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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: FEBRUARY 22, 2007
NOT TO BE PUBLISHED

Supreme Court of Kentucky

FINAL

DATE 3-15-07 E.A.Grauth D.C.

2006-SC-000130-MR

CAMERON DION DANIELS — APPELLANT

APPEAL FROM KENTON CIRCUIT COURT
HON. GREGORY M. BARTLETT, JUDGE
V. INDICTMENT NO. 05-CR-00220-001

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

Affirming

A jury of the Kenton Circuit Court convicted Appellant, Cameron Dion Daniels, of complicity to robbery in the first degree and of being a persistent felony offender in the first degree. For these crimes, Appellant was sentenced to twenty years' imprisonment. Appellant now appeals to this Court as a matter of right. Ky. Const. § 110(2)(b). For the reasons set forth herein, we affirm Appellant's convictions.

At approximately 2:00 a.m. on January 7, 2005, Covington Police Officer Brian Kane happened upon a robbery in progress. Officer Kane saw three men robbing two victims on the street. One of the victims testified that guns were pointed at both him and his friend.

When Officer Kane approached the scene, the robbers ran away. Officer Kane testified that he heard shots fired as they fled. Shortly thereafter, he

recognized one of the robbers, Ishmael Powell, walking down the street. Appellant and another co-defendant, Kareem Derkson, were soon found hiding nearby. Upon viewing Appellant and Derkson, Officer Kane recognized them as being the other two robbers. Appellant was also identified by victim, Donald Dixon, who testified that he recognized Appellant as the person who pointed a gun at his friend during the robbery. Finally, co-defendant Kareem Derkson testified that Appellant was involved in the robbery.

Appellant presented an alibi defense at trial. The jury nonetheless convicted Appellant of complicity to robbery in the first degree and of being a persistent felony offender in the first degree. Appellant now appeals to this Court, alleging errors which he claims entitle him to a new trial. For the reasons set forth herein, we affirm Appellant's convictions and sentence.

Appellant first alleges that the trial court erred when it failed to grant his motion for a directed verdict. A directed verdict shall not be granted "[i]f the evidence is sufficient to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty . . . ." Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky. 1991).

Appellant argues that he should have been granted a directed verdict because there are several weaknesses in victim, Donald Dixon's, testimony. First, Dixon testified at trial that he recognized Appellant from the neighborhood, however, he told police nothing of this the night of the robbery. Second, Appellant alleges that Dixon could not have gotten a good look at him since Dixon testified that he saw Appellant from his peripheral vision as a gun was being pointed at him by one of the co-defendants. Appellant further questions

the credibility of co-defendant Derkson. Derkson received a plea agreement for his testimony and his testimony was inconsistent with some of the testimony offered by Dixon and Officer Kane.

It is well-established that questions of credibility are reserved for the jury's consideration. See Id. Appellant had ample opportunity to address and expose the weaknesses identified above, and to present alibi witnesses in his own defense. Although Appellant may not agree with the credibility determinations made by the jury, there was clearly enough evidence to support its verdict. A directed verdict was not warranted in this case.

Appellant next argues that he was prejudiced by the trial court's refusal to either (1) sever his trial from that of co-defendant Powell's; or (2) bar from the jury's consideration of certain threats and a bribe made by Powell. "A reviewing court will not reverse a conviction for failure to grant separate trials unless it is clearly convinced that prejudice occurred and that the likelihood of prejudice was so clearly demonstrated to the trial judge as to make his failure to grant [a] severance an abuse of discretion." Wilson v. Commonwealth, 836 S.W.2d 872, 887 (Ky. 1992) (overruled on other grounds by St. Clair v. Roark, 10 S.W.3d 482 (Ky. 1999)).

Appellant first contends that he was prejudiced by the joint trial because the evidence against Powell was more substantial than the evidence against him. Generally, "a defendant must show that antagonism prevented a jury from being able to separate and treat distinctively evidence that is relevant to each particular defendant at trial and that the antagonism between codefendants will mislead or confuse the jury." Id. Although there may have been more evidence which

specifically implicated Powell, there was nothing about this evidence or the defense offered by Powell which was antagonistic or inconsistent with Appellant's alibi defense. In light of this record, we find no abuse of discretion by the trial court for failure to grant separate trials.

Appellant further claims that certain statements made by Powell should have been redacted because they violated his Confrontation rights. At trial, Derkson testified that following his plea of guilty, co-defendant Powell threatened to kill his mother and rape his sister. Victim, Donald Dixon, testified that Powell offered him a $5,000 bribe not to show up for court. Appellant claims that these statements should be construed as a confession which implicates him since "[a]ssociation with Powell's threats was inevitable given that both men sat on the defendants' side of the courtroom." See Bruton v. United States, 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968) (admission of a nontestifying codefendant's confession is unconstitutional if it expressly incriminates the defendant). We disagree.

Appellant cites no case law which holds or even suggests that threats or bribes made by a co-defendant may be considered a confession which is subject to the confines of Bruton, supra. Furthermore, there was absolutely nothing in Powell's statements which implicated or even mentioned Appellant. Cf. Richardson v. Marsh, 481 U.S. 200, 210, 107 S.Ct. 1702, 1709, 95 L.Ed.2d 176 (1987) ("the Confrontation Clause is not violated by the admission of a nontestifying codefendant's confession with a proper limiting instruction when, as here, the confession is redacted to eliminate not only the defendant's name, but

any reference to his or her existence"). Accordingly, we find no violation of Appellant's Confrontation rights.

For the reasons set forth herein, the judgment and sentence of the Kenton Circuit Court is affirmed.

All concur.

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