

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002842-MR

TIM ANDERSON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 00-CR-00630

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: COMBS, JOHNSON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Tim Anderson appeals his conviction of receiving stolen property less than \$300 and the court's failure to direct a verdict of acquittal on the alcohol intoxication charge. We believe the jury's acquittal renders the issue moot. However, we also opine that the court was correct in not directing a verdict and that no undue prejudice occurred. Therefore, we affirm.

On May 7, 2000, a bicycle belonging to Michael Newcom was taken from his Lexington, Kentucky apartment building. Newcom observed Tim Anderson riding away on the bicycle, and flagged down a police officer, Chad Martin, who subsequently stopped Anderson. As a result, on June 13, 2000, Anderson was indicted on charges of third-degree burglary, alcohol

intoxication, third or subsequent offense, and being a second-degree persistent felony offender. A jury trial was held on November 6, 2000, and Anderson was found guilty of receiving stolen property less than \$300, and found not guilty of alcohol intoxication. Anderson was sentenced to thirty days in jail. This appeal followed.

Anderson's sole issue on appeal is that the trial court erred in failing to grant a directed verdict on the alcohol intoxication charge. As Anderson was found not guilty of alcohol intoxication, we conclude this issue is moot. Anderson, nevertheless, contends that although he was found not guilty of alcohol intoxication, the trial court's failure to grant a directed verdict on the intoxication charge improperly allowed the charge to go to the jury. Anderson contends that the jury's deliberating and deciding this improper charge may have prejudiced the jury against Anderson with regard to the other charges being decided. We disagree because at the time the motion for a directed verdict was made, the jury had already heard the conflicting evidence. But for the sake of argument, we will review the failure to give a 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 the defendant is entitled to a directed verdict of acquittal." Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991). At trial, Officer Martin described Anderson as "fully coherent" in that he was aware of what was going on, but also testified that Anderson was

"somewhat impaired", smelled of alcohol, that he could tell Anderson had been drinking, and that Anderson had slurred speech and bloodshot eyes. According, we cannot say that it would be unreasonable for a jury to find guilt. Thus, the trial court did not err in submitting the intoxication charge to the jury.

For the above stated reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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