

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-000990-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HON. ANN BAILEY SMITH, JUDGE
ACTION NO. 13-CR-02681-001

ANTONIO YOUNG

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: J. LAMBERT, MAZE, AND NICKELL, JUDGES.

MAZE, JUDGE: The Commonwealth presents an interlocutory appeal from the Jefferson Circuit Court's order partially granting Antonio Young's motion to suppress, entered June 7, 2016. Finding no error, we affirm.

Troy Johnson, Jr. was shot and killed in Jefferson County on September 28, 2013. The day after the shooting, Sergeant John Lesh¹ of the

¹ Lesh¹ was a homicide detective at the time of the incident and subsequent interrogation, but now holds the rank of "Sergeant." This opinion refers to him by his current rank.

Louisville Metro Police department interrogated Young about the incident. At the time, Young was on home incarceration for an unrelated offense and resided in the neighborhood where the shooting took place. He was transported to the police department for an interview. In the course of his interview, Young made several damaging admissions regarding the firearm used in the shooting. Young and three other men were arrested on charges relating to the homicide. The Jefferson County grand jury indicted Young on charges of complicity to murder, complicity to first-degree robbery, tampering with physical evidence, and being a second-degree persistent felony offender.

On March 3, 2015, Young filed a motion to suppress statements he made to Sergeant Leshner during his interrogation, alleging he did not voluntarily waive his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Following a hearing on the motion, the Jefferson Circuit Court granted a partial suppression of Young's statements in a written order entered June 7, 2016. The Commonwealth now appeals from that order.

The Commonwealth's sole issue on appeal stems from Young's partially-granted motion to suppress statements he made to police. "In reviewing a trial court's ruling on a suppression motion, an appellate court must first determine if the trial court's factual findings are not clearly erroneous and are supported by substantial evidence. . . . A *de novo* review of the trial court's application of the law to the facts completes the analysis." *Nunn v. Commonwealth*, 461 S.W.3d 741,

745 (Ky. 2015) (quoting *Frazier v. Commonwealth*, 406 S.W.3d 448, 452-53 (Ky. 2013)).

At the time of his interrogation, Sergeant Lesher read Young his *Miranda* warnings, after which Young agreed to waive his rights and signed a form acknowledging the waiver. The United States Supreme Court has described a proper waiver pursuant to *Miranda* as follows:

[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. . . . Prior to any questioning, the person 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. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently.

Miranda, 384 U.S. at 444, 86 S.Ct. 1602. These “procedural safeguards” under *Miranda* ensure police will inform an individual of his or her rights protecting against self-incrimination and ask whether the individual understands these rights. “*Miranda* has become embedded in routine police practice to the point where the warnings have become part of our national culture.” *Dickerson v. United States*, 530 U.S. 428, 443, 120 S.Ct. 2326, 2336, 147 L.Ed.2d 405 (2000).

Louisville Metro Police video recorded Young’s interview, and the interview was later transcribed for the court. In its opinion and order partially

granting Young's motion to suppress, the circuit court noted dialogue on pages 112-13 of the transcribed interview between Young ("Def") and Sergeant Leshner ("Sgt"). We repeat the most relevant portion of this exchange as follows:

Sgt: You think I'm gonna run back and tell the people that or [sic] on there, that you –

Def: No –

Sgt: Owned the gun or you were drinking?

Def: (Inaudible)

Sgt: But no I mean do you think I'm gonna run back and say man you, man he helped dude get rid of guns or man he was drinking beer or he was out in the yard.

Def: But that's your job though.

Sgt: No it's not –

Def: Yea –

Sgt: My job is not to run back and tell on you.

Def: Well I know this all, I know this whole thing –

Sgt: My job is not to run back and tell on you.

Following this exchange, Young eventually admitted to helping one of his codefendants hide the firearms used in this incident.

Although police routinely use deception in interrogations, they are not permitted to engage in trickery in such a way as to vitiate *Miranda*. “Requiring police to give the proper *Miranda* warning and then allowing it to be

countermanded with a false assurance that the suspect's statements *will not* be used against him, requires suppression of any statements the suspect makes thereafter during the interrogation.” *Leger v. Commonwealth*, 400 S.W.3d 745, 751 (Ky. 2013) (citation and internal quotation marks omitted). In contrast, an interrogating detective's statements which merely “lull[s] [a suspect] into a sense of security. . . [are] not beyond the bounds of acceptable ‘clever investigative devices.’” *Bond v. Commonwealth*, 453 S.W.3d 729, 734 (Ky. 2015) (quoting *Leger*, 400 S.W.3d at 750). In *Bond*, police interrogation tactics included the officer telling the suspect that his digital recorder was for his own use “because he forgets a lot.” *Id.* (internal quotation marks omitted). The Kentucky Supreme Court did not find this tactic improper, and held the distinguishing characteristic between *Leger* and *Bond* is whether police state “that the conversation was going to be kept confidential or between the officer and the defendant.” *Id.*

In its analysis of the motion to suppress, the circuit court noted the above dialogue and found that Sergeant Lesher properly advised Young of his *Miranda* rights, but then undercut those rights by stating he would not “tell on” Young. For its part, the Commonwealth contends the Sergeant's assurances simply meant he would not report Young's alleged home incarceration violations, *i.e.*, his presence on his porch and his consumption of alcohol. The Commonwealth also asserts Sergeant Lesher made no explicit promises of confidentiality. However, we find no clear error in the circuit court's

determination regarding the meaning of these statements. The sergeant did not limit his promise not to “tell on” Young to alleged violations of his home incarceration status. Sergeant Leshar specifically pressed for the location of the guns used *in this homicide*, and followed up with repeated declarations that his job was not to “tell on” Young. This amounted to a false assurance of confidentiality to gain incriminating statements, directly contradicting *Miranda*’s warning that “he has the right to remain silent, [and] that anything he says can be used against him in a court of law[.]” *Leger*, 400 S.W.3d at 748 (quoting *Miranda*, 384 U.S. at 479, 86 S.Ct. 1602).

The court’s findings were supported by substantial evidence and not clearly erroneous. Furthermore, the court did not err in applying *Leger* to these facts, and properly suppressed the portion of the interview occurring subsequent to the assurances of confidentiality. *Id.* at 751.

For the foregoing reasons, we affirm the Jefferson Circuit Court order partially granting Young’s motion to suppress.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Andy Beshear
Attorney General of Kentucky

Andrew J. Gochenaur
Special Assistant Attorney General
Louisville, Kentucky

BRIEF FOR APPELLEE:

Cassandra F. Kennedy
Assistant Appellate Defender
Louisville Metro Public Defender's
Office
Louisville, Kentucky