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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002669-MR

COMMONWEALTH OF KENTUCKY — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE TOM McDONALD, JUDGE
ACTION NO. 03-CR-001273

MATTHEW SMITH — APPELLEE

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: DYCHE AND McANULTY, JUDGES; EMBERTON, SENIOR JUDGE.[1]

McANULTY, JUDGE: The Commonwealth appeals an order of the Jefferson Circuit Court which granted the motion of Matthew Smith (hereinafter appellee) to suppress a statement he gave to police. The court found that under the totality of the circumstances appellee was not fully capable of understanding or

[1] Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

of giving consent. The Commonwealth argues on appeal that the court's ruling was erroneous since it made no finding of coercive police activity, and the court incorrectly concluded that appellee's level of intoxication and mental distress required suppression of his confession. We agree that suppression was unwarranted, and we reverse.

The facts found by the circuit court following a hearing on the issue of suppression were as follows: On May 6, 2003, a twelve year old female, A.B., reported being raped by appellee, her mother's live-in boyfriend. The police detective taped the statement given by appellee at his home. The trial court found from Detective Sanders' testimony at the suppression hearing that: she and appellee spoke for approximately seven minutes before she taped the statement; she smelled alcohol on appellee; she asked appellee if he had been drinking and he confirmed that he had been. Detective Sanders testified that she would not have let appellee drive due to his degree of intoxication. The detective believed appellee to be coherent, and able to understand her questions and to answer them. Appellee gave a statement in which he admitted to the sexual contact with the child. The trial court found that subsequently appellee made several suicidal remarks.

According to the police transcript, appellee said, "So just do what you've got to do. Tell that officer to open that

door and shoot me right in the head." The detective told him nobody wanted that to happen. They talked a little while longer and Detective Sanders told appellee he could tell her anything he wanted to and she would listen. The transcript records that appellee responded, "I just want somebody to shoot me," and then said, "Kill me." Finally, toward the end of the statement, the detective asked appellee how he felt about what had happened with the victim. Appellee responded, "I'm really damned embarrassed about it. Wish to God somebody would just shoot me in the head."

The court noted that by the end of the statement appellee was crying. The detective did not want to leave him at the house due to his mental state. A crisis officer was called to the scene. Appellee was assessed as being a threat to himself based on his suicidal remarks and a past history of depression. Appellee was involuntarily hospitalized that day.

The court looked at the totality of the circumstances and held that appellee was unable to properly consent to giving the taped statement. The court focused on the fact that appellee could not operate a motor vehicle in his condition, as well as his mental state which led to hospitalization and being adjudged a danger to himself. The court concluded that appellee "was not fully capable of understanding the magnitude of his surroundings or of giving consent on May 7, 2007."

The standard on appeal is whether the trial court's suppression of the statement was an abuse of discretion. Canler v. Commonwealth, 870 S.W.2d 219, 221 (Ky. 1994). The factual findings of the court following a suppression hearing are conclusive so long as they are supported by substantial evidence. Id. When the findings of fact are supported by substantial evidence, the question for the reviewing court becomes whether the rule of law as applied to those facts was or was not violated. Adcock v. Commonwealth, 967 S.W.2d 6, 8 (Ky. 1998). Thus, in the absence of a substantial factual dispute the voluntary nature of a confession may be determined by a reviewing court. Mills v. Commonwealth, 996 S.W.2d 473, 481 (Ky. 1999), citing Jackson v. Denno, 378 U.S. 368, 391-92, 84 S. Ct. 1774, 1789, 12 L. Ed. 2d 908 (1964). We observe that there is no substantial factual dispute herein, and the issue is whether the trial court correctly applied the relevant law.

On appeal, the Commonwealth's primary argument is that the trial court failed to find coercion by the state, a prerequisite to a finding that a confession was involuntary under the Due Process Clause of the Fourteenth Amendment and Section 11 of the Kentucky Constitution. Mills, 996 S.W.2d at 481. A confession's voluntariness is assessed based on the totality of the circumstances surrounding the making of the confession. Id. A confession is considered voluntary unless,

under the totality of the circumstances, a defendant's "will has been overborne and his capacity for self-determination critically impaired." Soto v. Commonwealth, 139 S.W.3d 827, 847 (Ky. 2004), quoting Schneckloth v. Bustamonte, 412 U.S. 218, 225, 93 S. Ct. 2041, 2047, 36 L. Ed. 2d 854 (1973). Factors such as low intelligence are of consequence only to the extent they cause a defendant to be predisposed to yield to coercive police tactics. Mills, 996 S.W.2d at 481. The mere existence of a mental condition by itself and apart from the existence of police coercion does not make a statement involuntary. Lewis v. Commonwealth, 42 S.W.3d 605, 612 (Ky. 2001).

We agree that the presence or absence of coercive police activity was a relevant issue for trial court. The court noted that mental illness is not a bar to the ability to waive one's rights in the absence of police coercion. Yet the court made no finding that there was coercion. We agree that no coercion or duress was shown. There is no indication that the police took advantage of appellee's intoxication or mental state in taking the statement. The police informed him that he did not have to talk to them, that he was free to leave and that he was not under arrest. Appellee first stated that he did not understand when told he was not under arrest. When the detective repeated that appellee was not under arrest or in custody, and "in no way, shape or form" did he have to talk to

her, he said, “OK,” and he said he had no problem talking to her. The transcript displays no attempt to overcome appellee’s will.

The court was required, in addition, to give further consideration to the issue of intoxication and mental illness as it affected the reliability and voluntariness of the statement. Mills, 996 S.W.2d at 481, Soto, 139 S.W.3d at 848. The “basic question” is whether the accused was in sufficient possession of his faculties to give a reliable statement. Soto, 139 S.W.3d at 848, citing Britt v. Commonwealth, 512 S.W.2d 496 (Ky. 1974). Self–induced intoxication is not enough to require exclusion without a showing that the defendant was intoxicated “to the degree of mania” or of being unable to understand the meaning of his statements. Halvorsen v. Commonwealth, 730 S.W.2d 921, 927 (Ky. 1986).

In the case at bar, there was no indication that appellee was not in sufficient possession of his faculties when giving the statement. Appellee was not found to have been intoxicated either to the point of mania or of being unable to understand what he was saying. His answers were responsive to the detective’s questions. His responses are coherent and elucidatory. The fact that appellee was unable to drive does not show that he could not talk rationally with the detective. The suicidal statements by appellee did not display a manic

response or hallucinatory response. If anything, they show some awareness of the consequences of his actions.

In summary, we conclude that the confession should not have been suppressed under the totality of the circumstances. Appellee was not found to have been too intoxicated or too manic to have given a reliable statement. There was no evidence of police coercion or duress, even taking into consideration appellee's mental state and alcohol consumption. Therefore, we reverse the decision of the trial court which granted the motion to suppress the confession. We remand for further proceedings in the circuit court.

ALL CONCUR.

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