RENDERED: DECEMBER 23, 1999; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000286-MR

WILLIAM SHANNON BALDRIDGE — APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE LEWIS D. NICHOLLS, JUDGE
ACTION NO. 97-CR-00074

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: GUDGEL, CHIEF JUDGE, MILLER, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from a judgment of the Greenup Circuit Court convicting appellant of one count of selling a vehicle with identification number removed or altered, in violation of KRS 186A.310. Because the trial court did not err in overruling appellant's motion for directed verdict, and the Commonwealth's improper questioning of witnesses did not constitute palpable error, we affirm.

Appellant, William Shannon Baldridge, was in the business of rebuilding and selling trucks. Ed McReynolds (McReynolds) made a deal with appellant to buy the cab and bed of a 1988 Chevy pickup truck. The truck was not owned by appellant,

but was owned by Wetzel Mayse (Mayse). McReynolds went to pick up the truck at Mayse's residence on March 11, 1997. Appellant and Mayse were present. McReynolds noticed that the truck's VIN plate was missing and asked appellant about it. Appellant allegedly told McReynolds that he needed to keep the VIN plate and the title. McReynolds purchased the truck, and asked for a written receipt, which was written out by appellant, and signed by Mayse. McReynolds later became suspicious because of the missing VIN plate, and after finding the VIN number in the glove box, had it run through police records, and was informed that the vehicle had not been reported stolen. McReynolds subsequently ran into Steve Salley, Deputy Sheriff of Greenup County, and told him about the missing VIN plate. Salley then began an investigation. A few weeks later, McReynolds made a deal with appellant to purchase the chassis of the truck, but only Mayse was present when he went to pick it up.

The police investigation eventually discovered that the VIN plate, as well as the license plate, from the 1988 Chevy pickup sold to McReynolds had been placed on a 1995 Chevy pickup which was in the possession of Mayse. The 1995 truck had been stolen from Glockner's Chevrolet in Portsmouth, Ohio in February of 1997. Mayse pled guilty to receiving stolen property as a result of his possession of the stolen 1995 Chevy truck, and pled guilty to selling the 1988 Chevy truck to McReynolds with the VIN plate removed.

As a result of the sale of the 1988 Chevy pickup to McReynolds, appellant was charged with one count of selling a

vehicle with identification number removed or altered in violation of KRS 186A.310, and one count of obscuring the identity of a machine in violation of KRS 514.120. Appellant was tried by jury on January 6-7, 1999. At trial, appellant moved for a directed verdict, arguing that the Commonwealth had offered no proof that he had removed the VIN plate. Appellant further argued that the Commonwealth had not presented sufficient evidence that appellant sold or was ever in possession of the truck, that it was Mayse's truck, and appellant did nothing more than facilitate the sale. The court overruled appellant's motion for a directed verdict. The jury found appellant guilty of selling a vehicle with identification number removed, but not guilty on the count of obscuring the identity of a machine. Appellant was given a sentence of one year and one day. This appeal followed.

Appellant argues that the trial court erred in overruling his motion for directed verdict. 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 is the defendant entitled to a directed verdict of acquittal. Commonwealth v. Benham, Ky., 816 S.W.2d 186 (1991).

Appellant was convicted under KRS 186A.310 which states, in pertinent part:

> No person shall knowingly buy, sell, offer for sale, receive, or have in his possession, any titled motor vehicle or trailer or component part thereof, from which the

> original manufacturer's vehicle identification number, or serial number, has been removed, defaced, altered, obscured, or destroyed unless such vehicle or component part has attached thereto an identification number assigned or approved by the Department of Vehicle Regulation under the provisions of KRS 186.1911 or an authorized agency of another state in lieu of the manufacturer's number. (Emphasis added.)

Appellant argues that the Commonwealth presented insufficient evidence that he was the seller of the truck, and therefore he was erroneously convicted under KRS 186A.310. Appellant maintains that it was Mayse who sold the truck to McReynolds. In support of his argument, appellant notes that Mayse was the owner of the 1988 truck, and signed the sale receipt. Appellant argues that, because Mayse could not read or write, he merely assisted Mayse in the sale, and therefore cannot be found guilty of anything more than facilitation. Appellant further argues that the Commonwealth did not establish that he was ever in possession of the vehicle, only that he was in the vicinity of the vehicle.

KRS 186A.310 does not require that appellant be the owner of the truck, merely that appellant "sell" or "offer for sale". The evidence shows that appellant was involved with the sale of the truck to McReynolds. The record indicates that

appellant is the one who negotiated the deal with McReynolds to purchase the truck, and wrote out the receipt for Mayse to sign. The evidence also shows that appellant was aware that the VIN number had been removed, as McReynolds testified that appellant stated that he needed to keep the VIN plate. After reviewing the record, we cannot say that it would have been unreasonable for a jury to find guilt. Therefore, the trial court did not err in overruling appellant's motion for directed verdict.

Appellant further argues that the trial court erred when it allowed the Commonwealth to solicit opinions from witnesses concerning the credibility of other witnesses. At trial, Mayse testified in appellant's defense, stating that he was the one who sold the 1988 truck to McReynolds, not appellant. During cross-examination, the prosecutor asked Mayse if he was calling McReynolds "a liar and a perjurer". On rebuttal, the Commonwealth asked Detective Robert Noble if Mayse was "lying under oath" in his testimony when he denied having made certain statements to police officers that he had totaled the 1988 Chevy truck. The Commonwealth also asked Deputy Salley if Mayse did "lie under oath" in his testimony when he denied that he had previously admitted to police officers that he had taken the VIN plate from the 1988 Chevy truck and put it on the 1995 Chevy truck. The Commonwealth asked McReynolds if Mayse was "lying under oath" when Mayse testified that it was McReynolds who sold him the stolen 1995 Chevy truck. The prosecutor also asked McReynolds whether another defense witness, Betty Mayse, had "lied under oath" when she testified that appellant was not

present when McReynolds came to pick up the cab and bed of the truck.

Defense counsel did not object to the aforementioned questions by the Commonwealth, and therefore this issue was not preserved. Our review is therefore limited to palpable error under RCr 10.26.

We agree that it was improper for the Commonwealth to ask witnesses if other witnesses were "lying". A witness should not be required to characterize the testimony of another witness. Moss v. Commonwealth, Ky., 949 S.W.2d 579 (1997). "A witness's opinion about the truth of the testimony of another witness is not permitted. Neither expert nor lay witnesses may testify that another witness or a defendant is lying or faking. That determination is within the exclusive province of the jury." Id. at 583, quoting State v. James, 557 A.2d. 471, 473 (R.I. 1989).

Although the prosecutor's questions were improper, we do not adjudge them to constitute palpable error pursuant to RCr 10.26. If, upon consideration of the whole case, the reviewing court does not conclude that a substantial possibility exists that the result would have been any different, the error complained of will be held to be nonprejudicial. Jackson v. Commonwealth, Ky. App., 717 S.W.2d 511 (1986). Two important considerations in determining whether a particular error was prejudicial are the weight of the evidence, and the amount of punishment fixed by the verdict. Abernathy v. Commonwealth, Ky., 439 S.W.2d 949, 953 (1969). As previously stated, there was sufficient evidence for the jury to find guilt. Mayse himself

testified that it was appellant who wrote out the receipt for the truck. There is also no indication that the prosecutor's remarks affected the jury's ability to fairly consider the evidence, as they acquitted appellant of the charge of obscuring the identity of a machine. Furthermore, the jury gave appellant the minimum possible sentence for his conviction. Accordingly, we do not adjudge that there is a substantial possibility that the result would have been different in the absence of the Commonwealth's improper questions.

For the aforementioned reasons, the judgment of the Greenup Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Elizabeth Shaw
Richmond, Kentucky

BRIEF FOR APPELLEE:

A. B. Chandler, III
Attorney General

Ian G. Sonego
Assistant Attorney General
Frankfort, Kentucky