

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-002392-MR

WILLIE JOE HILL

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 07-CR-00594

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE AND NICKELL, JUDGES; LAMBERT,¹ SENIOR JUDGE.

ACREE, JUDGE: Willie Joe Hill appeals from an order of the Fayette Circuit Court convicting him of criminal possession of a forged instrument, tampering with physical evidence, and being a persistent felony offender in the second

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

degree. He argues that the Commonwealth failed to present enough evidence to convict him of either criminal possession of a forged instrument or tampering with physical evidence. We have considered the evidence and determined that the trial court properly denied Hill's motions for directed verdict.

In April 2007, a bartender at the Main Street Live complex in Lexington served a drink to a man wearing a tee-shirt featuring a design of printed currency bills. Chad Ogle believed that the twenty-dollar bill which he received in payment seemed to be an unusual color and size, but concluded that it was perhaps a new design. About half an hour later, the patron returned and purchased another drink from Ogle. Although Ogle had previously given the man over twelve dollars in change and the drink's cost was less than that amount, he again paid the bartender with a twenty-dollar bill. Noting that this second bill also seemed strange, Ogle asked the bouncer whether he thought the twenty was counterfeit. When the bouncer agreed that the bill was a fake, Ogle removed both bills from his register and called the police.

Upon their arrival, police officers examined the two bills and concluded that they were forgeries. They arrested Hill, who fit the description Ogle gave them, and escorted Hill outside. They were followed by the bouncer, Darryl Bonds. While he was being led out of the club, Hill surreptitiously dropped more bills on the floor. Bonds, the only witness to this act, retrieved the bills and

gave them to the police officers. Then, before he could be handcuffed, Hill fled. He was captured by the police after a short pursuit on foot. The additional twenty-dollar bills were also found to be counterfeit.

Hill was indicted on charges of first-degree criminal possession of a forged instrument, tampering with physical evidence, and being a persistent felony offender in the second-degree. The Commonwealth's trial witnesses included Ogle, Bonds, and one of the police officers who arrested Hill. A United States Secret Service agent also testified that the bills were in fact counterfeit. The trial court denied both of Hill's motions for directed verdict. He was convicted of all three offenses and sentenced to ten years. This appeal followed.

On appeal, Hill argues that the trial court should have granted his motions for directed verdict. The Kentucky Supreme Court has established the standard to be used by a trial court in ruling on a motion for directed verdict.

On motion for 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). Examination of the evidence against Hill reveals no grounds for the trial court to have granted Hill's directed verdict motion.

KRS 516.050 requires proof of “possession of a forged instrument . . . with knowledge that it is forged and with intent to defraud, deceive or injure another[.]” Hill argues that the Commonwealth did not present direct evidence that he knew the bills were forged or that he intended to defraud Main Street Live when he purchased drinks with counterfeit money. The Kentucky Supreme Court has stated clearly that circumstantial evidence is sufficient to sustain a conviction provided that it is “of such nature that, based on the whole case, it would not be clearly unreasonable for a jury to find guilt beyond a reasonable doubt.” *Graves v. Commonwealth*, 17 S.W.3d 858, 862 (Ky. 2000)(citation omitted). Further, in applying the standard of review, the law makes no distinction between allegations supported by circumstantial evidence and allegations supported by direct evidence. *Commonwealth v. Collins*, 933 S.W.2d 811, 815 (Ky. 1996).

The evidence of Hill’s guilt included testimony from both the bartender and the bouncer who quickly identified the fake bills as probable forgeries. Ogle testified that Hill used a fresh twenty dollar bill each time he paid for a drink despite the fact that he could have paid for his second drink with the change he received from his purchase of his first drink. Further, as he was being escorted outside by police officers, Hill was observed reaching into his pants pocket and discarding the remaining forged bills. Finally, he broke away from the police officers who were attempting to arrest him and fled until he was caught and subdued. “It has long been held that proof of flight to elude capture or to prevent discovery is admissible because ‘flight is always some evidence of a sense of

guilt.”” *Rodriguez v. Commonwealth*, 107 S.W.3d 215, 218 -19 (Ky. 2003), quoting, *Hord v. Commonwealth*, 227 Ky. 439, 13 S.W.2d 244, 246 (1928). The evidence introduced at Hill’s trial was sufficient to support a reasonable juror’s belief in his guilt beyond a reasonable doubt on the charge related to possession of the forged bills. *Benham*, 816 S.W.2d at 187.

Hill also contends that there was not enough evidence to prove beyond a reasonable doubt that he tampered with physical evidence because only one of the witnesses testifying for the Commonwealth saw him throw fake bills on the floor. At trial, Bonds testified that he saw Hill take his hand out of his pocket and drop money on the floor. Bonds picked up the bills and gave them to the police officers. They were later determined to be forgeries. KRS 524.100(1)(a) defines the crime of tampering with physical evidence as follows:

- (1) A person is guilty of tampering with physical evidence when, believing that an official proceeding is pending or may be instituted, he:
 - (a) Destroys, mutilates, conceals, removes or alters physical evidence which he believes is about to be produced or used in the official proceeding with intent to impair its verity or availability in the official proceeding[.]

Hill contends that the other witnesses who testified contradicted the Bonds’ account.

Although the officer who testified at trial did not see Hill drop the money, he told the jury that he was watching Hill’s shoulders in anticipation of any sudden movements. Likewise, the club owner did not see the money being

discarded, but he testified that he was not specifically watching Hill at the time. Thus, neither witness appears to have directly contradicted Bonds' testimony. Further, even if there had been contradictory testimony, determinations of credibility and weight of the evidence presented are reserved to the jury. *Benham*, 816 S.W.2d at 187. Consequently, the lack of corroboration does not prevent Bonds' testimony from being the basis for a reasonable juror to find Hill guilty beyond a reasonable doubt of tampering with physical evidence.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

Euva D. May
Assistant Public Advocate
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

David B. Abner
Assistant Attorney General
Frankfort, Kentucky