

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001302-MR

VICKIE SUE KING

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LEWIS G. PAISLEY, JUDGE
ACTION NO. 98-CR-01109

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: KNOPF, SCHRODER, AND TACKETT, JUDGES.

TACKETT, JUDGE: Vickie Sue King appeals from the judgment of the Fayette Circuit Court, finding her guilty of obtaining a controlled substance by fraud, a class D felony, for which she was sentenced to fourteen months in prison, probated by the court. On appeal, King raises several issues, ranging from the court's failure to grant a directed verdict to alleged errors in several evidentiary rulings. We affirm.

On September 1, 1998, Officer Thomas Johnston of the Lexington Urban County Police Department was dispatched to Saint Joseph Hospital to respond to a report of someone attempting to obtain medication by giving false information. King had given

the hospital a social security number that was different from the number on her driver's license. When the officer performed a records check, the number on her driver's license, 406-35-6893, returned the name "Vickie Hubbard". The number she gave the hospital, 402-96-4227, however, returned no record. King told Officer Johnston that the other names and numbers the hospital had for her were incorrect; that she had married Ricky King on July 31, 1998; and that she had not changed her records. Officer Johnston further testified that he checked a number she had previously given the hospital on July 27, 1998, when she checked in under the name "Vickie Hodge". That number belonged to her ex-husband, Donald Hubbard. Officer Johnston arrested King, and on search incident to lawful arrest he found a receipt from August 17, 1998, from Central Baptist Hospital listing her as Vickie King and showing a different address than the one given to Saint Joseph Hospital on the day of her arrest. She also had a Medicaid identification card bearing the number 402-96-4227 and the name "Vickie Hubbard."

At trial, Valerie Adkins, an emergency room nurse at Saint Joseph, testified in reference to King's records from the day of her arrest. Adkins noted a discrepancy in "patient statistics," wherein she was given a chart from August 26, 1998, when King, giving her name as "Vickie Hubbard", was seen in the emergency room for pain in her shoulder caused by a fall for which she was prescribed Lortab and Soma, both controlled substances. Also, another record showed that she had been seen under the name Vickie Hodge on July 27, 1998, and was prescribed

Vicodin for right rib pain. The physician on duty, Dr. Geren, requested that Adkins contact the police after Adkins brought it to his attention.

Cheryl Mansfield, an emergency room nurse at Central Baptist Hospital in Lexington, testified that King had been treated for flank pain and given morphine intravenously on August 12, 1998. She had been treated there earlier with the same symptoms on August 9 and 10, 1998, when she was prescribed Tylox and Dilaudid. She was seen again on August 17, 1998, and received another prescription for Tylox. Mansfield stated that she was seen again on November 8, 1998, with the same symptoms, after her indictment, and given morphine. Dr. Darryl Pauley, who treated King at Central Baptist, testified that when she was seen on August 9, she was diagnosed with a probable kidney stone and also had blood in her urine.

Dr. Joseph Richardson, an emergency room physician at Saint Joseph, testified that when he treated King on July 27, 1998, for a gall bladder complaint, she exhibited "marked drug-seeking behavior." Richardson explained that King displayed a very dramatic behavior change when she found out about the number of drugs being prescribed for her husband, who was also being treated in the emergency room that day. She believed that an insufficient quantity had been prescribed and suggested that Richardson give her husband 50 to 500 Cortab tablets. She also objected (Richardson characterized it as a "tongue lashing") when she realized she was being prescribed Vicodin, which is a mild narcotic.

Detective Lynn Thompson testified regarding the value of the substances when sold illegally, and the methods drug dealers in general employ to obtain controlled substances. However, there were no allegations that King had in fact sold the substances she obtained. A defense objection to Thompson's testimony was overruled.

In her defense King denied misrepresenting her name, address, or social security number to obtain prescriptions. She claimed that Ricky King signed her into Saint Joseph as Vickie Hodge and that she signed in at Central Baptist as Vickie King in order to use his insurance. She denied that she told Dr. Richardson to give her husband 500 narcotic pills; she also claimed to have no knowledge of how the hospitals obtained social security numbers that were not hers.

The jury found King guilty and sentenced her to fourteen months in prison. The sentence was probated by the trial court for five years. This appeal followed.

King makes several assignments of error on appeal. She claims that the trial court should have granted her motion for directed verdict; that the court should have excluded the testimony of Officer Johnston as investigative hearsay; that the court should have excluded the hospital records as hearsay under Rabovsky v. Commonwealth, Ky., 973 S.W.2d 6 (1998); that the court should have sustained her objection to Dr. Richardson's testimony regarding her "drug-seeking behavior;" and lastly that the court should have prevented Detective Thompson from

testifying in general terms about the drug trade. On these issues we find no reversible error.

Turning first to King's motion for directed verdict, we hold that the trial court properly denied her motion. When presented with a motion for a directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991). If the evidence is sufficient to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty of the charged offense, the motion must be denied. The trial judge may grant the motion only if the prosecution produces no more than a "mere scintilla" of evidence. Id. at 187-88. In this case, the evidence was clearly sufficient for a reasonable jury to infer that King acted with intent to obtain a controlled substance by fraud. The motion for a directed verdict was properly denied.

In reference to the testimony of Officer Johnston, the arresting officer, the issue of hearsay was not properly preserved for appeal by a timely objection. Under the constraints of Kentucky Rules of Criminal Procedure (Rcr) 10.26, we may consider an unpreserved error only when palpable error exists, an error affecting the substantial rights of a party. Berg v. Commonwealth, Ky. App., 20 S.W.3d 475, 478 (2000). Here, King argues that the officer's statement that he "felt like she was there to obtain pain medication with false information" constitutes no more than a statement of the reason he placed her

under arrest. Its admission does not rise to the level of palpable error, and accordingly we decline to review the issue.

Turning to the question of whether the hospital records were admissible, we hold that the records were properly admitted. King relies on Rabovsky v. Commonwealth, supra, for the proposition that the hospital records should not have been admitted because no one knew how the information contained within them had been obtained. We disagree with King's interpretation of the holding in Rabovsky. In Rabovsky, a murder conviction was reversed by the Kentucky Supreme Court due to the total failure of the Commonwealth to establish a chain of custody of blood samples taken from the victim. The Rabovsky case has everything to do with admission of records to show the chain of custody of physical evidence, but nothing to do with the admission of hospital records in general. The chain of custody issue present in Rabovsky is simply not present in this case. The general rule approving the admission of such records, found in Buckler v. Commonwealth, Ky., 541 S.W.2d 935 (1976), is applicable here. Rabovsky does not create an exception to the general rule, and so we apply the general rule here and hold that the trial court was correct in admitting the records.

Turning next to the question of Dr. Richardson's testimony regarding King's alleged "drug seeking" behavior, we hold that it was error to admit the statement over King's objections; however, the error was harmless in light of the evidence against her. Dr. Richardson made several statements which King claims constitutes reversible error: his notation that

she displayed "marked drug seeking behavior" on her chart; her "very dramatic" behavior change in the emergency room in discussing the potency and quantity of the drugs prescribed; including that she seemed to have specific, stronger drugs in mind; his testimony that he sees 5 to 10 people each day in the emergency room that he suspects of drug seeking; and that drug seeking is a problem nationally and that the majority of drug seekers sell the drugs they obtain. Of these, it was error only to admit the latter; however, in light of the evidence against her, the error was harmless. King was not prejudiced in the way that she claims by Dr. Richardson's testimony. King claims that the Commonwealth used this testimony to label her as a "drug seeker" or even as a drug trafficker, and then proceeded to try a "drug seeker" for the offense. We disagree. The evidence was sufficient, even without that statement, to convict her of the offense. Further, the light sentence imposed by the jury indicates that their verdict was not the product of passion and prejudice.

Finally, King claims that Detective Thompson's testimony with regard to prescription drug fraud in general was inadmissible. We agree that the relevance of the testimony was questionable. Detective Thompson testified to several matters that were not at issue in the trial, including the street value of the substances King obtained. The trial court should have limited Detective Thompson's testimony to the facts at issue in the case; however, any error in admitting the testimony of the detective was harmless. No prejudice to the defendant resulted

from the admission of the irrelevant portions of Detective Thompson's testimony, and the trial court did not abuse its discretion in failing to exclude the relevant portions of the detective's testimony under KRE 403. Brock v. Commonwealth, Ky., 947 S.W.2d 24, 29 (1997).

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

ALL CONCUR.

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