

**IMPORTANT NOTICE**  
**NOT TO BE PUBLISHED OPINION**

***THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.***

Supreme Court of Kentucky **FINAL**

2004-SC-0032-MR

DATE 7-7-05 ELLIAGROWING DC.

TED WILLIS

APPELLANT

V.

APPEALED FROM DAVIESS CIRCUIT COURT  
HONORABLE HENRY M. GRIFFIN, JUDGE  
02-CR-00291-002

COMMONWEALTH OF KENTUCKY

APPELLEE

**MEMORANDUM OPINION OF THE COURT**

AFFIRMING

Appellant, Ted Willis, was convicted by a Daviess Circuit Court jury of manufacturing methamphetamine, possession of anhydrous ammonia in an unapproved container, and of being a subsequent offender of the offense of manufacturing methamphetamine. He appeals to this Court as a matter of right from a sentence of sixty-nine years' imprisonment.

On the morning of June 8, 2002, Daviess County Deputy Sergeant Richard Coy, while driving on patrol with his window down, smelled a strong odor of ether coming from a house on Highway 81. Because of the odor, he suspected that a methamphetamine lab was located in the house. He called for assistance, and was joined by Fireman Scotty Smith and Deputy Ken Taul. They knocked on the door to investigate the matter.

The owner of the house, Sam Bickett, came to the door and allowed the officers to enter. Bickett's behavior became erratic as he attempted to harm himself with a knife. The officers subdued Bickett. At one point, Fireman Smith noticed a man flee the scene.

Due to the presence of a strong ether odor and methamphetamine manufacturing equipment, the officers evacuated Bickett and his family. The officers searched the area surrounding the house, which included several outbuildings. As Deputy Coy approached a barn in a pasture behind the house, he noticed a liquid propane cylinder in the pasture and found Appellant lying on his back about fifteen to twenty feet from the cylinder. The cylinder contained ammonia. Deputy Coy took Appellant into custody and waited for the arrival of Daviess County detectives.

The detectives collected methamphetamine, methamphetamine manufacturing equipment and methamphetamine ingredients from both the house and Appellant's car, which was parked near the house. The house contained all of the equipment and ingredients, save lithium, necessary to manufacture methamphetamine. Although no lithium was recovered, shredded battery cases were found indicating that lithium had already been extracted and used in the manufacturing process.

Appellant told the chief investigator that he had given a person named Jason a ride to Bickett's house shortly before the officers arrived. He stated that he dropped Jason off at the house, went inside, and observed Jason and Bickett "cooking" methamphetamine. Appellant claimed that the methamphetamine manufacturing equipment and ingredients found in his car belonged to Jason; however, he offered no explanation as to why he had been lying in the grass behind the house near the liquid propane cylinder. The officers did not find a person named Jason on the premises.

I.

Appellant argues that the trial court erred in failing to grant his motion for directed verdict. Appellant claims that the items found in his car were only some of the chemicals and some of the equipment that could have been used to make methamphetamine. The rest of the items constituting the methamphetamine lab were scattered throughout Bickett's house, yard, and pasture. Under KRS 218A.1432, as it was written at the time of Appellant's conviction, an individual is guilty of manufacturing methamphetamine if he either manufactures methamphetamine (KRS 218A.1432(a)), or possesses the chemicals or equipment for the manufacture of methamphetamine with the intent to manufacture (KRS 218A.1432(b)). Appellant claims that the Commonwealth did not demonstrate that he participated in the manufacturing of methamphetamine, or that he had dominion and control over the equipment and ingredients found in Bickett's home.

"On 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." Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky. 1991). The evidence presented at trial was sufficient for a jury to reasonably infer that Appellant either did in fact manufacture methamphetamine, or was in possession of all of the methamphetamine equipment and ingredients with an intent to manufacture. See Young v. Commonwealth, 25 S.W.3d 66, 70 (Ky. 2000)(directed verdict is not warranted where jury can reasonably infer that defendant possessed the items necessary to manufacture methamphetamine with an intent to use them); see also Varble v. Commonwealth, 125 S.W.3d 246, 254 (Ky. 2004). Appellant was found hiding in proximity to the methamphetamine lab in the house and admits that he had

been in the house while the methamphetamine was being “cooked.” The Commonwealth presented evidence suggesting that Appellant had been on the premises all night, and was not simply an innocent bystander who was dropping off a friend as he claimed. Coupled with the fact that methamphetamine equipment, ingredients, and the finished methamphetamine product were found in Appellant’s car, there was certainly enough evidence for the trial court to overrule Appellant’s motion for directed verdict. The trial court was correct in making the inferences from the evidence favorable to the Commonwealth.

## II.

Appellant claims that he was denied a unanimous verdict because the verdict form submitted to the jury combined several theories of the offense, and it is impossible to determine under which theory the jurors based their conviction.

Appellant did not preserve this issue for review, and it will only be reviewed for possible palpable error. RCr 10.26. There is no error because, as discussed above, the evidence was sufficient to support a conviction based on either the theory that Appellant manufactured methamphetamine, or that he possessed all the necessary methamphetamine manufacturing equipment or ingredients with intent to manufacture. Where multiple theories of guilt are included in jury instructions, juror unanimity is not violated where the evidence would support a conviction under both theories. Wells v. Commonwealth, 561 S.W.2d 85, 97 (Ky. 1978); See also 1 Cooper, Kentucky Instructions to Juries (Criminal), § 1.56, at 55 (4<sup>th</sup> ed. 1999).

The judgment and sentence of the Daviess Circuit Court are affirmed.

All concur.

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