

RENDERED: March 26, 2004; 2:00 p.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2002-CA-000218-MR

MONNIE SKAGGS SLOAN

APPELLANT

v. APPEAL FROM FLEMING CIRCUIT COURT  
HONORABLE ROBERT I. GALLENSTEIN, JUDGE  
ACTION NO. 01-CR-00010

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: COMBS, KNOPF, AND McANULTY, JUDGES.

KNOPF, JUDGE: Monnie Sloan appeals from a judgment of the Fleming Circuit Court, entered January 15, 2002, convicting her pursuant to her guilty plea of felonious theft by unlawful taking<sup>1</sup> and sentencing her to five years' imprisonment probated for five years. Before entering her plea, Sloan moved to suppress incriminating statements she made to police officers.

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<sup>1</sup> KRS 514.030.

She asserts that the officers elicited the statements by falsely promising her not to prosecute if she cooperated. She did cooperate, she claims, and thus is entitled either to the benefit of her bargain or to the suppression of the improperly elicited evidence. Sloan's guilty plea preserved her right to appeal from the trial court's denial of this relief. We affirm.

During the evening of April 6, 2001, Flemingsburg and Fleming County police officers questioned Sloan concerning the theft of a purse. At first Sloan denied any involvement in the theft, but when, according to Sloan, the officers promised her that if she told the truth and cooperated with the Buffalo Trace Gateway Narcotics Task Force she would not be prosecuted for the theft, she admitted to them where the purse had been discarded. Over the next couple of days she was put in contact with officers on the narcotics task force and unsuccessfully attempted to make a monitored drug purchase. The task force thereafter declined any further assistance from Sloan, and a few days later she was arrested on the theft charge.

As noted above, Sloan moved to suppress her incriminating statements to the police and the evidence derived from those statements on the ground that the officers had breached their promise not to prosecute. At the hearing on Sloan's motion, one of the officers admitted having told Sloan that if she would cooperate with the police they would cooperate

with her, "like one hand washing the other." This officer and the other who had questioned Sloan both, however, denied that they had promised not to prosecute. Rather, they testified, they had only promised to inform the prosecutor that she had cooperated. That promise, they maintained, had been fulfilled. Sloan, who admitted that she had been under the influence of prescription medication at the time of the interview, testified that she recalled definite promises not to prosecute.

The trial court found that the officers had not promised not to prosecute, but had promised only that Sloan's cooperation would be given consideration. That promise, the court ruled, had been honored and did not entitle Sloan to relief. We agree.

Sloan notes that KRE 408 and KRE 410 make inadmissible evidence of compromise negotiations or guilty-plea discussions. Neither rule has application here, however, because Sloan's interview with the officers cannot be characterized as an attempt to "compromise a claim," there having been no "claim" to compromise, or as a plea discussion, no mention of a guilty plea having been made.

Sloan's principal contention is that a breached police promise of leniency or non-prosecution in exchange for incriminating admissions offends against the Due Process Clause's guarantee of fundamental fairness. As Sloan notes,

several courts have so held.<sup>2</sup> In all of these cases, however, the evidence established a police promise (typically not to prosecute) that was essentially fraudulent because beyond the officer's authority to fulfill. Here, although the trial court did not explicitly resolve the evidentiary dispute, it implicitly found that the officers did not make the promise Sloan alleged. Generally in suppression proceedings, of course, the trial court's factual findings are conclusive if supported by substantial evidence.<sup>3</sup> The officers' testimonies in this case satisfy the substantial evidence requirement. There having been no promise not to prosecute, such a promise could not have been breached. Accordingly, we affirm the January 15, 2002, judgment of the Fleming Circuit Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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<sup>2</sup> State v. Sturgill, 469 S. E. 2d 557 (N.C.App. 1996); Commonwealth v. Stipetich, 652 A. 2d 1294 (Penn. 1995); People v. Gallego, 424 N. W. 2d 470 (Mich. 1988); People v. Fisher, 657 P. 2d 922 (Colo. 1983).

<sup>3</sup> RCr 9.78.