

IN THE SUPREME COURT OF OHIO

07-2366

STATE OF OHIO

APPELLEE

v.

**ON APPEAL FROM THE COURT
OF APPEALS FOR ALLEN COUNTY
OHIO, THIRD APPELLATE DISTRICT**

LARRY LUKE, JR.

APPELLANT

**COURT OF APPEALS CASE NO.
1-06-103**

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT LARRY LUKE, JR.**

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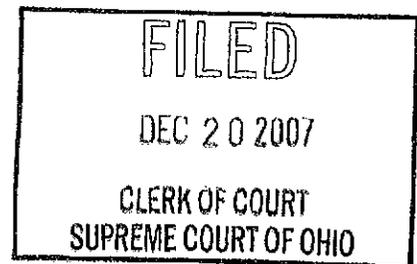


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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT
GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL
QUESTION

This case presents to the Court an issue of great public and general interest and involves a substantial constitutional question of the need for advising a suspect of their constitutional rights and the extent to which the fact that a suspect is allowed to leave after the interrogation is completed should determine whether or not the interrogation is custodial.

STATEMENT OF THE CASE

On April 13, 2006, the Allen County Grand Jury handed up an indictment charging Larry Luke, Jr. with one count of Involuntary Manslaughter in violation of 2903.04(A) being a Felony of the first degree.

On May 16, 2006, Defendant filed a Motion to Suppress Statements. A hearing on the Motion was held on June 7, 2006. The motion was denied by the Court on June 20, 2006. Defendant waived his right to a speedy trial and right to a jury on July 26, 2006 and a trial to the court commenced on September 11, 2006. At the conclusion of the trial, the Defendant was found guilty of Involuntary Manslaughter pursuant to Ohio Revised Code Section 2903.04(B) being a felony of the third degree.

After a pre sentence investigation, the Defendant was sentenced on October 18, 2006 to a term of imprisonment with the Ohio Department of Rehabilitation and Correction of 5 years.

A timely notice of appeal was filed and the Court of Appeals for Allen County Ohio rendered judgment and issued an opinion affirming the trial court on November 5, 2007. This request for the Supreme Court of Ohio to accept this matter for review timely follows.

STATEMENT OF THE FACTS

On March 14, 2006, the Defendant was at a convenience store in Lima, Ohio a little after midnight with another companion and Patrick Phalen. At some point an argument or confrontation took place and Luke struck Phalen one time with his fist along Phalen's jaw line. The blow was such that Phalen's neck was broken and caused his death.

After the incident of March 14, 2006 that lead to Mr. Phalen's death, Detectives Kleman and Nolan of the City of Lima Police Department began their investigation. After interviewing several persons and witnesses, the Detectives determined that Larry Luke was the person who struck Phalen and caused his death at the hospital shortly thereafter.

With that information, on March 16, 2006, the detectives went to Luke's residence to speak to him. They first encountered Luke's girlfriend who indicated that Luke was upstairs. Luke came downstairs and spoke with the Detectives at the home for approximately five minutes. During that conversation, Luke was asked if he would

accompany the Detectives to the Lima Police Department for an interview to give his side of the story. The Detectives offered to transport Luke, which he accepted by riding in the back seat of the Detective's vehicle.

According to the record, Luke was not told that Phalen was dead at any time before or during the interview. The record indicates that Luke was told he could leave after the interview was over. At the conclusion of the interview, Luke left with his girlfriend who had come to the Police Department.

At the time of the interview, Detectives knew that a fight had taken place on March 14, 2006, that Larry Luke had been identified by witnesses as the only person to have struck Phalen, that Phalen died as a result of blunt trauma from that blow. During the interview, Luke admitted to striking Phalen, however, he did not know that Phalen had died. Within three and one half hours, after consulting with the Allen County Prosecutor's Office, Detectives went to Luke's home and arrested him for Manslaughter.

At no time before or any time during the interview was Luke advised of his right to remain silent, his right to counsel or his right to court appointed counsel during questioning, commonly referred to as *Miranda* rights.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law: That where questioning of a suspect moves beyond the general on the scene questioning or fact finding and moves to the coercive environment of the police station interrogation room, the more coercive aspects of custodial interrogation are presumed to be present and *MIRANDA* warnings should be given before questioning.

This case presents a continuing and fundamental question regarding the application of *MIRANDA v. ARIZONA*, 384 U.S. 436 (1966) in situations where there is no formal arrest of a suspect.

As Justice Marshall pointed out in his dissent in *OREGON v. MATHIASON*, 429 U.S. 492 (1977):

Miranda requires warnings to "combat" a situation in which there are "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." 384 U.S., at 467. It is of course true, as the Court notes, that "[a]ny interview of one suspected of a crime by a police officer will have coercive aspects to it." Ante, at 495. But it does not follow that because police "are not required to administer Miranda warnings to everyone whom they question," *ibid.*, that they need not administer warnings to anyone, unless the factual setting of the Miranda cases is replicated. Rather, faithfulness to Miranda requires us to distinguish situations that resemble the "coercive aspects" of custodial interrogation from those that more nearly resemble "[g]eneral on-the-scene questioning . . . or other general questioning of citizens in the fact-finding process" which Miranda states usually can take place without warnings. 384 U.S., at 477.

Id. at 497-498 (Marshall, J. Dissenting).

In essence, that is the question presented here. "General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by our holding". *MIRANDA* at 477. But then the converse must also be true. Where questioning of a suspect is not general, on-the-scene, or other general questioning and the coercive elements of police interrogation are present, the requirement of *MIRANDA* warning should be required. This is especially true in the "close case" as found by the Court of Appeals below.

Although this court overrules the assignment of error, the totality of circumstances surrounding the interview/ interrogation in this case make this finding somewhat of a 'close call,' and suggests that the administration of Miranda warnings in such cases is, generally, a wise practice.

STATE v. LUKE, 2007-Ohio-5906 (footnote 1).

CONCLUSION

For the reasons set forth herein, the judgment of the Court of Appeals should be reversed and the judgment of the trial court should be affirmed.

Respectfully submitted,



F. Stephen Chamberlain

COUNSEL FOR APPELLANT
LARRY LUKE, JR.

PROOF OF SERVICE

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. Mail to counsel for the appellee, Juergen Waldick, Allen County Prosecutor, Court of Appeals Building, 204 North Main St., Lima, OH 45801 on December 19, 2007.



F. Stephen Chamberlain

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IN THE COURT OF APPEALS OF THE THIRD APPELLATE JUDICIAL DISTRICT OF OHIO

COURT OF APPEALS
FILED
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ALLEN COUNTY

GINA C. STALEY-BURLI
CLERK OF COURTS
ALLEN COUNTY, OHIO

STATE OF OHIO,

PLAINTIFF-APPELLEE,

CASE NO. 1-06-103

v.

LARRY LUKE, JR.,

**JOURNAL
ENTRY**

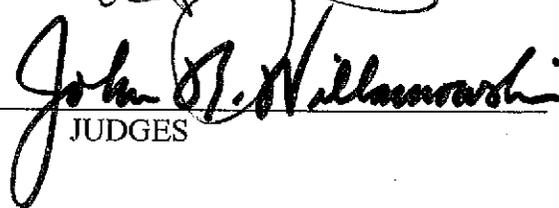
DEFENDANT-APPELLANT.

For the reasons stated in the opinion of this Court rendered herein, the assignments of error are overruled, and it is the judgment and order of this Court that the judgment of the trial court is affirmed at the costs of the appellant for which judgment is rendered and that the cause be remanded to that court for execution.

It is further ordered that the Clerk of this Court certify a copy of this judgment to that court as the mandate prescribed by Appellate Rule 27 or by any other provision of law, and also furnish a copy of any opinion filed concurrently herewith directly to the trial judge and parties of record.






JUDGES

DATED: November 5, 2007
/jlr

**IN THE COURT OF APPEALS
THIRD APPELLATE DISTRICT
ALLEN COUNTY**

STATE OF OHIO,

PLAINTIFF-APPELLEE,

CASE NO. 1-06-103

v.

LARRY LUKE, JR.,

OPINION

DEFENDANT-APPELLANT.

**CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas
Court**

JUDGMENT: Judgment Affirmed

DATE OF JUDGMENT ENTRY: November 5th, 2007

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PRESTON, J.

{¶1} Defendant-appellant, Larry L. Luke, Jr. (hereinafter “Luke”), appeals the judgment of conviction and sentence of the Allen County Court of Common Pleas finding him guilty of one count of involuntary manslaughter and sentencing him to five years imprisonment. For reasons that follow, we affirm.

{¶2} On March 14, 2006, Luke went to a convenience store in Lima, Ohio with a friend. During their visit to the store, Luke and his friend encountered Patrick Phalen. A confrontation occurred among these individuals, and Luke punched Phalen. Phalen subsequently died from his injuries.

{¶3} On March 16, 2006, two Lima Police Department detectives drove to Luke’s residence and asked Luke if he would be willing to answer questions regarding the convenience store confrontation. Luke agreed to the interview and was transported to the police station by the detectives.

{¶4} On April 16, 2006, the Allen County grand jury indicted Luke on one count of involuntary manslaughter in violation of R.C. 2903.04(A) and a first degree felony. On April 21, 2006, Luke was arraigned and entered a plea of not guilty.

{¶5} On May 16, 2006, Luke filed a motion to suppress incriminating statements he made to the police during the March 16, 2006 interview. On June 7, 2006, the trial court held an evidentiary hearing on the motion and, on June 20, 2006, it overruled Luke’s motion to suppress.

{¶6} On July 26, 2006, Luke appeared in court and waived his right to a jury trial. On September 11, 2006, a bench trial was held. The trial court found Luke not guilty of first degree involuntary manslaughter as charged, but it found Luke guilty of third degree involuntary manslaughter in violation of R.C. 2903.04(B).

{¶7} On October 18, 2006, the trial court sentenced Luke to a five year term of imprisonment. Luke now appeals the trial court's conviction and resulting term of imprisonment asserting one assignment of error.

ASSIGNMENT OF ERROR NO. I

THE TRIAL COURT COMMITTED ERROR PREJUDICIAL TO THE DEFENDANT BY OVERRULING THE DEFENDANT'S MOTION TO SUPPRESS HIS STATEMENT TO LAW ENFORCEMENT OFFICERS.

{¶8} In his sole assignment of error, Luke argues that the March 16, 2006 police station interview was a 'custodial interrogation' and that *Miranda* warnings were required. Luke argues his statements were inadmissible, and the trial court erred by not excluding the statements from evidence since he was not given *Miranda* warnings. The State argues that the interview was non-custodial because Luke voluntarily came to the police station and was free to leave at any time. Luke's assignment of error lacks merit.

{¶9} We review a trial court's findings of fact involving motions to suppress with deference and review such findings for whether they are supported by competent, credible evidence. *State v. Ransom*, 3d Dist. No. 15-06-05, 2006-Ohio-6490, ¶17, citing

State v. Vance (1994), 98 Ohio App.3d 56, 58-59, 647 N.E.2d 851; *State v. Ferguson*, 3d Dist. No. 4-01-34, 2002-Ohio-1763. “With respect to the trial court’s conclusions of law, however, our standard of review is de novo, and we must decide whether the facts satisfy the applicable legal standard.” *State v. Moore*, 3d Dist. Nos. 1-06-89; 1-06-96, 2007-Ohio-3600, ¶11, citing *State v. McNamara* (1997), 124 Ohio App.3d 706, 710, 707 N.E.2d 539.

{¶10} Only “custodial interrogations” trigger the requirement to provide *Miranda* warnings. *Moore*, 2007-Ohio-3600, at ¶12. “[T]he 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.’” *Ransom*, 2006-Ohio-6490 at ¶20, citing *State v. Mason*, 82 Ohio St.3d 144, 154, 694 N.E.2d 932, quoting *Berkemer v. McCarty* (1984), 468 U.S. 420, 442, 104 S.Ct. 3138, 82 L.Ed.2d 317. “In judging whether an individual has been placed into custody the test is whether, under the totality of the circumstances, a ‘reasonable person would have believed that he was not free to leave.’” *Id.*, citing *State v. Gumm* (1995), 73 Ohio St.3d 413, 429, 653 N.E.2d 253, quoting *United States v. Mendenhall* (1980), 446 U.S. 544, 554, 100 S.Ct. 1870, 64 L.Ed.2d 497.

{¶11} The circumstances for determining whether a reasonable person would have believed he was free to leave include:

- (1) What was the location where the questioning took place-i.e., was the defendant comfortable and in a place a person would normally feel free to leave? For example, the defendant might be at home as opposed to being in the more restrictive environment of a police station;**
- (2) Was the defendant a suspect at the time the interview began (bearing in mind that Miranda warnings are not required simply because the investigation has focused);**
- (3) Was the defendant's freedom to leave restricted in any way;**
- (4) Was the defendant handcuffed or told he was under arrest;**
- (5) Were threats [sic] made during the interrogation;**
- (6) Was the defendant physically intimidated during the interrogation;**
- (7) Did the police verbally dominate the interrogation;**
- (8) What was the defendant's purpose for being at the place where questioning took place? For example, the defendant might be at a hospital for treatment instead of being brought to the location for questioning;**
- (9) Were neutral parties present at any point during the questioning;**
- (10) Did police take any action to overpower, trick, or coerce the defendant into making a statement?**

State v. Greeno, 3d Dist. No. 13-02-46, 2003-Ohio-3687, ¶15, citing *State v. Estep* (Nov. 26, 1997), 2d Dist. No. 16279, at *4. To determine if an interrogation is custodial, however, “[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.” *Ransom*, 2006-Ohio-6490 at ¶20, citing *Mason*, 82 Ohio St.3d at 154, quoting *California v. Beheler* (1983), 463 U.S. 1121, 1125, 103 S.Ct. 3517, 77 L.Ed.2d 1275; *Thompson v. Keohane* (1995), 515 U.S. 99, 112, 116 S.Ct. 457, 133 L.Ed.2d 383.

{¶12} The trial court's factual findings regarding the March 16, 2006 interview can be summarized as follows:

- A. Factual Findings Supporting the Conclusion that the Interview was Custodial
 - 1. Detectives tracked Luke down and brought him to the police station;
 - 2. Interrogation lasted almost one hour;
 - 3. Luke was not told he was "free to leave";
 - 4. Detective Nolan sat between defendant and the door to a small interview room;
- B. Factual Findings Supporting the Conclusion the Interview was Non-custodial
 - 1. Luke voluntarily accompanied the detectives to the station;
 - 2. Detectives were in civilian attire;
 - 3. Interview was not conducted in a tense or extremely confrontational manner;
 - 4. No promises, threats, or offers of leniency were made to Luke;
 - 5. Luke was offered cigarettes and a drink, of which he requested and was given water;
 - 6. Luke and detectives were not overly stressed during the interview;
 - 7. At various times, the interview room door was open and detectives left Luke alone in the room;
 - 8. Luke had access to and used his cell phone during and after the interview;
 - 9. Luke was permitted to leave after making incriminating statements; and
 - 10. Luke's statements were voluntary and not coerced.

June 20, 2006 JE at 4-5). Our review of the record, including the suppression hearing transcript and the interview DVD, reveals that the trial court's factual findings, *supra*, are supported by competent, credible evidence. *Ransom*, 2006-Ohio-6490, at ¶17.

{¶13} Applying these factual findings to the circumstances articulated in *Greeno*, we find that a reasonable person in Luke's position would believe he was free to leave. 2003-Ohio-3687, at ¶15. Although Luke's interview was in the police station, it was not 'restrictive,' because he was left alone in an open room and had access to his cell phone. (June 7, 2006 T. at 7, 8). Luke was a suspect at the time of the interview; however, Detective Kleman testified that at that time only one eyewitness put Luke at the scene of the crime and, in his opinion, probable cause did not exist for an arrest. (June 7, 2006 T. at 27). Even if Luke was the 'focus' of the investigation, as he argues, that fact alone does not trigger *Miranda*. *Greeno*, 2003-Ohio-3687, at ¶15; *Stansbury v. California* (1994), 511 U.S. 318, 323, 114 S.Ct. 1526, 128 L.Ed.2d 293.

{¶14} Furthermore, Luke's freedom was not restricted. Luke voluntarily accompanied the detectives to the station in the back of an unlocked, unmarked car with no protective cage between the front and back seats. (June 7, 2006 T. at 20). Luke was then left alone in an open interview room for about five to ten minutes while the detectives attended to other matters. (Id. at 7). Luke also had access to and used his cell phone during the interview. (Id. at 8). Luke was never physically restrained in any manner before, during, or after the interview. (Id. at 6, 7). Luke was informed that he would be taken home after the interview and, in fact, left with his girlfriend following the interview. (Id. at 6, 7, 24-25). In addition, the interview DVD clearly demonstrates that: Luke was, for the most part, calm and responsive to questions; the detectives were not

coercive, threatening, or dominating; and the detectives did not trick or overpower Luke into making involuntary statements.

{¶15} Comparing Luke's circumstances to the circumstances outlined in *Greeno*, supra, a reasonable person would have felt free to leave the March 16, 2006 interview. Ergo, the interview was non-custodial, *Miranda* warnings were not required, and Luke's argument fails.

{¶16} Analyzing the *Greeno* circumstances aids the court in determining whether a reasonable person would have felt free to leave and, thus, whether a person was in custody for purposes of *Miranda*. 2003-Ohio-3687, at ¶15. However, as we have previously stated, to determine if an interrogation is custodial, "[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." *Ransom*, 2006-Ohio-6490 at ¶20, citing *Mason*, 82 Ohio St.3d at 154, quoting *Beheler*, 463 U.S. at 1125; *Thompson*, 515 U.S. at 112.

{¶17} The facts of this case do not meet this standard. First, Luke was not formally arrested prior to the interview. Second, Luke was never restrained to a degree equivalent to formal arrest. Since both these premises are true, the logical conclusions that follow are: (1) the March 16, 2006 interview was non-custodial in nature; (2) *Miranda* warnings were not required; and (3) the trial court did not err in admitting the interview statements into evidence at trial. *Ransom*, 2006-Ohio-6490, at ¶20, citing

Mason, 82 Ohio St.3d at 154, quoting *Beheler*, 463 U.S. at 1125; *Thompson*, 515 U.S. at 112; *Moore*, 2007-Ohio-3600, at ¶11.

{¶18} Consequently, whether *Greeno* is applied or our more limited inquiry under *Ransom*, supra, Luke's claim that the March 16, 2006 interview was custodial in nature and that *Miranda* warnings were required lacks merit.

{¶19} For all these reasons, Luke's assignment of error is overruled.¹

{¶20} Having found no error prejudicial to the appellant herein in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment Affirmed.

ROGERS, P.J. and WILLAMOWSKI, J., concur.

/jlr

¹ Although this court overrules the assignment of error, the totality of circumstances surrounding the interview/interrogation in this case make this finding somewhat of a 'close call,' and suggests that the administration of *Miranda* warnings in such cases is, generally, a wise practice.