

[Cite as *State v. Petriashvili*, 2009-Ohio-6466.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 92851**

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**STATE OF OHIO**

PLAINTIFF-APPELLANT

vs.

**ZURAB PETRIASHVILI**

DEFENDANT-APPELLEE

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**JUDGMENT:  
REVERSED AND REMANDED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-493986

**BEFORE:** Dyke, J., Kilbane, P.J., and Celebrezze, J.

**RELEASED:** December 10, 2009

**JOURNALIZED:**

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

ANN DYKE, J.:

{¶ 1} Plaintiff-appellant, the state of Ohio (“appellant”), appeals from the trial court’s order suppressing evidence on behalf of defendant-appellee, Zurab Petriashvili (“appellee”), after finding that the police failed to inform him of his Miranda warnings prior to interrogation. For the reasons provided below, we reverse and remand.

{¶ 2} On January 18, 2007, Nicole Fink was walking down the street when appellee approached her in his vehicle on Wellington Avenue. He repeatedly ordered that she get into the vehicle. Fink did not look at appellee’s face, but noticed his strong foreign accent. Afraid for her safety, Fink walked to a friend’s home nearby. Before she entered the residence, Fink noted the description of the vehicle driven by appellee as well as the license plate number. Later that day, she telephoned 911 and informed the operator of the incident.

{¶ 3} Officer John Porec responded to the 911 call and, prior to arriving at Fink’s home, was informed of the license plate number. A check of the vehicle via the license plate number confirmed Fink’s description of the vehicle. Porec continued his investigation by interviewing Fink at her residence where she again described the vehicle as a Pontiac Grand Prix and provided the license plate number. Fink’s family members then informed the officer that the vehicle was spotted in the neighborhood.

{¶ 4} With this knowledge, Officer Porec and his partner began patrolling the area and discovered the vehicle parked in the area of State Road and

Wellington Avenue behind a duplex. After speaking with neighbors, the officers discovered that appellee owned the vehicle and were directed to his residence. A check of the license plate revealed that appellee was the registered owner of the vehicle.

{¶ 5} Officer Porec and his partner knocked on the door of the house and a female answered the door. After a brief inquiry, the female informed the police that appellee owned the vehicle and lived with her in the duplex. She invited the police into the home to speak with him.

{¶ 6} The officers stood in the kitchen of the home and outside the door of appellee's bedroom, where he was sitting on his bed, when they spoke with him regarding this incident. At the time, appellee was not handcuffed or restrained in any way. During their conversation, appellee admitted that he was the owner of the vehicle, had the keys, and was the only person who had control over the vehicle the entire day. Officer Porec also confirmed Fink's description that appellee had a thick foreign accent, but testified that he did not have difficulty communicating with or understanding appellee.

{¶ 7} Thereafter, Officer Porec placed appellee under arrest and transported him to the police station. During this time, Porec and his partner did not have any other communications with appellee.

{¶ 8} On March 27, 2007, the Cuyahoga County Grand Jury indicted appellee for one count of attempted abduction in violation of R.C. 2905.02 and 2923.02. He pled not guilty to all charges and filed a motion to suppress his

statements to the police on January 23, 2009. In the motion, he argued that the statements were obtained prior to the police warning him of his Miranda rights. After conducting a hearing on February 17, 2009, the trial court granted appellee's motion to suppress two days later.

{¶ 9} On February 20, 2009, appellant filed a notice of appeal pursuant to R.C. 2945.67(A) and Crim.R. 12(K). Appellant certified that the appeal was not being taken for the purposes of delay, and that the trial court's decision granting the motion to suppress had rendered its proof with respect to the sole count in the indictment so weak in its entirety that any reasonable possibility of effective prosecution as to that count had been destroyed.

{¶ 10} Appellant's sole assignment of error is as follows:

{¶ 11} "The trial court erred in granting appellee's motion to suppress because appellee was not in custody and therefore Miranda rights need not be given."

{¶ 12} Appellant maintains that the officers did not need to provide appellee with his Miranda warnings because he was not in the custody of the police at the time he voluntarily provided his statement. For the reasons that follow, we agree and reverse and remand to the trial court for proceedings consistent with this opinion.

{¶ 13} With regard to procedure, we note that this court set forth the standard of review for a trial court's denial of a motion to suppress in *State v. Curry* (1994), 95 Ohio App.3d 93, 96, 641 N.E.2d 1172, which states:

{¶ 14} “In a motion to suppress, the trial court assumes the role of trier of fact and is in the best position to resolve questions of fact and evaluate witness credibility. *State v. Clay* (1973), 34 Ohio St.2d 250, 63 O.O. 2d 391, 298 N.E.2d 137. A reviewing court is bound to accept those findings of fact if supported by competent, credible evidence. See *State v. Schiebel* (1990), 55 Ohio St.3d 71, 564 N.E.2d 54. However, without deference to the trial court’s conclusion, it must be determined independently whether, as a matter of law, the facts meet the appropriate legal standard. *State v. Claytor* (1993), 85 Ohio App.3d 623, 627, 620 N.E.2d 906, 908.”

{¶ 15} In *Miranda v. Arizona* (1966), 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, the United States Supreme Court provided the guidelines for the admissibility into evidence of any statement given during the custodial interrogation of a suspect. *Miranda* requires that a suspect “be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.” *Id.* at 479.

{¶ 16} “The duty to advise a suspect of Miranda rights does not attach until questioning rises to the level of a ‘custodial interrogation.’” *State v. Gumm* (1995), 73 Ohio St.3d 413, 429, 653 N.E.2d 253. “‘Custodial interrogation’ has been 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.” *State v. Williams*, 99 Ohio St.3d 493, 505, 2003-Ohio-4396, 794 N.E.2d 27, quoting *Miranda v. Arizona*, *supra*. Police, however, are not required to Mirandize everyone they question. *Id.* “Instead, the question is whether the suspect has been arrested or restrained from movement to the degree associated with a formal arrest.” *Id.*, citing *California v. Beheler* (1983), 463 U.S. 1121, 1125, 103 S.Ct. 3517, 77 L.Ed.2d 1275.

{¶ 17} An analysis of whether an individual is in custody for purposes of *Miranda* focuses on whether a reasonable person under the circumstances would believe he was under arrest. *Berkemer v. McCarty* (1984), 468 U.S. 420, 442, 104 S.Ct. 3138, 82 L.Ed.2d 317; *Oregon v. Mathiason* (1977), 429 U.S. 492, 97 S.Ct. 711, 50 L.Ed.2d 714. Both the subjective intent of the officer and/or the suspect are irrelevant in this analysis. *State v. Uhler* (1992), 80 Ohio App.3d 113, 117, 608 N.E.2d 1091. “[T]he only relevant inquiry is how a reasonable man in the suspect’s position would have understood his situation.” *Berkemer*, *supra*. Thus, in this case, we must determine, based on the totality of the circumstances, whether a reasonable person in appellee’s position would have believed he was free to leave the presence of Officer Porec and his partner.

{¶ 18} In this case, the trial court determined that due to appellee’s ethnicity, his limited ability to speak English, the fact that police were in uniform, and that they knew appellee owned the vehicle, appellee could not have felt free to leave. However, “[t]he mere presence of police officers does not render a suspect powerless, particularly when the suspect is within the familiar surroundings of her

own home.” *State v. Hopfer* (1996), 112 Ohio App.3d 521, 546, 679 N.E.2d 321.

{¶ 19} Officer Porec testified that he was invited into the home and directed through the kitchen, where he and his partner stood outside the door to appellee’s bedroom. As appellee sat on his bed, the officers briefly inquired who owned the vehicle, drove it, and possessed the keys to it that day. During the brief conversation, appellee was not handcuffed, placed under arrest, informed that he could not leave the house, or restricted in his movement in anyway. Moreover, as Officer Porec testified under oath, his questions were intended to investigate the alleged incident, not to extract a coerced confession from appellee, the prevention of which is the policy underlying the Miranda requirements. Only after appellant voluntarily responded that he owned the vehicle and was the only person that day to have the keys and drive it, was he placed under arrest. Under these circumstances, we disagree with the trial court and find appellee was not deprived of his freedom in any way, and thus, was not under a custodial interrogation at the time the officers questioned him regarding his vehicle.

{¶ 20} Our conclusion in this case remains consistent with this court’s precedent. In *State v. Preztak*, 181 Ohio App.3d 106, 2009-Ohio-621, 907 N.E.2d 1254, we recently were presented with a similar case and determined that the police questioning of the defendant did not rise to the level of “custodial interrogation.” In so finding, we reasoned that the entire interview occurred in defendant’s home after the detectives in that case knocked on the door and were invited into the home. *Id.* at 114. Furthermore, “[T]he detectives did not



handcuff, restrain or threaten [defendant]” and he made no effort to cease the interview or request an attorney. Id.

{¶ 21} Finally, in this matter, we do not agree with the trial court that the alleged language barrier between appellee and the officers is a distinguishing factor in the inquiry of whether the questioning was a custodial interrogation for purposes of providing Miranda warnings. Officer Porec testified that, although appellee did have a foreign accent, he did not have difficulty communicating with or understanding appellee nor did he believe that appellee had trouble understanding the officers. Moreover, despite appellee’s assertions to the contrary, Detective Mickey Adams did not testify that he did not interrogate appellee due to a language barrier. Adams testified that appellee was able to provide him with his personal and basic background information and that Adams understood him completely and with no difficulties. Accordingly, based on the evidence presented and the totality of the circumstances, we disagree with the trial court and find that the context in which appellee made the statements does not rise to the level of a custodial interrogation in which he could reasonably have felt constrained. Finding merit to appellant’s appeal, we reverse and remand to the trial court for proceedings consistent with this opinion.

{¶ 22} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is, therefore, considered that said appellant recover of said appellee its costs herein.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANN DYKE, JUDGE

FRANK D. CELEBREZZE, JR., J., CONCURS.

MARY EILEEN KILBANE, P.J., DISSENTS. (SEE ATTACHED DISSENTING OPINION.)

MARY EILEEN KILBANE, P.J., DISSENTING:

{¶ 23} I respectfully dissent from the majority's decision that concluded appellee was not subjected to a custodial interrogation when questioned by the police. For the following reasons, I would affirm the trial court's suppression of appellee's statements.

{¶ 24} The majority's analysis does not defer to the factual determinations of the trial court. When reviewing a trial court's decision on a motion to suppress, this court must defer to the trial court's factual determinations because it was in the best position to assess the credibility of the witnesses and resolve factual disputes. *State v. Gammons*, Cuyahoga App. 87268, 2006-Ohio-4766, at ¶9, quoting *State v. Curry* (1994), 95 Ohio App.3d 93, 641 N.E.2d 1172. This court is required to accept the trial court's

factual determinations if they are supported by competent, credible evidence. *State v. Schiebel* (1990), 55 Ohio St.3d 71, 564 N.E.2d 54.

{¶ 25} The testimony at the suppression hearing supports the trial court's conclusion that appellee was a suspect at the time he was questioned. Officer Porec testified that the alleged victim provided him with the full license plate of the vehicle. (Tr. 13, 27.) Officer Porec and his partner located the vehicle and knocked on the door of the duplex where it was parked.

An unidentified female who answered the door informed Officer Porec that appellee was the owner of the vehicle. This testimony sufficiently supports the trial court's conclusion that at this point in time appellee was a suspect and not merely an individual being questioned as part of the investigation.

{¶ 26} Officer Porec and his partner entered the home and walked to appellee's bedroom, blocking the bedroom doorway. They began questioning appellee as he sat on the edge of his bed, without first advising him of his *Miranda* rights. Suspects are not required to be informed of their *Miranda* rights unless they are subjected to a custodial interrogation. *State v. Collins*, Cuyahoga App. No. 92338, 2009-Ohio-5362, at ¶13, quoting *State v. Gumm*, 73 Ohio St.3d 413, 429, 1995-Ohio-24, 653 N.E.2d 253. When determining whether a suspect is subject to a custodial interrogation, this court must determine whether the suspect was in custody or deprived of his freedom in a significant way. *Collins*, supra, citing *State v. Williams*, 99 Ohio St.3d 493,

505, 2003-Ohio-4396, 794 N.E.2d 27.

{¶ 27} A suspect is deprived of his freedom if, under those same circumstances, a reasonable person would feel he was not free to leave. *State v. Smith*, Cuyahoga App. No. 92320, 2009-Ohio-5692, at ¶19, citing *United States v. Mendenhall* (1980), 446 U.S. 544, 180 S.Ct. 1870, 64 L.Ed.2d 497. Factors to be considered when determining whether an individual felt free to leave include whether multiple police officers were present, the display of a weapon, physical touching of the suspect, and the language or tone of the questioning by the officers. *State v. Jones*, Cuyahoga App. No. 92820, 2009-Ohio-5701, ¶33, citing *Mendenhall*, *supra*.

{¶ 28} I would conclude that, based on the facts as found by the trial court, a reasonable person under the same circumstances as appellee would not have felt free to leave. The testimony elicited at the suppression hearing demonstrated both the presence of multiple officers and that appellee was likely intimidated by the language used by those officers, two of the main criteria for suppression as outlined in *Smith*, *supra*. The fact that two police officers arrived unexpectedly and blocked the bedroom door would lead a reasonable person to believe that he was not free to leave.

{¶ 29} While the majority contends that the instant case is analogous to the recently decided *Preztak*, *supra*, I would conclude that *Preztak* is distinguishable in two important respects. In *Preztak*, while the defendant

was questioned in her home, she was the one who allowed officers in. The officers knocked on Preztak's door and told her exactly what they were investigating prior to her deciding to allow them into her home. In the instant case, it was an unidentified female who allowed officers into appellee's home, and the officers appeared without warning in the doorway of appellee's bedroom. Appellee was not on notice as to the matter officers were investigating prior to allowing them into the home, as was the case in *Preztak*.

{¶ 30} Second, in *Preztak* there was no evidence presented to suggest that the police officers ever restrained the defendant's movements. This is in sharp contrast to the instant case in which Officer Porec testified that he and his partner were standing in appellee's bedroom doorway, thereby blocking appellee's only exit. Although I do agree with the majority's assertion that courts have consistently held that questioning by law enforcement is less likely to rise to the level of a custodial interrogation when it occurs in a defendant's home, that principle is not absolute. See *Orozco v. Texas* (1969), 394 U.S. 324, 89 S.Ct. 1095, 22 L.Ed.2d 311.

{¶ 31} The trial court also determined that there were significant language barriers between the police officers and appellee. This conclusion by the trial court was supported by ample testimony; therefore, we must defer to it in our analysis.

{¶ 32} During his arrest, appellee was speaking a mix of both English and his native language. Officer Porec could not even affirmatively state that appellee understood he was under arrest at that point. (Tr. 23.) The language barrier was also realized by Detective Mickey Adams, who was not present at appellee's home, but spoke with appellee at the police station. Detective Adams testified, "I realized that there was going to be some type of language barrier, and I opted not to conduct any type of interview or interrogation." (Tr. 35.)

{¶ 33} The facts found by the trial court were supported by competent, credible evidence. This court is required to defer to those facts, and therefore, I would find that a reasonable person under the same circumstances would not feel he was free to leave. Consequently, I would conclude that, in the absence of receiving his *Miranda* warnings, the appellee's statements must be suppressed.