

**IMPORTANT NOTICE**  
**NOT TO BE PUBLISHED OPINION**

***THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.***

Supreme Court of Kentucky **FINAL**

2004-SC-0312-MR

DATE 9-15-05 E.H.A. Green, D.C.

LARRY D. BRUNER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE  
2002-CR-2885

COMMONWEALTH OF KENTUCKY

APPELLEE

**MEMORANDUM OPINION OF THE COURT**

Affirming

A jury of the Jefferson Circuit Court convicted Appellant, Larry D. Bruner, of two counts of sodomy in the first degree and two counts of sexual abuse in the first degree in connection with the sexual molestation of a nine-year-old child. For these crimes, Appellant was sentenced to life imprisonment. Appellant now appeals to this Court as a matter of right. Ky. Const. § 110(2)(b). We affirm Appellant's convictions.

The Commonwealth presented evidence that Appellant molested the child on at least two occasions while babysitting her. The child's mother testified that she did not discover the abuse until some time later when the child spontaneously began crying upon overhearing a discussion of sexual abuse involving another family member. The child testified at trial regarding the instances of sexual abuse. Taped statements of the

Appellant were also admitted at trial wherein he admitted to the sexual acts, but insisted that the acts were initiated by the child.

Appellant's sole argument on appeal is that he should have been warned that the voluntary statements he made to police during the investigation could be used against him in a subsequent criminal prosecution. He contends that Ky. Const. §2 requires police to provide such a warning to all suspects regardless of whether they are in custody at the time the statement is given. Appellant initially concedes that the issue was not presented before the trial court, and accordingly, pleads the issue as palpable error under Kentucky Criminal Procedure Rule 10.26. We consider such errors only when they affect the substantial rights of a party and only where manifest injustice has resulted from the error. Lickliter v. Commonwealth, 142 S.W.3d 65, 70 (Ky. 2004). We find no such substantial right or manifest injustice in this case.

Ky. Const. §2 reads as follows, "Absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority." This section has been interpreted to prohibit the arbitrary exercise of power by state government. Kentucky Milk Marketing and Antimonopoly Com'n v. Kroger Co., 691 S.W.2d 893, 899 (Ky. 1985). Appellant concedes that his statements were knowingly and voluntarily given and that he was not in custody at the time his statements were taken. He further concedes that he had no right to any type of warnings under the United States Constitution or under any of this Court's precedents at the time his statements were taken. He argues, rather, that a brand new prophylactic rule should be gleaned from Ky. Const. §2 in order to ensure that all suspects giving taped or recorded statements in Kentucky are warned against self-incrimination even prior to being taken into custody. Appellant offers absolutely no support for this

contention in any of our previous case law, nor does he explain how the failure to warn a suspect that his voluntary statements may be used against him can be deemed an arbitrary exercise of power. Accordingly, we dismiss Appellant's argument as being completely without merit.

The judgment of the Jefferson Circuit Court is affirmed.

All concur.

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