

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002363-MR

TIMOTHY MARTEVES TAYLOR

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 02-CR-00778

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, COMBS, and DYCHE, Judges.

COMBS, JUDGE. Appellant Timothy Marteves Taylor entered a conditional plea of guilty to one felony count of trafficking in a controlled substance (cocaine) and possession of marijuana. On appeal, he contends that the trial court erred by overruling his motion to suppress statements that he made to the police and the drug evidence found on his person. We affirm.

On May 30, 2002, Detectives Hart, Schnelle, and Smoot received information from a confidential source that the appellant was in possession of crack cocaine. When the officers

approached Taylor, he began walking away. They then moved him up against a nearby building and handcuffed him. Detective Hart testified at trial that the officers had so restrained him because they feared that he was a flight risk. After handcuffing Taylor, the officers advised him that he was not under arrest. However, they proceeded to relate to him the informant's statement that he was trafficking in cocaine. At that point, Taylor voluntarily admitted to the officers that he had cocaine and marijuana in his pockets. Detective Hart then placed him under arrest, searched him, and found the cocaine and marijuana. After Taylor was formally arrested, he was read his *Miranda* rights, after which time he refused to answer any more questions. Miranda v. Arizona, 384 U.S. 436, 479, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

On July 29, 2002, appellant was indicted by the Fayette County Grand Jury on one count of trafficking in a controlled substance and on one count of possession of marijuana. He filed a motion to suppress the evidence, and a hearing was held on September 9, 2002. The court overruled his motion to suppress both the statements that he made to the police and the drugs that were found on his person. Taylor then entered a conditional guilty plea and was sentenced to five years in prison.

Taylor argues that the interview conducted by the detectives constituted a custodial interrogation, thus triggering the duty of the police to advise him of his rights. He relies upon Rhode Island v. Innis, 446 U.S. 291, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980). In Innis, the Court defined *interrogation* as any words or actions on the part of the police (other than those normally incident to arrest and a taking into custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. Thus, Taylor believes that custodial interrogation had occurred prior to his arrest because the police related the informant's statement to him.

Following the suppression hearing, the trial court determined that no interrogation had taken place, holding that the police had had a legitimate reason for initiating the contact with Taylor based upon the informant's tip. Furthermore, because Taylor had attempted to flee from the police, the court agreed that he had been properly handcuffed for his own protection and for the sake of police safety as well as to prevent destruction of evidence. (Videotape 09/20/02, 15:20:42-15:21:24). Formal warnings are not required unless there is a custodial interrogation. Miranda, supra. Although he was obviously not free to leave, he was not undergoing formal interrogation. He had been advised that he was not under arrest

before he freely volunteered the information contained in the statements that he later sought to suppress.

Our standard of review of a decision of the circuit court on a suppression motion following a hearing is twofold. First, the factual findings of the circuit court are conclusive if they are supported by substantial evidence. RCr 9.78; Commonwealth v. Whitmore, Ky., 92 S.W.3d 76, 79 (2002). Second, when the findings of fact are supported by substantial evidence, the question then becomes whether the trial court correctly applied the rule of law to the established facts. Whitmore, 92 S.W.3d at 79.

Our review of the videotapes persuades us that the court correctly found that no custodial interrogation had taken place at the time that Taylor uttered the statements. Since Taylor voluntarily affirmed the information reported by the informant prior to being placed under arrest, no Miranda warning was required. Therefore, suppression of the evidence was not required.

The judgment of the Fayette Circuit Court is affirmed.

BUCKINGHAM, JUDGE, CONCURS.

DYCHE, JUDGE, DISSENTS.

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