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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001710-MR

JOSE CROOKS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE PAMELA R. GOODWINE, JUDGE
ACTION NO. 03-CR-01323

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI AND TAYLOR, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

TAYLOR, JUDGE: Jose Crooks appeals from an August 3, 2004, judgment of the Fayette Circuit Court sentencing him to a total of fifteen years' imprisonment. We affirm.

On September 6, 2003, Crooks was walking in the parking lot of the Continental Inn in Lexington, Kentucky.

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

Lexington Police Officer Amy Hawkins, on a routine patrol, approached Crooks based on a belief that he might be loitering. Crooks told the officer that he was waiting for a person to bring his car. Officer Hawkins returned to her parole duties and left Crooks in the parking lot. After some period of time, Officer Hawkins returned to the parking lot of the Continental Inn. She and other police officers were in the parking lot when they observed a green Chevrolet pull into the parking lot with a loud stereo. Lexington Police Officer Steve Cobb approached the green Chevrolet and spoke with the driver, who identified himself as Brutus Buckner. Buckner stated that he was pulling the car around for his friend who was too intoxicated to drive. Thereupon, Officer Hawkins noticed Crooks was still in the parking lot, whereupon she asked him if the green Chevrolet was the car that he was waiting for. Crooks responded that it was. Officer Hawkins testified that Crooks smelled of alcohol, had bloodshot eyes, and his speech was somewhat slurred. Crooks then told the officer that his name was Marco Haskins. When Officer Hawkins asked Crooks his date of birth, he responded that he was too intoxicated to remember his date of birth. Officer Hawkins then placed Crooks under arrest for alcohol intoxication in a public place. The police then searched his person and seized 28 grams of crack cocaine, 1.2 grams of marijuana, and \$950.00 in cash.

On October 28, 2003, Crooks was indicted upon the offenses of first-degree trafficking in a controlled substance, possession of marijuana, resisting arrest, giving a false name to a police officer, alcohol intoxication, and for being a first-degree persistent felony offender. Crooks subsequently filed a motion to suppress evidence alleging that his arrest for alcohol intoxication was improper. A suppression hearing was held, and the circuit court eventually denied the motion. At trial, a jury found Crooks guilty on all indicted charges except the charge of alcohol intoxication, for which he was acquitted. Crooks was also adjudged to be a first-degree persistent felony offender. On August 3, 2004, he was sentenced to a total of fifteen years' imprisonment. This appeal follows.

Crooks contends the circuit court committed reversible error by denying his motion to suppress evidence. Specifically, he argues that his arrest for alcohol intoxication in a public place was unlawful. Crooks argues that alcohol intoxication in a public place is a misdemeanor and that an officer may only arrest for a misdemeanor committed in his presence. Kentucky Revised Statutes (KRS) 431.005(1)(d). Crooks contends he did not commit the offense of alcohol intoxication in a public place in the presence of Officer Hawkins. Crooks specifically argues that his arrest for alcohol intoxication in a public place was improper because there was no evidence that he endangered

himself, other persons, or property or that he unreasonably annoyed persons in his vicinity.

KRS 222.202 codifies the offense of alcohol intoxication in a public place and provides, in relevant part, as follows:

(1) A person is guilty of alcohol intoxication when he appears in a public place manifestly under the influence of alcohol to the degree that he may endanger himself or other persons or property, or unreasonably annoy persons in his vicinity.

Under this statute, a person must be in a public place manifestly under the influence of alcohol to the extent that he may endanger himself, other persons, or unreasonably annoy other persons. In the case at hand, Officer Hawkins testified that Crooks slurred his speech, had bloodshot eyes, and smelled of alcohol. When questioning him, Crooks admitted to being intoxicated and being unable to remember his date of birth or social security number. Crooks also admitted under oath to the jury that he gave Officer Hawkins a false name during the questioning in the parking lot. Moreover, Officer Hawkins testified that she was concerned Crooks would attempt to drive the green Chevrolet that Buckner had recently parked, creating a potential threat to himself and others.

In Commonwealth v. Mobley, 160 S.W.3d. 783, 787 (Ky. 2005), the Supreme Court held that "[t]he appropriate analysis

to determine a lawful misdemeanor arrest is whether a reasonable officer could conclude from all the facts that a misdemeanor is being committed in his presence." Based upon the above facts alone, we believe that Officer Hawkins could have reasonably concluded that Crooks had committed the offense of alcohol intoxication in a public place in her presence. We think it reasonable that Officer Hawkins feared Crooks might attempt to drive his automobile while intoxicated. Accordingly, we are of the opinion the circuit court properly denied Crooks' motion to suppress evidence.

Crooks also argues the circuit court committed reversible error by admitting into evidence a transcript of Crooks' taped statements to a narcotics detective. In the taped statement, Crooks admitted he had sold cocaine in the past in order to support his own habit. Crooks argues this evidence was inadmissible under Ky. R. Evid. (KRE) 404(b), which specifically prohibits the use of prior bad acts. Conversely, the Commonwealth argues the evidence was admissible under KRE 404(b)(1) to prove Crooks' intent to traffic in cocaine.

In Walker v. Commonwealth, 52 S.W.3d 533 (Ky. 2001), the Court held that evidence of a prior controlled buy of cocaine made it more probable that defendant intended to sale drugs in his possession; thus, such evidence was admissible to prove intent under KRE 404(b)(1). Likewise, in the case *sub*

judice, we are of the opinion that Crooks' taped statement admitting to previously selling cocaine to support his habit evidenced his intent to sell the drugs he possessed. Hence, we believe the taped statement was admissible to prove intent under KRE 404(b)(1). Indeed, the trial court admonished the jury that it should only consider the taped statement to determine Crooks' intent to commit the crime of trafficking in cocaine and not Crooks' propensity to commit the crime. As such, we hold the circuit court did not commit reversible error by admitting into evidence a transcript of Crooks' taped statement admitting that he sold cocaine to support his own habit.

Crooks' final argument is that the trial court committed reversible error by requiring him to answer certain questions during the suppression hearing. During the suppression hearing, Crooks took the stand and was asked by the Commonwealth where he purchased the cocaine and what he was going to do with it. Crooks objected to such questioning, but the court overruled the objection. Crooks then testified he was planning to party with the cocaine and admitted that he might sell some of it.

The testimony was never introduced into evidence during the trial; however, Crooks contends that it was reversible error because the circuit court considered it when ruling upon the motion to suppress. Even if this line of

questioning constituted error, we are of the opinion that it was harmless. Ky. R. Crim. P. 9.24. As previously decided, we think the circuit court properly denied Crooks' motion to suppress. Additionally, we cannot say there exists a reasonable probability that the motion to suppress would have been granted absent the introduction of Crooks' testimony on cross-examination during the suppression hearing. Consequently, we do not believe the circuit court committed reversible error.

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

ALL CONCUR.

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