

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-000002-MR

ERNIE QUINTANA

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE BRIAN WIGGINS, JUDGE
ACTION NO. 11-CR-00170

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: MAZE, STUMBO, AND VANMETER, JUDGES.

VANMETER, JUDGE: Ernie Quintana appeals from a Muhlenberg Circuit Court judgment finding him guilty of promoting contraband in the first degree pursuant to KRS¹ 520.050(1)(b) and of being a persistent felony offender and sentencing him to seven years' imprisonment. We affirm.

¹ Kentucky Revised Statutes.

In August of 2011, an officer with the Greenville Police Department served a bench warrant on Quintana for writing bad checks. Subsequent to his arrest, Quintana was searched, but no contraband was found. The arresting officer testified at trial that he asked Quintana, on more than one occasion, if he possessed contraband and explained to him that if he had contraband in his possession when he entered the detention facility, he would be subject to a charge of promoting contraband, which had a greater penalty than possession. Quintana testified at trial that he was high on meth at the time of arrest, but that the only discussion he had with the arresting officer occurred before his arrest and he did not recall being asked if he possessed drugs. He further testified that he knew a charge of promoting contraband had greater repercussions than possession outside a detention facility.

Upon arriving at the jail, the deputy jailer booked Quintana and asked him to turn over his personal items. The deputy searched Quintana's wallet and, upon removing its contents, discovered a small bag containing white powder. A field test revealed the substance was methamphetamine.

Quintana was subsequently charged with promoting contraband in the first degree. KRS 520.050(1)(b). At trial, Quintana testified that he placed the methamphetamine in his wallet a month or two before, and forgot that he had done so. Quintana was ultimately convicted of promoting contraband in the first degree for knowingly possessing contraband in a detention facility.

On appeal, Quintana avers that the circuit court erred when it failed to instruct the jury on the lesser offense of possession of methamphetamine under KRS 218A.1415. Quintana also asserts that he was entitled to a directed verdict of acquittal because the Commonwealth failed to present evidence that he “knowingly” possessed methamphetamine while confined in the detention facility. We disagree with both assertions.

KRS 520.050(1)(b) provides that “a person is guilty of promoting contraband in the first degree when: . . . being a person confined in a detention facility or a penitentiary, he knowingly makes, obtains, or possesses dangerous contraband.” Quintana avers that he was entitled to an instruction on possession as a lesser included offense of promoting dangerous contraband. “A person is guilty of possession of a controlled substance in the first degree when he or she knowingly and unlawfully possesses . . . [m]ethamphetamine” KRS 218A.1415. The parties disagree as to whether the jury instruction issue was properly preserved. Regardless, the failure to instruct the jury on possession was not erroneous under either palpable error or clear error standard of review.

The Kentucky Supreme court has held:

An instruction on a lesser included offense is required only if, considering the totality of the evidence, the jury might have a reasonable doubt as to the defendant’s guilt of the greater offense, and yet believe beyond a reasonable doubt that he is guilty of the lesser offense.

Houston v. Commonwealth, 975 S.W.2d 925, 929 (Ky. 1998). Promoting contraband in the first degree includes the knowing possession of

methamphetamine in a detention facility. Possession of a controlled substance in the first degree includes the knowing possession of methamphetamine. In this case, the parties do not dispute that Quintana was in a detention facility when methamphetamine was found in his wallet. Thus, the jury was tasked only with determining whether Quintana “knowingly” possessed methamphetamine.

Because the mens rea was at issue, and is required for both promoting contraband and possession, a jury could not have reasonable doubt as to Quintana’s guilt for promoting contraband, yet believe beyond a reasonable doubt that he is guilty of possession. Therefore, he was not entitled to an instruction on possession.

Next, Quintana argues that the Commonwealth failed to present evidence that Quintana “knowingly” possessed methamphetamine while he was in the facility and, as a result, he was entitled to a directed verdict. Once again, the parties disagree as to whether the issue was properly preserved. Either way, Quintana was not entitled to a 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). “A person acts knowingly with respect to conduct or to a circumstance described by a statute

defining an offense when he is aware that his conduct is of that nature or that the circumstance exists.” KRS 501.020(2). The Commonwealth established, and Quintana concedes, that he placed methamphetamine in his wallet, and the methamphetamine was found in his wallet while Quintana was confined in a detention facility. Although Quintana testified that he forgot the methamphetamine was in his wallet, “[c]ircumstantial evidence is sufficient to support a criminal conviction as long as the evidence taken as a whole shows that it was not clearly unreasonable for the jury to find guilt.” *Hampton v. Commonwealth*, 231 S.W.3d 740, 751 (Ky. 2007) (quoting *Bussell v. Commonwealth*, 882 S.W.2d 111, 114 (Ky. 1994)). In addition, the jury’s job is “to evaluate the credibility of witnesses and lend to that evaluation the relative weight they deem fit.” *Hatfield v. Commonwealth*, 250 S.W.3d 590, 596 (Ky. 2008). Here, both Quintana and the arresting officer testified at trial. Based on the evidence presented, the jury made a reasonable inference that Quintana knowingly possessed the methamphetamine. *See Hampton*, 231 S.W.3d at 751 (the jury reasonably concluded that defendant knowingly introduced contraband into a detention facility because the contraband was in his pocket).

For the reasons set forth above, the judgment of the circuit court is affirmed.

ALL CONCUR.

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