RENDERED: SEPTEMBER 28, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-000940-MR

ANTHONY L. WHITE — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A.C. MCKAY CHAUVIN, JUDGE
ACTION NO. 15-CR-003031

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, DIXON, AND MAZE, JUDGES.

MAZE, JUDGE: Anthony L. White appeals the judgment and sentence of the Jefferson Circuit Court convicting him of rape in the second degree. White's plea agreement reserved his right to appeal the denial of his motion to suppress statements made to the police on the grounds they were obtained in violation of *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

After careful review, we hold that White was not in police custody when he made the statements in question and affirm the denial of his motion to suppress.

On September 23, 2015, White had sex with an intoxicated female in the hallway of the Galt House in Louisville, Kentucky. The encounter led to an investigation by the Louisville Metro Police Department (LMPD). White emerged as a potential suspect, and Dets. Lisa Livers and Brooke Benton of the LMPD's Sex Crime Unit sought to question White at his home. They arrived at White's residence in plain clothes and their firearms were concealed by their clothing. Dets. Livers and Benton eventually found White sitting in a van in the back of the house smoking marijuana. White initially gave his brother's name. After Det. Benton stated she was not interested in his marijuana use and wanted to speak with him about another matter, White stated he was just "scared" and confirmed his identity. White then invited the officers into his home and consented to Det. Benton's request that the conversation be recorded. White admitted to the sexual encounter at the Galt House and gave his version of the events. Because White admitted to having sex with the victim, Det. Benton elected to arrest him at the conclusion of the approximately thirty-four minute interview. White was not read his *Miranda* rights before his arrest.

White was subsequently indicted for rape in the first degree for having sex with an individual who was physically helpless. He then moved to suppress

his statements because he was not read his *Miranda* rights. Det. Benton was the only witness to testify at the suppression hearing and she testified to the above facts. Det. Benton characterized her conversation with White as "laid back" and described White as open and informative during the interview. In Det. Benton's opinion, White did not appear nervous. Nor did he decline to answer any question or ask her and Det. Livers to leave. Det. Benton also denied threatening White. However, she admitted she never told White he was free to end questioning and ask the police to leave.

The recording of White's conversation was also entered into evidence. The recording supports Det. Benton's characterization of the conversation. At no point during the conversation does Det. Benton threaten White, raise her voice at him, or accuse him of lying. The recording also revealed that White made the following statement during the conversation: "To be honest, I'm kinda glad I can tell y'all about it today, because it kinda is just an ease off my chest, you know because like that happened." The trial court subsequently entered a written order denying the motion to suppress. The trial court found, under the totality of the circumstances, that White was not in police custody when he made the statements in question; therefore, he did not need to be advised of his *Miranda* rights. White then entered a conditional guilty plea to rape in the second degree, reserving the right to appeal the denial of his suppression motion. This appeal follows.

In *Miranda*, the United States Supreme Court held that police officers must advise criminal suspects of their rights against self-incrimination and to an attorney before subjecting the suspect to custodial interrogation. 384 U.S. at 444, 86 S. Ct. at 1612. If the suspect is not given a *Miranda* warning, suppression of the statements is the remedy. *Wells v. Commonwealth*, 892 S.W.2d 299, 302 (Ky. 1995).

Miranda warnings are required only when the suspecting being questioned is "in custody." *Commonwealth v. Lucas*, 195 S.W.3d 403, 405 (Ky. 2006). The test for determining whether a suspect is in custody is "whether, considering the surrounding circumstances, a reasonable person would have believed he or she was free to leave." *Id.* Relevant factors to consider include the following: the threatening display of several officers, the display of a weapon by an officer, use of threatening language or tone of voice, place of the questioning, length of questioning, whether the suspect was informed the questioning was voluntary and they were free to leave, and whether the suspect initiated contact with the police or voluntarily admitted the police into their residence to answer questions. *Smith v. Commonwealth*, 312 S.W.3d 353, 358-59 (Ky. 2010). Although the trial court's factual findings are conclusive if supported by substantial evidence and not clearly erroneous, the legal issue of custody is reviewed *de novo*. *Lucas*, 195 S.W.3d at 405.

Under the circumstances of this case, we hold a reasonable person would have believed they were free to leave. Although White expressed some fear after being seen smoking marijuana, he voluntarily admitted Dets. Livers and Benton into his home to answer questions. He eventually expressed relief that he was being given an opportunity to give his version of events. No threats were made, nor any weapons displayed. Based on the evidence before the Court, Det. Benton's tone was neutral, and White was able to give his version of events with relatively little interruption. Thus, the trial court correctly found White was not in custody and he did not need to be advised of his *Miranda* rights.

Accordingly, we affirm the Jefferson Circuit Court's denial of White's motion to suppress.

ALL CONCUR.

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