

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-003257-MR

EDWARD ANGLIN

APPELLANT

v.

APPEAL FROM MADISON CIRCUIT COURT
HONORABLE JULIA HYLTON ADAMS, JUDGE
ACTION NO. 97-CR-000087

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM, MCANULTY, AND MILLER, JUDGES.

MILLER, JUDGE: Edward Anglin brings this appeal from a December 11, 1997 judgment of the Madison Circuit Court. We affirm.

In September 1997, the Madison County Grand Jury indicted appellant with the offenses of trafficking in marijuana, (Ky. Rev. Stat. (KRS) 218A.1421), possession of marijuana (KRS 218A.1422), possession of drug paraphernalia (KRS 218A.500), and for being a persistent felony offender, second degree (KRS 532.080). A jury trial ensued wherein appellant was found guilty of the above offenses and of being a second-degree persistent

felony offender. The court sentenced appellant to ten years' imprisonment. This appeal followed.

Appellant's sole contention on appeal is that the circuit court erred by not tendering to the jury an instruction on the defense of entrapment. It is well established that the court has a duty to instruct the jury in writing upon the law of the case. Ky. R. Crim. P. (RCr) 9.54, and Russell v. Commonwealth, Ky. App., 720 S.W.2d 347 (1986). A defendant, however, is not entitled to the defense of entrapment if he is otherwise disposed to commit the offense. See Commonwealth v. Sanders, Ky., 736 S.W.2d 338 (1987), and Johnson v. Commonwealth, Ky. App., 554 S.W.2d 401 (1977). In Brown v. Commonwealth, Ky., 555 S.W.2d 252, 257 (1977), the Court held that "in order for the defense [of entrapment] to be raised, so as to call for an instruction placing the burden on the Commonwealth, there must be something in the evidence reasonably sufficient to support a doubt based on the defense in question"

In the case *sub judice*, it appears that an informant went to appellant's home, asked to buy marijuana, and was sold same by appellant. Appellant points out that the informant was his girlfriend's ex-boyfriend and believed the informant had an ulterior motive for participating in the "sting operation." Regardless, appellant maintains that he was not predisposed to commit the crime of trafficking in marijuana. He states that he did nothing to solicit the sale to the informant and that he was "rousted from all but peaceful slumber on his couch in the middle of the night" Appellant contends that the idea of

trafficking in marijuana originated not with him but with the informant and the Richmond Police Department's Narcotics Unit. As such, appellant believes he was entitled to an instruction on the defense of entrapment. We disagree.

The evidence indicated that the informant simply went to appellant's home and asked to buy a marijuana cigarette. At that time, appellant sold the informant a marijuana cigarette and received remuneration for the transaction. The evidence does not suggest any undue influence or coercion on the part of the informant or the police. In the case *sub judice*, we are of the opinion that there simply does not exist reasonably sufficient evidence to support an instruction upon the defense of entrapment. Id. Hence, we do not believe the circuit court erred in this instance.

For the foregoing reasons, the judgment of the circuit court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jimmy Dale Williams
Richmond, KY

BRIEF FOR APPELLEE:

A. B. Chandler III
Attorney General

and

Dennis W. Shepherd
Assistant Attorney General
Frankfort, KY