

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-001260-MR

APRIL WILLIAMS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE JOHN R. ADAMS, JUDGE  
ACTION NO. 01-CR-00854

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

\*\* \*\* \* \* \*

BEFORE: BUCKINGHAM, GUIDUGLI AND SCHRODER, JUDGES.

GUIDUGLI, JUDGE. April May Williams appeals from a final judgment and sentence of the Fayette Circuit Court on her conditional plea of guilty to one count of second-degree criminal abuse. We affirm.

On May 19, 2001, Lexington Police Department detective William Breslin ("Breslin") began investigating a case of possible child abuse. Four days later, Breslin was contacted by the child's mother, April May Williams ("Williams"). Williams

indicated that she had information relating to the investigation, and she agreed to meet Breslin at his office.

When Williams arrived, she was advised of her Miranda rights and signed a statement indicating that she was aware of those rights. Breslin then interviewed Williams. Some time into the interview, Williams confessed that she had shaken the child. She then agreed to make a taped confession. Williams was arrested on charges of second-degree criminal abuse.

Sometime thereafter, Williams, through counsel, moved to suppress the introduction of the confession into evidence at trial. She argued that the incriminating statement was coerced and not voluntarily made because Breslin had engaged in prolonged and menacing questioning of Williams, and had shown her pictures of babies who were severely injured by shaking. Since the statement was not voluntarily made, she maintained that she was entitled to an order barring its introduction at trial. She also argued that since Breslin only taped the incriminating portion of the interview, the Commonwealth engaged in the bad faith suppression of evidence favorable to Williams and should be barred from introducing the confession.

Upon considering Williams's argument, the trial court rendered an order denying the motion to suppress. Thereafter, Williams entered into a plea agreement with the Commonwealth, agreeing to enter a plea of guilty in exchange for a recommended

sentence of one year in prison. The plea was conditioned on Williams's right to appeal from the order denying her motion to suppress. It was accepted by the trial court, which sentenced Williams to a probated sentence of one year in prison. This appeal followed.

Williams now argues that the trial court erred in denying her motion to suppress the introduction of her confession into evidence. She argues that the tactics used by Breslin to bring about the confession were coercive, thus rendering the confession involuntary. Williams maintains that the trial court abused its discretion in failing to suppress its introduction at trial, and seeks an order reversing and remanding the matter with instructions to suppress the confession at any future trial.

We find no error on this issue. It is uncontroverted that Williams spoke with Breslin freely and of her own volition, that she was apprised of her Miranda rights, and that she signed a statement so indicating. Furthermore, since Williams was present at the police station voluntarily, she was not in custody and therefore not subject to Miranda restrictions in the first place. And lastly, Williams never stated that she wanted to speak to an attorney or stop talking to Breslin, nor that she wanted to leave. Given these uncontroverted facts, we must conclude that Williams's initial participation was voluntary.

The question then becomes whether Williams's incriminating statement was coerced. She argues that when one looks to the totality of the circumstances, it becomes clear that she would not have made the incriminating statement but for the coercive environment created by Breslin. According to Williams, this environment arose from Breslin yelling at her to tell the truth, from showing her graphic pictures of injured children, and from allegedly suggesting to her that the child was severely injured. Since, in her opinion, the incriminating statement was coerced and not voluntarily made, she argues that she is entitled to have the judgment of conviction reversed and the matter remanded with instructions that the statement may not be admitted into evidence at any future trial.

We are not persuaded by Williams's argument on this issue. When coercion is alleged, two elements must be proven to establish voluntariness: first, the prosecution must affirmatively establish the voluntariness of the confession by a preponderance of the evidence; and second, a police officer must testify at the hearing as to what he or she heard. Henson v. Commonwealth, Ky., 20 S.W.3d 466 (1999), citing Tabor v. Commonwealth, Ky., 613 S.W.2d 133, 135 (1981). See also, Canler v. Commonwealth, Ky., 870 S.W.2d 219, 220-21 (1994). The trial court's findings on this issue are conclusive if supported by substantial evidence. RCr 9.78.

In the matter at bar, the testimony is at best conflicting as to whether Breslin yelled at Williams and whether he implied that her child was more seriously injured than was actually the case. In reviewing the trial court's ruling on this issue, substantial evidence exists in support of the conclusion that Williams's statement was not coerced. Breslin stated that he did not yell at Williams nor did he suggest that her child was seriously injured. This evidence, taken alone, forms a sufficient basis upon which we may affirm the trial court on this issue. The trial court may also have been persuaded by the fact that Williams's boyfriend stated that he could hear Williams crying while being questioned by Breslin, but did not hear Breslin yelling.

Finally, even if Williams's claims are true on this issue, we would have difficulty concluding that the trial court erred in determining that the incriminating statement was not voluntarily made. Coercion has been found to exist only in the most extreme cases, to wit, where a defendant was tortured, Ward v. Texas, 316 U.S. 547, 62 S.Ct. 1139, 86 L.Ed. 1663 (1942), kept naked, Malinski v. N.Y., 324 U.S. 401, 65 S.Ct. 781, 89 L.Ed. 1029 (1945), or deprived of food for an extended period of time, Payne v. Arkansas, 356 U.S. 560, 78 S.Ct. 844, 2 L.Ed.2d 975 (1958). See generally, Allee v. Commonwealth, Ky., 454 S.W.2d 336, 341 (1970). Thus, even if Williams's claims are

true, it is likely we would affirm the trial court on this issue since the circumstances under which Williams made her statement do not rise to the level of coercion generally recognized as coercive by the United States Supreme Court.

Williams's last argument relates to the fact that Breslin did not tape the entire interview, instead recording only the incriminating statement. She maintains that this failure constitutes the bad faith suppression of the best evidence by the Commonwealth and should be characterized as prosecutorial misconduct. Accordingly, she seeks to have the judgment reversed and the statement suppressed at any future proceeding against her.

We find no error on this issue. In Brashars v. Commonwealth, Ky., 25 S.W.3d 58 (2000), the Kentucky Supreme Court expressly held that the Kentucky Constitution does not require the electronic recording of interrogations or questionings. Brashars is dispositive, and Williams has cited nothing to the contrary. Williams was not entitled to have her interview recorded, and the trial court did not err in so ruling.

For the foregoing reasons, we affirm the final judgment of the Fayette Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Matthew W. Boyd  
Lexington, KY

BRIEF FOR APPELLEE:

A. B. Chandler  
Attorney General

William L. Daniels, II  
Assistant Attorney General  
Frankfort, KY