RENDERED: AUGUST 24, 2007; 10:00 A.M.
NOT TO BE PUBLISHED

OPINION OF JUNE 22, 2007, WITHDRAWN

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001128-MR

RICHARD PARRENT — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY PAYNE, JUDGE
INDICTMENT NO. 05-CR-00939

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, MOORE, AND TAYLOR, JUDGES.

DIXON, JUDGE: Appellant, Richard Parrent, entered a conditional guilty plea in the Fayette Circuit Court to second-degree burglary and being a first-degree persistent felony offender and was sentenced to a total of ten years' imprisonment. He now appeals from the trial court's denial of his motion to suppress his statements to police. Finding no error, we affirm.

On the evening of May 16, 2005, Officer Trevor Wilkins responded to a radio call that a burglary was in progress in the Porter Place area of Lexington. Upon arriving at the scene, Officer Wilkins observed Appellant and a female, Patricia Ann Napier,[1] already in custody. Officer Wilkins spoke with the victim, Anthony Sutherland, who stated that he had arrived home to find damage to his front door. Sutherland then noticed Appellant and Napier walking down the street carrying items that Sutherland recognized as belonging to him. When he tried to stop Appellant and Napier, they dropped the items and ran. Sutherland thereafter chased them for a couple of blocks before catching them in a field. Police were summoned, and the pair were arrested. Appellant had two prescription drug bottles in his pocket belonging to Sutherland. Police also discovered Sutherland's watch in Napier's possession.

Officers transported Appellant to the Fayette County Detention Center where Officer Wilkins advised him of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). After waiving such rights, Appellant confessed to the burglary, stating that he knew Sutherland and thought he might have something of value in his house. Appellant further commented that he was "ignorant," and that he "should not have done it." Appellant was subsequently indicted on the instant charges.

On February 9, 2006, the trial court conducted a hearing on Appellant's motion to suppress his statements to police on the grounds that he was too intoxicated to

[1] The co-defendant is referred to as Janice Napier by the parties; however, her correct name is Patricia Ann Napier.

understand his *Miranda* rights. During the hearing, Officer Wilkins testified that Appellant was coherent during the questioning and that he observed absolutely nothing to indicate that Appellant had been drinking. Officer Wilkins opined that Appellant understood his rights when read to him and that he did not request an attorney.

Appellant testified that he and Napier had consumed a twelve-pack of beer during the day of the burglary. He admitted that Officer Wilkins had explained his *Miranda* rights to him before questioning began but claimed that because he was intoxicated, he did not truly understand that he did not have to talk to the officer, that an attorney could be present, or that his statements could be used against him in court. Appellant contended that his only reason for speaking to the police was to try to get Napier out of trouble.

Following the trial court's denial of his motion to suppress, Appellant entered a conditional guilty plea to one count of second-degree burglary and to being a first-degree persistent felony. He was sentenced to a total of ten years' imprisonment, and this appeal ensued.

Appellant's sole claim on appeal is that he did not understand the *Miranda* rights given to him due to his level of intoxication. Appellant relies on *Schneckloth v. Bustamonte*, 412 U.S. 218, 225-26, 93 S.Ct. 2041, 2047, 36 L.Ed.2d 854 (1973), for the proposition that if a defendant's "will has been overborne and his capacity for self-determination critically impaired, the use of [the] confession offends due process."

Appellant concedes that there was no overtly coercive activity on the part of Officer Wilkins. However, quoting *Hill v. Anderson*, 300 F.3d 679, 682 (6th Cir. 2002), he points out that "[w]hen a suspect suffers from some mental incapacity, such as intoxication . . . and the incapacity is known to interrogating officers, a 'lesser quantum of coercion' is necessary to call a confession in question." (Citation omitted).

We find Appellant's reliance on *Hill, supra,* misplaced. It is evident from Officer Wilkins' testimony that he had no indication that Appellant was intoxicated at the time of his confession. In fact, contrary to Appellant's assertion that he was also indicted for public intoxication, the record indicates that only Napier was charged with such offense. Thus, other than Appellant's own self-serving testimony during the suppression hearing, there was absolutely no evidence presented to demonstrate that Appellant was intoxicated or in any manner impaired at the time his rights were read to him. We further find Appellant's argument that he did not understand his rights to be somewhat disingenuous in light of the fact that he was also charged with being a first-degree persistent felony offender. Clearly, Appellant had knowledge of the criminal system and his rights thereunder.

Rulings on evidentiary matters are within the trial court's discretion and shall not be disturbed on appeal absent an abuse of that discretion. *Commonwealth v. English*, 993 S.W.2d 941 (Ky. 1991). In *Bailey v. Commonwealth*, 194 S.W.3d 296, 300 (Ky. 2006), our Supreme Court held that, "[t]he Commonwealth bears the burden of establishing the voluntariness of a confession by a preponderance of the evidence. *Tabor*

v. Commonwealth, 613 S.W.2d 133, 134 (Ky. 1981). If supported by substantial evidence, the trial court's conclusion regarding the voluntariness of a confession is conclusive. *Henson v. Commonwealth*, 20 S.W.3d 466, 469 (Ky. 1999)." And "deference to the trial court's factual findings and ruling in such matters as evidentiary questions is required because the trial court is in the best position to evaluate the evidence." *Miller v. Eldridge*, 146 S.W.3d 909, 917 (Ky. 2004).

Based upon the evidence presented during the suppression hearing, we cannot conclude that the trial court erred in refusing to suppress Appellant's confession. There simply was no evidence that Appellant was intoxicated or that his confession was rendered involuntary.

The judgment and sentence of the Fayette Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gene Lewter
Lexington, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Perry T. Ryan
Assistant Attorney General
Frankfort, Kentucky