

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000454-MR

WILLIAM ELLIS PATTERSON

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE KAREN L. WILSON, JUDGE
ACTION NO. 14-CR-00171

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: NICKELL, STUMBO AND VANMETER, JUDGES.

STUMBO, JUDGE: William Ellis Patterson (Patterson) appeals his conviction for first-degree Possession of a Controlled Substance and second-degree Fleeing and Evading the Police. The Henderson Circuit Court sentenced him to three years for the felony drug possession conviction, plus a concurrent twelve-month sentence for

the misdemeanor fleeing conviction. Having reviewed the arguments of the parties and applicable law, we affirm the judgment of conviction.

I. Facts

In April 2014, Patterson was arrested in Henderson, Kentucky at a scene where several people were suspected of participating in drug use inside of a parked vehicle. Patterson was sitting in the passenger side seat. When officers approached the vehicle, Patterson was instructed to keep his hands visible. Officers stated that Patterson initially placed his hands on the dashboard, but kept lowering them to his side. When ordered to do so by the officers, each time he placed his hands back on the dashboard. Patterson then ran from the vehicle, but was soon apprehended. The arresting officer noticed a syringe on the ground close to the area where Patterson was handcuffed and taken into custody. The syringe was later determined to contain methamphetamine residue. No drugs were found on Patterson during a search of his person incident to the arrest.

Patterson was indicted on charges of first-degree Possession of a Controlled Substance, Possession of Drug Paraphernalia, second-degree Fleeing/Evading the Police and second-degree Disorderly Conduct.

At his trial on February 4, 2015, none of the arresting officers testified to seeing Patterson place any items in his pockets at the drug scene prior to arrest. Additionally, no officers testified witnessing any items fall out of Patterson's pockets or witnessing Patterson throw anything from his person during the time he

was fleeing from police. No evidence was presented that Patterson had methamphetamine in his system.

At the close of the Commonwealth's case, Patterson moved for a directed verdict. Patterson stipulated to the fact that the syringe contained methamphetamine and that the syringe was found along the path where he fled police, but argued that the Commonwealth failed to prove he actually possessed either the illegal substance or the syringe. The Commonwealth argued that strong circumstantial evidence was presented that Patterson had possession and circumstantial evidence is sufficient to withstand a directed verdict. The Commonwealth argued that Patterson had constructive possession of the syringe given that he ran from the vehicle, did not follow police instructions, moved his hands from the dashboard and because the syringe was discovered in the vicinity of his apprehension.

The jury instructions defined possession as “[having] actual physical possession or otherwise to exercise actual dominion or control over a tangible object.” The Henderson Circuit Court denied the motion for a directed verdict, but did not provide findings of fact or conclusions of law to support its order. The case was submitted to the jury. Patterson was found guilty of first-degree Possession of a Controlled Substance and second-degree Fleeing and Evading the Police. He was found not guilty of the charges of Possession of Drug Paraphernalia and Disorderly Conduct. The jury recommended a total sentence of three years.

Post-trial, Patterson moved for a judgment of acquittal and, in the alternative, a motion for new trial. Patterson argued the jury's verdict was inconsistent, as the Commonwealth's evidence for both the Possession of a Controlled Substance and the Possession of Drug Paraphernalia charges were identical. Patterson argued that he could not be convicted of possessing a drug while being acquitted of possessing the item that contains the drug. By written order dated February 19, 2015, the circuit court held there was sufficient evidence to support the verdict that Patterson possessed methamphetamine and that the verdict was not fatally inconsistent. Specifically, the court cited to *Coffey v. Commonwealth*, 481 S.W.2d 262, 264 (Ky. 1972), in support of its order to deny the motion and found that, "a jury could reasonably believe that Patterson did knowingly possess a quantity of methamphetamine but not believe that he then had the intent to use the syringe to ingest methamphetamine into his body."

II. Issues and Analysis

The questions presented to the Court are whether the trial court improperly denied the motion for a directed verdict, the motion for judgment of acquittal, and the alternative motion for a new trial. Patterson argues that he did not possess the syringe under the definition set forth in the jury instructions and that his conviction for first-degree possession (methamphetamine) must be reversed as inconsistent with his acquittal for possession of the syringe containing the methamphetamine. He contends that allowing an inconsistent verdict to stand qualifies as a denial of due process.

The standard for a directed verdict is set out in *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (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.

Moreover, *Benham* states, “[o]n 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.* (citing *Commonwealth v. Sawhill*, 660 S.W.2d 3 (Ky. 1983)) (emphasis added). A directed verdict motion is reviewed in light of the proof at trial and the statutory elements of the alleged offenses. *Lawton v. Commonwealth*, 354 S.W.3d 565, 575 (Ky. 2011). As stated in *Sawhill*, there must be evidence of substance, and the trial court is expressly “authorized to direct a verdict for the defendant if the prosecution produces no more than a mere scintilla of evidence.” *Sawhill*, 660 S.W.2d at 5; *Benham*, 816 S.W.2d at 187-88. As to a trial court’s decision to deny a motion for a new trial, “[an appellate court is] to affirm . . . unless there is a complete absence of proof on a material issue in the action, or if no disputed issue of fact exists upon which reasonable men could differ.” *Fister v. Commonwealth*, 133 S.W.3d 480, 487 (Ky. App. 2003) (citation omitted). The reviewing court is

not to make determinations regarding credibility or weight of the evidence.

Benham, 816 S.W.3d at 187.

(A) Inconsistent Verdict – Controlled Substance

We may not disturb the trial court's rulings unless the decisions are clearly erroneous. *Peters v. Wooten*, 297 S.W.3d 55, 65 (Ky. App. 2009).

On the question of inconsistent verdicts, our Supreme Court held in

Commonwealth v. Harrell, 3 S.W.3d 349 (Ky. 1999):

[R]igid adherence to a prohibition against inconsistent verdicts may interfere with the proper function of a jury, particularly with regard to lenity. Such an approach would unduly restrict the right of the jury to consider the evidence broadly and convict or acquit based upon its view of the evidence pertaining to each charge. . . . The better approach would be to examine the sufficiency of the evidence to support each verdict. This approach is consistent with the United States Supreme Court's holding that each count of an indictment should be regarded as a separate indictment, and thus consistency in a verdict is not necessary.

Id. at 351 (citations omitted). The mere fact of inconsistency does not automatically make inconsistent verdicts subject to reversal. *Fister*, 133 S.W.3d at 485 (citations omitted). Kentucky Revised Statute (KRS) 218A.1415, which is the statute for possession of a controlled substance, provides,

(1) A person is guilty of possession of a controlled substance in the first degree when he or she knowingly and unlawfully possesses:

(a) A controlled substance that is classified in Schedules I or II and is a narcotic drug;

(b) A controlled substance analogue;

(c) Methamphetamine;

.....

(2) Possession of a controlled substance in the first degree is a Class D felony . . .

Additionally, the statute defining drug paraphernalia, KRS 218A.500, provides,

(1) “Drug paraphernalia” means all equipment, products and materials of any kind which are used, intended for use, or designed for use in . . . storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes but is not limited to:

.....

(k) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body; and

.....

(2) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia for the purpose of . . . storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter.

We do not find any language in KRS 218A.1415 and KRS 218A.500 mandating lock-step indictments or verdicts. We interpret the holdings in *Harrell* and *Fister* to mean that even though criminal counts are submitted at the same time within an indictment, jurors are not required to weave an unbreakable thread of uniformity through them to build a neat and perfect story of criminal activity. Jurors are expected to analyze the evidence presented at trial against each charge individually

and determine if such evidence is sufficient to support a guilty verdict. Unless the plain language of the relevant statute demands otherwise, each count in an indictment is an entity unto itself and must be weighed in that fashion by jurors. Criminal counts are not meant to be bound together. If the Commonwealth fails to present sufficient evidence to meet the elements of a specific count, then it is the duty of jurors to acquit on that specific count.

When looking at the evidence introduced at trial in a light favorable to the Commonwealth, we find no error in the trial court's decisions. As required under *Harrell* our mission as an appellate court is only to examine the sufficiency of the evidence to convict Patterson. The Commonwealth argues that the jury was entitled to rely upon circumstantial evidence in concluding that Patterson, at some point, possessed methamphetamine, even if concluding he was not in possession of the syringe found near his body. In *Sawhill*, the Supreme Court held that,

The trial court must draw all fair and reasonable inferences from the evidence in favor of the party opposing the motion, and a directed verdict should not be given unless the evidence is insufficient to sustain a conviction. The evidence presented must be accepted as true. The credibility and the weight to be given the testimony are questions for the jury exclusively.

Id. at 5. This holding supports the proposition that Patterson's flight from the vehicle and failure to keep his hands on the vehicle dashboard prior to running, in addition to the factor that the syringe was found near him, created an inference that Patterson had possessed methamphetamine. The circumstantial evidence was a sufficient basis from which the trial court could draw fair and reasonable

inferences in favor of the Commonwealth. We find the trial court did not act unreasonably in denying a directed verdict, as the Commonwealth produced more than a “mere scintilla of evidence” in relation to the criminal counts presented to the jury resulting in Patterson’s conviction. We find no abuse of discretion in denying the motion for a directed verdict or the motion for a judgment of acquittal or the motion for a new trial.

(B) Verdict – Fleeing and Evading

At the conclusion of his brief, Patterson requests reversal and remand of his conviction for second-degree Fleeing/Evading Police or, alternatively, for a new trial, or other relief we deem appropriate. We note that despite this request, Patterson’s sole focus in his appeal is his conviction for possession. He does not submit any substantive argument as to legal deficiencies or problems with his Fleeing/Evading conviction. As Patterson makes no specific argument that this Court can analyze, we presume he did not intend for us to do so; therefore, that conviction stands.

Conclusion

For the foregoing reasons, the order and judgment of the Henderson Circuit Court is hereby AFFIRMED.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Jason A. Hart
Assistant Public Advocate
Department of Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Gregory C. Fuchs
Assistant Attorney General
Frankfort, Kentucky