

RENDERED: NOVEMBER 1, 2019; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2018-CA-001550-MR

WILLIAM LEWIS MILLS

APPELLANT

v. APPEAL FROM BUTLER CIRCUIT COURT  
HONORABLE TIMOTHY R. COLEMAN, JUDGE  
ACTION NO. 17-CR-00103

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: LAMBERT, NICKELL, AND K. THOMPSON, JUDGES.

NICKELL, JUDGE: William Lewis Mills has appealed from the judgment and sentence of imprisonment entered by the Butler Circuit Court following a jury trial at which he was convicted of two counts each of sexual abuse in the first degree<sup>1</sup>

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<sup>1</sup> Kentucky Revised Statutes (KRS) 510.110, a Class D felony.

and attempted sexual abuse in the first degree.<sup>2</sup> Before this Court, he challenges the trial court's denial of his motion seeking suppression of statements made during an interview with police. Following a careful review, we affirm.

Mills owned a convenience store named Flo's Junction in Butler County, Kentucky. On May 21, 2017, he sat down beside a female employee and placed his hand on her upper thigh. He kissed her on the cheek and gave her a hug, during which he pressed the employee's breasts into his chest. The employee resisted and walked away but Mills followed her and attempted to lift her shirt so he "could look at her belly button." The employee again tried to get away from Mills to no avail. Mills attempted to touch her breasts, but she blocked the move with her forearm. It was not until Mills' son and grandchildren entered the store that the assault ended.

The incident was reported two days later to Kentucky State Trooper Terry Alexander. Trooper Alexander went to Flo's Junction accompanied by a Butler County Sheriff's Deputy who was serving a protective order on Mills. After the protective order was served, Trooper Alexander asked Mills to speak with him about the incident and the two engaged in a brief conversation on the porch of the

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<sup>2</sup> KRS 506.010, a Class A misdemeanor.

store. Mills informed the officer the store's video surveillance system was inoperable on the day of the assault but had been repaired the following day.

Trooper Alexander obtained a search warrant for the video surveillance system on May 24, 2017, and returned to Flo's Junction to execute the warrant. Mills was present when Trooper Alexander arrived and cooperated in producing the requested portions of the surveillance system. Thereafter, Trooper Alexander asked Mills if he would be willing to participate in an audiotaped interview to which Mills agreed. During the interview, which took place at a table near the rear of Flo's Junction, Mills admitted to many of the allegations except touching the employee's breasts, and offered explanations or apologies for his actions.

Mills was indicted for the offenses referenced above and the matter proceeded to a jury trial on September 6, 2017. On the eve of trial, Mills filed a motion seeking suppression of the "custodial statements" made during the interview with Trooper Alexander. The bare bones motion said little more than Mills was in custody when the statements were made and thus "subject to Fifth Amendment scrutiny." The trial court took up the motion immediately prior to the start of trial. Trooper Alexander was the only witness to testify and his testimony mirrored that set forth above. He stated he did not read Mills his *Miranda*<sup>3</sup>

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<sup>3</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

warnings, Mills was not placed under arrest nor put in handcuffs at any time, and he did not tell Mills whether he was or was not free to leave. There was no indication of how long the interview lasted. Mills argued he was in police custody during the questioning because he did not feel free to leave and thus, the failure to read the *Miranda* warnings warranted suppression. The trial court disagreed, concluding the testimony failed to establish Mills was in custody during the interview. At the conclusion of trial, the jury found Mills guilty of all counts and recommended an aggregate sentence of four years' imprisonment. Following entry of a trial order and judgment and a subsequent formal sentencing order, Mills was sentenced in accordance with the jury's recommendation. This appeal followed.

The sole issue presented on appeal is whether the trial court erred in denying Mills' suppression motion. As below, he contends he was subjected to a custodial interrogation being given *Miranda* warnings. "When reviewing a trial court's denial of a motion to suppress, we utilize a clear error standard of review for factual findings and a *de novo* standard of review for conclusions of law."

*Jackson v. Commonwealth*, 187 S.W.3d 300, 305 (Ky. 2006), *as amended* (Mar. 29, 2006) (citing *Welch v. Commonwealth*, 149 S.W.3d 407, 409 (Ky. 2004)). If substantial evidence is adduced to support a factual finding, it will not be deemed clearly erroneous, *Hardin v. Montgomery*, 495 S.W.3d 686, 693 (Ky. 2016), and

due regard is to be given to the trial court to judge and weigh the credibility of witnesses. CR<sup>4</sup> 52.01.

Before subjecting a suspect to a custodial interrogation, officers must advise the suspect of his rights against self-incrimination and representation by an attorney. *Miranda*, 384 U.S. at 444, 86 S.Ct. at 1612.

*Miranda* applies when a suspect is subjected to a “custodial interrogation.” A custodial interrogation means “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” *Miranda*, 384 U.S. at 444, 86 S.Ct. at 1612.

*Jackson v. Commonwealth*, 468 S.W.3d 874, 876 (Ky. App. 2014).

As used in our *Miranda* case law, “custody” is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion. In determining whether a person is in custody in this sense, the initial step is to ascertain whether, in light of “the objective circumstances of the interrogation,” a “reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave.” And in order to determine how a suspect would have “gauge[d]” his “freedom of movement,” courts must examine “all of the circumstances surrounding the interrogation.” Relevant factors include the location of the questioning, its duration, statements made during the interview, the presence or absence of physical restraints during the questioning, and the release of the interviewee at the end of the questioning[.]

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<sup>4</sup> Kentucky Rules of Civil Procedure.

Determining whether an individual's freedom of movement was curtailed, however, is simply the first step in the analysis, not the last. Not all restraints on freedom of movement amount to custody for purposes of *Miranda*. We have “decline[d] to accord talismanic power” to the freedom-of-movement inquiry, and have instead asked the additional question whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*. “Our cases make clear . . . that the freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody.”

*Howes v. Fields*, 565 U.S. 499, 508-09, 132 S.Ct. 1181, 1189-90, 182 L.Ed.2d 17 (2012) (citations omitted).

Here, Mills asserts his subjective feeling he was not free to leave in arguing he was subjected to a custodial interrogation. As the trial court concluded, this is insufficient.

“[T]he initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned.” *Stansbury v. California*, 511 U.S. 318, 320, 114 S.Ct. 1526, 1528-1529, 128 L.Ed.2d 293 (1994). “[T]he ultimate inquiry is simply whether there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.” *Id.*

*Jackson*, 187 S.W.3d at 310. Mills voluntarily agreed to be questioned at his business during normal operating hours. The interview took place in open view of the general public. Mills was not restrained in any way and the tenor of the discussion was cordial and neutral. No display of force occurred. Mills spoke

openly and was permitted to explain his side of the story. There is no indication of harsh or accusatory language and it appears Mills was not placed under arrest at the conclusion of the interview. Based on these facts, we cannot conclude Mills was subjected to a custodial interview requiring the reading of *Miranda* warnings. There was no inherently coercive environment and his freedom was not restrained to “the degree associated with a formal arrest.” *Id.* The trial court properly denied Mills’ suppression motion.

For the foregoing reasons, the judgment and sentence of the Butler Circuit Court is AFFIRMED.

K. THOMPSON, JUDGE, CONCURS.

LAMBERT, JUDGE, DISSENTS AND DOES NOT FILE A SEPARATE OPINION.

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