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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000161-MR

JAMES H. GOODEN

APPELLANT

v. APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE RUSSELL D. ALRED, JUDGE
ACTION NO. 08-CR-00134

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

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

VANMETER, ACTING CHIEF JUDGE: James H. Gooden appeals from the
judgment of the Harlan Circuit Court sentencing him to five-years' imprisonment.

For the following reasons, we affirm.

In 2006 Gooden was charged with first-degree trafficking in a controlled substance as a result of a “controlled buy” between Gooden and Hurlen and Teresa Couch, confidential informants for the Kentucky State Police. The Couches, working with Detective Keith Saylor and other law enforcement officers, drove to Gooden’s residence on Possum Hollow Drive in Dayhoit, Kentucky, and purchased two tablets containing the narcotic oxycodone. The transaction was recorded and introduced into evidence at trial.

At the conclusion of the Commonwealth’s case-in-chief, Gooden moved for a directed verdict alleging the Commonwealth failed to establish venue. The trial court overruled the motion and held that venue was established through testimony by Teresa that she purchased the narcotics at Gooden’s residence in Dayhoit, and by the audio record of the transaction in which Detective Saylor states that the purchase is occurring in Dayhoit, Kentucky, located in Harlan County.

At the conclusion of the trial, the jury returned a verdict of guilty and recommended a five-year sentence, which the trial court imposed. This appeal followed.

Gooden argues the trial court erred by denying his motion for a directed verdict because the Commonwealth failed to prove that the crime was committed in Harlan County, Kentucky, and therefore failed to establish venue. We disagree.

Upon consideration of a motion for a 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 purpose 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) (citations omitted).

KRS¹ 452.510 provides that “the venue of criminal prosecutions and penal actions is in the county or city in which the offense was committed.” Thus, venue is the “statutory prescription that the prosecution be in the county in which the offense has been committed[.]” *Commonwealth v. Cheeks*, 698 S.W.2d 832, 835 (Ky. 1985). Establishing venue “requires proof by the prosecutor that the offense did in fact occur in the county in which the case is being prosecuted.” *Id.* Direct evidence that the crime occurred in the particular county is not required; the fact may be inferred from evidence and circumstances presented to the jury. *Id.* (citations omitted).

Though a “jury is not presumed to know the location of particular homes, it is presumed to have some knowledge of local geography, such as the location of towns[.]” *Nelson v. Commonwealth*, 232 Ky. 568, 571, 24 S.W.2d 276,

¹ Kentucky Revised Statutes.

277 (1930) (citations omitted). In *Nelson*, the court concluded that evidence “the robbery took place ‘in a curve in the road on Middle creek in below Buckeye, something near a mile below Charlie Slone’s house, and about half way between Harmonson Slone’s and Charlie Slone’s,’ was sufficient to authorize the submission of the case to the jury.” 232 Ky. at 571, 24 S.W. at 277. Moreover, in *Commonwealth v. Patterson*, 10 Ky.L.Rptr. 167, 8 S.W. 694 (Ky. 1888), evidence that the crime was committed in a residence in Springfield was sufficient to establish venue since the jury was “presumed to know Springfield is the county seat of Washington county and that it is situated in that county.” Finally, in *Hays v. Commonwealth*, 12 Ky.L.Rptr. 611, 14 S.W. 833 (Ky. 1890), evidence that the crime was committed at a residence in the “Hendron district, sixteen miles from Springfield” was sufficient proof of venue since the jury was presumed to know that the “Hendron district” was located in Washington County. *Id.* at 833.

In this case, Teresa testified that she purchased the narcotics from Gooden at his residence in Dayhoit. In the recording of the purchase, which was played for the jury, Detective Saylor states that two cooperating witnesses were purchasing a controlled substance from a suspect in the Dayhoit community in Harlan County. Detective Saylor further testified that he conducted a drug trafficking investigation in Harlan County on October 13, 2006. From this evidence, a jury could reasonably have inferred that the crime occurred in Harlan County. Accordingly, the trial court did not err by denying Gooden’s motion for a directed verdict.

The judgment of the Harlan Circuit Court is affirmed.

ALL CONCUR.

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