

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-001812-MR

DERLQUAN COVETTE PRICE

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE BARRY WILLETT, JUDGE  
ACTION NO. 01-CR-000398

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
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BEFORE: COMBS and DYCHE, Judges; and JOHN POTTER, Special Judge.<sup>1</sup>

COMBS, JUDGE: Following his entry of a conditional guilty plea, Derlquan Covette Price (Price) appeals from an order of the Jefferson Circuit Court denying his motion to suppress statements made to police after he was taken into custody. Arguing that his statements resulted from coercive misrepresentations of the police, he contends that they could not have been made voluntarily and that failure of the trial court to grant his motion to suppress violated his rights pursuant to the Fourth

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<sup>1</sup>Senior Status Judge John Potter sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

Amendment of the United States Constitution and Section 10 of the Constitution of Kentucky.

Price's appellate counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed. 493 (1967), in which she states that there appears to be no meritorious basis for the appeal. Price did not file a *pro se* brief. Upon reviewing the record, we agree that this appeal has no merit. Thus, we affirm the trial court's judgment.

On February 14, 2001, Price was indicted for three counts of robbery in the first degree (KRS<sup>2</sup> 515.020 and 502.020) and one count of theft by unlawful taking over \$300 (KRS 514.030 and 502.020). The charges resulted from evidence that on December 30, 2000, he and co-defendant, Randall Scott Curry, entered Karina's Jewelry store armed with a handgun, robbed the business of more than \$140,000 in jewelry, and robbed the individual employees of the store. The car which they were driving had previously been stolen.

On May 16, 2001, Price filed a motion to suppress all evidence obtained during the police investigation – including statements he made to the police. On June 4, 2001, an evidentiary hearing was held on the motion, which the court denied on June 7, 2001. Price subsequently entered a conditional guilty plea to three counts of robbery in the first degree and theft by unlawful taking over \$300. The Commonwealth recommended a sentence of eighteen years on each count of robbery and five years on the theft count – all to run concurrently. Under the

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<sup>2</sup>Kentucky Revised Statutes.

terms of his plea agreement and pursuant to RCr<sup>3</sup> 8.09, Price reserved his right to appeal the denial of his motion to suppress. On July 26, 2001, the circuit court entered final judgment and sentencing pursuant to the plea agreement. This appeal followed.

Price contends that he made statements to the police about the jewelry without having been advised of his Miranda rights. He maintains that he did not voluntarily and intelligently waive his rights because of the police misrepresentations to him – including an alleged assurance that no criminal charges would be filed against him.

On January 2, 2001, Randall Scott Curry (Curry) was arrested at the scene of a separate jewelry store robbery and provided a statement implicating Price in the robbery that had occurred only days earlier at Karina's Jewelry Store. He gave the police a general address for an apartment building where he believed that Price lived. On January 3, 2001, Detective Duncan and three other detectives went to the apartment building and found an apartment occupied by Price's father, William Henry Price; Price's girlfriend was also present.

The detectives learned that Price was not there and that he did not live there -- although visiting often and sleeping on the couch. The police informed the father and girlfriend that they were investigating a robbery and that they had information that led them to believe that Price was in possession of the stolen jewelry. They confiscated jewelry from

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<sup>3</sup>Kentucky Rules of Criminal Procedure.

Price's girlfriend, which she stated had been given to her by Price on New Year's Eve and which she had suspected was stolen. When Price's father gave the detectives permission to search the apartment, they found more evidence linking Price to the robbery – including sweatpants matching the description given by one of the employees of the store, a price tag, and a bullet. The police did not collect the evidence at this point so as not to alert Price's father and girlfriend that they suspected Price in the robbery. Emphasizing that he was not saying that Price was involved in the robbery, Detective Duncan left a message to have Price call him when he returned about the jewelry he was believed to be holding.

On January 4, 2001, Price contacted Duncan and asked for a meeting. When Duncan and Detective Wilfong arrived, Price contends that the detectives did not then advise him of his rights. At the suppression hearing, Duncan and Wilfong testified that Price was advised of his rights and that he waived them. However, no written waiver was signed at that time. Price first admitted that Curry had given him the jewelry, but he denied knowing what happened to the rest of the jewelry. Detective Duncan emphasized that he was not saying Price was involved in the actual holdup; Price then volunteered to show where he was holding the jewelry. Price was placed under arrest and was put in handcuffs before leaving the apartment.

Price initially took the police to a location where no jewelry was found. He next directed the detectives to the apartment of Yashica Knight (Knight). After stating that she was

not going to get into any trouble for Price or Curry, Knight showed the detectives several thousand dollars' worth of jewelry hidden in a sock. Knight told police that when she came home on December 30, 2000, she had found Curry, Price, and her boyfriend, Thomas Taylor, with hundreds of pieces of jewelry spread out on the bed; Price and Curry had said they had robbed a jewelry store. Knight, Curry, Price, and Taylor each took some of the jewelry; she was instructed to hide the rest. Thomas Taylor recounted the same facts. He added that Price said he had gone into the jewelry store to case it and later went back with Curry to rob it. The police recovered the stolen property and proceeded to headquarters with Price.

Unaware of the statements of Knight and Taylor to the police, Price continued to deny his involvement in the robbery as the police questioned him en route to the police station. Detective Duncan told him that store employees had identified him as the person who had come into the store before the robbery; Price admitted only that he had accompanied Curry -- still denying actual participation in the robbery itself. Upon arrival at police headquarters, the police read Price his rights, and he signed a waiver. A taped confession followed in which he admitted that he and Curry had committed the holdup and that he and Curry had stolen the getaway vehicle.

In reviewing the decision of a circuit court on a suppression motion following a hearing, our standard of review is twofold. First, we review the trial court's factual findings for clear error; next, we examine its application of the law *de novo*.

Findings of fact of a trial court are conclusive if they are supported by substantial evidence. RCr 9.78; Adcock v. Commonwealth, Ky., 967 S.W.2d 6, 8 (1998). In this case, the court found that Miranda warnings were given both at the time Price was taken into custody and prior to his tape-recorded statement. It also found that Price knowingly, intelligently, and voluntarily waived his right to counsel when he initiated the contact with the detectives and agreed to meet with them to discuss his involvement in the robbery. It specifically found that there was no credible proof that the detectives made any intentionally false or misleading statements that would rise to the level of compulsion so as to render the confession forced or involuntary. Substantial evidence in the record (including the police report, the testimony of the detectives, the waiver-of-rights form, and the taped confession) supported these findings. We find no clear error under the first part of our analysis.

The second aspect of our review involves a *de novo* examination to determine whether the court's decision was correct as a matter of law. Stewart v. Commonwealth, Ky., 44 S.W.3d 376, 380 (2000). To determine whether a confession was the result of coercion, one must look at the totality of the circumstances to assess whether police obtained evidence by bullying the defendant with overbearing, credible threats. Henson v. Commonwealth, Ky., 20 S.W.3d 466 (2000), citing Arizona v. Fulminante, 499 U.S. 279, 286-88, 111 S.Ct. 1246, 1252-53, 113 L.Ed.2d 302 (1991).

Price makes no claim that any threats were made. However, he argues that the police made numerous misrepresent-

ations to him and that, therefore, he believed that they were only interested in recovering the jewelry. He testified that he believed that if he led the police to the jewelry, he would be returned home in an hour. He asks this court to consider his mistaken impression of police intent as a tool that coerced his confession.

The use of a ruse or strategic deception does not render a confession involuntary as long as the ploy does not rise to the level of compulsion or coercion. Springer v. Commonwealth, Ky., 998 S.W.2d 439, 447 (1999), citing Illinois v. Perkins, 496 U.S. 292, 297, 110 S.Ct. 2394, 2397, 110 L.Ed.2d 243 (1990). Detective Duncan admitted to making misrepresentations to Price as to what the police actually knew about the extent of his involvement in the robbery. However, Price's taped confession and waiver supported Detective Duncan's testimony that no promises were made to Price. The strategic deception of the police did not remotely equate with compulsion or coercion. We conclude, therefore, that Price's statements to the police were voluntary.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

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