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

NO. 2013-CA-001026-MR

RONALD ESTILL HILL

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE ERNESTO M. SCORSONE, JUDGE  
ACTION NO. 09-CR-01799-002

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: LAMBERT, MAZE AND MOORE, JUDGES.

LAMBERT, JUDGE: Ronald Hill has appealed from an order of the Fayette Circuit Court denying his motion to suppress. This case is again before this Court as a result of an opinion vacating the original judgment of conviction and order denying the motion to suppress, and ordering the circuit court to enter a new order including findings of fact in support of its ruling. Pursuant to this Court's

direction, the circuit court entered an order on May 22, 2013, containing findings of fact and conclusions of law supporting its decision. Finding no error or abuse of discretion, we affirm the court's decision and the judgment of conviction.

For our recitation of the factual and procedural background of this case, we shall rely upon this Court's prior opinion in *Hill v. Commonwealth*, 2011-CA-002099-MR, 2012 WL 6632818 \*1-3 (Ky. App. Dec. 21, 2012):

Hill and three other co-defendants were indicted by the Fayette County grand jury on December 1, 2009, in a thirteen-count indictment. Hill was charged with eleven of the thirteen counts, which arose from incidents that took place on September 9 and September 30, 2009. He was charged with two counts of first-degree burglary pursuant to Kentucky Revised Statutes (KRS) 511.020; three counts of first-degree robbery pursuant to KRS 515.020; first-degree rape pursuant to KRS 510.040; first-degree wanton endangerment pursuant to KRS 508.060; second-degree fleeing and evading police pursuant to KRS 502.100; two counts of third-degree criminal mischief pursuant to KRS 512.040; and for being a convicted felon in possession of a handgun pursuant to KRS 527.040. The September 3rd incidents involved break-ins at the residences of Hispanic families and the sexual assault of a female in one of the homes. The September 30th charges arose from Hill's actions during his apprehension by detectives from the Lexington Police Department. Hill was found to be indigent, and the court appointed a public defender to represent him.

Hill filed a *pro se* motion to suppress statements he made to detectives on September 30, 2009, arguing that he was not fully advised of his *Miranda*<sup>1</sup> rights when they began questioning him and that he was coerced into giving them a statement because he was under duress. Hill requested an evidentiary suppression hearing, which was held on May 27, 2010.

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

The first witness to testify at the suppression hearing was Detective Matt Brotherton of the Lexington Police Department, Homicide Unit. He and Detective Matthew Sharp had been discussing a case Detective Sharp was working on involving a series of robberies and assaults. One of the suspects was Hill, who had been the victim of a recent crime; he had been shot in the hand at a bar. The investigation of that shooting had been assigned to Detective Brotherton. The two detectives went to Hill's address on the morning of September 30, 2009, to discuss the shooting incident and to attempt to ask him more questions about the earlier break-ins. The detectives began recording the conversation as soon as Hill answered the door.<sup>2</sup> They entered the home with Hill's permission, and before any discussion began, the detectives went over the pre-printed form which included *Miranda* warnings. Detective Brotherton stated that he opted to read Hill his *Miranda* rights to err on the side of caution as they were at Hill's home. They spoke for less than an hour at Hill's kitchen table, but he was never placed under arrest or handcuffed. Hill never asked for an attorney. Regarding the robberies, Hill did not acknowledge any involvement, but then admitted to being involved in one of the robberies where he and another person broke into an apartment armed with pistols, stole several items, and sexually assaulted the woman in the apartment. There were three other individuals in the apartment—the woman's father and her two children—and both sexually assaulted the woman while the other held her father at gunpoint.

Because Hill was being cooperative, the detectives asked Hill to accompany them to police headquarters to look at photographs of the crimes and further discuss the robberies. Hill changed his clothes and the three proceeded to the police cruiser. Hill was not handcuffed, and he asked if he was going to jail that day. Detective Brotherton said he needed to think about the rest of his life. At that point, Hill said he did not want to go to jail and began to run. The detectives chased him on foot, and

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<sup>2</sup> The Commonwealth played a portion of the recording made at Hill's home, but it was difficult for the court and the parties to hear Hill's responses. The portions played included Detective Brotherton's explanation of the pre-printed form and Hill's *Miranda* rights.

Detective Sharp apprehended him. Hill was arrested and taken to headquarters, where the detectives re-Mirandized him and questioned him again. This interview was also recorded but was not offered as evidence during the hearing. In the second interview, Hill talked about a second home invasion with three other men, where they broke into a residence and stole several items. The second statement did not substantially differ from the statements Hill made at his kitchen table, but he added information about the second incident. Detective Brotherton stated that he did not threaten Hill or use physical force on him. The only force used was when Hill was apprehended.

On cross-examination, Detective Brotherton admitted that they did not reference the *Miranda* warning when they transitioned to the discussion about the robberies and assault cases and that Hill was a suspect when they arrived at his residence.

Detective Matthew Sharp testified next. He is a detective with the Lexington Police Department, Personal Crimes Section, Robbery/Homicide. Detective Sharp was a member of a task force that the police department had created in response to a series of robberies that had been occurring in a particular area of the city and which targeted Hispanic couples. Hill's name came up as being involved in the incidents. Detective Sharp first came into contact with Hill when he performed a traffic stop in mid-September of that year, but they were unable to discuss the incidents because Hill was with other people. Detective Sharp did put Hill on notice that he would be questioned about the robberies. A few days later, he discussed this with Detective Brotherton. Detective Sharp's testimony related to the interview conforms to Detective Brotherton's testimony, and we shall not repeat it here. On cross-examination, Detective Sharp said they had decided Detective Brotherton would talk to Hill first about the shooting, and then Detective Sharp would question him about the robberies, but that they did not reference back to the *Miranda* warnings when they began talking about the robberies.

Hill did not call any witnesses to testify. At the conclusion of the testimony, Hill argued that he was not properly Mirandized when the detectives questioned him about the robberies because his rights were only mentioned in conjunction with the crime of which he was a victim. Under the totality of the circumstances, including his being “trapped” in his own home, Hill asserted that his confession was involuntary. However, Hill could not identify any cases to support this argument. The Commonwealth argued that Hill had been on notice since at least September 21st that he was a suspect in the robberies, and that the detectives were not under any duty to Mirandize Hill because he was not in custody at all; Hill was at his own kitchen table and could have told the detectives to leave.

After noting that Hill had made allegations of improper police conduct, the court stated that Hill had failed to present any evidence that his statements were involuntary and that the testimony from the detectives established that his statements were voluntary and consensual. The court then indicated that it would listen to the rest of the audio recording introduced into evidence. The court permitted the parties to brief the issue and scheduled a status hearing for the future.

In his brief, Hill continued to argue that the *Miranda* warning given by detectives at his residence was not sufficient to properly advise him of his rights because it was given in the context of the discussion with him as the victim of a crime, not as a suspect. Because the detectives misrepresented their reason for the visit in order to gain access to his residence, Hill contends that his confession was involuntary. In its brief, the Commonwealth argued that no *Miranda* warning was required for the conversation at Hill's residence because he was not in custody, and there was no authority to support Hill's argument that the detectives had to re-Mirandize him after the topic shifted to the break-ins.

At the status hearing on August 6, 2010, the court stated that it had reviewed the law related to the suppression motion and that the law did not support

suppression of Hill's statements. The court concluded that the detectives did not have to re-Mirandize Hill when they questioned him about the robberies. The court then entered a written order on August 9, 2010, denying the motion to suppress.

The following year, Hill moved to enter a guilty plea, conditioned on his right to appeal the suppression ruling entered the previous August. The court accepted the plea following a hearing and entered a judgment in accordance with the plea agreement on October 24, 2011. As a result of the plea agreement, the court found Hill guilty of one count of second-degree robbery (amended from first-degree robbery) under Count 2 of the indictment and recommended a five-year sentence; first-degree robbery under Count 4 with a recommended sentence of ten years; first-degree rape under Count 6 with a recommended sentence of ten years; and of being a felon in possession of a firearm (amended from handgun) with a recommended sentence of one year. The sentences were ordered to be served concurrently for a total of ten years, but consecutively to his sentences in two earlier cases, bringing the total to fifteen years' imprisonment. The other seven charges were dismissed.

In his original appeal, Hill argued that the trial court erred in denying his motion to suppress based upon violations of his *Miranda* and Fifth Amendment rights and based upon its failure to include written findings of fact and conclusions of law in its ruling. Agreeing with Hill on his second argument, a panel of this Court vacated the circuit court's judgment and order denying the motion to suppress, determining that the court had not made sufficient written or oral factual findings to support its ruling on the motion to suppress or to provide for meaningful review. *Id.* at \*5. That opinion became final on February 5, 2013.

On May 22, 2013, the trial court entered a written order ruling on the motion to suppress pursuant to this Court's opinion, again denying Hill's motion.

The court made the following findings of fact:

1. Detective Brotherton and Detective Sharp (hereinafter "Detectives") went to Defendant's home on September 30, 2009, to question Defendant about an assault perpetrated upon him and about Defendant's involvement in a string of home invasions.

2. Defendant answered the door of the residence after the Detectives knocked. As soon as Defendant Hill answered the door, or shortly thereafter, the Detectives began recording the conversation with a pocket recorder.

3. Defendant initially requested that the Detectives question him outside, but upon the request of the Detectives, Hill invited the Detectives into his home.

4. The Detectives suggested that they speak at the kitchen table. Upon being seated at the kitchen table, Detective Brotherton filled out a standard interview form and read Defendant his *Miranda* rights from that form. Defendant indicated that he understood these rights.

5. The Detectives initially questioned the Defendant about an assault upon Defendant that resulted in him being shot in the hand. At some point during the interview, the questioning switched to a string of home invasions, of which Defendant was a suspect. Throughout the questioning Defendant was seated at the kitchen table and was not restrained in any way.

6. During the interview, Defendant admitted to being involved in some of the home invasions. Specifically, Defendant admitted to gaining entry through an open window, having a pistol, and sexually assaulting a woman inside. Defendant admitted that he and his cohort held a male in the home at gunpoint while they took turns sexually assaulting the woman.

7. At this point, the Defendant was no longer free to leave.

8. Then the Defendant began discussing a second home invasion in which he was involved.

9. The Detectives felt that the interview would be better served at police headquarters so that they could show Defendant pictures of the various scenes, as he was not aware where the home invasions took place.

10. The Detectives and Defendant began walking outside to the Detectives['] unmarked car. Defendant asked if he was going to jail. Detective Brotherton said to Defendant that he should focus on the rest of his life, not on today. At this point, Defendant fled.

11. Detective Sharp caught Defendant who was then physically detained and placed under arrest. Detective Sharp placed formal charges upon arriving at the police station.

12. The Detectives did not reference back to Defendant[']s rights when they switched subjects from the assault to the home invasions. The Detectives did not re-Mirandize Defendant when they switched subjects from the assault to the home invasions.

13. At no point during either interview, did Defendant ask for the questioning to stop.

14. At no point during either interview, did Defendant request an attorney.

15. At no point during either interview, did Defendant ask the Detectives to leave.

On the basis of these factual findings, the court concluded, “The undisputed facts presented to the Court are that the Detectives read Defendant his *Miranda* rights; Defendant acknowledged his rights; and Defendant voluntarily answered the



Detectives' questions. This constitutes a valid waiver of Defendant's right against self-incrimination." The court went on to conclude that Hill had not been coerced into waiving his rights or that the detectives had misrepresented the purpose of their visit. Furthermore, the court stated that the detectives were not required to inform Hill of all of the topics they intended to discuss with him. The court did not find any case law support for Hill's argument that the switching of subjects during the interrogation invalidated the *Miranda* warning he had been given.

Accordingly, the circuit court denied Hill's motion to suppress the statements he made to the detectives. This appeal now follows.

In this appeal, Hill contends that the circuit court again erred in denying his motion to suppress his statements and that the court failed to provide sufficient written findings of fact and conclusions of law in its order.

Our standard of review of a ruling on a motion to suppress is two-fold. First, a reviewing court must determine whether the lower court's findings of fact are supported by substantial evidence. If so, such findings are conclusive.

Kentucky Rules of Criminal Procedure (RCr) 9.78; *Adcock v. Commonwealth*, 967 S.W.2d 6, 8 (Ky. 1998). Second, the court must perform a *de novo* review of those factual findings to determine whether the decision is correct as a matter of law.

*Ornelas v. United States*, 517 U.S. 690, 697, 116 S.Ct. 1657, 1662, 134 L.Ed.2d 911 (1996); *Commonwealth v. Banks*, 68 S.W.3d 347, 349 (Ky. 2001); *Garcia v.*

*Commonwealth*, 185 S.W.3d 658, 661 (Ky. App. 2006); *Stewart v.*

*Commonwealth*, 44 S.W.3d 376, 380 (Ky. App. 2000).

“At a suppression hearing, the ability to assess the credibility of witnesses and to draw reasonable inferences from the testimony is vested in the discretion of the trial court.” *Pitcock v. Commonwealth*, 295 S.W.3d 130, 132 (Ky. App. 2009), citing *Commonwealth v. Whitmore*, 92 S.W.3d 76, 79 (Ky. 2002). “On review, the appellate court should not reevaluate the evidence or substitute its judgment of the credibility of the witnesses for that of the jury.” *Commonwealth v. Suttles*, 80 S.W.3d 424, 426 (Ky. 2002), citing *Commonwealth v. Jones*, 880 S.W.2d 544 (Ky. 1994). “In conducting our review, our proper role is to review findings of fact only for clear error while giving due deference to the inferences drawn from those facts by the trial judge.” *Perkins v. Commonwealth*, 237 S.W.3d 215, 218 (Ky. App. 2007) (citations omitted).

In his first argument, Hill contends that the circuit court erred in denying his motion to suppress. He argues that several findings of fact made by the circuit court are contradicted by the record and that his confession was not voluntary because he was misled by the detectives as to the purpose of their visit.

Hill disputes the circuit court’s factual finding that the detectives went to his home to question him about being the victim of an assault and argues that it ignored the detectives’ testimony that their chief required them to get a signed *Miranda* waiver form from every citizen they came in contact with to ensure good customer service. Our review of the suppression hearing supports the circuit court’s findings, and we do not find any error in this regard. The detectives’ uncontradicted testimony establishes that Hill was given a *Miranda* warning prior

to his arrest, that Hill signed a form stating that he understood his rights, and that he made incriminating statements prior to his arrest. The detectives also confirmed that they asked Hill questions related to the crime in which he was a victim when they arrived at his residence.

Next, we must determine whether the circuit court properly concluded that Hill's waiver of his *Miranda* rights was voluntary, knowing, and intelligent.

*Miranda* was concerned with “the protection which must be given to the privilege against self-incrimination when the individual is first subjected to police interrogation.” *Miranda* does not require that the warnings be repeated each time the interrogation process is resumed after an interruption. “In each case, the ultimate question is: Did the defendant, with a full knowledge of his legal rights, knowingly and intentionally relinquish them?”

*Fields v. Commonwealth*, 12 S.W.3d 275, 283 (Ky. 2000) (internal citations omitted). In *Commonwealth v. Lucas*, 195 S.W.3d 403, 405 (Ky. 2006), the Supreme Court of Kentucky explained “that *Miranda* warnings are only required when the suspect being questioned is ‘in custody.’ . . . The inquiry for making a custodial determination is whether the person was under formal arrest or whether there was a restraint of his freedom or whether there was a restraint on freedom of movement to the degree associated with formal arrest.” (internal citations omitted). More recently, the Supreme Court stated:

A waiver of one's right to remain silent and to refuse to make incriminating statements must be made “voluntarily, knowingly and intelligently.” *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Before introducing evidence of a defendant's incriminating custodial statement, the prosecuting

authority must demonstrate that the defendant's waiver of his right to remain silent was free from coercion, and that he understood “the nature of the right being abandoned and the consequences of the decision to abandon it.” *Moran v. Burbine*, 475 U.S. 412, 421, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986). One purpose for requiring the recitation of *Miranda* rights to an accused person in police custody is to “assure that the individual's right to choose between silence and speech remains unfettered throughout the interrogation process.” *Miranda*, 384 U.S. at 469, 86 S.Ct. 1602. Under *Miranda*, police must warn a suspect before conducting a custodial interrogation that, “*he has the right to remain silent, [and] that anything he says can be used against him in a court of law [.]*” *Id.* at 479, 86 S.Ct. 1602 (emphasis added). [Emphasis in original.]

*Leger v. Commonwealth*, 400 S.W.3d 745, 748 (Ky. 2013).

Here, Hill contends that the detectives misled him about the *Miranda* warnings he was given because the warnings were given to him in relation to his status as a victim, rather than as a suspect, and couched in terms of ensuring good customer service. Therefore, Hill argues that his waiver of his *Miranda* rights was not knowing, voluntary, or intelligent.

Hill relies on *United States v. Mitchell*, 966 F.2d 92, 100 (2d Cir. 1992), to support his claim that he had been misled into waiving his rights:

To prevail on a claim of trickery and deception, Mitchell and Brouillette “must produce clear and convincing evidence that the [EPA] agents affirmatively misled [them] as to the true nature of [their] investigation.” *Okwumabua*, 828 F.2d at 953 (citing *United States v. Serlin*, 707 F.2d 953, 956 (7th Cir. 1983)). It must also be shown that the misrepresentations materially induced the defendants to make incriminating statements. *Mast*, 735 F.2d at 750.

In addition, Hill cites to the Supreme Court of Kentucky's opinion in *Leger*, which provides:

We recognize that our law allows, and should allow, police officers to use deception and artifice to “mislead a suspect or lull him into a false sense of security” that, *despite his understanding of the Miranda warning*, might prompt him to speak against his own interest. *See Illinois v. Perkins*, 496 U.S. 292, 297, 110 S.Ct. 2394, 110 L.Ed.2d 243 (1990); *see also Moran*, 475 U.S. at 423–24, 106 S.Ct. 1135. That, however, is not what occurred here. Appellant did not opt to ignore the warning that his words could be used against him in a court of law. He effectively asked if his words would remain confidential and was expressly told that what he said would not be used against him. Artful deception is an invaluable and legitimate tool in the police officer's bag of clever investigative devices, but deception about the rights protected by *Miranda* and the legal effects of giving up those rights is not one of those tools. [Emphasis in original.]

*Leger*, 400 S.W.3d at 750.

But the Commonwealth points out that Hill failed to establish that his statements were involuntary or coerced, or even that he was in custody when he made his first incriminating statements. We agree. While the detectives certainly went to Hill's home to ask about the break-ins, they first questioned him about the shooting incident in which he was the victim. They did not trick him or lie to him about his *Miranda* rights, behavior which courts have condemned. However, the United States Supreme Court conclusively stated that it “has never held that mere silence by law enforcement officials as to the subject matter of an interrogation is ‘trickery’ sufficient to invalidate a suspect's waiver of *Miranda* rights, and we

expressly decline so to hold today.” *Colorado v. Spring*, 479 U.S. 564, 576, 107 S. Ct. 851, 858, 93 L. Ed. 2d 954 (1987) (footnote omitted). In addition, the testimony at the suppression hearing establishes that Hill was not in custody until after he admitted his involvement in the break-in and sexual assault. Therefore, we agree with the circuit court’s findings and conclusions that Hill’s waiver of his *Miranda* rights was knowing, voluntary, and intelligent, and he was not coerced into waiving his rights against self-incrimination.

Hill’s second argument relates to his contention that the circuit court failed to include sufficient factual findings and conclusions of law to support its decision to deny the motion to suppress. RCr 9.78 provides that a trial court must hold an evidentiary hearing and “shall enter into the record findings resolving the essential issues of fact raised by the motion or objection and necessary to support the ruling. If supported by substantial evidence the factual findings of the trial court shall be conclusive.” In order to properly review a trial court’s ruling on a motion to suppress, there must be factual findings entered into the record. “The provisions of RCr 9.78 are mandatory[,]” *Moore v. Commonwealth*, 634 S.W.2d 426, 433 (Ky. 1982), including the entry of findings of fact by the trial court.

In this appeal, Hill argues that portions of the court’s findings of fact were not supported by the evidence of record and that it failed to include whether he was “in custody” in the conclusions of law. Hill indicates that the findings related to this argument address whether he was free to leave:

5. The Detectives initially questioned the Defendant about an assault upon Defendant that resulted in him being shot in the hand. At some point during the interview, the questioning switched to a string of home invasions, of which Defendant was a suspect. Throughout the questioning Defendant was seated at the kitchen table and was not restrained in any way.

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7. At this point, the Defendant was no longer free to leave.

We hold that these findings were sufficient and were supported by the evidence of record. Furthermore, the basis of the circuit court's ruling was that Hill's waiver was voluntary, not whether he was in custody at the time he waived his rights and made the statements. Finally, Hill did not provide any evidence to contradict the detectives' testimony regarding the voluntary nature of his decision to waive his *Miranda* rights.

For the foregoing reasons, the order of the Fayette Circuit Court, as well as the underlying judgment, are affirmed.

ALL CONCUR.

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