

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000898-MR

BRANDON SCOTT JACKSON

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE GREGORY M. BARTLETT, JUDGE
ACTION NO. 02-CR-00669

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE, AND SCHRODER, JUDGES.

BUCKINGHAM, JUDGE: Brandon Scott Jackson appeals from a judgment of the Kenton Circuit Court wherein he was convicted of first-degree rape and sentenced to twelve years in prison. The sole issue on appeal is whether certain statements made by Jackson to police officers were properly admitted by the trial court. We affirm.

On June 22, 2002, Casey Pfirman asked a fourteen-year old girl, T.W., to baby-sit for her three-year old daughter at her apartment in the Fairway Apartments in Kenton County. T.W. arrived at Pfirman's apartment around 9:30 p.m. Shortly

thereafter, a male acquaintance arrived at T.W.'s request to keep her company while she babysat the Pfirman child. The acquaintance described himself as a good friend of T.W., but he testified that they were not dating.

Later in the evening, Jackson, who was visiting at his brother's nearby apartment, came to the door of the Pfirman apartment and asked to use the phone. He was granted permission to do so, and the male acquaintance testified that Jackson entered the apartment and made a phone call while in the kitchen. The male acquaintance also testified that Jackson came to the apartment a second time to use the phone and that Jackson again entered the apartment to make the call. The witness further testified that Jackson was wearing a blue University of Kentucky cap. Jackson's second visit to the apartment occurred as the witness was leaving.

When Pfirman returned to her apartment shortly before 1:00 a.m., she heard yelling coming from one of the bedrooms. Pfirman testified that she then observed Jackson hurriedly coming out of the bedroom with T.W. following closely behind. According to Pfirman, T.W. was cursing Jackson and appeared hysterical. Pfirman then took T.W. back to her apartment, which was in the same apartment complex. Pfirman stated that when she returned to her own apartment, she found a blue University of Kentucky cap by the side of her bed.

T.W.'s mother learned the next day that her daughter had been raped, and she called the police. After the police arrived at the apartment complex, Jackson and T.W. were transported by officers to a hospital for rape kit examinations. Although Jackson agreed to go voluntarily to the hospital for an examination, once there, he declined to be examined. A police officer interviewed Jackson at the hospital, and Jackson denied raping T.W. Further, although Jackson acknowledged going to the Pfirman apartment to use the phone, he denied entering the apartment and stated that he made the call in the apartment's doorway. He also denied returning to the apartment a second time.

A jury trial was held in late January 2003. T.W., T.W.'s mother, the male acquaintance, Pfirman, and the police officer testified. Without relating the specifics of T.W.'s testimony, she essentially testified that Jackson forced her on to a bed in the bedroom and entered her vagina with his penis about half way when Pfirman came home and entered the apartment. T.W. also testified that Jackson punched her in the face because she resisted.

At the conclusion of the trial, the jury found Jackson guilty of first-degree rape. It recommended a sentence of twelve years in prison, and the court sentenced Jackson accordingly. Jackson's appeal followed.

The sole issue on appeal involves the admissibility of statements made by Jackson to the police officer at the hospital. Jackson argues that his statements were improperly admitted into evidence by the court because he was entitled to be read his Miranda rights due to the fact that he was in custody at the time the statements were given. On the other hand, the Commonwealth argues that the statements were admissible despite the fact that Jackson was not read his Miranda rights because Jackson was not in custody but was free to leave at any time during the interrogation.

A pretrial suppression hearing concerning the statements was not held. Rather, Jackson's attorney raised an objection to the admissibility of the statements during the course of the trial. A suppression hearing was held pursuant to RCr¹ 9.78 outside the presence of the jury while the trial was in progress. The court denied Jackson's motion to exclude the statements as evidence, finding that the interrogation was noncustodial in nature.

"Miranda warnings are necessary when the defendant is the subject of custodial interrogation by authorities." Farler v. Commonwealth, Ky. App., 880 S.W.2d 882, 884 (1994), citing Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966). "[T]he test for determining whether the interrogation

¹ Kentucky Rules of Criminal Procedure.

is custodial is how a reasonable man in the defendant's position would have understood the situation." Farler, 880 S.W.2d at 884, citing Berkemer v. McCarty, 468 U.S. 420, 442, 104 S.Ct. 3138, 3151, 82 L.Ed. 2d 317 (1984). "Under Miranda, a person is in custody when 'deprived of his freedom of action in any significant way' by a law enforcement officer." Love v. Commonwealth, Ky., 55 S.W.3d 816, 823 (2001), quoting Miranda, 384 U.S. at 444. In short, the issue in the case *sub judice* is whether Jackson was "in custody" when he made statements in response to the police interrogation.

During the suppression hearing, the police officer who interrogated Jackson stated that he told Jackson during the interrogation that he was free to stop the interview and leave the hospital at any time. The officer also stated that Jackson acknowledged that he understood what he was told. Based upon this testimony, we conclude that the trial court was not clearly erroneous in determining that Jackson was not in custody when he gave his statement to the police officer. Therefore, we find no error in the trial court's ruling denying Jackson's motion to suppress the evidence.

The judgment of the Kenton Circuit Court is affirmed.

ALL CONCUR.

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