

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002249-MR

WILLIE G. MAFFETT

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE STEPHEN A. HAYDEN, JUDGE
INDICTMENT NO. 04-CR-00286

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING IN PART, REVERSING IN PART,
AND REMANDING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND HENRY, JUDGES.

DYCHE, JUDGE: On June 17, 2004, Mickea Goatee's 1994 Buick LeSabre automobile was stolen from outside her apartment in Vandenberg County, Indiana. An officer came to the scene and took a statement, but apparently no report was made at that time. A few days later, Goatee spotted her Buick out on the roadway and again called the police, who filed a formal theft report.

On June 28, 2004, the Buick was pulled over by police in Henderson, Kentucky, following the report of a theft at Walmart. Appellant, Willie Maffett, was driving the car with two associates as passengers. Maffett was taken into custody because of a suspended driver's license and an outstanding warrant for his arrest. He was later charged with receiving stolen property valued over \$300 and operating a motor vehicle on a suspended license. Maffett was convicted of both charges as well as being a first-degree persistent felony offender by a jury in Henderson Circuit Court. He was sentenced to fifteen years' imprisonment. This appeal follows.

First, Maffett argues that he was entitled to a directed verdict on the receiving stolen property charge because the Commonwealth failed to prove the value of the car and failed to prove that he knew or had reason to know the car was stolen.

The standard for a directed verdict is well settled. In Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky. 1991), the Kentucky Supreme Court held that a trial court "must draw all fair and reasonable inferences in favor of the Commonwealth." A directed verdict is inappropriate if there is sufficient evidence to convince a reasonable juror of the defendant's guilt. Id. The trial court is required to assume the veracity of the Commonwealth's evidence while reserving questions of weight and credibility to the jury. Id. Upon appellate review,

the defendant must show that it was clearly unreasonable for the jury to find guilt based on the evidence as a whole. Id.

We find that the proof of value issue has been waived because of Maffett's acquiescence to the jury instructions, which did not give the jury an option to find that the vehicle was valued at less than three hundred dollars. Embry v. Commonwealth, 492 S.W.2d 929, 932 (Ky. 1973). As to the knowledge issue, we find ample evidence in the record sufficient to convince a reasonable juror of guilt. Accordingly, there was no error.

Next, Maffett argues that the trial court erred by allowing him to proceed as co-counsel in this case without conducting a hearing pursuant to Faretta v. California, 422 U.S. 806 (1975).

In Kentucky, a trial court is under an affirmative duty to hold a *Faretta* hearing when an accused attempts to make an absolute or limited waiver of the right to counsel. Hill v. Commonwealth, 125 S.W.3d 221, 226 (Ky. 2004). The trial court has three *Faretta* duties. Id. First, the trial court must conduct a hearing in which the defendant testifies as to whether the waiver is voluntary, knowing, and intelligent. Id. Second, the trial court must warn the defendant in the hearing of the benefits relinquished and the perils arising from the waiver of counsel. Id. Finally, the trial court must make a finding on

the record that the waiver is voluntary, knowing, and intelligent. Id. The failure to comply with these requirements constitutes "structural" error to which harmless error analysis is inapplicable. Id. at 228.

Maffett invoked his right to self-representation at arraignment. The trial court appointed standby counsel to assist him with the subpoenaing of out of state witnesses. At one pretrial conference, Maffett accepted the appointment of counsel to represent him; however, counsel was permitted to withdraw one week later. Thereafter another public defender was appointed to assist Maffett as co-counsel. Maffett presented an opening statement to the jury at trial and his counsel made objections and examined the witnesses.

Although the trial court demonstrated an abundance of patience and solicitude for the preservation of Maffett's rights, the mandates of Hill, supra, were not satisfied. There was no *Faretta* hearing and no finding on the record that Maffett's waiver was voluntary, knowing, and intelligent. Although we are reluctant to reward Maffett's calculated, erratic antics, we are constrained by precedent to remand this case for a new trial despite the fact that Maffett's words and behavior in the proceedings below clearly evinced his voluntary, knowing, and intelligent waiver.

Finally, Maffett argues that the trial court erred by

allowing into evidence letters he had written to Mickea Goatee and his cousin, Chuck Ray. Maffett argues that the letters should have been excluded because of inadequate proof of chain of custody and that the letter to Chuck was unduly prejudicial.

Maffett does not dispute the authenticity of the letters. In fact, he admitted under oath at a motion in limine to writing the letters. Nor has Maffett made any allegation of tampering or alteration at any time.

Items of physical evidence which are clearly identifiable and distinguishable do not require proof of chain of custody under KRE 901(a). Rabovsky v. Commonwealth, 973 S.W.2d 6, 8 (Ky. 1998). Further, a perfect chain of custody need not be established so long as there is evidence that there is a reasonable probability that the evidence in question has not been tampered with or altered. Id. There was no error in the introduction of either letter because of chain of custody.

Finally, Maffett argues that the introduction of his letter to Ray was error because its probative value was outweighed by its prejudicial effect. In the letter to Ray, Maffett encouraged him to persuade Goatee not to press charges against Maffett and to convince her of Maffett's version of events.

We find that this was competent evidence of an attempt to induce a witness to swear falsely and tended to show guilt. Foley v. Commonwealth, 942 S.W.2d 876, 887 (Ky. 1996).

The judgment of the Henderson Circuit Court is reversed and remanded for a new trial.

ALL CONCUR.

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