

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001239-MR

JOHNNY EADS

APPELLANT

v. APPEAL FROM KNOX CIRCUIT COURT
HONORABLE JOHN KNOX MILLS, JUDGE
ACTION NO. 16-CR-00040

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, D. LAMBERT AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Johnny Eads appeals from a judgment of the Knox Circuit Court entered after a jury trial convicted him of trafficking in a controlled substance, first degree, first offense, and sentenced him to two-years' imprisonment. The sole claim of error by Johnny is that he was entitled to a directed verdict of acquittal at the close of the Commonwealth's case. We conclude there was sufficient evidence to submit the case to the jury and affirm.

Captain Everett Johnson of the Knox County Sherriff's Department testified he received complaints that Johnny and his brother, Robert Eads, were drug trafficking at a residence on Dr. Parker Lane where Robert and Johnny live in separate trailers located on their father's property. As part of his investigation, Captain Johnson used a confidential informant (C.I.).

Although Captain Johnson testified that the C.I. stated he could purchase drugs from Robert, he met with the C.I. to set up a buy with Robert or Johnny. Captain Johnson searched the C.I., gave him an audio recording device, three twenty dollar bills for buy money and drove him to the residence located on Dr. Parker Lane. Captain Johnson testified he parked in front of a brick house owned by Johnny's father with a trailer behind it. When they arrived, several vehicles were in the driveway.

The C.I. exited the vehicle and went into the residence alone. The C.I. returned to Captain Johnson's vehicle and informed Captain Johnson that the person inside the residence did not have change. Captain Johnson gave the C.I. three one dollar bills and two dollars in quarters. The C.I. went inside the residence, stayed a brief time and returned to Captain Johnson's vehicle.

Captain Johnson and the C.I. went down the road and the C.I. gave Captain Johnson one oxycodone pill, the unused money and the recording device. Captain Johnson testified he did not see Johnny.

The C.I. identified Johnny at trial as the person who sold him the pill. During his testimony, the audio recording was played.

Leann Garrison for the Kentucky State Police South Eastern Regional Laboratory testified that the pill contained oxycodone.

At the close of the Commonwealth's case, defense counsel approached the bench and asked if motions for directed verdict would be heard prior to the lunch break. The court instructed counsel to do so after the jury was excused. The court recessed. There is no record of defense counsel's motion for directed verdict having been made.

Johnny testified. He denied selling the pill to the C.I. and insisted he would not have been at his brother's home on the date in question because of their strained relationship. He denied that his voice was on the audio recording.

Johnny argues that he was entitled to directed verdict because there was insufficient evidence to convict him of trafficking. He argues the Commonwealth did not prove beyond a reasonable doubt that he sold the pill to the C.I. The Commonwealth argues that Johnny failed to preserve the issue for appellate review and, even if preserved, he was not entitled to a directed verdict.

As stated in *Chavies v. Commonwealth*, 354 S.W.3d 103, 113 (Ky. 2011) (footnotes omitted):

To preserve a trial court's denial of a directed verdict for appellate review, a defendant must move for a directed verdict at the close of the Commonwealth's case and renew the motion at the conclusion of all the evidence. And a defendant "must state specific grounds for relief and should identify which elements of the alleged offense the Commonwealth has failed to prove." When a defendant fails to preserve an error based upon the sufficiency of the evidence, an appellate court can review

the issue for palpable error. But palpable error review will not be granted when a defendant did not move for a directed verdict or affirmatively waived the objection in the trial court.

Preservation is questionable because there is no record of Johnny having moved for a directed verdict at either the close of the Commonwealth's case or at the conclusion of all the evidence. However, even if properly preserved, Johnny's claim of error is without merit.

On a motion for directed verdict of acquittal, all fair and reasonable inferences are drawn in the Commonwealth's favor. *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991). On appellate review, we determine whether, under the evidence viewed as a whole, it was clearly unreasonable for the jury to have found the defendant guilty. *Commonwealth v. Sawhill*, 660 S.W.2d 3, 5 (Ky. 1983). Questions concerning the weight of the evidence and credibility of witnesses are reserved for the jury. *Id.*

Our Supreme Court has held that “[t]he testimony of even a single witness is sufficient to support a finding of guilty, when other witnesses testified to the contrary if, after consideration of the evidence, the finder of fact assigns greater weight to that evidence.” *Commonwealth v. Suttles*, 80 S.W.3d 424, 426 (Ky. 2002). Captain Johnson's testimony, the C.I.'s testimony and identification of Johnny as the seller of the pill and the audio tape constituted sufficient evidence of Johnny's guilt to withstand a motion for directed verdict.

While Johnny questions the C.I.'s credibility because he worked as a C.I. in exchange for resolving pending felony cases against him and to aide his girlfriend who also faced criminal charges, he was subject to cross-examination at trial. Johnny's arguments challenge the C.I.'s credibility, which was resolved within the exclusive province of the jury. *Potts v. Commonwealth*, 172 S.W.3d 345, 351 (Ky. 2005). It was not clearly unreasonable for the jury to find Johnny guilty.

For the reasons stated, the judgment of the Knox Circuit Court is affirmed.

ALL CONCUR.

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