

RENDERED: June 16, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-001332-MR

DANNY GLENN HALEY

APPELLANT

v. APPEAL FROM LOGAN CIRCUIT COURT
HONORABLE TYLER L. GILL, JUDGE
INDICTMENT NO. 04-CR-00266

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DYCHE AND GUIDUGLI, JUDGE; BUCKINGHAM, SENIOR JUDGE.¹

DYCHE, JUDGE: On April 27, 2005, Danny Glenn Haley entered a conditional plea of guilty (RCr 8.09) to attempted rape in the first degree (KRS 506.110; KRS 510.040) and sodomy in the third degree (KRS 510.090). He was sentenced to a total of five years' incarceration. Haley was also ordered to pay restitution in the amount of \$612.60.

¹ Senior Status Judge David C. Buckingham sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

The sole issue on his appeal to this Court is whether the trial court erred in denying the motion to suppress evidence. Haley argues that the trial court's ruling was clearly erroneous based on the totality of the circumstances because (1) he was not given proper warnings against self-incrimination pursuant to Miranda v. Arizona, 384 U.S. 436 (1966); and (2) his repeated requests for counsel went unheeded.

Our standard of review of a circuit court's decision on a suppression motion following a hearing is twofold. First, the factual findings of the court are conclusive if they are supported by substantial evidence. The second prong involves a *de novo* review to determine whether the court's decision is correct as a matter of law. Kentucky has adopted the standard of review approach articulated by the Supreme Court in *Ornelas v. United States*, where the Court said that:

[A]s a general matter determinations of reasonable suspicion and probable cause should be reviewed *de novo* on appeal. Having said this, we hasten to point out that a reviewing court should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers. [517 U.S. 690, 698-700 (1996)].

Stewart v. Commonwealth, 44 S.W.3d 376, 380 (Ky.App. 2000) (footnotes omitted); see also Roberson v. Commonwealth, 185 S.W.3d 634, 637 (Ky. 2006). We have reviewed the factual

findings of the trial court and find that they are supported by substantial evidence. RCr 9.78.

We next must determine whether the trial court correctly applied the law to the facts of this case. "Although case law certainly supports Appellant's right to be free from interrogation once he asserts his right to counsel and to remain silent, waiver of this right can and did occur in this case when Appellant reinitiated conversation with the police" Roberson, supra at 639. "Appellant voluntarily, knowingly, and intelligently waived his right to have counsel present" when he continued to communicate with the police. Id. at 640. The trial court properly denied Haley's motion to suppress statements made to the police.

The judgment of the Logan Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Dennis M. Ritchie
Elkton, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Robert E. Prather
Assistant Attorney General
Frankfort, Kentucky