

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-001688-MR

PAUL DANIEL JACKSON

APPELLANT

v. APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE WILLIAM F. STEWART, JUDGE
ACTION NO. 1996-CR-000129

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: EMBERTON, KNOFF, AND SCHRODER, JUDGES.

KNOFF, JUDGE: By judgment entered July 3, 1997, the Shelby Circuit Court convicted Paul Daniel Jackson of trafficking in a controlled substance in the first degree (cocaine) (KRS 218A.1412) and sentenced him to seven (7) years in prison. Jackson contends on appeal that the trial court erred by denying his motions for a directed verdict of acquittal. We disagree and so affirm the judgment of the Shelby Circuit Court.

The Shelby Grand Jury indicted Jackson on December 20, 1996. The indictment alleged that on September 18, 1995, Jackson had sold crack cocaine to a Kentucky State Police confidential informant. At Jackson's trial, on April 16, 1997, Kentucky State

Police Trooper Mark Moore testified that in the fall of 1995 he had been assigned to narcotics investigation in Shelby County. Pursuant to that assignment, he had hired Gary Morgan as a confidential informant. In exchange for \$100.00 per transaction, Morgan had agreed to make "felony" drug purchases in areas designated by Moore and to testify in court, if necessary, against the sellers. Moore knew when he hired him that Morgan had used cocaine. Confidential informants are often drug users, Moore testified, because people with that sort of experience are best able to allay the suspicions of drug dealers and thus to witness the dealers' criminal acts. Moore conceded that police use of informants involves certain risks and that informants are not to be blindly trusted, but he explained that Morgan, who was the brother of one of Moore's friends, had proved to be reliable on other occasions.

On September 18, 1995, Moore had equipped Morgan with a recording device and had given him \$200.00 with which to purchase drugs. He had searched him to ensure that Morgan was not in possession of any drugs, and he had instructed Morgan to pass through a particular Shelbyville neighborhood where he was to attempt to buy drugs. Less than ten (10) minutes after parting from Moore, Morgan had rejoined him with \$200.00 worth of "crack" cocaine. He informed Moore that he had purchased the cocaine from Jackson, an acquaintance from his high-school days whom he knew as "Filmore." Moore testified that he questioned Jackson shortly thereafter. However, because Moore did not want to

expose his on-going investigations, he did not seek Jackson's arrest until December of the next year.

The Commonwealth also called the informant Gary Morgan to testify. Morgan corroborated Moore's description of the September 18 transaction and identified Jackson as the person from whom he had bought the cocaine.

On cross-examination, Jackson sought to impeach Morgan's credibility by showing that since September 1995 Morgan had been convicted of numerous drug and theft-related felonies. He also attempted to show that Morgan's identification of him as the seller was unreliable. He challenged Morgan's memory of the event, and he challenged Morgan's claim of acquaintance pointing out: that he and Morgan had graduated from high school several years ago, in 1982; that Morgan was unaware that Jackson had played football for their school; and that Morgan was unaware that Jackson had not lived in the neighborhood where the sale took place since shortly after high-school graduation.

Also during cross-examination, Jackson insisted that the tape recording of the transaction be played for the jury. The recording was very unclear. Morgan could be heard saying the name "Filmore," but the other voice on the recording could not categorically be said to be Jackson's. Jackson contends that Moore's and Morgan's testimonies were insufficient to establish his guilt and thus that he was entitled to a directed verdict of acquittal. We disagree.

As our Supreme Court has explained,

[o]n motion for directed verdict, the trial court must draw all fair and reasonable

inferences from the evidence in favor of the Commonwealth. If 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. For the purpose of ruling on the motion, the trial court must assume that the evidence for the Commonwealth is true, but reserving to the jury questions as to the credibility and weight to be given to such testimony.

On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal.

Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991). To establish a defendant's guilt, the Commonwealth "must have more than a mere scintilla of evidence and . . . it must be evidence of substance." Johnson v. Commonwealth, Ky., 885 S.W.2d 951, 953 (1994). Jackson insists, in effect, that Morgan's testimony was so unreliable as to be without legal substance.

As noted in Benham, however, in ruling on a directed verdict motion or in reviewing such a ruling, both the trial court and this Court must assume that the Commonwealth's evidence is true (absent some compelling reason not to do so) and leave to the jury the estimation of that evidence's reliability. Here, Morgan positively identified Jackson as the person who sold him \$200.00 worth of "crack" cocaine. In response, Jackson attempted to establish that Morgan could have misidentified him and that he had a motive and perhaps the willingness to claim to be more sure of the identification than he may actually have been. Jackson did not show, however, that Morgan's testimony had to be untrue or even, in this instance, that it was likely to be untrue.

Because it would not clearly be unreasonable for a juror to believe Morgan's testimony, the trial court did not err by deeming the Commonwealth's case against Jackson sufficient to go to the jury.

Nor is this result altered by the evidence Jackson presented in defense. Jackson testified that he did not sell drugs to Morgan and that he recognized the other voice on the tape recording as that of one of his relatives. He also denied having ever been known as "Filmore" or knowing anyone by that name. On rebuttal, a Shelby County Sheriff testified that Jackson was indeed known as "Filmore." Jackson's testimony did not render Morgan's evidence unreliable as a matter of law.

Accordingly, the Shelby Circuit Court did not err by denying either Jackson's original or his renewed motion for a directed verdict of acquittal. We therefore affirm its July 3, 1997, judgment of conviction.

ALL CONCUR.

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