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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-001713-MR

BRADLEY TYSON MORRIS — APPELLANT

v.

APPEAL FROM GRAVES CIRCUIT COURT
HONORABLE TIMOTHY C. STARK, JUDGE
ACTION NO. 05-CR-00016

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION AFFIRMING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; WINE, JUDGE; PAISLEY,[1] SENIOR JUDGE.

PAISLEY, SENIOR JUDGE: Bradley Tyson Morris appeals from an order of the Graves Circuit Court which denied his motion to withdraw his plea of guilty to assault in the second degree. We find no abuse of discretion on the part of the circuit court and therefore affirm the order.

Morris was indicted as a result of a shooting incident that occurred on January 14, 2005. The victim of the shooting was Charles Owens. According to a

[1] Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

witness who was inside Owens's home at the time of the shooting, Morris came to the door of the residence and asked for Owens. Morris then entered the bedroom where Owens was sleeping and shot him in the leg. The two men began to struggle but the witness intervened and convinced Morris to put down his gun. Morris was arrested and charged with assault in the first degree.

On April 25, 2005, Morris entered a plea of guilty to assault in the second degree pursuant to a plea agreement with the Commonwealth. About two months later, prior to his final sentencing, Morris attempted to withdraw his guilty plea. His defense counsel stated that he had been contacted by the victim, Owens, who now claimed that Morris had not intended to shoot him, and that the shooting had been an accident. Defense counsel produced a signed, handwritten statement from Owens, which stated as follows:

> The incident that occurred on Jan. 14, 2005 was an accident. Brad Morris came into my resident [sic] showed me the gun he found, the gun went off on accident. I did not know I was hit until he left my apartment. I would appreciate if the court would drop it to a fourth degree assault [sic] or drop the charge, and for he (Brad Morris) could pay $120.00 a month to me (Charles Owens) to help me with the bills. If possible I will or would testify on Mr. Morris['s] behalf.

The circuit court denied Morris's motion because it determined that his plea had been knowingly, intelligently, and voluntarily entered. The court also expressed doubts as to the reliability of Owens's statement, noting that

> the purported statement of the victim is just that. It is a purported statement of the victim who was not present before the Court to verify that this was his memorandum and that the

> event was an accident. The Court further notes that there appears to be a mercenary string tied to the memorandum in that $120.00 a month for some indeterminate period of time is requested. If the Court is going to note documents that appear in the file without testimony, it notes that on the Citation it is stated that Henry Hayes [the witness] told the officer he heard the Defendant say to Mr. Morris, "why did you take my dope and money" and then Mr. Hayes heard a gunshot. The synopsis of the investigation states that Officer Saxon spoke with Charles (the victim, Charles Owens) and he stated that Bradley Morris came into his room, said where is my dope and money, and shot him while he was in his bed. Therefore, the handwritten statement purported to be that of Charles Owens is somewhat suspect.

On appeal, Morris has urged us to apply standards analogous to reviewing the denial of motion for a new trial on the basis of newly-discovered evidence. But the effect of a guilty plea forecloses such an approach, because a defendant who has validly entered such a plea is barred from thereafter challenging the sufficiency of the evidence.

> Entry of a voluntary, intelligent plea of guilty has long been held by Kentucky Courts to preclude a post-judgment challenge to the sufficiency of the evidence. . . . The reasoning behind such a conclusion is obvious. **A defendant who elects to unconditionally plead guilty admits the factual accuracy of the various elements of the offenses with which he is charged**. By such an admission, a convicted appellant forfeits the right to protest at some later date that the state could not have proven that he committed the crimes to which he pled guilty. To permit a convicted defendant to do so would result in a double benefit in that defendants who elect to plead guilty would receive the benefit of the plea bargain which ordinarily precedes such a plea along with the advantage of later challenging the sentence resulting from the plea on grounds normally arising in the very trial which defendant elected to forego.
>
> As the United States Supreme Court has explained, "··· a counseled plea of guilty is an admission of factual guilt so

> reliable that, where voluntary and intelligent it *quite validly* removes the issue of factual guilt from the case." *Menna v. New York*, 423 U.S. 61, 96 S.Ct. 241, 242 n. 2, 46 L.Ed.2d 195 (1975) (original emphasis).

Taylor v. Commonwealth, 724 S.W.2d 223, 225 (Ky.App. 1986)(emphasis supplied).

An appellant may only have his guilty plea reviewed on the grounds that the plea was involuntarily made or made without understanding the nature of the charge. *See Lucas v. Commonwealth*, 465 S.W.2d 267 (Ky. 1971). If the trial court determines that the guilty plea was entered voluntarily, then it may grant or deny the motion to withdraw the plea at its discretion. *See Rigdon v. Commonwealth*, 144 S.W.3d 283, 288 (Ky.App. 2004). "The trial court's determination on whether the plea was voluntarily entered is reviewed under the clearly erroneous standard." *Id.*

In addition to signing a form entitled "Commonwealth's Offer on a Plea of Guilty" which fully described the terms of the plea bargain, Owens also signed a "Motion to Enter Guilty Plea." This form stated that he had reviewed the indictment, told his attorney the facts of the case, and that he understood the charges against him and any possible defenses to the charges. The form also stated that his plea was freely, knowingly, intelligently and voluntarily made. Morris acknowledged before the circuit court that he had signed the document. The trial court accepted the plea after conducting a colloquy fully in accordance with the standards established in *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct. 1709, 1711, 23, L.Ed.2d 274 (1969).

Morris has offered no affirmative evidence that his plea was invalid, except to state that the plea was not "intelligently" entered because the newly-discovered

evidence (in the form of Owens's statement) has put at issue whether Morris had the requisite mens rea to commit assault in the second degree. But Morris admitted to having the requisite mens rea when he entered his guilty plea; he was not convicted on the basis of flawed, false, or insufficient testimony. As the circuit court aptly explained,

> the requirement of an intelligent plea does not relate to a perfect knowledge of the facts that might be shown at trial. . . . What a prospective witness says he might have testified to at the trial may vary from day to day. That is too ephemeral a standard to use to determine whether the Defendant's plea was knowing and intelligent.

The circuit court did not err in determining that the plea was voluntarily entered, and there was no abuse of discretion in its denial of Morris's motion. The order of the Graves Circuit Court is hereby affirmed.

ALL CONCUR.

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