

Commonwealth of Kentucky
Court of Appeals

NO. 2006-CA-000418-MR

MARK A CASPER

APPELLANT

v. APPEAL FROM MEADE CIRCUIT COURT
HONORABLE ROBERT A. MILLER, JUDGE
ACTION NO. 05-CR-00044

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE AND NICKELL, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

ACREE, JUDGE: Mark A. Casper appeals from a final judgment and sentence of the Meade Circuit Court pursuant to a conditional guilty plea to burglary in the third degree, theft by unlawful taking or disposition of property valued at \$300.00 or more, receiving stolen property valued at \$300.00 or more, and fleeing or evading police in the first degree. The conditional plea reserved the right to appeal the denial of Casper's motion to

¹ Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

suppress his confession. Casper argues his confession was not voluntarily given due to the trauma and resulting duress which he was suffering from at the time. For the reasons stated herein, we affirm.

On February 23, 2005, Deputy Michael Robinson of the Meade County Police Department attempted to stop a truck driven by Casper after the vehicle had been reported stolen. Casper refused to stop and eventually drove the truck into a river. Casper was able to escape the truck, but swam away from police. He was later found on a riverbank and transported to a hospital. Tests revealed Casper was suffering from hypothermia and that he had been using methamphetamine and alcohol.

Deputy Guy Garcia picked Casper up from the hospital when he was released later that day. Deputy Garcia was to transfer Casper to the Meade County Detention Center. Deputy Garcia testified that Casper appeared to be coherent. He complained about being cold, asked for a cigarette, and inquired into the status of the female passenger in the truck with him at the time of his accident. Casper was able to walk without assistance.

Deputy Robinson interviewed Casper approximately 5-7 hours after he was apprehended. He testified that Casper spoke clearly and appeared to know what was going on. After being read his rights, Casper acknowledged that he understood his rights. His answers were coherent and consistent with facts known to the officer from his investigation. During the interview, Casper admitted stealing the truck. He also admitted breaking into a barn and stealing a trailer and two ATVs.

Casper was indicted on April 11, 2005. A suppression hearing was held on December 8, 2005. At the hearing, Casper testified that he did not remember much about

the interview with Deputy Robinson. He recounted his extensive drug use prior to his accident. He also remembered being cold, wanting a cigarette, and requesting a shower. He does not recall signing the waiver of rights. The trial court denied Casper's motion to suppress his confession and following his conditional guilty plea, he was sentenced to serve a total of 15 years in prison. This appeal followed.

Our standard of review of the trial court's decision on a motion to suppress evidence "requires that we first determine whether the trial court's findings of fact are supported by substantial evidence ." *Commonwealth v. Neal*, 84 S.W.3d 920, 923 (Ky.App. 2002). Substantial evidence is "evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men." *Owens-Corning Fiberglass Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998). If the findings of fact are supported by substantial evidence, then they are conclusive. See Kentucky Rules of Criminal Procedure (RCr) 9.78. Thus, in the absence of a substantial factual dispute, the voluntary nature of a confession may be determined by a reviewing court. *Mills v. Commonwealth*, 996 S.W.2d 473, 481 (Ky. 1999), citing *Jackson v. Denno*, 378 U.S. 368, 391-92, 84 S.Ct. 1774, 1789, 12 L.Ed.2d 908 (1964). We observe that there is no substantial factual dispute here, and the issue is whether the trial court correctly applied the relevant law.

A confession's voluntariness is assessed based on the totality of the circumstances surrounding the making of the confession. *Mills*, 996 S.W.2d at 481. A confession is considered voluntary unless, under the totality of the circumstances, a defendant's "will has been overborne and his capacity for self-determination critically impaired." *Soto v. Commonwealth*, 139 S.W.3d 827, 847 (Ky. 2004), quoting

Schneckloth v. Bustamonte, 412 U.S. 218, 225, 93 S.Ct. 2041, 2047, 36 L.Ed.2d 854 (1973). Casper argues that the trial court erred in denying the motion to suppress, on grounds that the confession was the product of coercion and not made voluntarily in light of his recent drug and alcohol consumption and his suffering from hypothermia. But having examined the record of the suppression hearing and applicable case law on these points, we find no reason to disturb the trial court's ruling.

The court was required to consider the issue of intoxication as it affected the reliability and voluntariness of the statement. *Mills*, 996 S.W.2d at 481; *Soto*, 139 S.W.3d at 848. The "basic question" is whether the accused was in sufficient possession of his faculties to give a reliable statement. *Soto*, 139 S.W.3d at 848, *citing Britt v. Commonwealth*, 512 S.W.2d 496 (Ky. 1974). Self-induced intoxication is not enough to require exclusion without a showing that the defendant was intoxicated "to the degree of mania" or of being unable to understand the meaning of his statements. *Halvorsen v. Commonwealth*, 730 S.W.2d 921, 927 (Ky. 1986).

In the case at bar, there was no indication that Casper was not in sufficient possession of his faculties when giving the statement. Casper was not found to have been intoxicated either to the point of mania or of being unable to understand what he was saying. His answers were responsive to the detective's questions. His responses were coherent and elucidatory. The fact that Casper had been on a multi-day drug binge does not mean that he could not talk rationally with the detective.

Regarding Casper's claim of physical and mental vulnerability due to suffering from hypothermia, he fails to demonstrate that the trial court's ruling was clearly erroneous. While the physical and emotional state of the accused can and should

be taken into account when weighing the totality of the circumstances, Casper has not demonstrated a level of physical and emotional stress that would render him unable to make a voluntary decision. That the detective did not get Casper a blanket or provide him with the cigarette that he kept requesting is hardly “duress by any definition” as Casper argues. Far from requiring that the accused be in an ideal physical condition, our courts have often held that statements from an accused suffering some injury or illness at the time were voluntary so long as the accused was in "sufficient possession of his faculties" to make a reliable statement. *Mills*, 996 S.W.2d at 481.

We conclude that under the totality of the circumstances the confession should not have been suppressed. Appellee was not found to have been too intoxicated or physically exhausted to have given a reliable statement. There was no evidence of police coercion or duress, even taking into consideration Casper's physical state and alcohol and drug consumption.

For the foregoing reasons the judgment of the Meade Circuit Court is affirmed.

ALL CONCUR.

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