

RENDERED: AUGUST 10, 2012; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2010-CA-001238-DG

WILL MCGINNIS

APPELLANT

ON DISCRETIONARY REVIEW FROM FAYETTE CIRCUIT COURT  
v. HONORABLE JAMES D. ISHMAEL, JR., JUDGE  
ACTION NO. 09-XX-00043

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: LAMBERT, TAYLOR, AND THOMPSON, JUDGES.

TAYLOR, JUDGE: Will McGinnis brings this *pro se* appeal from a June 2, 2010, Opinion and Order of the Fayette Circuit Court affirming a judgment of the Fayette District Court upon a jury verdict finding McGinnis guilty of violating Kentucky Revised Statutes (KRS) 243.020(3). Our Court granted discretionary review by Order entered April 21, 2011. We affirm.

McGinnis owns a business named Club 9. McGinnis rented the Club 9 premises to various individuals by the night for private parties. In March 2009, McGinnis rented the facility to Frankie Hall.<sup>1</sup> Hall paid McGinnis \$200 to rent Club 9 from 11:00 p.m. to 5:30 a.m. per night. It was alleged that McGinnis allowed Hall to repeatedly rent Club 9, who then charged patrons a cover charge at the door, and then allowed those patrons to bring alcoholic beverages onto the premises. Rather than Club 9 being used for private parties only, evidence was introduced that the public could enter Club 9 during the rental period and bring alcoholic beverages onto the premises if the cover charge was paid. Despite several warnings by the Lexington Metro Police, McGinnis refused to limit alcoholic beverage consumption at Club 9 and eventually was charged with two counts of violating KRS 243.020(3), which prohibits the consumption of alcoholic beverages at a public place of business.

The Fayette District Court conducted a jury trial on September 21, 2009, and McGinnis was found guilty on both counts of violating KRS 243.020(3). The District Court fined McGinnis \$500 and ordered him to pay court costs. McGinnis pursued a direct appeal (09-XX-00043) to the Fayette Circuit Court. By Opinion and Order entered June 2, 2010, the circuit court affirmed McGinnis's conviction for violating KRS 243.020(3). McGinnis, *pro se*, then filed a motion for discretionary review with the Court of Appeals. The motion was granted, and our review follows.

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<sup>1</sup> The record reflects that Will McGinnis entered into a "Private Party One Day Rental Agreement" with Frankie Hall for each rental period.

McGinnis alleges that he did not violate KRS 243.020(3).<sup>2</sup> In particular, McGinnis argues that he was not present at Club 9 when the violations occurred and that Club 9 was a private party space available for rent. He maintains that only his tenant, Hall, was guilty of violating KRS 243.020(3). In effect, McGinnis argues that he was entitled to a directed verdict of acquittal. A directed verdict is proper if after viewing the evidence most favorable to the Commonwealth, it would be clearly unreasonable for the jury to find guilt. Kentucky Rules of Civil Procedure (CR) 50.01; *Commonwealth v. Benham*, 816 S.W.2d 186 (Ky. 1991).

McGinnis was found guilty of violating KRS 243.020(3), which reads:

Except as provided in [KRS 243.036](#), [243.260](#), and [243.290](#), a person, conducting a place of business patronized by the public, who does not hold a license to sell distilled spirits, wine, or malt beverages, shall not permit any person to sell, barter, loan, give away, or drink distilled spirits, wine, or malt beverages on the premises of his place of business.

Under KRS 243.020(3), a person conducting a business patronized by the public prohibits the sale or consumption of alcoholic beverages at the business in the absence of a license to sell alcoholic beverages.

During trial, there was evidence that Club 9 was a business owned by McGinnis; that members of the public could enter Club 9 after paying a cover charge; and alcoholic beverages could be consumed by those attending Club 9.

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<sup>2</sup> McGinnis is proceeding *pro se* and has filed a *pro se* brief. We have endeavored to fully ascertain the allegations of error presented therein.

Also, evidence was introduced that McGinnis had actual knowledge that alcohol was being consumed by the public at his Club 9 business facility. Additionally, the evidence established that McGinnis refused to limit the consumption of alcohol and repeatedly rented Club 9 to Hall, and profited from renting Club 9 under these circumstances. Also, at all times pertinent to the Club 9 rentals, McGinnis did not hold a liquor license.

Considering the evidence is a light most favorable to the Commonwealth, we hold the evidence was sufficient to support the jury's verdict finding McGinnis guilty upon two counts of violating KRS 243.020(3). The evidence showed that McGinnis, at the very least, permitted the consumption of alcoholic beverages at his business premises and that those premises were accessible by the general public during the rental periods in question.

McGinnis also raises a plethora of additional allegations of error. McGinnis, however, fails to cite to any legal authority and fails to articulate an adequate legal basis supporting these allegations of error. In short, McGinnis fails to advance any legal argument justifying reversal of his conviction for violating KRS 243.020(3).

In sum, we cannot say that the circuit court committed error by affirming the district court's judgment upon a jury verdict finding McGinnis guilty upon two counts of violating KRS 243.020(3).

For the foregoing reasons, the Opinion and Order of the Fayette Circuit Court is affirmed.

LAMBERT, JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS IN RESULT ONLY.

BRIEFS FOR APPELLANT:

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