

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001247-MR

BRENDA EVERSOLE

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 01-CR-00274

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: DYCHE, JOHNSON AND PAISLEY,¹ JUDGES.

JOHNSON, JUDGE: Brenda Eversole has appealed from a final judgment and sentence of the Laurel Circuit Court entered on May 22, 2002, which pursuant a jury verdict found her guilty of unlawful transaction with a minor in the second degree² and as being a persistent felony offender in the second degree (PFO II),³ and sentenced her to ten years' imprisonment. Having

¹ This opinion was prepared and concurred in prior to Judge Paisley's retirement effective December 1, 2003.

² Kentucky Revised Statutes (KRS) 530.065.

³ KRS 532.080(2).

concluded that Eversole was properly convicted under KRS 530.065, we affirm.

On September 21, 2001, Eversole was indicted by a Laurel County grand jury on one count of unlawful transaction with a minor in the second degree and on a PFO II charge.⁴ The grand jury charged that on or around July 24, 2001, Eversole knowingly caused a minor, M.E., to engage in illegal controlled substances activity. Eversole entered pleas of not guilty to both charges and the case proceeded to trial.

Eversole's jury trial was held on April 10, 2002. During the presentation of its case-in-chief, the Commonwealth introduced evidence that on the date in question, M.E. used marijuana and LSD that Eversole had given her. The jury found Eversole guilty on both of the charges and recommended a sentence of ten years' imprisonment. On May 22, 2002, after a pre-sentence investigation had been completed, the trial court followed the jury's recommendation and sentenced Eversole to ten years' imprisonment. This appeal followed.

Eversole's only claim of error is that the instructions submitted to the jury were improper. Specifically, Eversole argues:

The jury was given [an]
[i]nstruction[], which provided, in
pertinent part, that the jury should find

⁴ Eversole's PFO II charge stemmed from a previous felony conviction in Fayette Circuit Court. No. 98-CR-01066.

Eversole guilty of [s]econd [d]egree
[u]nlawful [t]ransaction with a minor if it
finds:

That in this county on or about
July 24, 2002, and before the
finding of the Indictment herein,
she knowingly gave [M.E.]
marijuana which [M.E.] used,
and/or she knowingly gave [M.E.]
LSD which [M.E.] used [emphasis
original].

However, KRS 530.065(1) provides:

A person is guilty of unlawful
transaction with a minor in the
second degree when he knowingly
induces, assists, or causes a
minor to engage in illegal
controlled substances activity
involving marijuana, illegal
gambling activity, or any other
criminal activity constituting a
felony.

Thus, the second part of [the instruction]
allowed the jury to find Eversole guilty if
she gave [M.E.] LSD, even though that
activity is not any of the elements of a
crime under KRS 530.065(1).

According to Eversole, KRS 530.065(1) will only
support a conviction for a "controlled substance activity" when
that controlled substance is marijuana. Thus, since the jury
instructions in the case sub judice allowed the jury to find
Eversole guilty solely upon a finding that she gave M.E. LSD,
Eversole argues that the instructions were improper. We
disagree.

It is well settled that a statute is to be interpreted according to the plain meaning of the words used and in accordance with the legislative intent.⁵ Under KRS 530.065(1), "[a] person is guilty of unlawful transaction with a minor in the second degree when he knowingly . . . causes a minor to engage in . . . any . . . criminal activity constituting a felony." Pursuant to KRS 218A.1415, possession of LSD is a Class D felony for a first offense, and a Class C felony for subsequent offenses.⁶ Therefore, even if the jury based its guilty verdict solely upon a finding that Eversole had given M.E. LSD, Eversole could have properly been found guilty under KRS 530.065(1). By giving M.E. LSD, Eversole "cause[d] a minor to engage in . . . criminal activity constituting a felony." Accordingly, there was no error in the jury instruction that is the subject of this appeal.

⁵ Commonwealth v. Plowman, Ky., 86 S.W.3d 47, 49 (2002).

⁶ KRS 218A.1415(1) provides, in pertinent part:

A person is guilty of possession of a controlled substance in the first degree when he knowingly and unlawfully possesses: a controlled substance that contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers or, that is classified in Schedules I or II which is a narcotic drug; a controlled substance analogue; lysergic acid diethylamide; phencyclidine; gamma hydroxybutyric acid (GHB), including its salts, isomers, salts of isomers, and analogues; or flunitrazepam, including its salts, isomers, and salts of isomers [emphasis added].

Lysergic acid diethylamide is commonly referred to by the abbreviation "LSD."

Eversole argues that since KRS 530.065 specifically includes "illegal controlled substances activity involving marijuana," and KRS 530.064⁷ specifically excludes "controlled substances activity" involving marijuana, KRS 530.065 does not support a conviction for providing LSD to M.E. However, this interpretation of KRS 530.065 would have the effect of ignoring the broad language of the statute, i.e., "any . . . criminal activity constituting a felony." Statutes are to be interpreted so that no part is rendered meaningless or ineffectual.⁸ Accordingly, since possession of LSD is a felony, a finding by the jury that Eversole gave M.E. LSD properly supported a conviction under KRS 530.065.

Based on the foregoing, the judgment of the Laurel Circuit Court is affirmed.

ALL CONCUR.

⁷ KRS 530.064(1) states in part:

A person is guilty of unlawful transaction with a minor in the first degree when he knowingly induces, assists, or causes a minor to engage in illegal sexual activity, or in illegal controlled substances activity other than activity involving marijuana, except those offenses involving minors in KRS Chapter 531 and KRS 529.030.

⁸ General Motors Corp. v. Book Chevrolet, Inc., Ky., 979 S.W.2d 918, 919 (1998).

BRIEFS FOR APPELLANT:

Bruce A. Brightwell
Louisville, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General

Gregory C. Fuchs
Assistant Attorney General
Frankfort, Kentucky