

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-002195-MR

DAVID TURLEY

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE WILLIAM L. GRAHAM, JUDGE
ACTION NO. 04-CR-00201

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: ABRAMSON AND GUIDUGLI, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

GUIDUGLI, JUDGE: David Turley appeals from a conditional guilty plea entered in Franklin Circuit Court on one count each of first-degree trafficking in a controlled substance, second-degree trafficking in a controlled substance, and menacing. Turley filed a motion to suppress the evidence, and argues that the trial court erred in ruling that his arrest and subsequent

¹ Senior 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 KRS 21.580.

search were lawful. For the reasons stated below, we affirm the judgment of the Franklin Circuit Court.

On October 19, 2004, deputies from the Franklin County Sheriff's Office attempted to serve an arrest warrant on Joe Riddle at a Frankfort residence. The deputies knocked on the door and David Turley answered. When they asked for Turley's identification, Turley turned around and started to move back into the house. As he attempted to flee, he reached into his pocket. Deputy Alvin Cummins reached inside the residence and pulled the struggling Turley outside. Turley was placed under arrest for menacing.

Subsequent to the arrest, the deputies conducted a search of Turley's person. They found a pill bottle containing powdered cocaine, crack cocaine and Lortabs. Turley refused to identify himself, but was later identified by other means. Sometime thereafter, he was charged with one count each of first- and second-degree trafficking in a controlled substance, in addition to the one count of menacing.

As the matter proceeded, Turley argued that his arrest was unlawful because the elements of the charged offense were not present. Specifically, he claimed that there was no way the deputies could have reasonably believed that he had the intent to put them in apprehension of imminent physical injury. Since

the arrest was unlawful, Turley argued that the evidence obtained in the subsequent search should be suppressed.

In overruling the motion, the circuit court opined that the question of intent was a matter properly reserved for the jury's consideration. Turley then entered a guilty plea, conditioned on the reservation of his right to appeal the court's ruling on the unlawful arrest issue. Turley was sentenced to three years in prison, and this appeal followed.

The issues raised on appeal for our consideration are whether the circuit court erred in failing to rule that Turley's arrest for menacing was unlawful and, if so, whether the evidence found during the search incident to arrest should be suppressed. Turley maintains that the deputies could not rely on the fact that they had an arrest warrant for Riddle as supportive of their intrusion into Turley's home. He goes on to argue that the deputies expected to encounter Riddle, a non-violent DUI offender, and that their claim of being threatened by Turley's conduct is not supported by the record. Turley further argues that since the arrest was a "sham", the subsequent search was unlawful and entitles him to have the fruits of the search suppressed. In sum, Turley seeks an order reversing the circuit court's ruling on this issue and remanding the matter for reversal of his conviction.

We have closely examined the record and the written arguments, and find no error in the circuit court's ruling on Turley's motion to suppress. "A person is guilty of menacing when he intentionally places another person in reasonable apprehension of imminent physical injury."² Because the trial court's findings on a motion to suppress are conclusive if supported by substantial evidence,³ the dispositive question is whether substantial evidence existed to support the trial judge's conclusion that the record justified sending to the jury the issue of Turley's guilt or innocence on the menacing charge. Stated differently, the issue is whether the circuit court properly opined that the record precluded it from ruling as a matter of law that Turley was not guilty of the offense of menacing.

Substantial evidence exists to support the trial judge's conclusion on this issue. It is uncontroverted that when Turley saw the deputies, he reached into his pocket while attempting to flee. When examining the motion to suppress, the trial judge is not charged with the duty of finding guilt or innocence on the underlying offense.⁴ Rather, he or she "shall enter into the record findings resolving the essential issues of

² KRS 508.050.

³ RCr 9.78.

⁴ Id.

fact raised by the motion or objection and necessary to support the ruling.”⁵

The circuit court expressly relied on the uncontested evidence that Turley reached into his pocket while attempting to flee from the deputies, and this is sufficient to support the denial of Turley’s motion to suppress. The court did not attempt to resolve the underlying issue of whether Turley possessed the requisite element of intent to commit the offense, as that question was properly reserved for the jury. Since the record did not support Turley’s claim that his arrest was improper as a matter of law, and because the evidence obtained against him was found as a result of the arrest, we find no basis for reversing the order on appeal.

For the foregoing reason, the judgment of the Franklin Circuit Court is affirmed.

ALL CONCUR.

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⁵ Id.