

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000809-MR

WILLIAM J. BROCK

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE JAMES L. BOWLING, JR., JUDGE
ACTION NO. 08-CR-00306

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; KELLER AND VANMETER, JUDGES.

KELLER, JUDGE: William J. Brock (Appellant)¹ appeals from the trial court's denial of his motions for directed verdict. On appeal, Appellant argues that the Commonwealth failed to present any proof to establish venue and offered no evidence of substance to support a finding of guilt. The Commonwealth argues

¹ As William J. Brock and the detective involved share the same surname, for purposes of clarity we will address William J. Brock as the Appellant.

that there was sufficient evidence to support the jury's verdict in all respects. For the following reasons, we affirm.

FACTS

On March 5, 2009, a Bell County jury found Appellant guilty of first degree trafficking in a controlled substance and of being a persistent felony offender in the second degree. The jury recommended a sentence of ten-years' imprisonment for the trafficking conviction and fifteen-years' imprisonment for the persistent felony offender conviction. The court entered a judgment and sentence consistent with the jury findings and recommendations. Because Appellant raises only two issues on appeal, we limit our recitation of additional facts to evidence presented at trial regarding those issues.

At trial, Deputy David Brock (Dep. Brock) of the Bell County Sheriff's Department testified that he met with Kevin Partin (Partin), a confidential informant, at the Bell County Board of Education on March 30, 2008, to set up a purchase of illegal drugs. Dep. Brock stated that he had used Partin as an informant in the past and that Partin was paid for his efforts.

When he met with Partin, Dep. Brock performed a pat-down search, during which Partin removed his shoes and socks and "shook out" his pants legs. Dep. Brock admitted that he did not search Partin's underwear and that Partin could have hidden a pill on his person. After searching Partin, Dep. Brock gave him a ten dollar bill to purchase drugs from Appellant and a fifty dollar bill to purchase drugs from another person. Dep. Brock then outfitted Partin with video

and audio recording equipment and drove Partin to Skipper Street, which is near the George Martin Drive Apartments in Bell County. When the two arrived at Skipper Street, Partin got out of Dep. Brock's car and walked to the George Martin Drive Apartments, returning several minutes later.

Dep. Brock testified that Partin gave him two pills when he returned. One was a round white tablet marked with the number 54142, which Partin said he got from Appellant in exchange for the ten dollar bill. Partin stated that he had purchased the other pill from another person using the fifty dollar bill. Dep. Brock testified that he then removed the recording equipment from Partin but did not conduct another search of Partin.

Partin testified that he works as a paid informant, that he earned \$50.00 for his work on March 30, 2008, and that he had earned a total of \$1,600.00 working as an informant. Partin confirmed Dep. Brock's testimony that the two met at the Bell County Board of Education on March 30, 2008, in order to make illegal drug purchases in Bell County. When they met, Dep. Brock searched Partin, provided him with recording equipment, a ten dollar bill, and a fifty dollar bill, and drove him to the George Martin Drive Apartments. Partin testified that he purchased a pill, which he believed to be methadone, from Appellant, using the ten dollar bill provided by Dep. Brock. He then purchased a pill, which he believed to be oxycontin, from another person with the fifty dollar bill provided by Dep. Brock. After making the purchases, Partin returned to Dep. Brock's car and gave

Dep. Brock the two pills. The two then drove to a nearby baseball field where, according to Partin, Dep. Brock again performed a pat down search.

As part of Partin's testimony, the Commonwealth played the video recording of the transactions that took place on March 30, 2008. That video shows Partin entering Appellant's apartment and obtaining what appears to be a pill from him. After leaving Appellant's apartment, Partin walked to another apartment in the complex and obtained another pill. He then returned to Dep. Brock's car and gave Dep. Brock the two pills. Dep. Brock described the pill Partin got from Appellant as "light pink" in color, rather than white, and stated that it was marked with the number 54142. We note that Partin could not explain why Dep. Brock described the pill as being light pink rather than white. On re-direct examination, Dep. Brock attributed the discrepancy to tinting on the car's windows and the fact that he was driving while making the description.

The Commonwealth's only other witness was Beverly Wagner (Wagner), a technician from the Kentucky State Police Lab. She testified that the pill marked 54142 was methadone.

After the Commonwealth rested its case, Appellant moved for a directed verdict arguing that the Commonwealth had not proven that the actions took place in Bell County and that the evidence was insufficient to warrant submission to the jury. The court denied Appellant's motion.

Appellant then testified. He stated that Partin had been in the neighborhood earlier in the day on March 30, 2008, and that he had spoken with

Partin. Appellant stated that Partin asked to borrow money so that he could buy oxycontin and asked where he could get methadone. Appellant testified that he did not have any methadone and that he was not even sure what methadone was.

When Partin returned later that day, Appellant did give him a pill. However, Appellant stated that the pill was an over-the-counter Advil, not methadone. Appellant testified that he told Partin not to “snort” the Advil because he had seen Partin “do some bad things” and “snort all kinds of stuff.” He was worried that Partin would “burn his nose up” if he snorted the Advil. Furthermore, Appellant testified that, on the video, he did not say anything about methadone.

On re-direct examination, Partin testified that he had spoken earlier in the day with Appellant, and Appellant had said he had methadone for sale. That concluded the testimony, and Appellant reiterated his motion for a directed verdict.

STANDARD OF REVIEW

On a motion for directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. If the evidence is sufficient to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty, a directed verdict should not be given. For the purposes of ruling on the motion, the trial court must assume that the evidence for the Commonwealth is true, but reserving to the jury questions as to the credibility and weight to be given to such testimony. On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal.

Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky. 1991). With the preceding standards in mind, we review the issues raised by Appellant.

ANALYSIS

Appellant first argues that the Commonwealth failed to establish that Partin's purchase of methadone from Appellant took place in Bell County.

"Unless otherwise provided by law, the venue of criminal prosecutions and penal actions is in the county or city in which the offense was committed." Kentucky Revised Statute (KRS) 452.510. The Commonwealth bears the burden of proving that the prosecution is taking place in the correct venue. *See Commonwealth v. Cheeks*, 698 S.W.2d 832, 835 (Ky. 1985). However, to meet its burden, the Commonwealth is not required to present direct evidence that a crime took place in the county of its prosecution. The jury may infer that fact from the evidence and circumstances presented to it at trial. *Id.*

Partin testified that he met Dep. Brock on March 30, 2008, to make illegal drug purchases in Bell County. Dep. Brock testified that he drove Partin to Skipper Street, which he stated is in Bell County. The video showed Partin getting out of Dep. Brock's car and walking a short distance to Appellant's apartment. The jury could reasonably infer from that evidence that Partin purchased methadone from Appellant in Bell County. Therefore, the trial court did not err when it denied Appellant's motion for a directed verdict on the issue of venue.

Appellant next argues that the Commonwealth did not offer even a scintilla of evidence of his guilt. We disagree. In support of its case, the

Commonwealth offered: the testimony by Dep. Brock regarding his use of Partin as a confidential informant; the testimony of Partin that he purchased a pill from Appellant and gave that pill to Dep. Brock; the videotape of the transaction; and the testimony of Wagner that the pill supplied to her by Dep. Brock was methadone. Faced with that evidence we cannot say that the trial court acted erroneously in denying Appellant's motion for a directed verdict.

We recognize Appellant's argument that a jury cannot convict a person based on suspicion or conjecture. *See Adkins v. Commonwealth*, 313 Ky. 110, 112, 230 S.W.2d 453, 455 (1950). Furthermore, we recognize that there were some inconsistencies in the testimony of Dep. Brock and Partin. However, taken as whole, their testimony was not so "incredible or improbable or so at variance with natural laws or common human experiences as to be patently untrue" or as to be devoid of "the quality of legal proof." *Holland v. Commonwealth*, 272 S.W.2d 458, 459 (Ky. 1954); *see also Commonwealth v. Cox*, 837 S.W.2d 898 (Ky. 1992); *Bussey v. Commonwealth*, 797 S.W.2d 483 (Ky. 1990). Therefore, we discern no error in the trial court's denial of Appellant's motions for a directed verdict questioning the sufficiency of the Commonwealth's proof.

CONCLUSION

Because the Commonwealth provided evidence from which the jury could infer Appellant's criminal activity took place in Bell County and because the Commonwealth provided sufficient evidence of his guilt, we affirm the trial court's

denial of Appellant's motions for directed verdict.

ALL CONCUR.

BRIEF FOR APPELLANT:

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