "The officer asked the individual his name; he identified himself as Bryant Wynne. Then the officers asked him if he had any weapons on him. Wynne told them, 'No, I took the knife inside.'

{¶ 6} "The officer went to conduct a pat-down for safety purposes. As he was conducting the pat down Wynne produced a knife from his waistband. Spencer confiscated the knife and Wynne was put in handcuffs. Then the police advised the

defendant of the charges against him. Wynne denied the charges and stated he didn't do it.

{¶ 7} "Wynne asked the officers to secure his apartment. The officer took Wynne's keys and locked up the apartment. He stated he did not look around but simply locked the door.

{¶ 8} "The officer then contacted Sgt. Hamilton before processing the knife. Wynne was taken to jail.

{¶ 9} "On April 26, 2009, Detective William Swisher interviewed the Defendant in the jail. The detective stated that he met the Defendant in an interview room and that the Defendant was clad in casual clothing. Swisher identified himself as a police detective and stated that he wished to talk to Wynne about the incident.

{¶ 10} "Swisher went over the City's standard pre-interview form. First Swisher filled in the Defendant's name, date of birth and social security number; then he put in the charges before going over Wynne's rights. Swisher read verbatim the rights contained in paragraphs one through four to the Defendant. Wynne then placed his initials beside each one to indicate that he understood each right. For the fifth paragraph, Swisher had Wynne read the words aloud to him before having Wynne write the amount of education that he had. Wynne wrote that he had been home-schooled. Wynne agreed to waive his rights and speak to Swisher. The two talked a short time.

{¶ 11} "Wynne was then asked to write out a statement. The statement consisted of two sentences. The length of the entire interview was approximately 15 minutes. At no time did Wynne ask for an attorney."

{¶ 12} There is evidence in the record to support these findings.

{¶ 13} Wynne was charged by indictment with one count of Aggravated Burglary and one count of Felonious Assault. He moved to suppress the statements he made to the police, contending that they were obtained in violation of his rights under *Miranda v. Arizona*, supra.

{¶ 14} Following a hearing, Wynne's motion to suppress was overruled. He then entered into an agreement wherein he pled no contest to Aggravated Burglary and the Felonious Assault charge was dismissed. Wynne was convicted of Aggravated Burglary, and was sentenced accordingly.

{¶ 15} From his conviction and sentence, Wynne appeals.

II

{¶ 16} Wynne's sole assignment of error is as follows:

{¶ 17} "THE TRIAL COURT ERRED IN OVERRULING THE APPELLANT'S MOTION TO SUPPRESS."

{¶ 18} Wynne's argument in support of his assignment of error is as follows:

{¶ 19} "At issue in the case at bar is whether the questioning of the Defendant in the hallway of his apartment building constituted a custodial interrogation that required Miranda warnings. The record is clear that the Defendant was not mirandized. Though Officer Spencer initially indicated that the Defendant's statement about his knife was not in response to any questioning, he later admitted that Officer Hardin had asked the Defendant questions about the incident prior to that statement. (Tr. 9 and 13). Officer Spencer also made it clear that the Defendant was more than a suspect at this point, as he testified unequivocally that 'I was going to arrest him anyway because I had

a name complaint, but he did say something that I thought incriminated him a little to himself.’ (Tr. 15).

{¶ 20} “Based on this uncontroverted evidence, it is plain and clear that the statements made by the Defendant in the hallway without the benefit of Miranda rights at a time when it was clear to the police officer that the Defendant was going to be arrested is a violation of the Defendant’s constitutional rights. Therefore, the trial court erred when it overruled the Defendant’s Motion to Suppress on this issue and the court’s ruling should be reversed and this matter remanded to the trial court for further proceedings.”

{¶ 21} As the State points out, it is immaterial whether the officer interrogating Wynne intended, ultimately, to take Wynne into custody. The issue is whether Wynne was in custody during the interrogation. And that determination is based upon the defendant’s objective perspective – that is, how a reasonable person in the suspect’s position would have understood his situation. *State v. Biros* (1997), 78 Ohio St.3d 426, 436. See *State v. Hatton*, Champaign App. No. 2009 CA 15, 2010-Ohio-499.

{¶ 22} When police officers Spencer and Hardin first encountered Wynne, he was sitting in “a patio common hall area in front of his apartment, just sitting out right in front of his apartment door.” The officers made no move to take Wynne into custody, or otherwise to restrain his liberty. Hardin asked Wynne, “what happened?” Wynne responded, “I don’t know anything.” Spencer asked Wynne for his name, and then “asked him if he had any weapons on him.” Wynne said that he was unarmed, having taken “the knife” inside. Spencer then “[w]ent up to pat him down, told him I was going

to pat him down and place him in handcuffs for my safety at this time. And as I grabbed one arm, he reached down with his other arm and pulled a knife out of his waistband. * * * And he didn't do anything aggressive with it. He'd reached down and grabbed it and said, 'I have a knife.' ” Spencer took the knife, and then put Wynne in handcuffs. At this point, he was in custody.

{¶ 23} The officers did not question Wynne after they handcuffed him; they merely responded to his question “what was this all about,” by explaining to him what he had been charged with. Wynne then voluntary denied any criminal involvement.

{¶ 24} By the time Wynne was again questioned, at the jail, he had been advised of his rights under *Miranda v. Arizona*, supra. Thus, when Wynne was questioned before he had been advised of his *Miranda* rights, he was not in custody, and when he was questioned later, while in custody, he had been advised of his *Miranda* rights. Therefore, the trial court did not err in overruling Wynne’s motion to suppress.

{¶ 25} Wynne’s sole assignment of error is overruled.

III

{¶ 26} Wynne’s sole assignment of error having been overruled, the judgment of the trial court is Affirmed.

.....

BROGAN and FROELICH, JJ., concur.

Copies mailed to:
Mathias H. Heck, Jr.

R. Lynn Nothstine
Marshall G. Lachman
Hon. Frances E. McGee