

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000724-MR

MARVIN GOODMAN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE CHARLES L. CUNNINGHAM JR., JUDGE
ACTION NO. 14-CR-002269-001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, JOHNSON, AND MAZE, JUDGES.

DIXON, JUDGE: Marvin Goodman entered a conditional guilty plea to first-degree robbery and was sentenced to a fifteen-year term of imprisonment.

Goodman appeals the Jefferson Circuit Court's order denying his motion to suppress a confession he made to police during a custodial interview. After careful review, we affirm.

Goodman was arrested on September 10, 2014, pursuant to a warrant issued by the Jefferson Circuit Court upon his indictment by the grand jury.

Following his arrest, Goodman was interviewed by Detective Tim Crowell at the police department. Goodman signed a written waiver of his *Miranda* rights and gave a recorded statement confessing to his role in the robbery of a Taco Bell restaurant.

Goodman filed a motion to suppress his confession, contending he requested an attorney before Crowell began recording their conversation and that Crowell ignored his request. At the suppression hearing, Crowell and Goodman each testified as to the circumstances surrounding Goodman's interview.

According to Crowell, Goodman never requested an attorney at any time. Crowell testified he read Goodman his *Miranda* rights and went over the waiver form with him. Goodman initialed each of the enumerated *Miranda* rights on the form and signed the bottom of the document. The recorded statement began two hours after Goodman signed the waiver. At the outset of the recording, Goodman acknowledged signing and understanding the waiver of his *Miranda* rights. At the end of the recording, Goodman indicated he participated in the interview voluntarily and that he had been afforded the ability to take breaks and have refreshments. Goodman testified on his own behalf. Goodman asserted, once he arrived at the police department, he told a female officer and a male officer that he wanted to speak to his attorney. According to Goodman, he requested an attorney at the beginning of the interview, but Crowell told him to sign the *Miranda* waiver

or Crowell would file additional charges against him. On cross-examination, Goodman asserted he signed the *Miranda* waiver because Crowell told him to sign it. Goodman further testified he did not mention his request for an attorney during the recorded statement because he wanted to leave. Following the hearing, the trial court found the testimony of Crowell to be the most credible and concluded Goodman did not invoke his right to an attorney. The court denied the motion to suppress, and Goodman now appeals that decision.

When this Court reviews a ruling on a motion to suppress evidence, we are bound by the factual findings of the trial court if they are supported by substantial evidence. *Adcock v. Commonwealth*, 967 S.W.2d 6, 8 (Ky. 1998). We then review *de novo* the application of the law to the facts. *Id.*

Pursuant to *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612, 16 L. Ed. 2d 694 (1966), a person in police custody, prior to questioning, “must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.” After being advised of his rights, he may waive them, “provided the waiver is made voluntarily, knowingly and intelligently.” *Id.* Determining the validity of a waiver involves a two-step analysis:

First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being

abandoned and the consequences of the decision to abandon it. Only if the “of the circumstances surrounding the interrogation” reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the Miranda rights have been waived.

Moran v. Burbine, 475 U.S. 412, 421, 106 S. Ct. 1135, 1141, 89 L. Ed. 2d 410 (1986) (internal citation and quotation marks omitted).

On appeal, Goodman contends he clearly invoked his right to an attorney. Relying on his own testimony, he opines Crowell ignored his request for an attorney and threatened to file additional charges against him if he did not cooperate. Essentially, Goodman challenges the veracity of Crowell’s testimony at the suppression hearing and contends his own testimony was more credible.

The signed waiver and recorded portion of the interview were admitted into evidence at the hearing. Crowell unequivocally testified Goodman never asked for an attorney at any time and that Goodman signed the waiver form prior to any questioning. Crowell described Goodman’s demeanor as calm and alert. On the recording, Goodman indicated he understood his rights, acknowledged signing the waiver form, and affirmed giving the statement of his own free will. Aside from Goodman’s self-serving testimony, there was no evidence the waiver was obtained by coercion or that Goodman did not fully understand his rights and the effect of waiving them.

It was the duty of the trial court to weigh the conflicting evidence, and the court found Crowell’s testimony to be the most credible. Based on the totality of

the circumstances, we agree with the court's conclusion Goodman did not request an attorney and validly waived his *Miranda* rights. Accordingly, the trial court properly denied the motion to suppress.

For the reasons stated herein, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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