

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2015-CA-000106-MR

WALTER G. MATTHEWS

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE THOMAS D. WINGATE, JUDGE  
ACTION NO. 13-CI-00070

ALAN BROWN; RICKY CARY;  
DONALD YOUNG; AND COREY NEAL

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON, NICKELL, AND THOMPSON, JUDGES.

NICKELL, JUDGE: Walter G. Matthews, *pro se*, appeals from an order entered by the Franklin Circuit Court dismissing his petition for a declaration of rights after a prison disciplinary proceeding found him guilty of possession or promoting dangerous contraband. As punishment for a pocketknife being discovered in a pocket—of a coat he claims was not his—while he was a resident at KCI,<sup>1</sup>

<sup>1</sup> Keeton Corrections, Inc., a halfway house in Paducah, Kentucky.

Matthews was placed in segregation for sixty days and forfeited ninety days' good time credit. Characterizing the result as improper because two forms created by the Department of Corrections (DOC) were incomplete and informants were unreliable, he seeks dismissal and expungement of the disciplinary report, transfer to Center Point Rehabilitation Facility in Paducah, and that each appellee be ordered to pay him punitive, compensatory, injunctive and declaratory damages—each in the amount of \$50,000.00, or alternatively, each in the amount of \$16,160.16. Upon review of the record, the briefs and the law, we affirm.

### FACTS

On July 25, 2012, Security Monitor Teddy Phelps conducted a locker search. During that search, Phelps found and confiscated a Smith & Wesson pocketknife. Security Monitor Arvid Summers witnessed the search and observed both the knife and a completed chain of evidence form being given to Director Joe Stuart for safekeeping in his office under lock and key.

Discovery of the pocketknife was investigated by Donald Young. He summarized information gathered from officers and inmates. According to his report, Summers told Young that Phelps found the knife in a pocket of Matthews' state-issued khaki-colored coat. As he and Counselor Kim Isom subsequently packed Matthews' belongings, several inmates volunteered they had heard Matthews say he had a knife "in case he got jumped." Summers and Isom signed a brief memo stating:

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[o]n [7-25-2012 Approximately 2:40 pm] while staff member Kim Isom and I were packing inmate Matthew's (sic) property, we were told why he had the knife. His dorm mates told us that he had stated that he was not going to get jumped empty handed again. They then told us that he had gotten pushed down the stairs and beaten by staff at other places. He had told me that his problem was that he had a stroke. We thought that this information was pretty important to pass along since he had told the Director that he did not know where it came from.

Phelps told Young while searching Matthews' bed area, he patted down a tan state-issued coat hanging on the locker. Feeling something in the pocket, he reached in and pulled out a Smith & Wesson pocketknife which he confiscated, completed a chain of custody form for the item and secured the item in the evidence locker in Stuart's office. Phelps summarized the event in a written Occurrence Report as follows:

[o]n the above date and time while conducting a locker search I did find a Smith & Wesson pocket knife (sic) in Mr. Matthews (sic) coat pocket hanging on the side of his locker. I did confiscate the knife and filled out a chain of evidence form to accompany it. Mr. Summers witnessed the search and also witnessed me handing the knife and the chain of evidence to the Director (Joe Stuart) to be locked up in his office.

Matthews told Young the knife was found in a gray jacket hanging in a public area. He stated there was no proof the knife was his. He suggested Young speak to two counselors—Isom and Brandon Harris—who would confirm he had been “set up.” He also asked Young to speak to inmates Joe Coin and Larry Woolett who would confirm Ed Hall

has been messing with inmates. Ed Hall is trying to set me up, because I am trying to get him fired. Arvid Summers and Ed Hall are friends.

Neither Harris nor Isom knew of a plot to set up Matthews. Isom said she was on the “other side of the room” when the knife was found in a jacket “hanging on Inmate Matthews (sic) locker.” Coin knew only a knife had been found “in [Matthews’] bed area.” Woolett had been transferred to another facility and was not contacted.

Stuart told Young that Phelps found the knife in a coat hanging on Matthews’ locker, a chain of evidence form was completed, the knife was confiscated, and the knife was photographed. Assistant Director Byron Jasis identified the item found as a tanto style Smith & Wesson pocketknife.

Officer Corey Neal prepared the original disciplinary report. He provided no new information, but told Young he had listed the wrong incident date while entering the report into the electronic database.

Other Security Monitors were interviewed, but had nothing substantive to add. Other inmates stated only Matthews freely shared coffee and cigarettes with other inmates.

As a result, Matthews was charged with a major violation—6-04- Possession or promoting of dangerous contraband. He received a copy of the report—including a photo of the confiscated knife. Matthews attended the hearing<sup>2</sup>

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<sup>2</sup> Though recorded, the hearing was not included in the appellate record.

held September 7, 2012. He had listed fifteen witnesses, but released all of them except Stuart, who appeared via telephone. At the conclusion of the hearing, Adjustment Officer Ricky Cary found Matthews guilty of possession or promoting of dangerous contraband based on a photo of the knife and Stuart's statement that Phelps found the knife in a coat hanging on the locker assigned to Matthews. As punishment, Matthews was segregated for sixty days and forfeited ninety days' good time credit.

Matthews' appeal was denied by Warden Alan Brown on September 26, 2012, with the following explanation:

I have reviewed your appeal and the disciplinary report. The evidence supports that two staff members were present when your bed area was searched. Both staff members report that when they were searching your locker, a Smith & Wesson knife was found inside the side pocket of a state issued coat. The staff member that found the knife kept the knife in his possession until turning the knife over to his supervisor to be locked in his office. Based upon my review of your appeal and the evidence contained in the disciplinary report, I find that you are guilty of the charge you were convicted of. You provided no evidence to discredit either employee's statements. Your appeal is denied.

On January 31, 2013, Matthews petitioned the Franklin Circuit Court for a declaration of rights. The four appellees moved to dismiss the petition for failure to state a claim upon which relief could be granted. On May 17, 2013, an order was entered stating as follows:

[t]his matter is before the Court on motion of the Respondents to dismiss the Petition because the Petitioner has failed to state a claim upon which relief

can be granted. The Court having reviewed the petition and response and being otherwise sufficiently advised; the Petitioner's adjustment proceeding conformed with the requirements of *Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S.Ct. 2963, 2975, 41 L.Ed.2d 935 (1974) and the evidence relied upon by the adjustment officer was sufficient in finding the Petitioner guilty of "possession or promoting dangerous contraband."

IT IS HEREBY ORDERED that the Petition is DISMISSED. This is a final and appealable order.

It is from this order that Matthews now appeals and we affirm.

#### ANALYSIS

The full panoply of rights accorded a defendant in a criminal trial does not attach to an inmate in a prison disciplinary proceeding. *Wolff*, 418 U.S. at 556, 94 S.Ct. at 2975; *Stanford v. Parker*, 949 S.W.2d 616, 617 (Ky. App. 1996).

Furthermore, due process is satisfied if "some evidence" supports the finding of guilt. *Smith v. O'Dea*, 939 S.W.2d 355, 357 (Ky. App. 1997); *Stanford*, 949 S.W.2d at 617 (citing *Superintendent, Mass. Corr. Inst., Walpole v. Hill*, 472 U.S. 445, 456, 105 S.Ct. 2768, 2774, 86 L.Ed.2d 356 (1985)).

Here, the two officers involved in the search that yielded the knife, Phelps and Summers, detailed their actions when speaking to the investigating officer and specifically stated the knife was found in a state-issued khaki/tan coat hanging on the locker assigned to Matthews. Those facts, in tandem with the confiscated knife, were "some proof" of guilt and enough to support the finding of guilt. In addition to receiving the reasons for the punishment, Matthews was also provided advance written notice of the charge, an opportunity to call witnesses and

present evidence, and a written summary of the evidence. Thus, he was afforded due process. *Walpole*, 472 U.S. at 454, 105 S.Ct. at 2773.

Matthews makes much of the fact that Stuart received the knife and chain of evidence form from Phelps for safekeeping, but Stuart did not sign<sup>3</sup> the form. In this scenario, the absence of Stuart's signature is not a critical flaw. The purpose of the chain of custody is to eliminate the probability of tampering and ensure the integrity of the evidence. *See Byerly v. Ashley*, 825 S.W.2d 286, 288 (Ky. App. 1991). Matthews has never disputed a knife was found—his challenge is only that the coat in which it was found was gray, not his, and could have been accessed by others seeking to set him up.

However, *Byerly* is distinguishable. While a prisoner, Byerly was charged with unauthorized use of drugs or alcohol. A urine sample was collected, but the testing laboratory failed to document who received and handled the sample, leading this Court to conclude the test results were unreliable and it was unfair to base guilt on unreliable proof. While the integrity of a urine sample is critical due to its very nature, the same cannot be said of the knife found during this locker search. When urine testing is the only proof of forbidden drug use, who touched the sample and when—in other words a complete chain of custody—is crucial. In this context, however, possession of a knife—regardless of its condition—was “some proof” of the guilt needed to impose punishment. Here, there was no

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<sup>3</sup> We note that Corrections Policies and Procedures (CPP) 9.8 (F)(2)(b)(1) reads: “A chain of evidence document shall be *completed*.” [Emphasis added]. It does not use the word “complete” as Matthews has interpreted the provision.

indication the knife, which was photographed immediately upon being confiscated, was unreliable or changed in some way.

Apart from Matthews failing to demonstrate anyone tampered with the knife, a “prison regulation primarily designed to guide correctional officials in the administration of a prison . . . [is] not designed to confer rights on inmates[.]” *Sandin v. Conner*, 515 U.S. 472, 481-82, 115 S. Ct. 2293, 2299, 132 L. Ed. 2d 418 (1995). Therefore, we reject Matthews’ complaint about the incompleteness of the chain of evidence form.

In his second argument, Matthews claims no reliable informants placed the knife in his possession and Young did not “investigate the alleged informants.” First, no confidential informants were involved in this case. Second, because Matthews did not identify the “informants” about whom he complains, we cannot ascertain about whom he is speaking. Young interviewed eighteen individuals—including several specifically named by Matthews, but none supported his view of the incident. “[I]t is not our function as an appellate court to research and construct a party’s legal arguments, and we decline to do so here.” *Hadley v. Citizen Deposit Bank*, 186 S.W.3d 754, 759 (Ky. App. 2005) (citations omitted); see also CR<sup>4</sup> 76.12(4)(c)(v).

In his third and final argument, Matthews merely repeats prior claims. He contends the knife was found in a *gray* coat, but both Phelps and Summers

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<sup>4</sup> Kentucky Rules of Civil Procedure.



described a state-issued *khaki/tan* coat. That Matthews believed a different version of events does not mean Phelps and Summers were not to be believed.

It has long been held that the trier of fact has the right to believe the evidence presented by one litigant in preference to another. *King v. McMillan*, 293 Ky. 399, 169 S.W.2d 10 (1943). The trier of fact may believe any witness in whole or in part. *Webb Transfer Lines, Inc. v. Taylor*, Ky., 439 S.W.2d 88, 95 (1968). The trier of fact may take into consideration all the circumstances of the case, including the credibility of the witness. *Hayes v. Hayes*, Ky., 357 S.W.2d 863, 866 (1962).

*Commonwealth v. Anderson*, 934 S.W.2d 276, 278 (Ky. 1996). Here, the Adjustment Officer chose to believe Phelps and Summers, as was his prerogative, and the trial court agreed. We discern no error.

WHEREFORE, the order denying the petition for declaration of rights is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Walter G. Matthews, Jr., *pro se*  
Central City, Kentucky

BRIEF FOR APPELLEE:

J. Todd Henning  
Frankfort, Kentucky