

RENDERED: April 25, 2003; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002590-MR

JAMES MINSHALL, III

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE LEONARD L. KOPOWSKI, JUDGE
ACTION NO. 00-CR-00362

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: JOHNSON, KNOPF, AND McANULTY, JUDGES.

KNOPF, JUDGE: In October 2000, the Newport police were investigating a recent string of burglaries at local pharmacies. On October 13, 2000, a Newport patrol officer arrested James Minshall for public intoxication and found on his person more than 200 prescription pills. Soon thereafter, the detective investigating the pharmacy burglaries requested that Minshall

come talk to him at the Newport police station. Minshall met with the detective at about 11:00 A.M. October 17, 2000. His mother accompanied him to the station, but she remained in the lobby while Minshall and the detective went to an office. The detective began the interview by assuring Minshall that he was not under arrest and was free to leave at any time. The detective did not, however, give Minshall his Miranda warnings.

During the interview the detective accused Minshall of having committed one of the pharmacy burglaries and promised to recommend leniency if Minshall confessed and cooperated. When Minshall denied the accusation, the detective claimed that he appeared on the store's surveillance video. Minshall asked to see the video, at which point the detective's manner became brusque and he said,

I'm not playing a game with you. Okay? If you want to sit here and bullshit me and play me for stupid, fuck it. I'll put you in jail for burglary. Okay? It makes no difference to me. Okay? We'll end it right here. Next thing you hear from me is when there's a warrant for your arrest for burglary. Okay? All right. I'm not bluffing you. I'm being completely up front.

Thus confronted, Minshall thought for several moments, then admitted having committed the burglary. At about noon he was allowed to return home with his mother. At no point during the interview did the detective give him the Miranda warnings.

Minshall was indicted, and prior to trial he moved to suppress his October 17 statement on the ground that he should have been mirandized.¹ When the trial court denied the motion to suppress, Minshall pled guilty to theft of controlled substances of value greater than \$300.00, a class C felony,² and to possession of a controlled substance in the second degree, in this case a class-A misdemeanor.³ By judgment entered November 1, 2001, he was sentenced to a total of five years' imprisonment. Minshall reserved his right to appeal from the trial court's suppression ruling and contends on appeal that that order misapplied the rule of Miranda v. Arizona.⁴ We disagree and so affirm the trial court's judgment.

As the parties acknowledge, the familiar Miranda warnings--safeguards of the privilege against self-incrimination--are required only when the authorities question a person whom they have "taken into custody or otherwise deprived of his freedom of action in any significant way."⁵ Minshall contends that at the point in his interview when the detective threatened him with arrest, he should be deemed in custody, for

¹ He also maintained that he had given his statement involuntarily, but that line of argument he has abandoned on appeal.

² KRS 218A.1418(2)(b).

³ KRS 218A.1416.

⁴ 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602 (1966).

⁵ 384 U.S. at 444.

at that point no rational person would have felt free to leave.
We disagree.

To determine whether a person was in custody, for
Miranda purposes,

a court must examine all of the
circumstances surrounding the interrogation,
but "the ultimate inquiry is simply whether
there [was] a 'formal arrest or restraint on
freedom of movement' of the degree
associated with a formal arrest."⁶

In Stansbury v. California, the United States Supreme
Court recognized that "[a]n officer's knowledge or beliefs may
bear upon the custody issue if they are conveyed, by word or
deed, to the individual being questioned."⁷ However,

[e]ven a clear statement from an officer
that the person under interrogation is a
prime suspect is not, in itself, dispositive
of the custody issue, for some suspects are
free to come and go until the police decide
to make an arrest. The weight and
pertinence of any communications regarding
the officer's degree of suspicion will
depend upon the facts and circumstances of
the particular case.⁸

In this case, although the detective could hardly have
communicated his suspicions more forcibly, his threat to

⁶ Stansbury v. California, 511 U.S. 318, 322, 128 L. Ed. 2d 293,
298, 114 S. Ct. 1526, 1529 (1994) (citing California v. Beheler,
463 U.S. 1121, 77 L. Ed. 2d 1275, 103 S. Ct. 3517 (1983) and
Oregon v. Mathiason, 429 U.S. 492, 50 L. Ed. 2d 714, 97 S. Ct.
711 (1977)) (internal quotation marks omitted).

⁷ 511 U.S. at 325, 128 L. Ed. 2d at 300.

⁸ 511 U.S. at 325, 128 L. Ed. 2d at 300.

terminate the interview and to seek an arrest warrant confirmed rather than contradicted his initial assurance that Minshall was not yet under arrest and was free to leave. Rather than suggesting that the interview would continue until Minshall said what the detective wanted to hear, or that Minshall would immediately be arrested if he did not confess, the detective threatened to send Minshall home, but to proceed against him thenceforth without leniency. We agree with the trial court that this threat did not convert the voluntary questioning into a custodial interrogation--it did not suggest any immediate restraint on Minshall's freedom of movement--and therefore that Minshall was not entitled to Miranda warnings prior to his confession. The trial court thus did not err when it denied Minshall's suppression motion. Accordingly, we affirm the November 1, 2001, judgment of the Campbell Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Karen Shuff Maurer
Assistant Public Advocate
Department of Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky

Elizabeth A. Heilman
Assistant Attorney General
Frankfort, Kentucky