

IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

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RENDERED: MARCH 20, 2003
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2001-SC-0716-MR

FINAL
DATE 4-10-03 EJA/Grou/tdc

DANNY WOODS

APPELLANT

V. APPEAL FROM OHIO CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
2000-CR-00012

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

This appeal is from a judgment based on a jury verdict which convicted Woods of two counts of first-degree sexual abuse and two counts of incest against his stepdaughter. He was sentenced to a total of twenty-six years in prison.

The questions presented are whether Woods was entitled to a directed verdict and whether it was required that the jury be informed that Woods was subject to a three-year conditional discharge.

At trial on July 17, 2001, the victim testified that she was approximately four years old when her mother married Woods in 1985. She related an incident that occurred when she was eight years old where Woods touched her vagina underneath her pants. The victim told her mother the next day, but the victim stated that her mother did not believe her.

According to the victim, Woods started touching her inappropriately again approximately two to three years later. She claimed that at that time Woods came into her room each morning before he left for work and touched her vagina and chest area. She alleged that when she was 13 or 14 years old, Woods began having sexual intercourse with her. This would occur once or twice a week when the mother was not home. The victim testified that at age 15 she became pregnant by Woods but that she had an abortion. She became pregnant a second time later that year, but this time she suffered a miscarriage. The victim stated that the abuse ended when she was 16 years old.

The mother of the victim testified and recalled the original accusation made by the victim when she was eight years old. She claimed that when she first asked Woods about the allegation, he denied it. However, the mother stated that after police began investigating the claim in May 1997, Woods admitted to the sexual abuse and admitted that he impregnated the victim both times.

The stepbrother of the victim testified that his father, Woods, told him the reason he (Woods) and the mother were no longer married was because he had molested the victim and had gotten her pregnant. A second stepbrother took the stand on rebuttal but refused to answer any questions of the Commonwealth concerning the conversation between him and his father.

Woods testified in his own defense and completely denied the charges. The jury convicted Woods of two counts of first-degree sexual abuse and two counts of incest. He was sentenced to three years on each count of first-degree sexual abuse and ten years on each count of incest, said sentences to run consecutively for a total of twenty-six years in prison. This appeal followed.

I. Directed Verdict

Woods argues that the trial judge committed reversible error and denied him state and federal due process of law by failing to direct a verdict of acquittal on the charges contained in counts one and two of the indictment, first-degree sexual abuse, and count three of the indictment, incest. We disagree.

On a motion for a directed verdict, the trial judge must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth.

Commonwealth v. Benham, Ky., 816 S.W.2d 186 (1991). 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. Id. The standard for appellate review of a denial of a motion for a directed verdict based on insufficient evidence is if under the evidence as a whole, it would not be clearly unreasonable for a jury to find the defendant guilty, he is not entitled to a directed verdict of acquittal. Commonwealth v. Sawhill, Ky., 660 S.W.2d 3 (1983).

Here, the Commonwealth presented sufficient evidence to support the conviction of Woods for two counts of first-degree sexual abuse and two counts of incest. As noted earlier in this opinion, the victim testified that Woods touched her vagina and chest area and had sexual intercourse with her. She stated that Woods had sex with her on numerous occasions and impregnated her twice. The mother of the victim testified that Woods admitted to her that he sexually abused the victim and impregnated her. One of the stepbrothers of the victim testified that Woods informed him that the reason he (Woods) and the mother were divorced was because he had sexually abused the victim and had gotten her pregnant. Clearly, this evidence was sufficient to overcome the motion for a directed verdict.

On appeal, Woods contends that the victim's date of birth was never established and that the instructions for sexual offenses contain erroneous dates. A careful review of the record shows that the motion of Woods for a directed verdict was based solely on the lack of credibility of the witnesses for the Commonwealth. The trial judge denied the motion, stating that the credibility of witnesses was a question for the jury. Moreover, the trial judge addressed each charge and noted the evidence presented by the Commonwealth to support his ruling. Woods did not object to the jury instructions.

The sexual abuse charges occurred when the victim was less than twelve years old, and that was the only relevant time element necessary to support those convictions. KRS 510.110(1)(b)(2). See also, Stringer v. Commonwealth, Ky., 956 S.W.2d 883 (1997), which held that in a felony case, the failure to prove the specific date of the offense is of no consequence unless time is a material ingredient of the offense. Peyton v. Commonwealth, 288 Ky. 601, 157 S.W.2d 106 (1941). The date of the act of the incest is not a necessary element of the offense and it was sufficient that the Commonwealth proved the offense was committed prior to the rendition of the indictment. Browning v. Commonwealth, Ky., 351 S.W.2d 499 (1961) and Salyers v. Commonwealth, Ky., 255 S.W.2d 605 (1953).

II. Sentences

Woods also argues that he was denied state and federal due process of law in the penalty phase because the jury was not informed, prior to recommending sentences on the convictions, that a three-year period of conditional discharge would automatically be added to any sentence imposed. He concedes that this issue is not properly preserved for appellate review, but he seeks review pursuant to RCr 10.26.

Woods cites no authority for the proposition that the jury must be informed about the three-year period of conditional discharge. KRS 532.055, the truth-in-sentencing statute, states in part that “evidence may be offered by the Commonwealth relevant to sentencing.” The defendant shares the same privilege. Boone v. Commonwealth, Ky., 780 S.W.2d 615 (1989). Clearly, the statute is discretionary and does not mandate any information be given to the jury. Consequently, there was no error and certainly no manifest injustice.

Woods was not denied either state or federal due process in any phase of the trial.

The judgment of conviction is affirmed.

All concur.

COUNSEL FOR APPELLANT:

Shelly R. Fears
Assistant Public Advocate
Department of Public Advocacy
Suite 302, 100 Fair Oaks Lane
Frankfort, KY 40601

COUNSEL FOR APPELLEE:

A. B. Chandler III
Attorney General of Kentucky

Anitria M. Franklin
Assistant Attorney General
Criminal Appellate Division
Office of the Attorney General
1024 Capital Center Drive
Frankfort, KY 40601-8204