

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000616-MR

JAMES M. EDWARDS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE THOMAS KNOPF, JUDGE
ACTION NO. 98-CR-001818

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE, EMBERTON and HUDDLESTON, Judges.

HUDDLESTON, JUDGE. This is an appeal by James M. Edwards from a judgment based on a conditional guilty plea.¹ Edwards pled guilty to nine counts of burglary, reserving the right to appeal to this Court the trial court's denial of his motion to suppress certain incriminating statements he made to Louisville police following his arrest.

As disclosed in the uncontradicted testimony presented at the November 23, 1998, suppression hearing, the facts are as

¹ Ky. R. Crim. Proc. (RCr) 8.09.

follows.² At about 5:25 a.m. on the morning of June 15, 1998, in the Old Louisville section of Louisville, Louisville Police Officer Higgs received a radio dispatch regarding a break-in in progress. Higgs was nearby and responded. As he drove up an alley near the location of the reported break-in, Higgs encountered Edwards carrying two large stereo speakers. Higgs knew Edwards and called out his name. Edwards at first did not stop, but Higgs called to him again. Edwards then stopped and placed the speakers on the ground. Higgs did not immediately arrest Edwards, but did handcuff him. Higgs then transported Edwards to the front of the location, where three witnesses identified Edwards as the man they had seen break into the residence. Higgs then arrested Edwards and read him his "Miranda³ rights." Higgs indicated that he understood them.

Thereafter, Edwards agreed to speak to Higgs. Edwards explained various details of the break-in to Higgs and emphasized that this was the first house he had ever burglarized. Higgs then transported Edwards to the 5th Police District station house. In the meantime, Higgs had called Louisville Police Detectives Gravatte and Bybee about the apprehension of Edwards. Gravatte and Higgs were assigned to investigate several burglary cases in the Old Louisville area. About ten to fifteen minutes following Higgs and Edwards' arrival at the station, Detective Gravatte arrived. Higgs told Detective Gravatte that he had informed Edwards of his

² The Commonwealth did not file a brief in the case. We therefore accept the appellant's statement of the case, which comports with the facts as set forth herein. Ky. R. Civ. Proc. (CR) 76.12(8)(c).

³ See Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

rights, and Detective Gravatte questioned Edwards regarding that morning's break-in. About ten or fifteen minutes after Gravatte's arrival, Detective Bybee arrived. At this point, at about 6:15 a.m., Higgs left. At no time while Edwards was in Higgs presence did Edwards explicitly seek to invoke his right to remain silent, and Edwards seemed to understand what was going on.

The detectives asked Edwards if he understood his rights, to which Edwards responded "yes". The detectives emphasized to Edwards that he did not have to speak to them, and Edwards indicated that he understood that. However, Edwards refused to sign a rights waiver form or to give a tape recorded statement. During this time, Edwards commented several times to the effect that "I didn't do anything, take me to jail." Edwards also continued to comment that he was involved with only the one burglary. However, at no time did Edwards explicitly indicate to the detectives that he wanted to invoke his right to remain silent.

At some point Gravatte left the room momentarily to get some coffee. A discussion between Edwards and Bybee ensued. The discussion initially centered upon the difference between right and wrong. Bybee commented to the effect that the most important thing was that "he clear things up with God." Although Edwards initially refused to talk about the other burglaries and maintained that that morning's burglary was the only one with which he was involved, following the discussion about right and wrong, Edwards voluntarily agreed to drive around the Old Louisville area and show the detectives other locations he had burglarized.

Gravatte, Bybee and Edwards proceeded with the trip around Old Louisville, and the detectives logged Edwards's incriminating statements relating to various burglaries he had committed. In the car, Detective Bybee again asked Edwards if he understood his rights, and Edwards affirmed that he did. Procedurally, the detectives would drive by various addresses in Old Louisville where burglaries had occurred, and Edwards would indicate whether he recognized the location as the site of one of his burglaries.

In July 1998 Edwards was indicted on eight counts of second-degree burglary (KRS 511.030) and one count of third-degree burglary (KRS 511.040). On October 8, 1998, Edwards filed a motion to suppress his statements to the police on the basis that the statements were not the product of a free, voluntary, intelligent and non-coerced choice. Edwards also moved to suppress the statements, and any evidence gained from the statements, as fruits of an illegal arrest.⁴

An evidentiary hearing on the suppression motion was held on November 23, 1998. At the evidentiary hearing, the Commonwealth presented three police officers, Higgs, Gravatte and Bybee, as witnesses. Edwards presented no witnesses. At the conclusion of the hearing it was agreed that the trial court would take the case under submission. The trial court subsequently denied the motion.

On January 5, 1999, Edwards entered into a conditional guilty plea agreement with the Commonwealth. Under the agreement,

⁴ It is not contended on appeal that Edwards was subjected to an illegal arrest by Higgs.

Edwards was to receive eight years on each second-degree burglary count and five years on the third-degree burglary count, all sentences to run concurrently for a total of eight years to serve. Under the agreement, however, Edwards reserved his right to appeal the denial of his suppression motion. The trial court accepted the plea agreement and entered judgment and imposed sentence in accordance with its terms. Edwards then filed this appeal challenging the denial of his suppression motion.

Edwards contends that the trial court erred by denying his motion to suppress because the police did not respect his right to cut off questioning. Edwards insists that the detectives improperly failed to take notice of his request not to talk about other burglaries and his request to be taken to jail. Edwards argues that all statements and evidence obtained after he first indicated he no longer wished to talk about other burglaries should be suppressed. In addition, Edwards contends that Higgs violated Rule of Criminal Procedure (RCr) 3.02(2) in that Higgs arrested Edwards without a warrant, and pursuant to the rule was required to take him without unnecessary delay before a judge but, instead, took him to be interviewed by the detectives.

Miranda v. Arizona requires the express declaration of a defendant's rights prior to custodial interrogation. Otherwise suppression is the remedy.⁵ It is uncontested that Higgs read Edwards his rights at the time of his arrest and that the detectives on several occasions after that notified Edwards that he

⁵ Miranda, supra, n. 3 at 479; Wells v. Commonwealth, Ky., 892 S.W.2d 299, 302 (1995).

did not have to speak to them. The detectives also on several occasions questioned Edwards as to whether he understood his rights, and received Edwards's assurance that he did.

There is no assertion that Edwards requested, or even mentioned, an attorney during the course of police interrogation so as to require the cessation of questioning.⁶ Rather, Edwards's argument in support of suppression is based solely on the premise that he asserted his Fifth Amendment right to remain silent, and the police failed to honor the assertion of the right by continuing to interrogate him. Specifically, Edwards contends that (1) when he denied involvement in any other burglaries, he was effectively invoking his right to remain silent as to those burglaries, and (2) that when he stated, "I didn't do anything, take me to jail," he was, in effect, literally requesting that interrogation cease and that he be taken immediately to jail.

The voluntariness of a confession is assessed based on the totality of circumstances surrounding the making of the confession.⁷ A statement is not "compelled" within the meaning of the Fifth Amendment if an individual "voluntarily, knowingly and intelligently" waives his constitutional privilege.⁸ The inquiry into whether a waiver is coerced has two distinct dimensions.

⁶ See Baril v. Commonwealth, Ky., 612 S.W.2d 739, 743 (1981).

⁷ Allee v. Commonwealth, Ky., 454 S.W.2d 336, 341 (1970), cert. granted, 400 U.S. 990, 91 S. Ct. 454, 27 L. Ed. 2d 438 (1971), case dismissed, 401 U.S. 950, 91 S. Ct. 1186, 28 L. Ed. 2d 234 (1971); Mills v. Commonwealth, Ky., 996 S.W.2d 473, 481 (1999).

⁸ Miranda v. Arizona, supra, n. 3, at 444.

First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived."⁹

The Commonwealth only needs to prove waiver of Miranda rights by a preponderance of the evidence.¹⁰ An appellate court will reverse the trial court's decision as to a Miranda violation only upon a showing of clear abuse of discretion.¹¹

There was no testimony or evidence given at the hearing to contradict the police officers' testimony that Edwards was advised of his rights, that he understood the rights read to him, and that he knowingly waived them. "If the government wishes to introduce into evidence at trial a statement made during [a custodial] interrogation, it has the burden of establishing by a

⁹ Moran v. Burbine, 475 U.S. 412, 421, 106 S. Ct. 1135, _____, 89 L. Ed. 2d 410, 421 (1986) (quoting Fare v. Michael C., 442 U.S. 707, 725, 99 S. Ct. 2560, 61 L. Ed. 2d 197 (1979)); See also Colorado v. Spring, 479 U.S. 564, 573, 107 S. Ct. 851, 857, 93 L. Ed. 2d 954 (1987); Mills v. Commonwealth, at 481-482 (1999).

¹⁰ Colorado v. Connelly, 479 U.S. 157 168, 107 S. Ct. 515, 522, 93 L. Ed. 2d 473 (1986); Mills at 482.

¹¹ Mitchell v. Commonwealth, Ky., 908 S.W.2d 100, 103 (1995).

preponderance of the evidence that the suspect waived his Miranda rights and that his statement was truly the product of free choice."¹² Uncontradicted testimony by witnesses for the Commonwealth satisfies a burden of proof higher than preponderance of the evidence to show waiver.¹³

Edwards was read his rights and he on several occasions indicated that he knew what those rights were. Thereafter, rather than stating that he sought to invoke his right to remain silent, Edwards, to the contrary, waived his right to remain silent and expressed a willingness to talk first to Higgs, and then the detectives. Subsequent statements to the effect that he "committed only one burglary" and that he "should be taken on to jail" implicate an assertion of the right to remain silent only in the most subtle way.

When a suspect invokes his privilege against self-incrimination, whether in the form of refusing to answer questions or asking that an ongoing interrogation be terminated, his request must be "scrupulously honored."¹⁴ If a suspect "states unequivocally that he wishes to remain silent and refuses to answer questions, interrogation ordinarily must cease."¹⁵ When it is not clear whether a suspect has invoked his right to remain silent,

¹² United States v. Ramirez, 79 F.3d 298, 304 (2d Cir.1996) (internal quotations and citation omitted).

¹³ See Reeves v. Commonwealth, Ky., 462 S.W.2d 926, 930 (1971), cert. denied, 404 U.S. 836, 92 S. Ct. 124, 30 L. Ed. 2d 69 (1971); Mills at 482.

¹⁴ Michigan v. Mosley, 423 U.S. 96, 104, 96 S. Ct. 321, 326, 46 L. Ed. 2d 313; Mills 996 S.W.2d at 482.

¹⁵ Ramirez at 304.

officers may question the suspect for the purpose of clarifying the ambiguity.¹⁶ "In some circumstances, however, a suspect's statement as to his willingness or unwillingness to answer questions, or his silence in response to some questions, does not constitute even an ambiguous or equivocal invocation of the right to remain silent."¹⁷ The present case is of the third type. Edwards's initial denials of other burglaries and his occasional references to the effect that he should be taken to jail are so imperceptibly and indirectly related to an assertion of the right to remain silent that they cannot be expected to be taken by a reasonable police officer to be an invocation of the Fifth Amendment right against self-incrimination.

The United States Supreme Court decision in Davis v. United States¹⁸, on a similar Miranda issue (invocation of the right to counsel after previous waiver must be by clear request before law enforcement officers are required to cease interrogation), supports the position that the invocation of the right to silence after a previous waiver must be clear. Considering that Edwards had previously waived his right to remain silent, we are not persuaded that his statements to the effect that he did not commit prior burglaries or that he wanted to be taken to jail were invocations of his right to remain silent such that the detectives were required to cease questioning him.

¹⁶ Id.; see also Springer v. Commonwealth, 998 S.W.2d 439, 446 (1999).

¹⁷ Id.

¹⁸ 512 U.S. 452, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994).

Next, Edwards contends that there was a violation of Kentucky Rule of Criminal Procedure (RCr) 3.02(2) when Officer Higgs failed to take him without unnecessary delay before a judge and file a post-arrest complaint. It does not appear that the right to appeal this issue was reserved by Edwards in his conditional guilty plea. The plea agreement states only that "[t]his is a conditional plea conditioned on [Edwards'] appeal of suppression." The suppression hearing dealt only with the voluntariness of his post-arrest statements and the invocation of his right to remain silent. Edwards did not raise this issue before the trial court, it is not an element of his conditional plea agreement, and the issue is unreserved.

In any event, giving Edwards his Miranda warning satisfied the required constitutional protection and covered many of the protections envisioned by RCr 3.02.¹⁹ Edwards was lawfully arrested and held in custody. While Edwards was not taken immediately before a judge, there was neither coercion or duress in obtaining the post-arrest statement. There was not a flagrant disregard for the rule. Id. Unnecessary delay should not invalidate any confession or statements made during the post-arrest period unless coercive tactics were used. Id. There were no coercive tactics used in this case. Even if Edwards's RCr 3.02 argument were preserved for our review as a part of his conditional plea, the evidence would not support the suppression of his statements and confessions given in the hours following his arrest.

¹⁹ Savage v. Commonwealth, Ky. 939 S.W.2d 325, 327 (1996).

Because the trial court was correct in denying the motion to suppress, the judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. David Niehaus
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Louisville, Kentucky

Daniel T. Goyette
Jefferson District
Public Defender

BRIEF FOR APPELLEE:

None filed