

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000596-MR

CALVIN REAVES

APPELLANT

v.

APPEAL FROM BATH CIRCUIT COURT
HONORABLE WILLIAM B. MAINS, JUDGE
ACTION NO. 03-CR-00028

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; HENRY AND TACKETT, JUDGES.

TACKETT, JUDGE: Calvin Reaves appeals from his conviction of felony theft by unlawful taking and being a persistent felony offender in the second degree. He argues the Bath Circuit Court erroneously denied his motion to suppress physical evidence found on his person. Reaves contends that his rights against unreasonable search and seizure and self-incrimination were violated. He received a six-year sentence on his conditional

guilty plea. After reviewing the record, we affirm the trial court's decision.

On the day of Reaves' arrest, Trooper Larry Bowling was meeting with County Attorney Kim Price about a case. He noticed Reaves in the area right before he went into the county attorney's office. While Bowling was meeting with Price, a secretary in the office reported seeing a well-dressed African American man get out of Price's vehicle with a purse. Bowling went outside to look for the suspect, but he did not immediately find anyone matching the description. Price searched her car and found her purse still there, but her wallet with credit cards and cash missing. Sheriff Randall Armitage received a call about the theft and began searching the area for a suspect. He encountered Reaves and noted that he was a well-dressed African American. Armitage approached and asked Reaves whether he had been in a nearby vehicle which Reaves denied. He then he escorted Reaves back to the county attorney's office where Linda Copher, a secretary in the office, identified him as the man she had seen getting out of Price's car. A search of the vicinity failed to locate Price's wallet. After about a half an hour, officers asked to see Reaves' money, so he handed it to them. The money Reaves was carrying matched, in part, the description of the cash Price had in her wallet. Reaves was arrested and charged with felony theft.

A grand jury indicted him for the theft as well as for being a persistent felony offender in the second degree. After the trial court refused to suppress the money found on Reaves, he entered a conditional guilty plea and was sentenced to serve two years, enhanced to six years. This appeal followed.

Reaves first argues that police illegally detained him without probable cause or an arrest warrant. Terry v. Ohio, 392 U.S. 1, 88 S.Ct.2d 1868, 20 L.Ed.2d 889(1968), allows officers to make a brief investigative stop if they have "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the officer's belief that an individual is involved in criminal activity. Id. at 21. Armitage approached Reaves after receiving a report of an African American man, dressed as a salesman and on foot in the area, who had just been seen stealing from a vehicle. Reaves, an African American man, who was wearing a dress shirt and tie with slacks, fit a description which would not have applied to many people in rural Owingsville. Officers may consider race as a legitimate factor in deciding whom to approach if race was included in the description of a suspect. U.S. v. Waldon, 206 F.3d 597 (6th Circuit 2000).

Reaves did not testify at the suppression hearing and, based on the evidence provided by officers' testimony, the trial court found that he was not seized when Armitage asked Reaves to

accompany him to the county attorney's office. A trial court's factual findings are conclusive if supported by substantial evidence. Kentucky Rule of Criminal Procedure 9.78. Reaves has not disputed the trial judge's finding that he voluntarily accompanied the sheriff to the county attorney's office; rather, he argues that he was detained there by police while they attempted to find Price's wallet. As soon as they arrived at Price's office, Reaves was identified by the eyewitness as the man she saw getting out of Price's vehicle. At that point, the trial judge found that probable cause existed to arrest him and charge him with felony theft. Legal conclusions relating to probable cause are reviewed *de novo*. Commonwealth v. Whitmore, 92 S.W.3d 76 (Ky. 2002). However, we agree that the facts introduced at the suppression hearing established probable cause to detain Reaves.

Reaves next complains that the money he had in his possession should have been suppressed because officers obtained it without advising him of his right against self-incrimination. Price told the investigating officers that she had \$626.00 in her wallet. There were five crisp \$100.00 bills and one crumpled \$100.00 bill that she had received in payment from a client earlier in the day. About halfway through their investigation, while Reaves was still standing outside the county attorney's office with some officers, he was asked to

show them the contents of his wallet. Reaves' wallet contained \$656.00, including six \$100.00 bills matching the description of the money in Price's wallet. After allowing officers to inspect the contents of his wallet, Reaves informed officers who were questioning him that he was going to leave if they did not arrest him at that time. Based on the eyewitness identification and the possession of money matching, in part, the description of the theft proceeds, officers arrested Reaves and charged him with felony theft.

The trial court found that Reaves voluntarily complied with the request to show officers the money he was carrying in his wallet. Reaves was not formally under arrest at that point. In order to determine whether the production of the money was coerced, a trial court must examine the suspect's subjective belief about whether he was in custody. Although the officers testified at the suppression hearing that Reaves was not free to leave the county attorney's office, Reaves did not testify in his own behalf. Consequently, we are left with only his statement to officers that he was leaving if they did not arrest him. The trial court's ruling that Reaves voluntarily produced his wallet was based on uncontroverted evidence and, therefore, must be affirmed.

For the foregoing reasons, the judgment of the Bath Circuit Court is affirmed.

ALL CONCUR.

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