

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2016-CA-000092-MR

CASSIUS TOWNSEND

APPELLANT

v.

APPEAL FROM ESTILL CIRCUIT COURT  
HONORABLE MICHAEL DEAN, JUDGE  
ACTION NO. 15-CR-00028

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: KRAMER, CHIEF JUDGE; CLAYTON AND TAYLOR, JUDGES.

CLAYTON, JUDGE: Cassius Townsend appeals from the judgment of the Estill Circuit Court convicting him of one count of first-degree sexual abuse of a victim under the age of twelve.<sup>1</sup> Townsend entered a conditional guilty plea pursuant to Kentucky Rules of Criminal Procedure (RCr) 8.09 and has appealed the circuit court's denial of his motion to suppress evidence based on his claim that his

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<sup>1</sup> Kentucky Revised Statutes 510.110.

*Miranda*<sup>2</sup> rights were violated. Because Townsend was not subjected to a custodial interview, we affirm.

## **FACTS**

In October 2014, Detective Thompson, of the Kentucky State Police, accompanied social service workers to Townsend's home to investigate allegations of sexual abuse made by Townsend's daughter.<sup>3</sup> At the residence, Detective Thompson spoke with Townsend's wife who informed him that the child had said that Townsend had had sexual contact with the child.

Thereafter, Detective Thompson contacted Townsend and asked if he would meet him at the Irving Police Department to answer questions about a pending case.<sup>4</sup> Townsend agreed and, on December 19, 2014, arrived at the police station accompanied by his sister. Detective Thompson, who was wearing his service pistol, escorted Townsend from the waiting area of the police station to a conference room in the back of the station. Townsend's sister was not asked to accompany Townsend to the interview room. To gain entrance to the back area of the police station, the two men had to be "buzzed in" through a locked door.

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<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

<sup>3</sup> It is unclear from the record whether the child is Townsend's adopted daughter or foster daughter.

<sup>4</sup> The following facts and circumstances surrounding Townsend's police statement are drawn from the uncontroverted testimony given by Detective Thompson at the pretrial suppression hearing.

Although the door locked behind them, there were several marked exits in the back of the station.

When Townsend and Detective Thompson entered the interview room, Detective Thompson closed the door behind them, but did not lock the door. He immediately advised Townsend that he did not have to talk, and that he could stop the questioning at any time and speak to an attorney. He also advised Townsend that he was not under arrest. While Townsend was in the interview room, several officers were present and could be heard outside of the room; however, they were all involved with matters unrelated to Townsend's interrogation. At one point, one of the officers interrupted the interrogation to briefly speak to Detective Thompson about an unrelated matter. When the interview resumed, Townsend confessed to sexually abusing his daughter. At the interview's conclusion, Townsend left the police station.

Two months later, Townsend was arrested after a grand jury indicted him for first-degree sexual abuse. Thereafter, Townsend filed a pretrial motion to suppress his statement to police, which the circuit court denied. Townsend then entered a conditional *Alford* plea<sup>5</sup> to the charge, reserving the right to appeal the circuit court decision denying his motion to suppress. Townsend now appeals as a matter of right. Additional facts will be developed as necessary.

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<sup>5</sup> *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct 160, 27 L.Ed.2d 162 (1970).

## ANALYSIS

In *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the United States Supreme Court held that a person taken into custody or otherwise deprived of his freedom in any significant way must be warned of his right to remain silent, that anything he says can be used against him in a court of law, that he has a right to an attorney, and that if he cannot afford an attorney one will be appointed to him prior to any questioning if he so desires. *Id.*, 384 U.S. at 478-79, 86 S.Ct. 1602. *Miranda* warnings are only required when the suspect being questioned is considered “in custody” at the time of questioning. *Commonwealth v. Lucas*, 195 S.W.3d 403, 405 (Ky. 2006).

On appeal, Townsend contends the circuit court should have suppressed his statement to police because he gave the statement without being afforded full *Miranda* warnings. The Commonwealth agrees Townsend was not given full *Miranda* warnings before he was interrogated. However, it argues Townsend was not in custody at the time of the interview and thus was not entitled to *Miranda* warnings before giving his statement. Whether a suspect was in custody at the time of his interview is a mixed question of law and fact to be reviewed *de novo*. *Id.*

The Kentucky Supreme Court, in *Cecil v. Commonwealth*, 297 S.W.3d 12 (Ky. 2009), repeated the inquiry courts should make when determining whether a person was in custody for *Miranda* purposes. The Court explained:

The inquiry for making a custodial determination is whether the person was under formal arrest or whether there was a restraint of his freedom or whether there was a restraint on freedom of movement to the degree associated with a formal arrest. The test is whether, considering the surrounding circumstances, a reasonable person would have believed he or she was free to leave. The United States Supreme Court has identified factors that suggest a seizure has occurred and that a suspect is in custody: the threatening presence of several officers; the display of a weapon by an officer; the physical touching of the suspect; and the use of tone of voice or language that would indicate that compliance with the officer's request would be compelled.

*Id.* at 16 (internal citations and footnotes omitted).

In *Cecil*, using the above totality of the surrounding circumstances test, the Court found that the defendant in that case was not in custody for *Miranda* purposes. There, the suspect voluntarily appeared at the police station for the interview; the police told him the interview was voluntary and he could leave at any time; only one officer interviewed the suspect; the suspect was not handcuffed; and the suspect left after the interview ended. *Id.* at 16.

Similarly, in this case, the facts and circumstances in their totality support the conclusion that Townsend was not in custody when he gave his statement to the police. Townsend appeared voluntarily at the police station. He was interviewed by a single police officer. Townsend was not handcuffed, fingerprinted, searched, or in any other way restrained. Although the door to the rear of the police station had to remain locked for security reasons, the door to the

interview room was not locked and there were several exits nearby. At no point did Townsend ask the officers if he could leave or indicate that he no longer wished to speak to them. And finally, Townsend left the police station when the interview ended.

Townsend argues that additional facts support the conclusion that his police interview was custodial. Particularly, he points out that the interviewing officer carried his service weapon, that there were several officers right outside the door, and that the officer never used the word “voluntary” or told Townsend that he was free to leave at any time. We, however, are not persuaded by these additional facts. When considered in light of the totality of the circumstances, the facts do not dictate a finding of custody.

First, the mere fact that the detective was armed—as police officers often are—does not here support a finding that the interview was custodial. The test is whether there was a show of authority such that a reasonable person would believe that his freedom of action was curtailed. *Smith v. Commonwealth*, 312 S.W.3d 353, 358 (2010). There is no evidence that Detective Thompson ever removed his gun from its holster, or used his weapon in any manner to threaten Townsend or restrain his freedom.

Second, the presence of several officers outside of the interview room does not support Townsend’s conclusion in this case. Although the presence of several officers is a factor that should be considered in the totality of the

circumstances, there is no indication that their presence was threatening. On the contrary, Detective Thompson testified that the other officers were disinterested and that he assumed they were “going about their everyday business.”

Finally, the fact Detective Thompson did not expressly tell Townsend he was free to leave—although a factor that weighs in favor of the view that Townsend was in custody—does not alter our conclusion that Townsend’s interview was not custodial. The fact is to be considered with all the other factors in assessing whether a reasonable person would have felt free to leave. *See Yarborough v. Alvarado*, 541 U.S. 652, 124 S.Ct 2140, 158 L.Ed.2d 938 (2004) (holding that a state court decision that an interrogation was noncustodial even though the defendant was not expressly told that he was free to leave, was not objectively unreasonable). Here, we believe that a reasonable person who voluntarily goes to the police station for an interview, is not overborne by a police-dominated atmosphere, and at the outset is informed that he is not under arrest, does not have to answer questions, and can terminate the interview at any time, would have understood that he was free to leave without being expressly told.

### **CONCLUSION**

In conclusion, there was no restraint on Townsend’s freedom while he was being interviewed, nor was the environment coercive. Townsend voluntarily went to the police station, gave his statement, and left the police station unhindered. He was not arrested until two months later. During the recorded

interview, Detective Thompson explicitly informed Townsend that he was not under arrest and did not have to answer any questions if he did not wish to do so. In response, Townsend stated that he did not mind answering the detective's questions. Based on the totality of the circumstances, Townsend was not in custody when he gave his statement. Therefore, the trial court correctly declined to suppress Townsend's statement.

For the foregoing reasons the judgment of the Estill Circuit Court is affirmed.

ALL CONCUR.

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