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NOT TO BE PUBLISHED OPINION

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THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE
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OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE
BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION
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ACTION.

Supreme Court of Kentucky

2012-SC-000774-MR

MIKEL CRUMES

APPELLANT

V.

ON APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
NO. 11-CR-00648-001

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant, Mikel Crumes, was tried for and convicted of robbery in the first-degree and complicity to murder. The only issue on appeal is whether the trial court erred when it denied the Appellant's motion for a directed verdict. Because the evidence was sufficient to sustain a guilty verdict, this Court affirms.

I. Background

The sixteen year-old Appellant, Mikel Crumes, was indicted in Kenton County as a youthful offender along with fifteen year-old Tromonte Rice for the robbery and murder of fifteen year-old Dre' Shawn Hammond and tampering with physical evidence in June 2011. Prior to the Appellant's trial, Rice entered a guilty plea and agreed to testify against the Appellant. Though the Appellant

was a juvenile, he was found to be a youthful offender and was therefore tried as an adult.

At trial, Rice testified that on the day of the murder the Appellant contacted him via phone and text message asking if Rice wanted to “hit a lick” and if he had a “hammer.” Rice testified that he understood the phrase “hit a lick” as asking him if he wanted to make some money or rob someone, and that “hammer” was slang for gun. He testified that after he was contacted by the Appellant, he obtained a gun from a man he was staying with at the time of the crime. Rice stated he told the Appellant he had gotten a gun, and the two boys made plans to meet up later that afternoon.

After an initial meet-up at a local convenience store, Rice, the Appellant, and a few other boys decided to go to the area of Latonia Terrace near Covington. At some time during this initial meeting, Rice testified that he had shown the Appellant the gun and that the Appellant had told him he intended to rob the victim, Dre’Shawn Hammond.

Rice then testified that he and the Appellant, as part of a larger group of youths that included Hammond, met up to play basketball and had hung out behind Hammond’s home that afternoon. Rice stated that he and the Appellant had discussed trying to sell the gun to Hammond as a ruse to see how much money he had in his possession.

After this discussion, Rice testified that he went inside the Hammonds’ home to use the restroom, and while inside, had approached Hammond about the possibility of purchasing the gun. He stated that he showed Hammond the

gun and told him he would take \$300 for it, but that Hammond had said that was too much to pay, and Rice had gone back outside. Shortly after this, the Appellant, Rice, and Hammond decided to go to the City Heights neighborhood to find a dice game.

The boys took a wooded trail up a hill to City Heights. On the way, Hammond asked to see the gun to make sure it worked. Rice testified that the Appellant took the gun from him and fired it into the air to show Hammond that it worked, and that the Appellant had kept the gun after that time. Upon arriving in City Heights, Rice testified that the boys split up—the Appellant and Hammond had gone to a nearby convenience store and Rice had gone to find a dice game. The Appellant and the victim later found Rice and joined in the dice game for a time before going back to the convenience store. Video surveillance footage shows the Appellant and Hammond at the store at both 9:20 p.m. and again at 10:16 p.m.

The group of boys met back up and were returning home on another wooded trail when the murder occurred. Rice testified that as they walked down the trail, the Appellant pulled out the gun, pointed it at Hammond, and demanded that Hammond give him everything he had. Hammond, according to Rice, turned around to look at the Appellant and then turned back around, as if to ignore him, and continued walking down the trail. The Appellant then shot Hammond in the back. After he fell, Rice testified the Appellant shot Hammond several more times. Rice removed \$180 and a cell phone from Hammond's pocket. He testified that he turned off the cell phone and threw it into the

woods near the trail and split the money with the Appellant. The boys walked together for a distance before going their separate ways.

On cross-examination, Rice admitted telling a different story to police—namely that he had found the gun, that he did not know anything about guns, that he had not touched the gun, and that he never had anything to do with the robbery and murder. However, he stated that his testimony at trial was the truth. The Commonwealth's proof also presented cell phone records showing that the Appellant was in the vicinity of the crime scene near the time of the crime.

From the beginning, the Appellant denied any involvement in the robbery and murder of the victim. In his defense, the Appellant presented testimony from Stacy Patterson, a resident of the City Heights neighborhood who was familiar with the Appellant. She testified that she saw the Appellant getting into a sedan for a ride at approximately 10:30 p.m. This testimony was followed by testimony from two of the Appellant's aunts, Marilyn Thompson and Michelle Thompson, placing him at their homes between 11:05 p.m. and 11:25 p.m. The Appellant also elicited testimony that while phone records showed that his cell phone "pinged" through a cell phone tower close to the crime scene, there were three towers in the area and that a call will go to the tower where there is the strongest signal, not necessarily the closest tower. DNA, gunshot residue, and footprint testing were performed, but no match was found. The totality of the Appellant's proof was that he could not have committed the murder and robbery because he was not present when the crime occurred.

At the close of the Commonwealth's case and again at the close of all evidence, the Appellant moved for a directed verdict of acquittal on all charges. The court granted the motion on the charge of tampering with physical evidence. The remaining counts proceeded to the jury.

Despite testimony offered by the defense, the jury found the Appellant guilty, and he was sentenced to 30 years in prison. He appeals to this Court as a matter of right. *See* Ky. Const. § 110(2)(b).

II. Analysis

As noted above, the Appellant's only claim on appeal is the trial court should have granted a directed verdict in his favor on the murder and robbery charges.¹ Specifically, the Appellant argues the trial court erred in denying the motion because the only witness testifying against him admitted lying to investigators prior to his testimony at trial and the cell phone evidence that placed him at the crime scene was not definitive.

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" and "[i]f 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." *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991). On appellate review, the standard is somewhat deferential: a directed verdict decision will be reversed only "if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt." *Id.*

¹ The Commonwealth does not challenge that the issue is preserved for appeal.

The gravamen of the Appellant's argument is that there was insufficient evidence to convict him of the crime because the Commonwealth's key witness was not credible and the cell phone evidence did not definitively place him at the scene of the crime. That does not entitle the Appellant to a directed verdict.

First, the credibility of witness testimony is an exclusive question for the jury. *Id.*; *Commonwealth v. Sawhill*, 660 S.W.2d 3, 5 (Ky. 1983). Witness credibility is separate from a trial court's decision of whether sufficient evidence has been presented to find a defendant guilty. Indeed, "the trial court must assume that the evidence for the Commonwealth is true," *Benham*, 816 S.W.2d at 187, regardless of whether the evidence, usually testimony, has been attacked or impeached. The trial court is required to "reserv[e] to the jury questions as to the credibility and weight to be given to ... testimony." *Id.* Further, an appellate court cannot reevaluate the evidence or substitute its judgment as to the credibility of a witness for that of the trial court and the jury. *Commonwealth v. Bivins*, 740 S.W.2d 954, 956 (Ky. 1987).

In the Appellant's case, the jury heard testimony from Tromonte Rice that implicated the Appellant. While that testimony also included admissions that he had previously lied to investigators, and the Appellant offered his own countervailing evidence, the trial court was not allowed to evaluate the quality of that evidence. Instead, whether to believe Rice over the Appellant's witnesses is the sole province of the jury, which chose to believe Rice's version of events. There can be no error where the jury acts as it was designed to function.

Second, this case is not one, as the Appellant suggests, where the evidence only presents a “mere possibility of wrongdoing” and cannot support conviction, *Johnson v. Commonwealth*, 885 S.W.2d 951, 952–53 (Ky. 1994), or where the evidence equally supports an inference of guilt as it does innocence and thus requires acquittal, *see Mullins v. Commonwealth*, 196 Ky. 687, 245 S.W. 285, 286 (1922). There was substantial evidence that connected the Appellant to the crime. Indeed, this Court has held that a conviction can be sustained “even [on] the uncorroborated testimony of an accomplice.” *Hodge v. Commonwealth*, 17 S.W.3d 824, 841 (Ky. 2000).

In light of this law, this Court concludes that the trial court made the correct decision. Assuming the evidence presented by the Commonwealth is true, as this Court must, it would not be clearly unreasonable for a jury to find the Appellant guilty of both robbery and murder. There was direct testimony that the Appellant committed the robbery and murder of the victim. This proof was supported, albeit imperfectly, by cell phone records that placed the victim in the vicinity of the crime scene at the time of the crime. The Commonwealth produced “more than a scintilla of evidence” connecting the Appellant to the crime. *Benham*, 816 S.W.2d at 187. Thus, the trial court properly denied the motion for a directed verdict.

III. Conclusion

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

All sitting. All concur.

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