

Commonwealth Of Kentucky

Court Of Appeals

NO. 2004-CA-000512-MR

CHARLES CHRISTOPHER LEWIS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
INDICTMENT NO. 03-CR-00991

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER
AFFIRMING
AND GRANTING MOTION
FOR LEAVE TO WITHDRAW

** ** * * *

BEFORE: DYCHE, KNOPF, AND JOHNSON, JUDGES.

KNOPF, JUDGE: On August 19, 2003, a Fayette County grand jury returned an indictment charging Charles Christopher Lewis with thirteen counts of theft by unlawful taking over \$300.00,¹ two counts of theft by deception over \$300.00,² four counts of theft by deception under \$300.00,³ and one count of being a persistent

¹ KRS 514.030.

² KRS 514.040.

³ KRS 514.040.

felony offender in the first degree.⁴ Lewis filed a motion to suppress incriminating written and oral statements which he made to his employer.

Following a hearing, the trial court denied the motion. Thereafter, on January 30, 2004, Lewis entered a conditional guilty plea. In exchange for his guilty plea, the Commonwealth amended the remaining theft charges to misdemeanors. Pursuant to the agreement with the Commonwealth, the trial court sentenced Lewis to a total of twenty years' imprisonment.

In the appeal of the reserved suppression issue, Lewis's appointed counsel has filed a brief pursuant to Anders v. California,⁵ stating that there are no matters which may serve as a basis for a good-faith appeal. Furthermore, we have reviewed the record and the videotape of the suppression hearing. We likewise find no merit to this appeal.

Lewis was the manager of a McDonald's Restaurant in Lexington, Kentucky. In early June 2003, his supervisors at McDonald's discovered that Lewis had failed to make daily bank deposits in the amount of approximately \$45,000.00. Eventually, he was confronted about the missing deposits and he made

⁴ KRS 532.080.

⁵ 386 U.S. 738, 87 S. Ct 1396, 18 L. Ed. 2d 493 (1967).

statements admitting to the theft. On June 12, 2003, Lewis signed a "Confession and Agreement", in which he waived his right to counsel, admitted to taking the money, and agreed to make restitution. Lewis made additional statements after signing this agreement. In exchange, McDonald's agreed not to pursue criminal charges provided that Lewis repaid the money. McDonald's filed a criminal complaint after Lewis failed to make payments as agreed. Lewis sought to suppress the written confession and his oral statements.

As a general rule, statements made to a person other than a law enforcement official are not subject to protections of the Fourth Amendment to the United States Constitution and Section Eleven of the Kentucky Constitution.⁶ Such statements will only be suppressed where there is compelling evidence that the confession was obtained by the use or threat of physical force.⁷ The evidence in this case fell well short of meeting that standard.

Accordingly, the judgment of the Fayette Circuit Court is affirmed.

IT IS FURTHER ORDERED that appointed counsel's motion for leave to withdraw is GRANTED.

⁶ Commonwealth v. Cooper, 899 S.W.2d 75, 76-77 (Ky. 1995).

⁷ *Id.* at 79.

ALL CONCUR.

ENTERED: November 23, 2005

_/s/ Wm. L. Knopf_____
JUDGE, COURT OF APPEALS

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