RENDERED: JULY 17, 2020; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001742-MR

MICHAEL THORNTON APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE A.C. MCKAY CHAUVIN, JUDGE
ACTION NO. 15-CR-002660

COMMONWEALTH OF KENTUCKY APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CALDWELL, JONES, AND TAYLOR, JUDGES.

CALDWELL, JUDGE: Appellant, Michael Thornton, having been charged with and having pleaded guilty to various Class C and D felony offenses, including multiple counts of burglary, wanton endangerment, and theft, was sentenced to ten years' imprisonment by the Jefferson Circuit Court by judgment of conviction and sentence entered August 28, 2018. He reserved the right to appeal the trial court's

ruling on his motion to suppress statements made to the police, alleging that the police took advantage of his intoxicated state to coerce a confession from him in violation of his Fifth Amendment rights.[1] Having reviewed the record and the arguments of the parties, we affirm.

FACTS AND BACKGROUND

In 2015, the Jefferson County Grand Jury indicted Thornton on twenty-two counts of various criminal charges. Before trial, he sought to suppress statements he made to police during three interviews. He primarily challenged the admissibility of statements he made during the first interview. There were subsequent interviews conducted, in part, because the officers who had conducted the initial interview had represented to the latter investigators that Thornton had been cooperative during the initial interview.

Thornton challenges on appeal the admissibility of the inculpatory statements elicited during the first interview, and further alleges that the subsequent interviews were tainted by alleged constitutional violations of the initial interview, to wit, that the confession was not voluntary due to his state of intoxication and coercive tactics engaged in by the police.

[1] The Fifth Amendment Self-Incrimination Clause applies to the states via the Fourteenth Amendment Due Process Clause. *Malloy v. Hogan*, 378 U.S. 1, 10-11, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964).

After his arrest on January 24, 2015, Thornton was read his rights and signed a written *Miranda* waiver.[2] During the first interview, Thornton "appeared normal" to the detective interviewing him. Thornton admitted to stealing an automobile and placing a stolen plate on the vehicle. He also acknowledged stealing credit cards and cash from another vehicle. At the time of the arrest, he admitted having in his possession items stolen from other vehicles.

During the second interview, Thornton acknowledged he was sober and detoxing from heroin since he had been arrested four days earlier. He was read his rights once again and acknowledged he understood his rights. Thornton admitted to having burglarized an apartment in the eastern part of Louisville, where he stole a television and some cash. He also admitted to attempting another burglary at a different location.

The third interview was mostly unproductive after Thornton became upset with being given a cup of water rather than a soft drink during the interview. At this interview, Thornton consistently denied having burglarized another apartment despite persistent questioning by the officer.

Thornton thereafter filed a motion to suppress the statements made in the interviews, alleging that he was so intoxicated on heroin at the time of the

[2] *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

initial interview that he was not capable of understanding the consequences of waiving his Fifth Amendment rights. His motion also alleged that information gleaned by the officers from the second and third interviews was "fruit of the poisonous" tree as the latter interviews were based, in part, on information gleaned from that first interview. After conducting an evidentiary hearing, the trial court denied the motion. Thornton now appeals.

STANDARD OF REVIEW

We review a trial court's denial of a motion to suppress through a two-step analysis. First, finding of facts are conclusive if supported by substantial evidence. *Milam v. Commonwealth*, 483 S.W.3d 347, 349 (Ky. 2015). Second, the application of law to those factual findings is reviewed *de novo*. *Simpson v. Commonwealth*, 474 S.W.3d 544, 547 (Ky. 2015).

ANALYSIS

Thornton argues that because he was allegedly under the influence of heroin at the time of his interrogation, his confession was not voluntary. Intoxication can be a factor under certain circumstances that can cause an otherwise valid confession to be suppressed. *Jones v. Commonwealth*, 560 S.W.2d 810, 814 (Ky. 1977). However, the defendant has the burden to present some evidence that the voluntariness of his confession was compromised by his

intoxication. *Id.* Thornton has failed to present any evidence sufficient to support his argument.

While it may be true that a "lesser quantum" of coercion need be shown to suppress the confession of one under the influence, there must still be coercion. *Smith v. Commonwealth*, 410 S.W.3d 160, 164 (Ky. 2013). The interviews of Thornton by the police were taped. He was read his *Miranda* rights and did not appear intoxicated or under the influence of drugs. The fact that the police here encouraged Thornton to be truthful in his statements about the crimes under investigation was not unduly coercive. Thornton argues he was coerced through implied threats of criminal charges against his girlfriend if he did not cooperate and confess to the crime. Thornton's girlfriend was with him in a stolen automobile at the time of his arrest and was also arrested. Accordingly, if what Thornton was insisting were true—that his girlfriend was simply present for his criminal activities and not an active participant in them—the detective's request for truthfulness would naturally benefit his girlfriend's position, if she was in fact innocent. This argument, on its face, fails to support Thornton's position that the confession was involuntary.

> Generally speaking, no constitutional provision protects a drunken defendant from confessing to his crimes. "The fact that a person is intoxicated does not necessarily disable him from comprehending the intent of his admissions or from giving a true account of the occurrences to which they have reference." *Peters v.*

> *Commonwealth*, 403 S.W.2d 686, 689 (Ky.1966). As noted by Justice Palmore in *Britt v. Commonwealth*, "[i]f we accept the confessions of the stupid, there is no good reason not to accept those of the drunk." 512 S.W.2d 496, 500 (Ky. 1974). "We are not at all persuaded that it would make sound law to hold that the combination of intoxication and police custody must add up to a violation of due process." *Id*. at 501.

Smith, 410 S.W.3d at 164.

We conclude that Thornton has not shown that the trial court erred in denying his motion to suppress his confession. The police properly engaged in interrogations with a person who alleges that he voluntarily ingested heroin. There was no discernible difference in Thornton's demeanor and affect during his interrogation at the time of his arrest, while allegedly under the influence of heroin. Under the totality of the circumstances given, and during the evidentiary hearing, there is nothing in the record to implicate the involuntariness of Thornton's confession. "The voluntariness of a confession is assessed based on the totality of circumstances surrounding the making of the confession." *Mills v. Commonwealth*, 996 S.W.2d 473, 481 (Ky. 1999), *overruled on other grounds by Padgett v. Commonwealth*, 312 S.W.3d 336 (Ky. 2010) (citing *Allee v. Commonwealth*, 454 S.W.2d 336, 341 (Ky. 1970), *cert. granted*, 400 U.S. 990, 91 S.Ct. 454, 27 L.Ed.2d 438 (1971), *case dismissed*, 401 U.S. 950, 91 S.Ct. 1186, 28 L.Ed.2d 234 (1971)).

Having concluded that the first interview was not violative of Thornton's rights, it follows, of course, that the second and third interviews, absent any novel allegations of violations, cannot be considered to be "fruit of the poisonous tree." *See Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); *Dye v. Commonwealth*, 411 S.W.3d 227, 236 (Ky. 2013). Thornton has presented no evidence to support any allegations sufficient to impugn the second and third interrogations, and simply relies on the purported violations during the first interview as a basis for suppression. This argument, too, fails on its face.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Julia K. Pearson
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear
Attorney General of Kentucky

Joseph A. Newberg, II
Assistant Attorney General
Frankfort, Kentucky