

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-000793-MR

MARCO ANTONIO TELLEZ

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE MARY C. NOBLE, JUDGE  
ACTION NO. 04-CR-01333

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, DIXON, AND KELLER, JUDGES.

KELLER, JUDGE: Marco Tellez appeals his conviction for criminal attempt to commit sexual abuse in the first degree, under a conditional plea sentencing him to twelve months to be probated for two years.<sup>1</sup> Tellez's conditional plea reserved the right to appeal the Fayette Circuit Court's denial of his motion to suppress his incriminating statements on the grounds that Tellez was not Mirandized in Spanish. We agree with the trial court that

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<sup>1</sup> Appellant was indicted on one count of sexual abuse in the first degree and one count of criminal attempt to commit sexual abuse in the first degree. However, in return for his conditional guilty plea, the Commonwealth agreed to dismiss the one count of sexual abuse in the first degree.

Tellez speaks and understands English sufficiently to understand the *Miranda* rights that were given to him and that he intelligently and voluntarily waived those rights before making any incriminating statements. Therefore, we affirm.

On September 21, 2004, Detective Welch and two other officers went to the Kentucky Horse Training Center and asked Tellez to come with them to answer some questions concerning allegations of two counts of sexual abuse. Tellez was then arrested and taken to the Lexington Police Department where Detective Welch interviewed him. During the initial moments of the interview, Detective Welch read Tellez his *Miranda* rights in English. At the conclusion of reading the rights, Detective Welch asked Tellez if he understood his rights and advised him that he had a right to an attorney. Initially, Tellez responded no, but after being asked again whether he understood that he had a right to an attorney, Tellez responded that he did.

On November 3, 2004, Tellez was indicted, and on January 10, 2005, Tellez filed a motion to suppress the statements made to Detective Welch during his interview. A suppression hearing was held on March 10, 2005, and an interpreter was provided for Tellez. At the suppression hearing, Tellez stated that he is a native of Mexico but has lived in the United States for approximately eighteen to twenty years. He further acknowledged that he spoke and wrote “a little” English. However, Tellez stated that when Detective Welch read him his *Miranda* rights, he did not understand that he could have a lawyer present while being questioned.

Detective Welch testified that he communicated with Tellez in English. Although Detective Welch has been trained in Spanish with the police department, he testified that he believed that using Spanish was unnecessary because Tellez responded to his questions in English and appeared to understand English. He further testified that when he read Tellez his *Miranda* rights in English, he believed that Tellez understood them.

The trial judge found that Tellez's waiver was knowingly, voluntarily, and intelligently made and therefore denied his motion to suppress in an order entered on March 15, 2005. As a result, Tellez entered a conditional plea sentencing him to twelve months to be probated for two years, reserving for appeal the court's denial of his suppression motion. This appeal followed.

On appeal, Tellez contends that because of his limited grasp of the English language, he was not able to make a voluntary and knowing waiver of his rights under *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Therefore, he contends that the trial court erred in not granting his motion to suppress. We disagree.

The issue of whether Tellez understood his rights and made a knowing, intelligent, and voluntary waiver of those rights is an issue of fact. RCr 9.78 provides that "[i]f supported by substantial evidence the factual findings of the trial court shall be conclusive." Additionally, the voluntariness of the incriminating statements depends upon the totality of the circumstances surrounding the statement. *Mills v. Commonwealth*, 996 S.W.2d 473, 481 (Ky. 1999). Furthermore, "a reviewing court

should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers.” *Olden v. Commonwealth*, 203 S.W.3d 672, 676 (Ky. 2006), (quoting *Ornelas v. United States*, 517 U.S. 690, 699, 116 S.Ct. 1657, 1663, 134 L. Ed. 2d 911 (1996)).

After reviewing the testimony from the suppression hearing, we conclude that the findings of the trial judge were supported by substantial evidence. First, Tellez responded to Detective Welch’s questions in English and appeared to understand English. Additionally, Tellez ultimately stated that he did understand his *Miranda* rights and that he had a right to an attorney when asked by Detective Welch. Furthermore, there was testimony presented that Tellez even wrote apology letters to the two victims in English and that Detective Welch could understand the letters. Therefore, based upon the evidence as a whole, we conclude that the trial court’s findings that Tellez understood English and further understood he was waiving his rights under *Miranda* were not clearly erroneous. *See Garcia v. Commonwealth*, 185 S.W.3d 658, 667-68 (Ky.App. 2006). Accordingly, we hold that the trial court did not err in denying Tellez’s motion to suppress.

For the foregoing reasons, we affirm the judgment of the Fayette Circuit Court.

DIXON, JUDGE, CONCURS.

ACREE, JUDGE, CONCURS AND FILES SEPARATE OPINION.

ACREE, JUDGE, CONCURRING: I concur with the majority's opinion, but I write separately to express a practical and common sense observation. Our criminal justice system should not demand more from Officer Welch's five weeks of Spanish-language immersion training in Mexico than we expect from Mr. Tellez's eighteen to twenty years of English-language immersion training in the United States.

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