

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-000186-MR

JAMES EDWARD HOLLAND

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE RON DANIELS, JUDGE  
ACTION NO. 97-CR-00212

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: BUCKINGHAM, EMBERTON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: James Edward Holland (Holland) brings this direct appeal of a final judgment of the McCracken Circuit Court entered on January 20, 1998, sentencing him to ten years following a conviction on first-degree trafficking in a controlled substance. Finding no error, we affirm.

In July 1996, Officer Jim Osborne was working as an undercover agent in a drug investigation operation in Paducah, Kentucky. On the night of July 17, 1996, Officer Osborne went to an area on Ruth Lane known for drug activity with two female confidential informants. After arriving at the scene, one of the female informants called out to a black man using the name "Uncle

Buddy". When he came to the car, she discussed with him the purchase of some rock cocaine and gave him some money. He then went to an apartment nearby, returning a few minutes later, and gave her one piece of rock cocaine. At that time, the two females were in the front seat of a car and Officer Osborne was in the back seat where he witnessed the drug transaction.

The next day, Osborne returned to the Ruth Lane area with Officer Eric Jackson and pointed out Holland as the person who had sold crack cocaine to the female informant the previous night. Officer Jackson then had Officer Welch, who was a patrol officer familiar with the area, immediately perform a field interview of Holland to obtain direct information on his identity and place of residence. Officer Welch then gave the information to Officers Jackson and Osborne. In November 1996, an arrest warrant was issued for Holland on the charge of drug trafficking, but he was not actually arrested until June of 1997.<sup>1</sup>

In July 1997, the McCracken County Grand Jury indicted Holland on one felony count of first-degree trafficking in a controlled substance (cocaine) (Kentucky Revised Statute (KRS) 218A.1412). Following a one-day trial on November 26, 1997, the jury convicted Holland of trafficking in cocaine and recommended a sentence of ten years. In January 1998, the trial court sentenced him to serve ten years in prison for first-degree

---

<sup>1</sup>Officer Osborne indicated that the delay in taking out the arrest warrant was necessary to protect both his and the informants' identities while the undercover operation was still being conducted. The delay in serving the warrant was caused by the inability of the police to locate Holland, who had moved from the area.

trafficking in a controlled substance (cocaine). Holland filed this appeal of the judgment.

Holland argues that the trial court erred by failing to grant his motion for a directed verdict. The sole issue on appeal is whether the Commonwealth presented sufficient evidence linking Holland to the illegal drug transaction that occurred on July 17, 1996, to withstand the defense motion for a directed verdict.

In Commonwealth v. Benham, Ky., 816 S.W.2d 186 (1991), the Kentucky Supreme Court delineated the approach for handling a motion for directed verdict as follows:

On a 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.

Id. at 187 (citing Commonwealth of Sawhill, Ky., 660 S.W.2d 3 (1983)). See also Commonwealth v. Collins, Ky., 933 S.W.2d 811, 815 (1996). The standard for appellate review of a denial of a motion for directed verdict alleging insufficient evidence dictates 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. Benham, 816 S.W.2d at 187; Baker v. Commonwealth, Ky., 973 S.W.2d 54, 55 (1998).

In the case at bar, Holland argues that the Commonwealth did not present sufficient evidence of his identity as the person who sold the drugs at issue to support the conviction. He challenges the validity of Officer Osborne's identification of him, especially given the time gap between the date the offense was committed in July 1996, and the date of the trial in November 1997.<sup>2</sup> Holland correctly points out that the Commonwealth has the burden of proving each element of the offense beyond a reasonable doubt. See, e.g., Brown v. Commonwealth, Ky., 890 S.W.2d 286, 288 (1994); In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). He also further posits that identification of the defendant as the person who committed the crime is an essential element of an offense. See Sanders v. Commonwealth, Ky., 801 S.W.2d 665, 674 (1990), cert. denied, 502 U.S. 831, 112 S. Ct. 107, 116 L. Ed. 2d 76 (1991). Based on these principles, Holland contends that the conviction should be reversed because the evidence on identity did not provide proof beyond a reasonable doubt.

Holland's argument, however, misconstrues the standards applicable to a motion for directed verdict. As indicated above, the evidence must be viewed in the light most favorable to the Commonwealth, and the standard of review is reasonableness. The major issue during the trial was Holland's identity as the perpetrator, and defense counsel sought to undermine Officer Osborne's identification. While the Commonwealth must convince a jury of the defendant's guilt beyond a reasonable doubt, the

---

<sup>2</sup>See infra note 1.

trial court cannot grant a directed verdict and take the case from the jury unless it is unreasonable for the jury to find the defendant guilty.

Kentucky courts have long recognized that the accuracy of an identification of a person by a witness is a factual issue generally within the province of the jury. As the Court stated in Stephens v. Commonwealth, Ky., 489 S.W.2d 249, 252 (1972):

We recognize the distinct possibility of mistaken identity in a case of this kind. But after the able closing argument of appellant's counsel there can be no doubt that the twelve jurors who heard the case were fully aware of it also. The accuracy of an identification, though it is based on memory and the senses alone, still lies within the inherent province of the jury to assess.

(quoting Burton v. Commonwealth, Ky., 442 S.W.2d 583, 585 (1969)). See also Pankey v. Commonwealth, Ky., 485 S.W.2d 513, 522 (1972); Merritt v. Commonwealth, Ky., 386 S.W.2d 727, 729 (1965); Beecham v. Commonwealth, Ky. App., 594 S.W.2d 898, 899 (1979). The accuracy of an identification implicates the traditional jury questions dealing with witness credibility and the weight of the evidence. See Johnson v. Commonwealth, Ky., 514 S.W.2d 115, 118 (1974) (weight accorded an identification is a matter for the jury); Dell v. Commonwealth, Ky., 433 S.W.2d 872, 873 (1968) (circumstances of identification affect witness's credibility).

During the trial, Officer Osborne stated that he had a good look at the man who sold the cocaine, and the transaction occurred in a well-lighted area. He said that he was trained to pay special attention to the physical features of suspects during

the undercover drug buys. At trial, Officer Osborne positively identified Holland as the person who sold the cocaine on July 17 and as the person that he pointed out the next day as being involved in the drug transaction. Officer Jackson also identified Holland at trial as the man Officer Osborne recognized and pointed out on July 18th as the person who had sold cocaine to the confidential informant as "Uncle Buddy". Finally, Officer Welch identified Holland at the trial as the person he interviewed on July 18th after being notified by Officer Jackson. More importantly, Officer Welch stated that he was already familiar with Holland from seeing him in the neighborhood and that he knew Holland as "Uncle Buddy".

Meanwhile, Holland testified that he had lived in the area of Ruth Lane and that he frequently had been in the area where the drug transaction occurred during the day, but he denied any involvement in the incident or being known as "Uncle Buddy". However, Holland admitted that he had talked with and been interviewed on July 18th by Officer Welch.

The question of the accuracy of Officer Osborne's identification of Holland was an issue for the jury and was challenged by the defense at trial. Defense counsel argued this issue before the jury in closing argument. Taking all of the evidence into account in the light most favorable to the Commonwealth, we feel there was sufficient evidence for a reasonable juror to believe that Holland was the person who sold cocaine to the informant on July 17, 1996. See Compton v. Commonwealth, Ky., 602 S.W.2d 150 (1980) (trial court properly

denied directed verdict motion based on challenge to identification of defendant); Stephens v. Commonwealth, 489 S.W.2d at 249. The trial court did not err in denying Holland's motion for directed verdict.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Irvin J. Halbleib  
Louisville, Kentucky

BRIEF FOR APPELLEE:

A. B. Chandler, III  
Attorney General

Paul D. Gilbert  
Assistant Attorney General  
Frankfort, Kentucky