

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001855-MR

RANDALL SCOTT LUCAS

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE REBECCA M. OVERSTREET, JUDGE
ACTION NO. 02-CR-00655

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING IN PART AND
REVERSING IN PART

** ** * * * * *

BEFORE: BARBER, DYCHE, AND McANULTY, JUDGES.

BARBER, JUDGE: Appellant, Randall Scott Lucas (Lucas), appeals from a conditional guilty plea to charges of sexual abuse. Lucas alleges that his Miranda rights were violated during police interrogation.

Lucas was questioned by police officers on February 26, 2002, regarding charges that he had abused his stepdaughter. Lucas was given a Miranda warning before this questioning.

Lucas was not in custody at the time he was questioned, and was free to return home after the questioning.

The investigating officer later received information that Lucas had sexually abused his nephew twenty years earlier. Lucas was asked to return for additional questioning. Although Lucas did not know it during the interview, the officer had in her possession a warrant to arrest him at the time he was questioned. Lucas was arrested on that warrant immediately after the questioning concluded. Lucas was not given a new Miranda warning before the second round of questioning. Lucas confessed to the second charge, that of abusing his nephew, during the questioning.

Defense counsel made a motion to suppress the charges of abuse of the nephew due to the officer's failure to give Lucas a second Miranda warning. Defense counsel asserts that the two charges were dissimilar, and so a new warning was required. The Commonwealth claims that Lucas was not in custody during either interrogation, therefore no Miranda warning was required.

The trial court found that Lucas was not in custody during the first interrogation, but was in custody when he was questioned regarding the second charge. We affirm those findings of fact. The trial court then stated that the initial Miranda warning given before the first interrogation was

sufficient to protect Lucas' rights during the second interrogation. We disagree, and hold that a Miranda warning was required prior to the custodial interrogation. We reverse the trial court's finding with regard to the need for a Miranda warning.

Kentucky law requires that a Miranda warning be given prior to a custodial interrogation. Farler v. Commonwealth, Ky. App., 880 S.W.2d 882 (1994). The law states that "the test for determining whether the interrogation is custodial is how a reasonable man in defendant's position would have understood the situation." Id., at 884. The court must determine whether the defendant was in custody at the time of the questioning. Little v. Commonwealth, Ky. App., 991 S.W.2d 141, 142 (1999). The totality of the circumstances surrounding the interrogation is to be used to determine whether the interrogation was custodial. Mills v. Commonwealth, Ky., 996 S.W.2d 473, 481 (1999). We affirm the trial court's finding that Lucas was in custody when he was questioned regarding the second offense.

The investigating officer admitted that she intended to arrest Lucas at the time he was questioned, and that she did not intend to let him leave the premises under any circumstances. She was in possession of a valid arrest warrant for Lucas at the time of the interrogation. Although Lucas may not have known it at the time he was questioned, he was clearly not free to leave.

The investigating officer was in possession of a valid warrant for his arrest and planned to arrest him immediately after the questioning. Contrary to the Commonwealth's assertion, Lucas was clearly in custody at the time he was questioned regarding the second offense.

Lucas asserts that a Miranda warning was required before the interrogation regarding the felony offense. We concur with Lucas' claim. During the first questioning period Lucas was only questioned regarding a misdemeanor offense. This interrogation was non-custodial and did not require a Miranda warning. He was informed that he was free to leave following the questioning, and did in fact leave.

Later, the officer asked that Lucas return to discuss the misdemeanor again. Once Lucas arrived, the officer asked a few questions about the misdemeanor, and then questioned him in detail about unrelated felony abuse claims that were asserted to have occurred twenty years earlier. No Miranda warning was given before this questioning. When Lucas filed a motion to suppress the confession made during the custodial interrogation, the trial court denied the motion. The trial court stated that the Miranda warning given before the earlier non-custodial interrogation was sufficient to protect Lucas' rights during the later custodial interrogation. We disagree.

Where a new interrogation is commenced, a new Miranda warning is required, even if the questioning is regarding the same or similar charges. Linehan v. Commonwealth, Ky., 878 S.W.2d 8, 11 (1994). Miranda warnings must be provided to a defendant before any custodial interrogation that is separate in time from any other custodial interrogation. Wilson v. Commonwealth, Ky., 476 S.W.2d 622, 623 (1971). This is so unless the interrogations are so close in time as to be part of the same occurrence, or where the statements are volunteered by the defendant without prompting. Campbell v. Commonwealth, Ky., 732 S.W.2d 878, 881 (1987). In the present case, the custodial interrogation was separate in time from the earlier questioning; was not undertaken at the request of the defendant; and concerned a separate and distinct offense. Clearly, a Miranda warning was required under such circumstances.

Miranda was "concerned with 'the protection which must be given to the privilege against self-incrimination when the individual is first subjected to police interrogation.'" Fields v. Commonwealth, Ky., 12 S.W.3d 275, 283 (2000). An "interrogation has been defined to include 'any words or actions on the part of police . . . that the police should know are reasonably likely to elicit an incriminating response from the subject. . . .'" Wells v. Commonwealth, Ky., 892 S.W.2d 299, 302

(1995), citing Rhode Island v. Innis, 446 US 291, 301, 100 S. Ct 1689, 64 L. Ed 2d 297 (1980).

The record shows that Lucas was first subjected to police interrogation regarding the felony offense when he was asked to return for questioning on the separate and distinct misdemeanor charge. It was at that point that a Miranda warning was required. The failure to give such a warning required suppression of the confession. For the foregoing reasons we reverse the trial court's denial of the motion to suppress the conviction.

DYCHE, JUDGE, DISSENTS.

McANULTY, JUDGE, CONCURS IN RESULT.

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