

RENDERED: April 3, 1998; 2:00 p.m.  
NOT TO BE PUBLISHED

NO. 96-CA-002153-MR

GERALD MINTER

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE R. JEFFREY HINES, JUDGE  
ACTION NO. 96-CR-00087

COMMONWEALTH OF KENTUCKY

APPELLEE

**OPINION**  
**AFFIRMING**

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BEFORE: EMBERTON, HUDDLESTON, and JOHNSON, Judges.

JOHNSON, JUDGE: Gerald Norman Minter (Minter) appeals from a final judgment and sentence of imprisonment entered on July 22, 1996, in the McCracken Circuit Court that sentenced Minter to ten years in prison for trafficking in a controlled substance in the first degree (cocaine) in violation of Kentucky Revised Statutes (KRS) 218A.1404 and ten years in prison in lieu of the trafficking sentence for being a persistent felony offender in the first degree (PFO I) pursuant to KRS 532.080. Minter argues that the trial court erred in denying his motion for a directed verdict because there was insufficient evidence to warrant a conviction. We affirm.

Minter was indicted on March 5, 1996, for allegedly selling crack cocaine to an undercover narcotics officer on the night of June 30, 1995. A jury trial was held on June 11, 1996. Deputy Carey Batts (Deputy Batts) of the Ballard County Sheriff's Department and a member of Western Area Narcotics Team (WANT) testified that he and an informant set up a cocaine purchase at the Lincoln Court housing project in Paducah. The informant had spoken to Minter and had arranged for Deputy Batts to purchase crack cocaine from him. Deputy Batts and the informant arrived at the housing project at 10:23 p.m. Both Deputy Batts and the informant wore transmitters that were monitored by other officers in nearby vehicles.<sup>1</sup> Deputy Batts testified that Minter asked him what he wanted and he responded that he wanted "one of the twenty-dollar pieces of crack cocaine." Deputy Batts testified that he gave Minter a marked twenty-dollar bill, and that Minter then left. Deputy Batts stated that in approximately five minutes Minter returned and gave him a piece of crack cocaine in a small piece of blue plastic. Deputy Batts stated that he asked Minter if the cocaine was real and Minter suggested that Deputy Batts could take a little piece off to test if he was not convinced it was cocaine. Deputy Batts testified that he told Minter that he believed that it was cocaine. Deputy Batts and the informant returned to one of the undercover vehicles. The cocaine was placed in custody, and later tested by the Kentucky State Police Lab. Those tests revealed that the substance was cocaine.

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<sup>1</sup> The audio tape of the transaction was played to the jury. Some parts could be understood and some could not.

During the drug buy, Deputy Batts apparently did not discover the name of the black male who sold him the cocaine. Officer Bruce Douglas (Officer Douglas) of the Paducah Police Department, also working with the drug task force, testified that he returned to Lincoln Court that evening to photograph Minter and several other black males in that area. Officer Douglas testified that he identified himself to Minter as a police officer, that he told Minter he wanted to take his picture, and that Minter consented. The next day Officer Douglas placed these photographs in a twelve photograph line-up and Deputy Batts identified Minter from the line-up. Minter was not indicted until nine months later.

Captain Bill Gordon (Captain Gordon) of the Paducah Police Department, who served as commander of the enforcement officer personnel assigned to the WANT task force, also testified. He testified that after Minter was arrested, he and Officer Douglas interviewed Minter. Captain Gordon testified that Minter denied selling the cocaine but admitted that the police took his picture. Minter maintained during that interview that he was at work on the night of June 30, 1995. Captain Gordon testified that a subsequent investigation of Minter's employer's records revealed he was not at work on either June 30 or July 1, 1995.<sup>2</sup> When asked about the nine-month delay in arresting Minter, Captain Gordon explained that it is a common practice among drug enforcement officers to work the informants and undercover officers as long as possible and then do

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<sup>2</sup> A payroll manager from Minter's place of employment brought Minter's timecard to court and testified that the card had no time stamped on those dates.

a "small roundup" several months later and that this was done in Minter's case.

Minter did not present any evidence in his defense. Following the denial of Minter's motions for a directed verdict based on insufficiency of the evidence, the case went to the jury and Minter was convicted. This appeal followed.

We address Minter's argument that the trial court erred in denying his motions for a directed verdict. "The standard for appellate review of a denial of a motion for directed verdict based on insufficient evidence is that if under the evidence as a whole, it would not be clearly unreasonable for a jury to find the defendant guilty, he is not entitled to a directed verdict of acquittal." Yarnell v. Commonwealth, Ky., 833 S.W.2d 834, 836 (1992), citing Commonwealth v. Benham, Ky., 816 S.W.2d 186 (1991).

[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. . . . This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.

Jackson v. Commonwealth of Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560, 573 (1979) (emphasis original). Jackson went on to state that a reviewing court "faced with a record of historical facts that supports conflicting inferences must presume--even if it does not affirmatively appear in the record--that the trier of fact resolved any such conflicts in favor of the prosecution, and must defer to that resolution." Id., 443 U.S. at 326. A claim of insufficient evidence must be evaluated in

light of all the evidence introduced at trial, including any evidence the defense presented.

KRS 218A.1404(1) provides: "No person shall traffic in any controlled substance except as authorized by law." Under the definitional section of Chapter 218A, Section .010(3) states that a "'controlled substance' means a drug, substance, or immediate precursor in Schedules I through V . . . ." and pursuant to KRS 218A.070(d), crack cocaine is a Schedule II controlled substance. Furthermore, Section .010(24) defines traffic as "to manufacture, distribute, dispense, sell, transfer, or possess . . . a controlled substance."

While Deputy Batts testified that Minter sold crack cocaine to him, Minter claims that Deputy Batts did not properly identify him. He argues that he was unknown to Deputy Batts at the time of the alleged transaction, that the buy took place late at night and lasted only a few minutes, and that the photo lineup was prepared by Officer Douglas to "bolster [Deputy Batts'] identification of Minter." We believe that these arguments go to the weight and credibility given to the evidence rather than the sufficiency of the evidence. "[T]he weight of evidence and the credibility of the witnesses are functions peculiarly within the province of the jury, and the jury's determination will not be disturbed." Partin v. Commonwealth, Ky., 918 S.W.2d 219, 221 (1996), citing Jillson v. Commonwealth, Ky., 461 S.W.2d 542, 544 (1970). The jury heard the evidence concerning the identification of Minter and, within its sound judgment, it decided what weight to assign that evidence and what credibility to give to the witnesses. Taken in the light most

favorable to the prosecution, there was sufficient evidence presented by the Commonwealth for a reasonable jury to conclude that the Commonwealth met its burden of proving each of the elements of the crime.

Minter also argues that the nine-month delay between the incident and the indictment and arrest is crucial. However, Minter failed to explain how this argument impacts the insufficiency of the evidence argument. At any rate, this delay was explained by police officers at trial and was just another factor to be weighed by the jury.

Viewing the evidence introduced at Minter's trial as a whole, we hold that a reasonable jury could find Minter guilty of trafficking in a controlled substance (cocaine) in the first degree. We affirm the judgment of the McCracken Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Hon. Kim Brooks  
Covington, KY

BRIEF FOR APPELLEE:

Hon. A. B. Chandler, III  
Attorney General  
Hon. Michael L. Harned  
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