

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002553-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM WAYNE CIRCUIT COURT
HONORABLE ROBERT L. WILSON, JUDGE
ACTION NO. 02-CR-00062

BILLY K. MEREDITH

APPELLEE

OPINION
REVERSING AND REMANDING
** **

BEFORE: EMBERTON, CHIEF JUDGE; DYCHE AND TACKETT, JUDGES.

TACKETT, JUDGE: The Commonwealth of Kentucky appeals from an order of the Wayne Circuit Court suppressing Billy Meredith's confession to a Kentucky State Police trooper because Meredith had not been advised of his right to remain silent. Upon reviewing the facts in this case, we conclude that the trial court abused its discretion in determining that Meredith was in custody and that the police were required to advise him of his Fifth Amendment right against self-incrimination prior to questioning him. Consequently, we reverse the trial court's

order suppressing Meredith's confession and remand this case for a trial by jury.

Meredith is accused of sexually abusing A.H. who is his wife's minor granddaughter. Trooper C. M. Feltner investigated the case and testified at an emergency removal hearing in the Wayne District Court on April 13, 2002. This hearing resulted in A.H. being removed from the home of her legal guardian, Charlotte Meredith, who is married to Billy Meredith, due to accusations of abuse and neglect. While attending the hearing, Feltner informed Meredith that he would like to ask him some questions about the incident.

Meredith voluntarily accompanied Feltner to the Monticello police station where he was interviewed. Feltner informed Meredith that he was not under arrest and was free to go at any time. Meredith signed a written statement admitting that he had sexually abused A.H., touching both her breasts and her vagina, although he blamed her for being the instigator. When Feltner asked Meredith to give a tape recorded statement, Meredith refused saying that he wanted to speak to his attorney. Then, Meredith left without being placed under arrest. On August 29, 2002, Feltner arrested Meredith on the charge of second-degree rape of A.H.

Meredith filed a motion to suppress his confession on November 19, 2002, arguing that he did not waive his rights

under Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). The trial court held a hearing on December 3, 2002, and granted Meredith's suppression motion on the grounds that Miranda applied. The trial court's conclusions appear to be based on the fact that Feltner was testifying at the civil hearing wherein Meredith was being accused of committing a felony act against A.H. Even though the allegations that led to A.H.'s removal from the Merediths' home were felony acts, that is not the proper focus of our inquiry.

The trial court's determination that Meredith was entitled to be informed of his Miranda rights prior to being questioned by Feltner cannot be overturned on appeal absent an abuse of discretion, and its findings are conclusive if supported by substantial evidence. Canler v. Commonwealth, Ky., 870 S.W.2d 219 (1994). The trial court neglected to specify the reasoning supporting its ruling in favor of suppression; however, the evidence in this case leads to two possible rationales. The trial court may have decided that Meredith, as a suspect, was entitled to receive Miranda warnings, or that Meredith reasonably believed himself to be in custody during his interrogation. The trial court's comment that Feltner had just finished testifying to felony acts committed by Meredith could imply the court was relying on the fact that Meredith was a person of interest to police to trigger the Miranda requirement.

However, Kentucky courts have rejected the "person of interest" standard for triggering Miranda, instead favoring the required determination that the suspect was in custody when he was interrogated. Farler v. Commonwealth, Ky. App., 880 S.W.2d 882 (1994); Wells v. Commonwealth, Ky., 892 S.W.2d 299 (1995); Hourigan v. Commonwealth, Ky., 962 S.W.2d 860 (1998); Little v. Commonwealth, Ky. App., 991 S.W.2d 141 (1999).

Nevertheless, if a reasonable person in Meredith's situation would have thought he was in custody, then the suppression of his confession was proper. Berkemer v. McCarty, 468 U.S. 420, 103 S.Ct. 3138, 82 L.Ed.2d 317 (1984). The undisputed testimony at the suppression hearing indicated that Feltner informed Meredith that he was not under arrest and was free to go at any time. Meredith attempts to distinguish the facts in his case from the underlying facts supporting our ruling in Little wherein we upheld a trial court's decision to admit a confession from a defendant who was interrogated by police officers in the front seat of a cruiser while parked in front of his house. Although police did not give Little a Miranda warning, they did advise him that he was not under arrest, was free to leave at any time and did not have to answer any questions. Although Feltner apparently did not inform Meredith that he could refuse to answer questions, Meredith did exactly that when he was asked to give a tape recorded

statement. He refused to answer further questions, invoked his right to counsel, and left the police station without any interference. These actions, coupled with Feltner's statement to Meredith that he was not under arrest and could leave at any time, clearly belie the notion that Meredith thought, or that a reasonable person in his situation would have thought, he was in custody. Consequently, Feltner was not required to give Meredith a Miranda warning, and the trial court erred in suppressing Meredith's confession that he sexually abused A.H.

For the forgoing reasons, the order of the Wayne Circuit Court suppressing Meredith's confession is reversed, and this case is remanded for further proceedings consistent with this opinion.

ALL CONCUR.

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