

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000367-MR

LARRY MASDEN

APPELLANT

v. APPEAL FROM GRAVES CIRCUIT COURT
HONORABLE TIMOTHY C. STARK, JUDGE
ACTION NO. 09-CR-00054

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS and MOORE, Judges; ISAAC, ¹ Senior Judge.

COMBS, JUDGE: Larry Masden appeals his conviction in the Graves Circuit Court of trafficking in a controlled substance in the first degree. After our review of the record and the law, we affirm.

Masden was arrested after selling pills to a drug informant who worked with the Kentucky State Police (KSP). The KSP's crime laboratory tested the pills and confirmed that they were methadone. Masden was indicted for trafficking in a

¹ Senior Judge Sheila R. Isaac sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

controlled substance in the first degree. In January 2010, a jury found him guilty. He was sentenced to serve six years in prison. This appeal follows.

Kentucky Rule[s] of Criminal Procedure (RCr) 10.24 allows defendants to make a motion for a directed verdict if the Commonwealth has not presented enough evidence to support a conviction. In undertaking appellate review, we must determine whether there was enough evidence of substance for a reasonable juror to believe beyond a reasonable doubt that the defendant was guilty. If not, a directed verdict should have been granted by the trial court. *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991).

Kentucky Revised Statute[s] (KRS) 218A.1412 provides that trafficking in the first degree involves a Schedule I or II controlled substance that is also a narcotic. According to KRS 218A.1413, trafficking in the second degree is the offense of trafficking a Schedule I or II controlled substance that is **not** a narcotic. Masden agrees that methadone is a Schedule II drug. However, he asserts on appeal that the pertinent statutes do not classify methadone as a narcotic. He further alleges that the trial court improperly allowed testimony from the KSP chemist, who was not qualified as an expert. We disagree.

We review a trial court's decision regarding the necessity of an expert witness for an abuse of discretion. *Baptist Healthcare Sys., Inc. v. Miller*, 177 S.W.3d 676, 681 (Ky. 2005). "The test for abuse of discretion is whether the trial

judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

We agree with the trial court that it was not necessary to qualify the KSP chemist as an expert in order to establish that methadone is a narcotic. An expert witness is required to testify about "scientific, technical, or other specialized knowledge." Kentucky Rule[s] of Evidence (KRE) 702. In this case, the statutes have already resolved the question for which Masden seeks an expert witness. In pertinent part, KRS 218A.010(23) defines *narcotic* as:

- (a) [o]pium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
- (b) Any salt, compound, isomer, derivative, or preparation thereof which is **chemically equivalent** or identical with any of the substances referred to in paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium.

(Emphasis added). Masden argues that an expert must draw the chemical structure of methadone in order to determine whether it is truly a synthetic narcotic.

However, we are not at liberty to ignore the statute that specifies what drugs belong in Schedule II. KRS 218A.070(2) sets forth a list of opiates, which includes methadone. Therefore, if opiates are narcotics, and methadone is an opiate, then methadone is a narcotic by statutory definition. Our Supreme Court has held that even though cocaine might not scientifically or technically be a narcotic, our legislature has nonetheless exercised its prerogative to treat cocaine as a narcotic. *Sanders v. Commonwealth*, 663 S.W.2d 216, 218 (Ky. 1983).

Masden has not provided any evidence that persuades us to hold otherwise in this case.

Accordingly, we cannot hold that testimony by an expert is necessary to establish that methadone is a synthetic narcotic. We note that the federal statute defining Schedule II drugs also includes methadone in a list of opiates. 21 U.S.C.A. § 812. *Methadone* is defined by the dictionary as “a synthetic addictive narcotic drug[.]” Merriam-Webster’s Collegiate Dictionary 730 (10th ed. 2002). Furthermore, both this Court and our Supreme Court have referred to methadone as a synthetic narcotic. See *Begley v. Commonwealth*, 2009 WL 792557 (Ky. App. March 27, 2009); *University of Louisville v. Matz*, 2009 WL 3806154 (Ky. App. Nov. 13, 2009); *Hall v. Commonwealth*, 2009 WL 1707225 (Ky. Aug. 27, 2009); *Pack v. Witten*, 2005 WL 497202 (Ky. App. March 4, 2005).

Other jurisdictions, including the Supreme Court of the United States, have also referred to methadone as a synthetic narcotic. See *J.B. v. Cleburne County Dept. of Human Res.*, 992 So.2d 34 (Ala. Civ. App. 2008); *Hoover v. Agency for Health Care Admin.*, 676 So.2d 1380 (Fla. Dist. Ct. App. 1996); *People v. Hunter*, 49 A.D.2d 751 (NY App. 2d Div. 1975); *New York City Transit Auth. v. Beazer*, 440 U.S. 568, 99 S.Ct. 1355 (1979).

In light of the treatment of methadone as a narcotic by Kentucky’s statutes and case law, we conclude that the Graves Circuit Court did not abuse its discretion. Therefore, we affirm.

ISAAC, SENIOR JUDGE, CONCURS.

MOORE, JUDGE, CONCURS IN RESULT.

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