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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001638-DG

TRISTAN HALL

APPELLANT

ON DISCRETIONARY REVIEW FROM LAUREL CIRCUIT COURT
v. HONORABLE GREGORY A. LAY, JUDGE
ACTION NO. 16-XX-00006

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: COMBS, NICKELL AND K. THOMPSON, JUDGES.

NICKELL, JUDGE: On discretionary review, Tristan Hall seeks reversal of an appellate opinion of the Laurel Circuit Court affirming the Laurel District Court's judgment of conviction following entry of a conditional guilty plea to hindering

prosecution in the second degree¹ and contempt of court.² Following a careful review, we affirm.

On June 24, 2014, several officers from the Williamsburg Police Department came to Hall's residence to execute a search warrant. Officers also had arrest warrants for Hall and his girlfriend, Angela Reeves. Police Chief Wayne Bird was the first to approach the front door of the residence. Immediately after being greeted by a juvenile who opened the door, Chief Bird observed Hall walking toward him. It is undisputed Chief Bird asked Hall about Reeves' whereabouts, to which Hall responded he had not seen her in several months. Reeves was subsequently located hiding in a closet in the residence. Hall was charged with hindering prosecution based on the false statements he made to Chief Bird. The sole factual dispute is whether Hall was arrested and secured with handcuffs prior to being questioned regarding Reeves' location.

Although the case originated in Whitley District Court, subsequent events resulted in a transfer of venue to Laurel District Court in June of 2016. During the pendency of the matter, Hall filed no fewer than three motions asserting

¹ Kentucky Revised Statutes (KRS) 520.130, a Class A misdemeanor.

² KRS 432.280. The Commonwealth requested Hall be held in contempt for his direct and almost immediate violation of an order to cease contact with prosecutors and law enforcement officers regarding the instant matter. The same day the order was entered, Hall sent an email to the lead prosecutor in which he specifically discussed this case.

his right to a speedy trial and multiple motions seeking dismissal of the charges against him; all were denied.

Hall also filed a motion to suppress his statement to Chief Bird which formed the basis for the hindering prosecution charge.³ A hearing was conducted on February 2, 2015, at which Chief Bird was the sole witness. Chief Bird stated Hall was not under arrest and police were not seeking to arrest him until after Hall made the false statement regarding Reeves' whereabouts. The trial court denied the suppression motion upon concluding Hall was not in custody at the time Chief Bird asked the single question, thus negating the need to inform Hall of his *Miranda*⁴ rights.

On September 13, 2016, Hall filed a renewed suppression motion based on newly discovered evidence. In the renewed motion, Hall contended Chief Bird had testified before the grand jury regarding unrelated charges on the same day as the earlier suppression hearing. During that testimony, Chief Bird stated Hall was arrested immediately before being questioned about Reeves. Hall asserted this contradictory testimony established he was, in fact, in custody when

³ In his brief, Hall includes a citation to the record where he claims the motion can be located. However, the referenced document is a transcript of the suppression hearing which was included as an attachment to his statement of appeal to the Laurel Circuit Court. The motion to suppress does not appear in the certified record on appeal. Thus, we are unable to discern the precise grounds for suppression asserted by Hall.

⁴ *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

Chief Bird questioned him, thereby requiring the giving of a *Miranda* warning and the failure to do so required suppression of his statement. Following a hearing at which only argument from counsel was presented, the district court reaffirmed its previous ruling.

Shortly thereafter, Hall entered a conditional plea reserving the right to appeal. Pursuant to his agreement with the Commonwealth, Hall was sentenced to twelve months' imprisonment on the hindering prosecution charge and six months for contempt, to be served consecutively for a total of eighteen months. However, also pursuant to the plea agreement, the sentence was suspended and conditionally discharged for one year.

On appeal to the Laurel Circuit Court, Hall challenged denial of his suppression motion and the district court's failure to dismiss the charges for alleged violations of his right to a speedy trial. After reviewing the record, the circuit court concluded the district court's factual findings regarding suppression were supported by substantial evidence. Specifically, it found no error in the district court's conclusion Chief Bird's grand jury testimony was a summary of events intended for another purpose. In a lengthy analysis, the circuit court agreed with the district court's legal holding that Hall was not in custody nor under arrest at the time Chief Bird posed his single question. The circuit court concluded

Miranda warnings were unnecessary considering the totality of the circumstances and thus, no basis existed to suppress Hall's statement.

Further, the circuit court rejected Hall's assertion the trial court should have dismissed the charges against him for alleged violations of his right to a speedy trial. Although the length of delay facially appeared extraordinary, the circuit court set forth a detailed recitation of the factual and procedural causes for postponements and complications in the matter, concluding delays were chiefly attributable to Hall and many were acquiesced in or prompted by his own counsel. Discerning no substantial prejudice or impairment to the defense from any delay, the circuit court found no violation of Hall's speedy trial rights.

We granted discretionary review to determine whether the district court erred in denying the suppression motion and whether Hall's right to a speedy trial was violated. Discerning no error, we affirm the lower courts' rulings.

Our standard for appellate review of rulings on pretrial motions to suppress evidence remains unchanged despite the recent repeal of [Kentucky Rules of Criminal Procedure (RCr)] 9.78 and its reformulation under RCr 8.27. *Simpson v. Commonwealth*, 474 S.W.3d 544, 546-47 (Ky. 2015). We apply the same two-step process adopted in *Adcock v. Commonwealth*, 967 S.W.2d 6, 8 (Ky. 1998). First, we review the trial court's findings of fact, which are deemed to be conclusive, if they are supported by substantial evidence. Next, we review *de novo* the trial court's application of the law to the facts to determine whether its decision is correct as a matter of law.

Maloney v. Commonwealth, 489 S.W.3d 235, 237 (Ky. 2016). Substantial evidence is “evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable men.” *Kentucky State Racing Commission v. Fuller*, 481 S.W.2d 298, 308 (Ky. 1972).

The parties frame the issue on appeal as a challenge to the district court’s finding Hall was not in custody when Chief Bird questioned him. Hall contends Chief Bird’s contradictory testimony establishes he had been arrested prior to being interviewed. He contends the lower courts erred in ignoring the grand jury testimony which clearly showed he was under arrest and in handcuffs at the time the incriminating statement was made. Interestingly, Hall’s position ignores Chief Bird’s testimony during the suppression hearing. The Commonwealth maintains Chief Bird’s testimony before the grand jury was summary in nature, was not given in a dispositive proceeding such as the suppression hearing, and thus any contradictions are irrelevant. Additionally, the Commonwealth posits custody status is immaterial as the question posed by Chief Bird was unrelated to the arrest warrant he possessed for Hall or to any other current investigation.

Our review reveals Chief Bird’s conflicting testimony, while concerning, is not dispositive of the matter at bar.

In a trial without a jury, the findings of the trial court, if supported by sufficient evidence, cannot be set aside

unless they are found to be “clearly erroneous.”
[Kentucky Rules of Civil Procedure (CR)] 52.01;
Stafford v. Stafford, [618 S.W.2d 578 (Ky. App. 1981)].
This principle recognizes that the trial court had the
opportunity to judge the witnesses’ credibility.

R.C.R. v. Commonwealth, Cabinet for Human Resources, 988 S.W.2d 36, 39 (Ky. App. 1998). The clearly erroneous standard set forth in CR 52.01 is based on a review for clear and convincing evidence. *W.A. v. Cabinet for Health and Family Services, Commonwealth*, 275 S.W.3d 214, 220 (Ky. App. 2008). As this Court has previously stated, clear and convincing proof does not mean uncontradicted proof. *Id.* Rather, it is sufficient if there is proof of a “probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent-minded people.” *V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d 420, 423-24 (Ky. App. 1986) (quoting *Rowland v. Holt*, 253 Ky. 718, 70 S.W.2d 5, 9 (1934)).

Although the evidence presented was certainly controverted and Hall disagrees with the lower courts’ assessments, there was sufficient probative evidence to support the contested factual findings. Thus, no clear error exists. Nevertheless, the question of whether Hall was in custody when Chief Bird asked him about Reeves’ whereabouts is not the only issue bearing consideration for *Miranda* purposes.

Our review reveals Chief Bird's inquiry was not reasonably intended to elicit an incriminating response nor to further investigation into another crime. There simply was no interview or interrogation. Chief Bird was not seeking testimonial evidence when he made his simple inquiry. Hall's assertions to the contrary are without merit and we decline to extend the protections of *Miranda* to the extreme lengths Hall suggests. Taken to its logical conclusion, Hall's position would prohibit officers from asking even the most mundane of questions to anyone they came in contact with unless *Miranda* warnings were given first. We cannot countenance such a position.

Under the facts as presented, *Miranda* simply does not apply and there was no basis for suppressing Hall's statement. The simple question Chief Bird posed was unrelated to Hall's arrest warrant and he could in no way have believed such an inquiry would lead to any incriminating statements, as the district court concluded in denying the renewed suppression motion. The circumstances objectively indicate the primary purpose of the question was not "to establish or prove past events potentially relevant to later criminal prosecution." *Davis v. Washington*, 547 U.S. 813, 822, 126 S.Ct. 2266, 2274, 165 L.Ed.2d 224 (2006). An informal, neutral, and detached inquiry by a law enforcement officer does not equate to a criminal interview or interrogation requiring *Miranda* warnings. Chief Bird was not attempting to establish facts of a past crime to identify or provide

evidence to convict Hall of any such illicit conduct. He was merely trying to gather information about the scene and the presence of other persons potentially in the home, including one upon whom he wished to serve an arrest warrant. Regardless of Hall's custody status, the nature of the inquiry was not of the sort intended to be covered by the protections of *Miranda*. Suppression was unwarranted.

Finally, we must briefly discuss Hall's assertion the lower courts erred in failing to find a violation of his right to a speedy trial justifying dismissing the charge against him. Determining whether a defendant's right to a speedy trial was violated, reviewing courts consider four factors: 1) length of delay; 2) reasons for the delay; 3) assertion of the right to a speedy trial; and 4) prejudice to the defendant. *Stacy v. Commonwealth*, 396 S.W.3d 787, 795 (Ky. 2013).

As stated by the circuit court, the length of the delay in this matter facially appears excessive. However, the inquiry cannot merely end because of the passage of a significant amount of time. Even a cursory review of the record reveals while Hall filed three motions asserting his right to a speedy trial, a multitude of other motions and actions constituted the foundation for the majority of the delay.

During the pendency of this matter, Hall was involved in several other felony and misdemeanor cases peripherally related to this case which complicated

the handling of what would otherwise have been a simple matter. His actions led to the recusal of two judges necessitating the appointment of a special judge. Hall requested a change of venue. He hired and fired multiple attorneys. Hall employed a strategy of litigating every conceivable issue. His counsel acquiesced and even suggested many of the continuances so issues in other pending cases could run their course. Much of the delay in this case is plainly attributable to Hall which clearly served to “toll the running of the constitutional speedy trial clock.” *Dunaway v. Commonwealth*, 60 S.W.3d 563, 571 (Ky. 2001) (quoting *DeLoach v. State*, 722 So.2d 512, 517 (Miss. 1998)). Hall’s assertion the delays in this matter were solely attributable to the Commonwealth is plainly contradicted by the record. Further, Hall has established no prejudice resulting from any delay. There was no violation of his right to a speedy trial as the lower courts correctly concluded. Hall is entitled to no relief.

For the foregoing reasons, the judgment of the Laurel Circuit Court affirming the decision of the Laurel District Court is AFFIRMED.

COMBS, JUDGE, CONCURS.

THOMPSON, K., JUDGE, CONCURS IN RESULT ONLY.

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