

RENDERED: NOVEMBER 4, 2005; 2:00 P.M.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2004-CA-001689-MR

JESSIE CONWAY

APPELLANT

v. APPEALS FROM FAYETTE CIRCUIT COURT  
HONORABLE LEWIS G. PAISLEY, SPECIAL JUDGE  
INDICTMENT NO. 03-CR-00836

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: GUIDUGLI, JOHNSON, AND KNOPF, JUDGES.

KNOPF, JUDGE: On July 14, 2003, a Fayette County grand jury returned an indictment charging Jessie Conway with two counts of trafficking in a controlled substance within one-thousand yards of a school,<sup>1</sup> and one count each of possession of drug paraphernalia, second offense,<sup>2</sup> alcohol

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<sup>1</sup> KRS 218A.1411, a class D felony.

<sup>2</sup> KRS 218A.500, a class D felony.

intoxication,<sup>3</sup> and being a persistent felony offender in the first degree (PFO I).<sup>4</sup> Thereafter, Conway filed a motion to suppress statements which he made to police officers following his arrest. After conducting an evidentiary hearing, the trial court denied the motion, finding that Conway's statements were knowing and voluntary.

On the day scheduled for trial, Conway entered a conditional plea of guilty to two amended counts of possession of a controlled substance, possession of drug paraphernalia, second or subsequent offense, and alcohol intoxication. The Commonwealth dismissed the PFO I charge. The trial court fixed Conway's sentence at a total of two years' imprisonment, and a \$25.00 fine for the violation. Conway now appeals the trial court's ruling on the reserved suppression issue. We affirm the trial court's ruling.

The following facts were developed at the suppression hearing: At approximately 11:30 p.m. on May 3, 2003, Officers Todd Iddings, Thomas Mooney, and several other officers of the Lexington Police Department were having dinner at the Tally-Ho Restaurant in downtown Lexington. The officers were approached by two college-

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<sup>3</sup> KRS 222.202, a violation.

<sup>4</sup> KRS 532.080.

aged women, who informed them that an individual, who appeared to be intoxicated, had harassed them outside of the restaurant.

The women pointed out Conway to the police and Officers Iddings and Mooney left the restaurant to approach Conway. They observed that Conway was unsteady on his feet, had bloodshot eyes, smelled of alcohol and had slurred speech. In addition, Conway made threatening moves while being questioned by Officer Mooney. Based upon their observations, the officers placed Conway under arrest for alcohol intoxication. Following the arrest, Officer Mooney advised Conway of his Miranda<sup>5</sup> rights, and Conway indicated that he understood. Officer Mooney and Officer Harold Faulkner then transported Conway to the jail. Prior to taking him into the jail, Officer Mooney patted Conway down and found marijuana, pills, scales, cash, and rolling papers. At that point, Conway made statements to Officers Mooney and Faulkner indicating that he had been selling drugs. Conway also stated that he could obtain more drugs and that he was willing to work with the police as an informant against other drug dealers. Conway repeated these statements after Officer Mooney again advised him of

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<sup>5</sup> Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

his Miranda rights. Subsequently, Conway was involved in an altercation with jail personnel, during which his arm was broken.

Conway also testified at the suppression hearing. He stated that he had been drinking heavily prior to arrest, and that he had also smoked marijuana and had taken a large amount of Xanax. Conway testified that he remembered only parts of the arrest and the events which followed. However, his recollection of those events was unclear and he was confused about where he was and which officers were involved when certain events happened. He did not remember making the incriminating statements to the police.

Conway primarily argues that his statements made to the police should have been suppressed because he was too intoxicated at the time to make a knowing and voluntary waiver of his right to remain silent. The traditional rule is that a confession otherwise voluntary is not to be excluded by reason of self-induced intoxication unless "the accused was intoxicated to the degree of mania, or of being unable to understand the meaning of his statements."<sup>6</sup>

It is only when intoxication reaches  
the state in which one has

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<sup>6</sup> Britt v. Commonwealth, 512 S.W.2d 496, 499 (Ky. 1974).

hallucinations or 'begins to confabulate to compensate for his loss of memory for recent events' that the truth of what he says becomes strongly suspect. Loss of inhibitions and muscular coordination, impaired judgment, and subsequent amnesia do not necessarily (if at all) indicate that an intoxicated person did not know what he was saying when he said it. 'In vino veritas' is an expression that did not originate in fancy. If we accept the confessions of the stupid, there is no good reason not to accept those of the drunk.<sup>7</sup>

The trial court found that, while Conway was clearly intoxicated, the police officer's testimony was sufficiently credible to establish that Conway was able to make a knowing and voluntary waiver of his right to remain silent. The trial court's finding in this regard was supported by substantial evidence and is conclusive of the issue.<sup>8</sup>

Conway also contends that the police officers lacked probable cause to arrest him for alcohol intoxication, a violation; because the officers did not personally observe that he was a danger to himself or to others. He argues, therefore, that all evidence seized and statements which he made following the arrest should have

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<sup>7</sup> Id. at 500. (*footnote omitted*).

<sup>8</sup> RCr 9.78.

been suppressed. However, Conway never made this argument to the trial court, nor did he reserve the issue for appeal following his guilty plea. Thus, the issue is unpreserved and we decline to address it in this case.<sup>9</sup>

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Gene Lewter  
Lexington, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

Susan Roncarti Lenz  
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<sup>9</sup> Centers v. Commonwealth, 799 S.W.2d 51 (Ky.App. 1990). "It should first be noted that the effect of entering a voluntary guilty plea is to waive all defenses other than that the indictment charges no offense. . . . A guilty plea constitutes a break in the chain of events, and the defendant therefore may not raise independent claims related to the deprivation of constitutional rights occurring before entry of the guilty plea." Id. at 55 (*citations omitted*).