

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001087-MR

JOE GLENN BLAKE

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE BRIAN WIGGINS, JUDGE
ACTION NO. 13-CR-00264

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; STUMBO AND TAYLOR, JUDGES.

ACREE, CHIEF JUDGE: Joe Blake appeals the Muhlenberg Circuit Court's March 21, 2014 opinion and order denying his motion to suppress evidence. We conclude that Blake's intoxication was not to such a degree as to render his confession to police involuntarily, unknowingly, and unwillingly made. Therefore, we affirm.

I. Facts and Procedure

The Muhlenberg Grand Jury indicted Blake, a 64 year-old man, on two counts of third-degree rape, two counts of third-degree sodomy, and two counts of first-degree sexual abuse. Blake moved to suppress his confession to police on the ground that he lacked the mental capacity and competency to render a reliable confession because, at the time he gave his statement, he was heavily intoxicated by means of excessive prescription medication. The trial court conducted an evidentiary hearing on March 10, 2014, which revealed the following facts.

On the morning of September 26, 2013, Blake visited his daughter-in-law, Amy Blake. Amy observed Blake ingest two Lortab and two Xanax pills upon his arrival between 8:00 am and 9:00 am, and consume another two Lortab and two Xanax pills between 12:00 pm and 12:30 pm. She thought this unusual.

At Blake's request, Blake and Amy traveled to Blake's house to retrieve his truck. Blake then drove back to Amy's house; Amy followed Blake in her vehicle. Amy described Blake's driving as "pretty good" and noted he did not deviate out of his driving lane or off the road.

Upon returning to Amy's residence, Blake requested privacy to make a phone call. Blake telephoned Curtis McGehee, the Muhlenberg County Sheriff. Blake asked Sheriff McGehee if there was a warrant out for his arrest or if the police were investigating a case against him involving a juvenile. Sheriff McGehee knew of none, but promised to delve further into the possibility. Sheriff

McGehee called Deputy Sheriff Bob Jenkins, who informed Sheriff McGehee that officers of the Kentucky State Police were “working a case” involving Blake and a juvenile. The sheriff relayed this information to Blake. Blake, *sua sponte* and without prompting from Sheriff McGehee, informed the sheriff that things were being said about him that were untrue, and that he had tried to have sexual relations with a juvenile, but was unable to perform. Concerned, Sheriff McGehee notified the Cabinet for Health and Family Services.

While conversing with Blake, Sheriff McGehee did not ask him any questions or inform him of his *Miranda* rights. Blake freely offered all of the information relayed to Sheriff McGehee, and volunteered to be interviewed about the allegations. Sheriff McGehee testified that Blake never gave any indication that he was intoxicated or impaired.

After speaking with the sheriff, Blake readied himself to leave. Amy testified that Blake was talking very slowly, slurring his words, and stumbling. She thought Blake was impaired,¹ and cautioned him not to drive. Blake told Amy he needed to talk to a detective. Amy agreed to transport him to the interview location. While she was getting ready, Blake slipped out. He drove himself to the Cabinet’s office in Greenville, Kentucky, where an interview was scheduled to occur with a Cabinet worker and Kentucky State Police Detective Scott Smith.

Detective Smith opened the interview by asking Blake several preliminary questions, such as his name, address, phone number, date of birth,

¹ Amy is employed as a hairdresser and admitted she does not possess specialized training or knowledge which would allow her to gauge a person’s level of intoxication.

social security number, height, weight, hair and eye color, and occupation. Blake answered each question correctly and with apparent ease. Detective Smith then read Blake his *Miranda* rights. Blake affirmed he understood those rights, and asked several meaningful questions concerning them. Notably, Blake asked if “any statement I make today can be used against me?” Detective Smith replied, “Yes, it can.” Detective Smith reiterated that Blake was free to leave and was under no compulsion to give a statement. After pondering for a moment, Blake stated he was “going to man up” and agreed to talk to Detective Smith.² Blake reviewed, initialed, and signed a Waiver of Rights.

Detective Smith testified Blake was nervous and, at times, emotionally distraught. The detective attributed Blake’s reactions to the distressing interview topic and the death of Blake’s son. At one point, Blake quietly stated, “my mind is not working good.” Detective Smith testified he did not hear the comment. In any event, Detective Smith, who has specialized experience and training to determine if a person is impaired by drugs and/or alcohol, testified Blake did not display any signs of impairment before, during, or after the interview. The detective did not observe Blake slurring his speech, falling out of his chair, stumbling, or having problems walking or talking, and testified that Blake’s body movements were normal. Detective Smith explained that Lortabs and Xanax act as depressants, and their effect would have been readily

² Blake admitted to fondling a juvenile and attempting to have intercourse with her, but was unable to maintain an erection due to being intoxicated.

apparent at the beginning of the interview. The interview lasted a little over an hour. An audio recording of the interview was admitted into evidence.

Dr. William McGhee, Blake's family physician, testified on Blake's behalf. Dr. McGhee specializes in internal medicine, and had prescribed Blake Lortab and Xanax to combat physical pain and chronic anxiety, respectively. The doctor testified that ingesting an excess dosage of medication could have impaired Blake's memory, judgment, and understanding. Assuming Blake indeed ingested the amount of medication claimed, Dr. McGhee testified Blake's memory would have been clouded and Blake would not have been able to comprehend the questions posed by Detective Smith.

The trial court entered an opinion and order on March 21, 2014, denying Blake's suppression motion. The court found the evidence as a whole was insufficient to support Blake's claim that he was intoxicated or impaired to such a degree that his confession was not knowingly, willingly, and voluntarily given. Blake entered a conditional guilty plea to two counts of third-degree sodomy and two counts of first-degree sexual abuse, reserving his right to appeal the suppression issue. The trial court sentenced him to three and one-half years' imprisonment on each count, to be served concurrently. This appeal followed.

II. Standard of Review

Our review of a trial court's decision on a motion to suppress is two-fold. First, we must determine whether the trial court's findings of fact are supported by substantial evidence. If so, then they are conclusive. Kentucky

Rules of Criminal Procedure (RCr) 9.78. Second, we review *de novo* the trial court's application of the law to those facts. *Brown v. Commonwealth*, 416 S.W.3d 302, 307 (Ky. 2013).

III. Analysis

Blake argues the trial court erred when it denied his motion to suppress. He contends his statements to police should have been suppressed because he was so heavily intoxicated he was unable to understand the meaning of his statements or comprehend the questions asked, thus rendering his statements involuntarily made. Blake asserts there was ample evidence submitted at the evidentiary hearing illustrating his extreme degree of intoxication. Blake also faults the trial court for failing to consider Dr. McGee's testimony.

With respect to the latter claim, we are wholly convinced that the trial court was aware of Dr. McGee's testimony, having conducted the evidentiary hearing at which the doctor testified. By omitting reference to the doctor's testimony in its order, we surmise the trial court simply found the doctor's comments unpersuasive. Functioning as the fact finder, it was within the province of the trial court to gauge witness credibility and allocate the weight to be given the evidence. *Lindsey v. Commonwealth*, 306 S.W.3d 522, 528 (Ky. App. 2009). We see no error mandating reversal here.

We turn now to the heart of Blake's appeal: the voluntariness of his confession. "Generally speaking, no constitutional provision protects a drunken defendant from confessing to his crimes." *Smith v. Commonwealth*, 410 S.W.3d

160, 164 (Ky. 2013). It is certainly the right of every citizen, even an intoxicated one, to admit his failings. And, the fact of intoxication does not inescapably render a person incapable of offering a true account of his actions or “disable him from comprehending the intent of his admissions[.]” *Id.* (quoting *Peters v. Commonwealth*, 403 S.W.2d 686, 689 (Ky. 1966)). It is possible for an intoxicated person to know what he was saying when he said it. *Britt v. Commonwealth*, 512 S.W.2d 496, 500 (Ky. 1974).

With that said, it is universally accepted that the Due Process Clause of the Fourteenth Amendment forbids admission of involuntary confessions. *Schneckloth v. Bustamonte*, 412 U.S. 218, 225–26, 93 S.Ct. 2041, 2047, 36 L.Ed.2d 854 (1973); *Dye v. Commonwealth*, 411 S.W.3d 227, 232 (Ky. 2013). While intoxication does not deem a suspect’s statement to police inadmissible *per se*, the degree of intoxication is relevant to the voluntariness calculus under the police coercion and reliability rubrics. *Smith*, 410 S.W.3d at 164; *Peters*, 403 S.W.2d at 688 (“[P]roof that the accused was intoxicated at the time he confessed his guilt of crime will not, without more, bar the reception of the confession in evidence.” (citation omitted)); *United States v. Gaddy*, 532 F.3d 783, 788 (“[I]ntoxication and fatigue do not automatically render a confession involuntary.” (citation omitted)).

Intoxication renders a person more susceptible to subtle and overt coercive police tactics. *See Smith*, 410 S.W.3d at 164. Accordingly, “intoxication may become relevant because a ‘lesser quantum’ of police coercion is needed to

overcome the will of an intoxicated defendant.” *Id.* A confession achieved through coercive police conduct is reckoned involuntary and subject to suppression. *Jones v. Commonwealth*, 560 S.W.2d 810, 814 (Ky. 1977).

Police coercion is a non-issue in this case. Blake did not argue it before the trial court and raises it only peripherally on appeal. Perhaps more importantly, the record is devoid of any evidence suggesting police coercion. Blake willingly initiated contact with Sheriff McGehee, freely made statements to the sheriff pertaining to the allegations involving the juvenile, volunteered to be interviewed, traveled to the Cabinet’s office of his own accord, and was subsequently informed by Detective Smith that he was free to leave and under no obligation to make a statement. Detective Smith read Blake his *Miranda* rights, and competently answered Blake’s questions regarding those rights. Blake signed a waiver reflecting that he understood his *Miranda* rights and was consciously waiving them for the express purpose of the interview. Absent coercive police conduct, no confession may be suppressed for want of constitutional adherence. *Colorado v. Connelly*, 479 U.S. 157, 167, 107 S.Ct. 515, 522, 93 L.Ed.2d 473, 484 (1986).

A confession may also “be suppressed when the defendant was ‘intoxicated to the degree of mania’ or was hallucinating, functionally insane, or otherwise ‘unable to understand the meaning of his statements.’” *Smith*, 410 S.W.3d at 164 (quoting *Halvorsen v. Commonwealth*, 730 S.W.2d 921, 927 (Ky. 1986)). “The ‘basic question’ when reviewing the voluntariness of a confession

obtained from an intoxicated defendant ‘is whether the confessor was in sufficient possession of his faculties to give a reliable statement.’” *Soto v. Commonwealth*, 139 S.W.3d 827, 848 (Ky. 2004) (quoting *Britt*, 512 S.W.2d at 501). Blake argues his ingestion of excessive prescription medication disabled him to such a degree that he was unable to comprehend the questions asked of him by Detective Smith. He claims to retain no memory of the police interview.

There is nothing in the record to suggest that Blake suffered from a degree of intoxication serious enough to render his confession involuntary. We, like the trial court, listened to the police interview in its entirety. From our examination of the entire record, we cannot conclude that the trial court erred in its estimation of Blake’s testimony, *i.e.*, that Blake consistently conversed clearly, calmly, and coherently. He was cognizant enough to ask intelligent questions concerning his *Miranda* rights and described with clarity the factual circumstances necessitating the interview. He was articulate and not once did he slur his speech. Blake exhibited no manic behavior during the interview. There is no evidence he was hallucinating.

Detective Smith testified Blake was nervous and occasionally distraught, but at all times appeared lucid, displayed normal bodily movements, and exhibited no outward signs of intoxication. Blake was capable of driving home after the interview and did so; the inference to be drawn from those facts is that Detective Smith did not believe Blake to be under the influence to a degree that would have affected his ability to operate a motor vehicle.

Similarly, Sheriff McGehee testified he did not detect any impairment during his telephone conversations with Blake. The evidence as a whole supports the trial court's factual conclusion that Blake never surrendered possession of his faculties or was otherwise intoxicated to a degree of mania, hallucinations, or functional insanity. It follows that his statements were offered voluntarily, knowingly, and willing. We find the trial court's refusal to suppress his confession justified.

IV. Conclusion

We affirm the Muhlenberg Circuit Court's March 21, 2014 Opinion and Order denying Blake's motion to suppress his statements to police.

ALL CONCUR.

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