

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001673-MR

LINDA B. CHADWELL

APPELLANT

v. APPEAL FROM OWEN CIRCUIT COURT
HONORABLE STEPHEN L. BATES, JUDGE
ACTION NO. 04-CR-00025

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
REVERSING

** ** * * *

BEFORE: ABRAMSON AND VANMETER, JUDGES; KNOPF,¹ SENIOR JUDGE.

VANMETER, JUDGE: Linda B. Chadwell appeals from a judgment entered by the Owen Circuit Court after she and numerous codefendants were found guilty of multiple drug-related offenses including, in her case, engaging in organized crime and trafficking in five or more pounds of marijuana as a principal or accomplice. We agree with her assertion that the trial court

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

erred by failing to direct a verdict in her favor. Hence, we reverse.

Briefly, this matter arose from the operations of an alleged criminal drug syndicate in Owen County between December 1, 2003 and April 25, 2004. Chadwell and the man with whom she cohabited, Richard Swan, were indicted on multiple counts. Also indicted were Chadwell's parents, her sister and brother-in-law, and several others. Some of the codefendants entered guilty pleas to the charges against them, while Chadwell and Swan were tried jointly with Chadwell's parents and sister. According to the detailed testimony, members of the alleged syndicate imported massive quantities of marijuana from Mexico into the United States and then to Owen County for distribution. The jury found Chadwell guilty of the charges against her, and she was sentenced to concurrent terms of imprisonment which totaled ten years. This appeal followed.

First, Chadwell asserts that the trial court erred by denying her motion for a directed verdict as to the charge of trafficking in five or more pounds of marijuana as a principal or accomplice. We agree.

The Kentucky Supreme Court succinctly stated that when a party makes a motion for a 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.

Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky. 1991). See CR 50.01. The test on appellate review is whether, "under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt[.]" *Benham*, 816 S.W.2d at 187 (citing *Commonwealth v. Sawhill*, 660 S.W.2d 3 (Ky. 1983)). Although issues raised in a motion for a directed verdict may be unpreserved where, as here, the grounds were no more specific than that the evidence was insufficient to support the charges against the defendant, the issues nevertheless may be reviewed for palpable error affecting the defendant's substantial rights, and relief may be granted in order to prevent manifest injustice. RCr 10.26. See, e.g., *Potts v. Commonwealth*, 172 S.W.3d 345, 347-48 (Ky. 2005); *Pate v. Commonwealth*, 134 S.W.3d 593 (Ky. 2004).

Chadwell was indicted for trafficking pursuant to KRS 218A.1421 and KRS 502.020(1). Under KRS 218A.1421(4), a first offense of trafficking in five or more pounds of marijuana is a

Class C felony. "Traffic" is defined by KRS 218A.010(34)² as meaning "to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance." KRS 502.020(1) addresses issues of complicity, stating:

A person is guilty of an offense committed by another person when, with the intention of promoting or facilitating the commission of the offense, he:

- (a) Solicits, commands, or engages in a conspiracy with such other person to commit the offense; or
- (b) Aids, counsels, or attempts to aid such person in planning or committing the offense; or
- (c) Having a legal duty to prevent the commission of the offense, fails to make a proper effort to do so.

Here, as summarized in the jury instructions, the Commonwealth claimed that the jurors could find that Chadwell was guilty of marijuana trafficking under any one of three different scenarios. First, the jurors could find that Chadwell trafficked in five or more pounds of marijuana on a day or days between April 3 and April 25, 2004. Second, they could find Chadwell guilty of complicity to trafficking in five or more pounds of marijuana based on findings that her codefendant, Norman Dale Masden, knowingly possessed five or more pounds of

² Formerly numbered as KRS 218A.010(28).

marijuana on a day or days between April 3 and April 25, 2004 with the intent of selling or distributing it to another, that Chadwell "aided, assisted or attempted to aid Norman Dale Masden in so doing by among other things buying, selling and distributing said marijuana," and that Chadwell thereby intended that Masden would "possess the marijuana with the intent of selling or distributing it to another person." The jurors chose the third option of "Trafficking in Marijuana - Five Pounds or More, First Offense, Principal or Accomplice," whereby they found that Chadwell was guilty of one of the first two options without determining whether she acted as a principal under the first option, or as an accomplice to Masden under the second option.

The record shows that there was overwhelming evidence that some of Chadwell's codefendants engaged in a drug trafficking conspiracy. However, a search of Chadwell and Swan's residence revealed no evidence of drug trafficking, and the investigating law enforcement officers indicated at trial that Chadwell's codefendants never implicated her during questioning. Indeed, the record shows that the statements made against Chadwell at trial were limited to the following:

- Codefendant Scott Sizemore replied "yes" when he was asked by the Commonwealth whether Swan and Chadwell sold marijuana for her father, Lee Roy Brewer, but his

subsequent statements focused on Swan's behavior rather than on Chadwell's, except for indicating that Chadwell generally "wouldn't smoke" marijuana and was "always looking out for her job" as "she took urine tests on her job." Further, Sizemore responded affirmatively when asked whether "any drugs at the Chadwell residence" involved Swan.

- Masden testified that he worked with Lee Roy, who would tell him that Chadwell and Swan or some other person(s) needed marijuana. He had delivered marijuana to Swan at Chadwell's home, and once Chadwell answered the phone at Lee Roy's home and stated that her father had been arrested. At trial Masden viewed a notebook that allegedly recorded deliveries of marijuana, and he claimed that certain initials identified Chadwell and Swan. Masden stated that he had personally delivered marijuana to Swan at Chadwell's residence perhaps three times, and he had left marijuana outside the residence once. He delivered one pound each time except for one time when he took two pounds. Masden never testified that he left marijuana with Chadwell, instead confirming on cross-examination that marijuana delivered to Chadwell's home was left with Swan.

It certainly could be inferred from the evidence that Chadwell was aware that her codefendants were involved in organized crime and in the trafficking of large amounts of marijuana. Moreover, there was evidence that on several occasions one or two pounds of marijuana were delivered to Chadwell and Swan's home by Masden at Lee Roy's direction, and that the couple's initials were on a list of alleged marijuana deliveries. However, there was no evidence to show that Chadwell ever possessed or exercised control over five or more pounds of marijuana at any one time, and there certainly was no evidence that she aided, assisted, or attempted to aid Masden in the trafficking of marijuana which was in Masden's possession at any time between April 3 and April 25, 2004. It follows, therefore, that it was clearly unreasonable for the jury to find that Chadwell was guilty of the trafficking charge against her. *Benham*, 816 S.W.2d at 187. Even if Chadwell's motion for a directed verdict was insufficient, she must be granted relief in order to avoid manifest injustice because the Commonwealth failed to prove the elements of the trafficking charge against her. RCr 10.26. See *Potts*, 172 S.W.3d at 347-48.

Next, Chadwell contends that the trial court erred by denying her motion for a directed verdict as to the charge of engaging in organized crime. We agree.

KRS 506.120(1) prohibits "engaging in organized crime," which occurs when "[a] person, with the purpose to establish or maintain a criminal syndicate or to facilitate any of its activities," engages in certain activities including:

- (a) Organize or participate in organizing a criminal syndicate or any of its activities;
- (b) Provide material aid to a criminal syndicate or any of its activities, whether such aid is in the form of money or other property, or credit;
- (c) Manage, supervise, or direct any of the activities of a criminal syndicate, at any level of responsibility;
- . . . ;
- (e) Commit, or conspire to commit, or act as an accomplice in the commission of, any offense of a type in which a criminal syndicate engages on a continuing basis[.]

KRS 506.120(3) defines a "criminal syndicate" as "five (5) or more persons collaborating to promote or engage" in certain named activities "on a continuing basis," including the "[i]llegal trafficking of controlled substances as prohibited by KRS Chapter 218A[.]"

Here, the record shows and the Commonwealth admitted during closing argument that there was no evidence that Chadwell violated KRS 506.120(1)(a) or (c) by organizing, managing, supervising or directing a criminal syndicate. Moreover, the

record shows that there was no evidence that Chadwell, rather than Swan, ever accepted the delivery of any marijuana, had control over any marijuana, sold any marijuana to others, or attempted to act, conspire with or aid anyone else in planning or committing the activities of a criminal syndicate. Thus, it was clearly unreasonable for the jury to find Chadwell guilty of engaging in organized crime. We are compelled to conclude, therefore, that the trial court erred by denying Chadwell's motion for a directed verdict of acquittal as to this charge. See *Benham*, 816 S.W.2d at 187. As above, even if Chadwell's motion for a directed verdict was insufficient, she must be granted relief in order to avoid manifest injustice because the Commonwealth failed to prove the elements of the organized crime charge against her. RCr 10.26. See *Potts*, 172 S.W.3d at 347-48.

Given our conclusions to this point, it follows that Chadwell's remaining contention, regarding the court's instructions to the jury, is moot and need not be addressed on appeal.

The court's judgment is reversed.

ALL CONCUR.

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