[Cite as *In re A. A.*, 2009-Ohio-4094.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

IN RE: A. A.	C.A. No. 08CA009512
	APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO CASE No. 08JD21254

DECISION AND JOURNAL ENTRY

Dated: August 17, 2009

DICKINSON, Judge.

INTRODUCTION

{¶1} As part of his investigation of a breaking and entering, Detective Mike Lopez went to Midview High School and asked to speak with A.A., who he thought was involved in the crime. An aide delivered a hall pass to A.A., who reported to Assistant Principal John Brown's office, where Detective Lopez asked him some questions. Mr. Brown and Assistant Principal Tom Faska were also in the room during the interview. The door of the office was closed but not locked. After the prosecutor's office filed a complaint against A.A., he moved to suppress his statements to Detective Lopez because he was not given Miranda warnings. A magistrate recommended denying the motion, concluding that Miranda did not apply because A.A. was not in custody at the time of the interview. The trial court overruled A.A.'s objection to the magistrate's recommendation and adopted her decision. Subsequently, A.A. pleaded no contest and was adjudicated delinquent for attempted breaking and entering. He has appealed the trial

court's denial of his motion to suppress, assigning two errors. Because A.A. was in custody at the time he was interviewed by Detective Lopez, this Court reverses.

MISTAKE IN ORDER

{¶2} A.A.'s first assignment of error is that the trial court failed to undertake an independent review of the magistrate's decision. The magistrate issued her recommendation on August 26, 2008, and A.A. timely objected to it. Following a hearing on the objection, the trial court entered a handwritten order overruling it. After A.A. requested a more specific judgment, the trial court entered an order indicating that it had "made an independent review as to the objected matters" and found "that the decision of the magistrate was proper." It wrote that "[A.A.]'s motion to dismiss is denied and the magistrate's decision is hereby adopted by this Court." A.A. has argued that the trial court's order is inadequate because it referred to a motion to dismiss instead of his motion to suppress.

{¶3} A.A.'s argument is moot because the trial court has entered a nunc pro tunc order correcting its mistake. Rule 36 of the Ohio Rules of Criminal Procedure provides that "[c]lerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time." "The term 'clerical mistake' refers to a mistake or omission, mechanical in nature and apparent on the record, which does not involve a legal decision or judgment." *State ex rel. Cruzado v. Zaleski*, 111 Ohio St. 3d 353, 2006-Ohio-5795, at ¶19 (quoting *State v. Brown*, 136 Ohio App. 3d 816, 819-20 (2000)). This Court concludes that, since A.A. did not file a motion to dismiss, but did object to the magistrate's recommendation to deny his motion to suppress, the trial court's misidentification of his motion was a clerical error. Since the trial court has corrected its mistake under Criminal

Rule 36, A.A.'s first assignment of error is moot, and it is overruled on that basis. See App. R. 12(A)(1)(c).

IN CUSTODY

{¶4} A.A.'s second assignment of error is that the trial court incorrectly concluded that he was not in custody when Detective Lopez interviewed him in Mr. Brown's office. He has argued that a reasonable person in his situation would not have felt as though he was free to leave.

{¶5} A motion to suppress evidence presents a mixed question of law and fact. *State v. Burnside*, 100 Ohio St. 3d 152, 2003-Ohio-5372, at ¶8. A reviewing court "must accept the trial court's findings of fact if they are supported by competent, credible evidence." *Id.* But see *State v. Metcalf*, 9th Dist. No. 23600, 2007-Ohio-4001, at ¶14 (Dickinson, J., concurring). The reviewing court "must then independently determine, without deference to the conclusion of the trial court, whether the facts satisfy the applicable legal standard." *Burnside*, 2003-Ohio-5372, at ¶8.

{¶6} In *Miranda v. Arizona*, 384 U.S. 436, 478 (1966), the United States Supreme Court held that, "when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized." "The prosecution may not use statements . . . stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean 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." *Id.* at 444.

{¶7} "In order to determine whether a person is in custody for purposes of receiving *Miranda* warnings, courts must first inquire into the circumstances surrounding the questioning and, second, given those circumstances, determine whether a reasonable person would have felt that he or she was not at liberty to terminate the interview and leave." *State v. Hoffner*, 102 Ohio St. 3d 358, 2004-Ohio-3430, at ¶27 (citing *Thompson v. Keohane*, 516 U.S. 99, 112 (1995)). "Once the factual circumstances surrounding the interrogation are reconstructed, the court must apply an objective test to resolve 'the ultimate inquiry' of whether there was a 'formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.'" *Id*. (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983)). "[T]he only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984).

{¶8} The undisputed testimony was that Detective Lopez had A.A. summoned to the school office so he could speak with him. He conducted the interview in Mr. Brown's assistant principal office. Both assistant principals, Mr. Brown and Mr. Faska, were present for the interview. The door of the office was closed, but not locked. A.A. sat near the door, Detective Lopez sat in a chair in a corner, Mr. Faska stood in front of a bookcase or file cabinet, and Mr. Brown sat behind his desk. Detective Lopez did not raise his voice during the interview. He did not tell A.A. whether he was free to leave or not free to leave. At one point during the interview, he had another student brought into the room to answer questions as well. When he was finished questioning A.A. and the other student, he told the assistant principals and returned to the police station.

{¶9} According to the detective and assistant principals, A.A. could have left the room at any time. They admitted, however, that there would have been consequences if A.A. had left

before he was dismissed. They acknowledged that students may not be in the school hallways without a pass. The assistant principals said that they typically only prepare a pass for a student to return to their class when they are done speaking with them. Mr. Brown said that he could remember previously suspending A.A., but could not remember when it was or the reason.

{¶10} The magistrate concluded that A.A. was not in custody because he "was not under arrest and was never told he was not free to leave. There is no evidence of any restriction of movement or freedom that is consistent with custody. The juvenile was not arrested, there were no aggressive or coercive tactics used by the detective, he was never told he couldn't leave and he was never physically restrained in any manner." She also reasoned that "[t]here was nothing inherently coercive in the school setting that would require *Miranda* warnings." The trial court adopted her conclusion.

{¶11} The magistrate relied on three cases in her decision. In *In re Haubeil*, 4th Dist. No. 01CA2631, 2002-Ohio-4095, the court considered whether Mr. Haubeil, a student, was in custody when he was interviewed by a law enforcement officer in his high school principal's office. *Id*. at ¶5, 9. The only evidence was the parties' joint stipulation of facts, which provided, merely, that Mr. Haubeil was interviewed in the school office by the officer and was not read Miranda rights. *Id*. at ¶13. On the sparse facts provided in the joint stipulation, the court concluded there was nothing in the record that indicated that Mr. Haubeil had been subjected to custodial interrogation. *Id*. at ¶16.

{¶12} In *In re Bucy*, 9th Dist. No. 96CA0019, 1996 WL 640039 at *1 (Nov. 6, 1996), a police officer interviewed Robert Bucy, a high school student, in a school conference room. The officer did not give Mr. Bucy Miranda warnings. *Id*. at *2. While the door to the room was closed, the officer began the interview by telling Mr. Bucy that he was free to leave at any time

and could speak to his mother if he wanted. *Id*. Mr. Bucy was also familiar with the officer from a junior firefighters program. *Id*. This Court concluded that, under the totality of the circumstances, a reasonable person in Mr. Bucy's situation would have felt free to leave. *Id*.

{¶13} In *In re Johnson*, 5th Dist. No. CA-95-13, 1996 WL 363811 at *1 (June 20, 1996), a sheriff's deputy interviewed Jeremy Johnson in a school library. Mr. Johnson's probation officer was present and also asked him questions. *Id*. The court concluded that, since a suspect is not in custody when he is talking to his probation officer, Miranda warnings were not necessary, even though a deputy was present. *Id*. The court also noted that a school library is not an intimidating setting. *Id*.

{¶14} The cases cited by the magistrate are not useful comparisons. In *Haubeil*, the court had few facts about the interview. In *Bucy*, the interview occurred in a conference room and the officer told the defendant that he was free to leave and could speak to his mother. In *Johnson*, because the defendant's probation officer was present, the court concluded that he was not in custody as a matter of law.

{¶15} The magistrate also determined that she could not consider A.A.'s age in reviewing the totality of the circumstances, citing *Yarborough v. Alvarado*, 541 U.S. 652 (2004). The United States Supreme Court, however, "has not definitively ruled on whether a suspect's youth is part of the objective *Miranda* custody analysis." *In re R.H.*, 2d Dist. No. 22352, 2008-Ohio-773, at ¶19 (citing *Alvarado*, 541 U.S. at 668). In *Alvarado*, the Supreme Court did not hold that age was irrelevant to the custody inquiry, it only concluded that the state court's failure to consider the defendant's age was not "an unreasonable application of clearly established law." *Alvarado*, 541 U.S. at 668.

{¶16} Having reviewed the totality of the circumstances, this Court concludes that A.A. was in custody during his interview with Detective Lopez. A.A. was pulled out of his classroom and summoned to the office, where he was asked to sit in a small, closed room with three adult, authority figures: the school's two assistant principals and a law enforcement officer. He was not advised that he could call his parents or that he was free to leave. While the door of the office was not locked, a person in A.A.'s situation would have known that, if he left before the assistant principals were finished with him, he could face adverse consequences, such as a detention, for walking the halls without a pass. Under the circumstances, a reasonable person in A.A.'s situation would not have felt "at liberty to terminate the interview and leave." *State v. Hoffner*, 102 Ohio St. 3d 358, 2004-Ohio-3430, at ¶27. The trial court, therefore, incorrectly denied A.A.'s motion to suppress. A.A.'s second assignment of error is sustained.

CONCLUSION

{¶17} The trial court incorrectly concluded that Detective Lopez did not have to give A.A. Miranda warnings because he was not in custody during the interview in the assistant principal's office. The judgment of the Lorain County Common Pleas Court is reversed.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellee.

CLAIR E. DICKINSON
FOR THE COURT

MOORE, P. J.
CARR, J.
CONCUR

APPEARANCES:

GINO PULITO, attorney at law, for appellant.

DENNIS P. WILL, prosecuting attorney, and MARY R. SLANCZKA, assistant prosecuting attorney, for appellee.