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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001264-MR

PATRICIA RENEE VALANDINGHAM

APPELLANT

v. APPEAL FROM CARTER CIRCUIT COURT
HONORABLE REBECCA K. PHILLIPS, JUDGE
ACTION NO. 08-CR-00046

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AFFIRMING

** ** * ** * **

BEFORE: KELLER AND THOMPSON, JUDGES; SHAKE,¹ SENIOR JUDGE.

THOMPSON, JUDGE: Patricia Renee Valandingham appeals from the Carter

Circuit Court's judgment of conviction finding her guilty of conspiring to murder

her husband. For the reasons stated herein, we affirm.

¹ Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On April 22, 2008, Valandingham was indicted by a Carter County grand jury for conspiring to murder her husband, Brent Valandingham. She was indicted with Christopher Stephens, her co-conspirator, but Stephens eventually pled guilty to conspiracy to commit second-degree assault. In exchange for his guilty plea, the Commonwealth agreed to recommend a six-year sentence. On March 24, 2009, Valandingham's conspiracy to commit murder trial began.

At trial, Terry Marcum, Valandingham and Stephens's co-worker at McDonald's, testified that Stephens, who normally did not prepare sandwiches, voluntarily agreed to prepare an order for a McChicken sandwich on January 12, 2008. She testified that she observed Stephens apply a greenish-bluish substance to the sandwich buns. She testified that Stephens disposed of the buns when she inquired about the substance. According to Marcum, she retrieved the sandwich wrapper and buns and turned them over to her manager, Christy Arms. She further testified that Stephens was preparing the order for Brent Valandingham who was talking to his wife at the front counter. During her testimony, Christy Arms stated that she discussed the incident with Marcum and then discovered an eyedropper bottle filled with a crushed green material, which was turned over to police.

David Klem, a Kentucky State Police (KSP) Trace Analyst, testified that he found a greenish-bluish substance on the eyedropper and the wrapper. He testified that the substances were microscopically consistent with a test standard of d-Con, a commercial mouse poison. Ken Rider, a KSP Trace Analyst Supervisor, testified that the eyedropper contained a regulated pesticide chemical consistent

with d-Con, which was dangerous to humans. While testifying that material found on the wrapper was too minute for rodenticide analysis, he stated that the substance was microscopically similar to d-Con. He further testified that the tests conducted on the sandwich buns were inconclusive.

Olive Hill Police Officer Sam Richmond testified that Valandingham gave written and recorded statements. According to portions of statements, Valandingham admitted to an “intimate relationship” with Stephens and that he had mentioned the possibility of her husband’s poisoning. Officer Bruce Palmer testified that the search of Stephens’s residence yielded numerous items, including many photographs of Stephens and Valandingham.

According to Stephens’s testimony, he knew Valandingham from their employment at McDonald's and their friendship developed into an intimate relationship. The paramours began spending holidays together, professed their love for each other, and wore matching wedding bands. He identified numerous cards and letters that he had received from Valandingham. One writing provided that, “One day I will be Renee Stephens” and another provided that, “I so very much can't wait to be with you all the time.”

At some point, Valandingham informed Stephens that she preferred him over her husband. Valandingham informed him that her husband had a violent temper, had ripped up their wedding album, had dragged her by her hair, and had raped her. The paramours then discussed Valandingham divorcing her husband

and how it would be better if her husband fell off the earth. The pair then began discussing using d-Con mouse poison to kill her husband.

During the course of their discussions and planning, Valandingham informed Stephens that she believed the mouse poison would probably work. He was then supplied with money by Valandingham to purchase the d-Con and Visine bottle at the Olive Hill Dollar Store. The purchase was made just a couple of days before the attempted poisoning. Valandingham neither asked him to terminate the plan nor expressed disapproval with the plan.

As Stephens's testimony continued, he stated that the paramours further discussed the plan after the purchase of the mouse poison, and he instructed her to invite her husband to McDonald's on January 12, 2008. The night before the poisoning attempt, the paramours finalized their plan to lure Brent to McDonald's where Valandingham would inform Stephens of her husband's arrival. The next day, Valandingham asked Stephens if he had brought it, and he showed her the Visine bottle containing the mouse poison. He later heard her call her husband. Upon Brent's arrival, Valandingham said to Stephens, "The bastard is here." Following this portion of his testimony, Stephens gave further testimony consistent with Marcum's testimony regarding the poisoning of the McChicken sandwich.

After the close of the Commonwealth's case, Valandingham moved for a directed verdict of acquittal. After hearing the arguments of counsel, the trial court observed that she and Stephens discussed the planning of her husband's

murder, that she provided money to Stephens to purchase the poison, and that she lured her husband to McDonald's. Denying the motion, the trial court ruled that the evidence created a jury question regarding her guilt as to the charged offense.

According to Valandingham's testimony, her friendship with Stephens developed into a sexual relationship. Because Stephens did not possess a driver's license, she drove him wherever they traveled. While acknowledging that she had not been raped by her husband, she testified that she had sex with him when she was not in the mood. A couple of weeks prior to the attempted poisoning, she and Stephens were at a store when he approached her with a box of d-Con. He told her that he hated her husband and wanted to get rid of him. She then denied providing Stephens money to buy d-Con or being with him at the Olive Hill Dollar Store.

Valandingham further testified that she did not call her husband to McDonald's on the day in question and did not inform Stephens of his arrival. However, Valandingham acknowledged that she never informed her husband about any of Stephens's ill-willed statements or about his intentions with the d-Con. At the close of her case, Valandingham's motion for a directed verdict of acquittal was again denied. Subsequently, she was found guilty of conspiracy to commit murder and, in *lieu* of jury sentencing, agreed to an eleven-year sentence.

Valandingham contends that the trial court erred by denying her motion for a directed verdict of acquittal. She contends that she could not be found guilty of the conspiracy charge because the Commonwealth did not prove the existence of an agreement between her and Stephens. Because she argues that she

did not agree with Stephens's suggestion to murder her husband, she contends that the trial court was required to issue her a directed verdict of acquittal.

Our review of a trial court's denial of a motion for directed verdict of acquittal is governed by the standard set forth in *Commonwealth v. Benham*, 816 S.W.2d 186 (Ky. 1991):

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.

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.

Id. at 187.

KRS 506.040 provides the following:

(1) A person having the intention of promoting or facilitating the commission of a crime is guilty of criminal conspiracy when he:

(a) Agrees with one (1) or more persons that at least one (1) of them will engage in conduct constituting that crime or an attempt or solicitation to commit such a crime; or

(b) Agrees to aid one or more persons in the planning or commission of that crime or an attempt or solicitation to commit such a crime.

Under our conspiracy statute, a conviction cannot be established with evidence of suspicion or evidence showing relations between the parties which are natural and reasonable. *Senibaldi v. Commonwealth*, 338 S.W.2d 915, 918 (Ky. 1960).

After reviewing the record, we conclude that the trial court did not err by denying Valandingham's motion for a directed verdict of acquittal. While she argues that she did not agree and participate in the planning and execution of her husband's murder, the jury was presented with competent evidence that she provided money to buy the poison, discussed killing her husband with Stephens, lured her husband to McDonald's, and signaled his arrival to her co-conspirator.

Although we acknowledge Valandingham's testimony that she had a good relationship with her husband, that she did not want him killed, that she did not provide money for the purchase of the poison, and that she did not signal her husband's arrival to Stephens, her testimony was refuted by the testimony of other witnesses, including her own statements to police and Stephens that her husband was abusive towards her. While Valandingham believes her version of the facts, the jury has the sole province to determine the weight and credibility of conflicting evidence. *Clark v. Commonwealth*, 996 S.W.2d 39, 42 (Ky.App. 1998).

Accordingly, based on the evidence in the record, we cannot conclude that the trial court erred by denying Valandingham's motion for a directed verdict. When all fair and reasonable inferences from the evidence are drawn in favor of the Commonwealth, we conclude that there was sufficient evidence to permit a

reasonable juror to believe beyond a reasonable doubt that Valandingham was guilty of conspiring with Christopher Stephens to murder her husband.

For the foregoing reasons, the Carter Circuit Court's judgment of conviction is affirmed.

ALL CONCUR.

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