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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.

RENDERED: DECEMBER 21, 2006
NOT TO BE PUBLISHED

Supreme Court of Kentucky

FINAL

DATE Jan 11, 07 EVAGrantPC

2005-SC-0360-TG and 2005-SC-0390-MR

GRANT R. MARKSBERRY — APPELLANT

V.

TRANSFER FROM COURT OF APPEALS
NO. 2005-CA-1034
APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN K. MERSHON, JUDGE
2004-CR-2025 & 2004-CR-1065

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

This appeal is from a conditional plea of guilty to thirteen counts of second degree robbery. Marksberry reserved the right to appeal the denial of the motion to suppress statements he provided to the police. He was sentenced to serve 20 years in prison pursuant to a plea agreement.

The sole question presented is whether the invocation of the Miranda right to counsel and to remain silent made the subsequent waiver of those rights ineffectual in the absence of counsel.

Marksberry committed a string of robberies early in 2004. In late February, he was questioned about a robbery by members of the St. Matthews police department. He was provided his Miranda rights and started to provide a statement to the police. He

then invoked his right to counsel, contacted his mother who is an attorney, and was then allowed to leave. A month later he was arrested by the Louisville Metro Police and questioned about additional robberies. He was again advised of his Miranda rights. He waived those rights including his right to counsel and his right to remain silent and made several self incriminating statements regarding the various robberies. At the suppression hearing the trial judge heard testimony from two detectives, Marksberry's mother and Marksberry. The motion was denied. This appeal followed.

I. WAIVER OF RIGHTS

The invocation of Miranda warning rights is not an absolute. Possible literal interpretations would lead to absurd and unintended results. Michigan v. Mosley, 423 U.S. 96, 102, 96 S.Ct. 321, 46 L.Ed.2d 313, 320 (1975). The Miranda decision does not create a per se proscription of indefinite duration upon any further questioning by any police officer on any subject once the person in custody has indicated a desire to remain silent. Id. In the current case, almost an entire month had passed since Marksberry invoked his rights to counsel and to remain silent. The Miranda protections assume no break in custody. See McNeil v. Wisconsin, 501 U.S. 171, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991).

In Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981), it was held that once the right to counsel was invoked interrogation must cease. That absolute does not apply to suspects who are not in continuous custody. See Kyger v. Carlton, 146 F.3d 374 (6th Cir. 1998). The facts that almost a month elapsed between the two interrogations, that they were conducted by two different police departments and that they involved different crimes, invocation of rights to remain silent and to rely on counsel could not in any reasonable manner be expected to carry forward into the

second interrogation. The trial judge was correct to refuse to suppress the statements. The statements were properly allowed.

Marksberry was not denied any of his rights under either the Federal or State Constitutions.

The judgment of conviction and sentence are affirmed.

All concur.

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