

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002449-MR

RUSSELL M. EVANS

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
INDICTMENT NO. 04-CR-00757

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: DYCHE AND GUIDUGLI, JUDGES; PAISLEY, SENIOR JUDGE.¹

PAISLEY, SENIOR JUDGE: On February 2, 2004, Detectives Holland, Lewis and Maynard of the Lexington Police Department were carrying out undercover controlled drug buys. Detectives Holland and Lewis were in uniform and were on patrol in a marked cruiser while Detective Maynard was working undercover. Because he was working undercover, Detective Maynard was wearing a radio transmitter which allowed the other detectives to monitor his activities. Soon the officers spotted Russell M. Evans standing

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

by himself on the corner of Sixth Street and Elm Street. Since it was cold outside and the area was known for frequent drug activity, the officers suspected Evans of dealing drugs. Detective Maynard approached Evans and obtained a small quantity of cocaine from him but did not arrest him.

A short time later, after Detective Maynard had left, Detectives Holland and Lewis approached Evans. Detective Holland asked Evans for his name, address, date of birth and social security number, which Evans supplied voluntarily. Using this personal information, the officer discovered that an arrest warrant had been issued for Evans. Pursuant to the outstanding warrant, the detectives arrested Evans and advised him of his rights pursuant to Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

On June 15, 2004, in Fayette County, Evans was charged by indictment with trafficking in a controlled substance in the first degree. In due course, Evans moved to suppress the evidence and argued that he was in custody when Detective Holland asked for his personal information. According to Evans, the detective had subjected him to a custodial interrogation without first advising him of his Miranda rights. After Fayette Circuit Court denied Evans' suppression motion, he entered a conditional guilty plea reserving his right to appeal the suppression issue.

On appeal, Evans cites United States v. Mendenhall, 446 U.S. 544, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980) and California v. Hodari D., 499 U.S. 621, 111 S. Ct. 1547, 113 L. Ed. 2d 690 (1991) and argues that he was in custody when Detectives Holland spoke with him, so the Fourth Amendment applied to the situation. And he argues if the Fourth Amendment applies to a custodial situation, then the Fifth Amendment applies as well. Since he was in custody and the Fifth Amendment applied, Evans contends that when Detective Holland questioned him, the detective was required to first advise him on his Miranda rights.

When we review suppression issues, we initially examine the trial court's findings of fact to determine if they are supported by substantial evidence. If so, then the findings are conclusive. Then we review *de novo* the trial court's application of the law to the facts. Commonwealth v. Neal, 84 S.W.3d 920, 923 (Ky. App. 2002).

In the present case, the facts are not in dispute, so the trial court's findings are conclusive.

Whenever a person, who is in police custody, is subjected to interrogation, the police must first advise that person of his Miranda rights. Rhode Island v. Innis, 446 U.S. 291, 301, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980). For Miranda purposes, "interrogation" means any express questioning by the

police that will elicit an incriminating response or any words or actions by the police that the police should reasonably know will elicit an incriminating response. Id. An "incriminating response" is any response, either inculpatory or exculpatory, that the prosecution might later seek to introduce at trial. Id.

When Detective Holland asked Evans for his personal information, the detective did not subject Evans to a custodial interrogation since the detective's questions were not meant to elicit, nor did they elicit, any incriminating response from Evans. Thus, prior to asking these questions, the detective was not required to advise Evans of his Miranda rights. In addition, the arrest of Evans was clearly proper because the officers had an arrest warrant for him. The Fayette Circuit Court correctly applied the law and correctly denied Evans' motion to suppress.

The judgment is affirmed.

ALL CONCUR.

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