

RENDERED: JULY 25, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000539-MR

PHILLIP L. PARTIN

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE JAMES L. BOWLING, JR., JUDGE
ACTION NO. 06-CR-00234

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: FORMTEXT ACREE, DIXON, AND TAYLOR , JUDGES.

TAYLOR, JUDGE: Phillip L. Partin brings this appeal from a February 26, 2007, judgment and sentence of imprisonment upon a jury verdict finding him guilty of possession of drug paraphernalia, second offense, and of being a persistent felony offender in the second degree. We affirm.

Appellant was a backseat passenger in a motor vehicle stopped by police upon suspicion that the driver was intoxicated. The other backseat passenger was Lujayne Childers. After placing the driver of the vehicle under arrest for driving under the influence, appellant and Childers were asked to step out of the vehicle. Childers was then placed in the rear seat of a police cruiser. Upon Childers exiting the cruiser, crack cocaine was visible in plain view in the rear seat of the cruiser. Childers admitted to possession of the cocaine, and a search of her person produced additional quantities. Thereafter, the police conducted a search of appellant's person. The police found a glass pipe wrapped in a paper towel hidden in appellant's pants. Appellant stated that the glass pipe was Childers' and that she placed the pipe in his pants to avoid police detection.

The Bell County Grand Jury indicted appellant upon first-degree possession of a controlled substance, possession of drug paraphernalia (second offense), and with being a first-degree persistent felony offender. Following a jury trial, the jury returned a verdict of acquittal upon first-degree possession of a controlled substance but returned a verdict of guilty upon possession of drug paraphernalia. Appellant was also adjudged to be a second-degree persistent felony offender. By judgment entered February 26, 2007, appellant was sentenced to a total term of ten-years' imprisonment. This appeal follows.

Appellant contends that the circuit court erred by denying his motion for a directed verdict of acquittal upon the offense of possession of drug paraphernalia. A directed verdict is proper if considering the whole evidence it

would have been clearly unreasonable for the jury to have found defendant guilty.

Com. v. Benham, 816 S.W.2d 186 (Ky. 1991).

Kentucky Revised Statutes (KRS) 218A.500(2) criminalizes the possession of drug paraphernalia and reads as follows:

It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter.

Appellant believes that the evidence was insufficient to support the jury's finding of guilt upon possession of drug paraphernalia. Specifically, he points to testimony by police that appellant and Childers were "fumbling around in the backseat," that appellant immediately explained that the pipe was Childers', and that Childers tried to dispose of other incriminating evidence. Moreover, appellant essentially argues that the jury's verdict of guilty upon possession of drug paraphernalia and verdict of not guilty upon possession of a controlled substance are inconsistent verdicts:

Following approximately 18 minutes of testimony and proof by the Commonwealth, [appellant] was found guilty of Possession of Drug Paraphernalia, but, inexplicably, found not guilty of Possession of a Controlled Substance in the First Degree. Essentially, the jury found [appellant] guilty of possessing the crack pipe, but not the crack cocaine contained therein. It only stands to reason that if the proof was insufficient to establish that [appellant] possessed the crack inside the

pipe, it was insufficient to prove he possessed the pipe itself.

At trial, the evidence was undisputed that the glass pipe was found hidden in appellant's pants. Considering the circumstances of this case, we believe this undisputed evidence alone is sufficient to support the jury's guilty verdict upon possession of drug paraphernalia under KRS 218A.500(2). Simply stated, we cannot say it was clearly unreasonable for a jury to have returned a guilty verdict. Moreover, in this Commonwealth, jury verdicts need not be entirely consistent if the evidence is sufficient to support each verdict. *Com. v. Harrell*, 3 S.W.3d 349 (Ky. 1999). As hereinbefore stated, the evidence supports the jury's finding of guilt upon possession of drug paraphernalia. In sum, we conclude that the circuit court properly denied appellant's motion for directed verdict of acquittal.

For the foregoing reasons, the judgment and sentence of the Bell Circuit Court is affirmed.

ALL CONCUR.

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