[Cite as *State v. Goodspeed*, 2004-Ohio-1819.]

**IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO**

**STATE OF OHIO :**

**Plaintiff-Appellee : C.A. CASE NO. 19979**

**vs. : T.C. CASE NO. 03CR414**

**STEVEN GOODSPEED : (Criminal Appeal from Common Pleas Court)**

**Defendant-Appellant :**

**. . . . . .**

**O P I N I O N**

**Rendered on the 9th day of April, 2004.**

**. . . . . .**

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**. . . . . .**

**GRADY, J.**

**{¶1}** On February 21, 2003, Steven Wayne Goodspeed was indicted on one count of robbery and one count of failure to comply with the order or signal of a police officer. The charges stemmed from an incident wherein Goodspeed and a co-defendant had knocked down and robbed an eighty-three-year-old woman and stolen her purse. Goodspeed and his co-defendant then fled from the police in an automobile driven by Goodspeed. While attempting to elude the police, Goodspeed crashed his automobile into a

telephone pole. He then exited the vehicle and fled on foot. A short time later, Goodspeed was captured by police officers.

{¶2} On March 18, 2003, Goodspeed filed a motion to suppress statements he made to police officers following his arrest. A hearing was held, and at its conclusion the trial court overruled Goodspeed's motion.

{¶3} On May 27, 2003, Goodspeed plead no contest to the robbery count. In exchange for this plea, the State dismissed the count against Goodspeed for failing to comply with the order or signal of a police officer. On June 10, 2003, Goodspeed was sentenced to four years in prison.

{¶4} Goodspeed now appeals the trial court's decision overruling his motion to dismiss and the sentence imposed by the trial court.

FIRST ASSIGNMENT OF ERROR

{¶5} "THE TRIAL COURT ERRED IN FAILING TO GRANT APPELLANT'S MOTION TO SUPPRESS."

{¶6} 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. Upon appellate review of a decision on a motion to suppress, 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

independently determine as a matter of law, without deference to the trial court's conclusion, whether they meet the applicable legal standard. *Id.*

{¶7} Defendant argues that the trial court erred when it denied his motion to suppress statements he made to police. Defendant contends that he was so emotionally disturbed or distraught when he made the statements that they are inherently unreliable, and that his condition so diminished his capacity to rationally understand the *Miranda* warnings he was given that any statements he made thereafter were involuntary.

{¶8} The facts and conclusions of the trial court were as follows:

{¶9} "THE COURT: first of all, Court finds that the facts are that an officer of the Oakwood Police Department saw a subject push someone down. That subject then went to an automobile to flee. The automobile was followed initially and then eventually chased by the officer at high speeds. The vehicle then was involved in a collision or a wreck with a pole. And the defendant in this case, Mr. Goodspeed, was apprehended near a building.

{¶10} "At that point he made some statements which the Court finds as the officer indicated were unsolicited statements where no questions were asked, where he was crying that he wasn't doing anything. It wasn't his fault and he was threatened with a hammer.

{¶11} "Thereafter the defendant, Mr. Goodspeed, was taken into custody, taken to the Oakwood Police Department where he was

brought to Detective Yount's office. In Detective Yount's office before being asked any questions, although at this point he was clearly in custody, there were what were referred to as excited utterances where he explained the circumstances that the defendant had found himself in.

{¶12} "The Court finds that that was not in response initially to any questions of the officer. Furthermore, the Court specifically finds that the defendant at that point was crying uncontrollably and he was then consoled. He was advised of his Miranda rights by means of the form that is State's Exhibit number 1, which the officer went through in detail with him. And then the Waiver of Rights form was also covered with the defendant, and the defendant signed the Waiver of Rights form.

{¶13} "The evidence is that there was no force, no duress, no promises, no threats, no coercion or deprivation and that the defendant understood what he was doing and that he was coherent.

{¶14} "The law with regard to Miranda rights is that they are only required when there is custodial interrogation. Although it's - it may be that the defendant was in custody when he was first detained by the officer on the street, there is no interrogation. Therefore, the statements that he made at that point about saying that he was threatened and crying that he wasn't doing anything, those statements are volunteered statements and should not be suppressed on a constitutional basis.

{¶15} "Thereafter, the initial statements that the defendant made in the interrogation room with Detective Yount for the same reason should not be suppressed. Those are voluntary or

**volunteered statements and they are not in response to interrogation. And whether or not the defendant is in custody unless he is tricked into making those statements in some way, shape or form, they should not be suppressed based on Miranda or its progeny.**

**{¶16} "Finally, the issue then is whether the statements that the defendant made after that point are - are or are not admissible. In the circumstances of this case, it is the burden of the State to prove that there was an intelligent voluntary waiver based upon the totality of facts and circumstances.**

**{¶17} "One of those circumstances that the Court should consider, although it is not a determining factor, is the mental status of the defendant and in particular I refer to the case of State of Ohio versus Phillips. That's out of the Second District Court of Appeals, August 11th, 2000, 2000 Ohio Appeal, Lexus 3rd 3605 where the Second District Court of Appeals has specifically stated, 'The suspect's impaired mental condition at the time of waiver and confession has some bearing on the issue of voluntariness, but only as to whether police officers deliberately exploited the suspect's mental condition to coerce the waiver and confession.'**

**{¶18} "In this case I find that there is absolutely no evidence that anyone exploited a mental or emotional condition of the defendant to coerce a confession. The long and the short of that is the Court believes that the Miranda rights were adequately given. Furthermore that the statements by the defendant were voluntary under the totality of circumstances.**

**{¶19} "Therefore, the Motion to Suppress is in its entirety going to be overruled. What I'm going to do is I'm going to confirm that in writing with the finding and the basis of that being on the record. What I would like to do is place this matter on the docket for Tuesday." (Suppression Tr. 63-66).**

**{¶20} Having reviewed the record, we find that the trial court's findings of fact are supported by competent, credible evidence. We must now address whether the trial court's decision to overrule the Defendant's motion to dismiss was the appropriate legal finding. For the sake of simplicity, we will break down the statements made by the Defendant into two categories: those he made prior to hearing his *Miranda* rights, and those he made after he heard and waived his *Miranda* rights.**

**The Defendant's Pre Miranda Statements**

**{¶21} Miranda warnings are required only "when an individual is taken into custody or otherwise deprived of his freedom in any significant way and is subjected to questioning." *Miranda v. Arizona* (1966), 384 U.S. 436, 478. Questioning alone does not trigger the requirement; the subject must also be in custody. *State v. Biros* (1997), 78 Ohio St.3d 426, 678 N.E.2d 891. Custody does not exist when a reasonable person in the suspect's position would not have felt free to end the interrogation and leave. *United States v. Mendenhall* (1980), 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 497.**

**{¶22} "Only a custodial interrogation triggers the need for a *Miranda* rights warning." *Berkemer v. McCarty* (1984), 468 U.S. 420, 104 S.Ct. 3138. Custodial interrogation is defined 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." *Miranda, supra.***

**The statements the Defendant made prior to being read his *Miranda* warnings were made on two separate occasions: (1) when he was first captured and taken into police custody and (2) when he was first brought from the cell-block to Oakwood Police Department Detective Michael Yount's office for questioning.**

**{¶23} The Defendant's first statement was made immediately after he was captured by the police. Officer James Vincent Tovinitti testified that as he was searching the Defendant, the Defendant stated that "he didn't do it. He was forced to do it. And he was threatened [by the co-defendant] with a hammer." (Suppress Tr. 31).**

**{¶24} The Defendant's second statement was made immediately after the Defendant was brought from the cell block into Detective Jeffrey Michael Yount's office. Yount testified that the Defendant was crying uncontrollably at the time. Detective Yount testified that as soon as the Defendant sat down in his office, but before Detective Yount began questioning him, the Defendant stated:**

**{¶25} "My life is over. I have nothing to live for. I have no heat or electricity. My wife took all my money and I raised her kids. I was desperate for money. My daughter has a criminal for a father. I have never before broken the law. My wife trashed my life. I lost my sense of smartness. I can't get it turned around. I was going to be homeless. I have now lost my**

freedom. I don't deserve to go to jail. I was in jail in that house anyway. I need a second chance. It was my stupid idea and that is how desperate I got." (Suppress Tr. 37-38).

{¶26} The Defendant was in police custody at the time he made both statements. This leaves the question of whether the Defendant was being interrogated or questioned at the time he made the statements. During the motion to suppress hearing, both Tovinitti and Detective Yount testified that they did not ask the Defendant any questions prior to the statements. (Suppression Tr. 27, 31, 37-38). We find that the evidence overwhelmingly shows that Defendant was not being questioned when he made the statements and that his statements were voluntarily made. Accordingly, we find the trial court was correct in overruling the Defendant's motion to suppress the statements he made prior to receiving his *Miranda* warnings.

The Defendant's Post *Miranda* Statements

{¶27} In order for a statement made by the accused to be admitted in evidence, the prosecution must prove that the accused effected a voluntary, knowing, and intelligent waiver of his Fifth Amendment right against self-incrimination. *State v. Edwards* (1976), 49 Ohio St.2d 31, 38 (citing *Miranda v. Arizona* [1966], 384 U.S. 436, 86 S.Ct. 1602) The test for voluntariness under a Fifth Amendment analysis is whether or not the accused's statement was the product of police overreaching:

"The Fifth Amendment privilege is not concerned with moral and psychological pressures to confess emanating from sources other than official coercion. The voluntariness of a waiver of

**this privilege has always depended on the absence of police overreaching, not on 'free choice' in any broader sense of the word." *State v. Dailey* (1990), 53 Ohio St.3d 88, 92, 559 N.E.2d 459 (citing *Moran v. Burbine* [1986], 475 U.S. 412, 421, 106 S.Ct. 1135).**

**In deciding whether a defendant's confession is involuntarily induced, 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. *Edwards,* 49 Ohio St.3d at paragraph two of the syllabus; see *State v. Brewer* (1990), 48 Ohio St.3d 50, 58, 549 N.E.2d 491.**

**The totality of the circumstances analysis is triggered by evidence of police coercion. *Clark, supra,* at 261, 527 N.E.2d 844. "[C]oercive police activity is a necessary predicate to the finding" that a suspect involuntarily waived his *Miranda* rights and involuntarily confessed. *Connelly,* 479 U.S. at 167, 107 S.Ct. at 522, 93 L.Ed.2d at 484. A suspect's decision to waive his *Miranda* rights and to make a confession are made voluntarily absent evidence that "his will was overborne and his capacity for self-determination was critically impaired because of coercive police conduct." *Colorado v. Spring* (1987), 479 U.S. 564, 574, 107 S.Ct. 851, 857, 93 L.Ed.2d 954, 966; *Moore, supra* at 32, 689 N.E.2d 1; *State v. Dailey* (1990), 53 Ohio St.3d 88, 91, 559 N.E.2d 459.**

**The suspect's impaired mental condition at the time of the**

**waiver and the confession has some bearing on the issue of the voluntariness, but only as to whether police officers deliberately exploit the suspect's mental condition to coerce the waiver and confession. *Connelly,* 479 U.S. at 164, 93 L.Ed.3d at 486; *State v. Nobles* (1995) 106 Ohio App.3d 246, 279, 665 N.E.2d 1137.**

**Immediately after the Defendant made the statement to Detective Yount discussed above, the Defendant begged Detective Yount for his gun so that he could shoot himself in the head. (Suppression Tr. 38-39). Detective Yount testified that he told the Defendant that doing something like that would not be necessary and then spent a few minutes calming the Defendant. After the Defendant had calmed down, Detective Yount informed the Defendant of his *Miranda* rights using the departmental pre-interview form. Detective Yount testified that he asked the Defendant if he understood his rights at each step of the pre-interview form. After the Defendant indicated that he understood his *Miranda* rights, Detective Yount read him the waiver of rights provision on the form. Detective Yount asked the Defendant about his education and the Defendant indicated that he had completed twelve years of school. Detective Yount then asked the defendant to sign the line indicating that he was waiving his *Miranda* rights. The Defendant did this. The record contains no evidence that the defendant did not understand what he was being told, nor is there any evidence showing that the Defendant was subjected to any threats or intimidating behavior at this time.**

**{¶28} After waiving his *Miranda* rights, the Defendant explained that robbing the victim was his idea, and explained his**

**and his co-defendant's actions on the day of the robbery. (Suppression Tr. 45-49). The Defendant appears to argue that the statements he made to the police after he was informed of his *Miranda* rights should have been suppressed due to his mental state at the time he waived his *Miranda* rights. We disagree.**

**{¶29} There is nothing in the record to support the conclusion that the police officers deliberately exploited the Defendant's alleged impaired state to coerce him into waiving his *Miranda* rights and admit to committing a robbery. Appellant was clearly emotionally distraught when he was first brought into Detective Yount's office. However, there is no evidence indicating that he was yet emotionally distraught when he waived his *Miranda* rights. Further, there is no evidence to show that Detective Yount took advantage of Appellant's impaired mental state to coerce him into waiving his *Miranda* rights and making a self- incriminating statement. There is, in fact, evidence to support the conclusion that Appellant voluntarily waived his *Miranda* rights. Appellant signed the waiver form, which is strong proof that the waiver was valid. *North Carolina v. Butler* (1979), 441 U.S. 369, 274-275, 99 S.Ct. 1755, 1758-1759, 60 L.Ed.2d 286, 293; *Moore, supra* at 32, 689 N.E.2d 1. The record demonstrates that Detective Yount informed the Defendant of his *Miranda* rights. (Suppression Tr. 40). Specifically, the record indicates that Detective Yount went through a point by point recitation of the Defendant's *Miranda* rights through the use of a departmental pre-interview form. (Suppression Tr. 40). Detective Yount testified that after he finished explaining the Defendant's *Miranda* rights, the**

**Defendant signed the form expressly waiving those rights. (Suppression Tr. 43-44).**

**{¶30} We conclude the prosecution sustained its burden to prove by a preponderance of the evidence that the Defendant voluntarily waived his *Miranda* rights. We agree with the trial court that the Defendant's motion to suppress should have been overruled. Accordingly, we overrule Appellant's first assignment of error.**

**{¶31} The first assignment of error is overruled.**

**SECOND ASSIGNMENT OF ERROR**

**{¶32} "THE TRIAL COURT ERRED IN FAILING TO SENTENCE THE APPELLANT TO THE MINIMUM AND FAILING TO STATE THAT THE SHORTEST TERM WOULD EITHER DEMEAN THE SERIOUSNESS OF THE OFFENDER'S CONDUCT OR WOULD NOT ADEQUATELY PROTECT THE PUBLIC FROM FUTURE CRIME BY THE OFFENDER."**

**{¶33} R.C. 2953.08(A)(4) confers a right of appeal on defendants whose sentence is contrary to law. Defendant argues that his sentence is contrary to law because the trial court failed to comply with R.C. 2929.14(B) when it sentenced him to a term of imprisonment greater than the minimum available sentence for the offense.**

**{¶34} In order to impose more than the statutory minimum sentence upon an offender who has not previously served a prison term, the trial court must find either "that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the**

**offender or others," or both. R.C. 2929.14(B)(2).**

**{¶35} On the robbery charge, the trial court sentenced the Defendant to four years in prison. This sentence was more than the minimum two year authorized prison sentence, but less than the eight year maximum authorized prison sentence. The court stated:**

**{¶36} "Mr. Goodspeed, I've reviewed the purposes and principles of sentencing and the risk of recidivism factors in the Ohio Revised Code. And although you do not have any other felony convictions, I'm sure that you are aware the circumstances of this offense are that you and you co-defendant helped each other in committing an offense where an 83-year-old lady who was otherwise unable to take care of herself or help herself was knocked to the ground and had her purse stolen." (Sentencing Tr. 5).**

**{¶37} The trial court further stated:**

**{¶38} "I have considered the minimum sentence; however, because of the nature of the offense, particularly that you have an elderly victim and the fact that you admittedly were quite high on drugs at the time this occurred and in fact probably addicted to drugs at the time this occurred, that sentence of a minimum is not appropriate." (Sentencing Tr. 6).**

**{¶39} The trial court made no finding that the shortest prison term would demean the seriousness of the Defendant's conduct or would not adequately protect the public from future crimes he might commit. R.C. 2929.14(B)(2). The State argues, however, that the court's statements concerning the matters that make Defendant's conduct egregious are substantially equivalent to the**

**omitted seriousness finding, and therefore satisfy R.C. 2929.14(E)(4).**

**{¶40} It is readily evident that the court concluded that the Defendant's conduct was seriously wrong and harmful and why the court reached that conclusion. We do not take issue with the conclusions the court reached. The issue, however, is whether the court's statements satisfy the express pronouncement requirements of R.C. 2929.14(E)(4). In making those findings, the trial court was not obligated to mimic the exact language used in R.C. 2929.14(B), *See State v. Shepherd* (Dec. 6, 2002), Montgomery App. No. 19284, 2002-Ohio-6790, although that is probably the better practice. Nevertheless, R.C. 2929.14(B) requires the trial court to make findings, and those findings must clearly be expressed on the record. *See State v. Castle*, Champaign App. No. 02CA09, 2003-Ohio-45. When the court fails to make those findings, we are mandated to "remand the case to the sentencing court to state, on the record, the required findings." R.C. 2953.08(G)(1).**

**{¶41} The purpose of the various findings requirements that S.B. 2 imposed on sentencing courts is not to inform the defendant why he is being sentenced to a particular term, or at least not primarily. Rather, the findings requirements were intended to create a template for state-wide application, in order to make sentences of imprisonment imposed by Ohio's courts more uniform, fair, and, by avoiding unduly long sentences, less costly to the taxpayer. The function of the requirement is to create a regimen which the sentencing courts must follow to achieve the purposes and principles of felony sentencing. Unlike many other procedural**

**requirements, the findings/reasons regimen does not readily lend itself to a substantial compliance alternative. The primary goal is not individual fairness but overall consistency, and to that end observance of the forms prescribed by the statute is necessary.**

**{¶42} We cannot find that the trial court made the requisite R.C. 2929.14(B)(2) finding to support its imposition of more than the minimum sentence. Although one or more of the remarks made by the trial court portray reasons that would support a finding that the two-year minimum sentence would demean the seriousness of the Defendant's conduct, the trial court failed to expressly state such a finding on the record. While the record shows that the trial court considered and rejected the prospect of imposing the minimum sentence on the Defendant, the record fails to specifically state why the trial court chose to depart from the statutorily mandated minimum sentence based on one or both of the permitted reasons in R.C. 2929.14(B)(2).**

**{¶43} Because the trial court failed to make the requisite R.C. 2929.14(B)(2) findings, we sustain the Defendant's second assignment of error. Accordingly, we will reverse and vacate the Defendant's sentence and remand this case to the trial court for resentencing and, as a part of that proceeding, to state the required findings on the record. R.C. 2953.08 (G)(1).**

**FAIN, P.J., concurs.**

**WOLFF, J., dissents with opinion.**

**WOLFF, J., dissenting.**

**{¶44} I respectfully dissent from the majority's disposition of the second assignment of error. I believe the trial court's statements, quoted in the majority opinion, can only be read as a finding that the shortest prison term would demean the seriousness of Goodspeed's conduct. I certainly agree with the majority that probably the better practice is simply mimicking the exact language of R.C. 2929.14(B)(2). However, this is not required, as the majority observes. It is clear to me that the trial court found on the record that the minimum prison term would demean the seriousness of Goodspeed's conduct, although the court did not expressly say so. As such, I would overrule the second assignment of error and affirm the judgment.**

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**Copies mailed to:**

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