

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 27, 2007**

A. John Voelker  
Acting Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2006AP1767-CR**

**Cir. Ct. No. 2005CF283**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DAREN N. YAEGER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Chippewa County:  
RODERICK A. CAMERON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Daren Yaeger appeals a judgment convicting him of second-degree sexual assault and burglary, both as a repeater. He argues that

the trial court erred when it refused to suppress statements he made to the police. The officers had not informed him of his *Miranda*<sup>1</sup> rights. We conclude that Yaeger was not in custody at the time he made the statements and the police were not required to inform him of his *Miranda* rights before taking his statement.

¶2 *Miranda* warnings must be given before any custodial interrogation begins. A person is considered “in custody” when his movement is restrained to the degree comparable to a formal arrest. *United States v. Wyatt*, 179 F.3d, 532, 535-36 (7<sup>th</sup> Cir. 1999). The test for custody is an objective one. The question is whether a reasonable person in the suspect’s position would have considered himself to be in custody. *Id.* A suspect is not automatically deemed to be in custody simply because he is questioned in a coercive environment such as a station house. *Id.* Nor are *Miranda* warnings required merely because the individual is a suspect or the focus of a criminal investigation. *Id.* Rather, unless the suspect was formally arrested, he is not in custody unless the totality of the circumstances shows that a reasonable person in his position would believe he was not free to leave. *Id.*

¶3 A reasonable person in Yaeger’s position would have believed he was free to leave. Detective Sergeant Robert Adams telephoned Yaeger and asked him to come to the police station. When Yaeger indicated he had something else to do, Adams said he would like to interview Yaeger “today or tomorrow.” Later that morning, Yaeger arrived unannounced at the police station and was escorted to an interview room. Adams asked Captain Wayne Nehring to join them less than an hour later because Adams believed Yaeger was about to tell him what

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

actually happened. When Nehring arrived, he closed the door to the interview room. Nehring told Yaeger that if he was responsible for the sexual assault, it would only be a matter of time before they would identify him through DNA evidence. Yaeger then told the officers that he needed a cigarette and some time to gather his thoughts. Adams escorted Yaeger to the front of the building so that he could go outside and smoke. Adams left Yaeger unattended outside the building and told Yaeger to have one of the secretaries notify him when Yaeger came back in the building.

¶4 After the break, Adams escorted Yaeger back to the same interview room and again closed the door. During the ensuing fifteen to ninety minutes, depending on whose testimony is believed, Nehring told Yaeger “we’re beyond the question of if [you] did the criminal offense. We’re now concerned with ... why [you] did it.” At that point, Yaeger made inculpatory statements.

¶5 A reasonable person in Yaeger’s position would have believed he was free to leave. When the officers allowed him to leave the building unescorted, they demonstrated that his freedom to leave was not restrained. Nehring’s statement just before the break, that DNA evidence would determine whether Yaeger committed the sexual assault, suggests that no arrest would be made until a DNA test was completed. After the break, when Nehring told Yaeger that they were beyond the question of if he committed the offense and were now concerned with why he did it, Nehring did not allude to any evidence that was unavailable before the break. Because Yaeger was allowed to leave the building upon request and the police identified no additional evidence when he returned, a reasonable person would have believed that he could leave again upon request.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE  
809.23(1)(b)5 (2005-06).

