

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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD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 OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.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: AUGUST 23, 2007

NOT TO BE PUBLISHED

Supreme Court of Kentucky

FINAL

2006-SC-000338-MR

DATE 9-13-07 E.A. GORMAN DC.

JONATHAN RAMSEY NOLAN

APPELLANT

V.

ON APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
INDICTMENT NO. 04-CR-000102-002

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant, Jonathan Ramsey Nolan, was convicted of two counts of murder, complicity to second degree arson, and tampering with physical evidence. After the guilty verdict, Appellant and the Commonwealth agreed on a recommended sentence of life imprisonment without the possibility of parole for twenty-five years for each murder conviction, ten years for the complicity to second degree arson conviction, and one year for the tampering with physical evidence conviction. The trial court accepted the agreed recommendation and sentenced Appellant accordingly, ordering the sentences to be run concurrently. On appeal, Appellant presents a single issue for review: whether the trial court erred in denying his motion for a directed verdict as to the murder convictions. Finding no error, we affirm.

Appellant's convictions arise from the deaths of Phillip and Shonda Booth. Phillip was shot to death. Shonda was stabbed to death. Moments after their deaths, their

home was doused with gasoline and then set aflame. The weapons used against them were later burned at another location in a second fire. There is no question that Appellant and his friend, Patrick Campbell, were present at the Booths' home when they were murdered. Their versions of events, however, differ sharply.

The Commonwealth's key witness was Campbell, who pleaded guilty to two counts of murder, tampering with physical evidence and arson in the third degree in return for his testimony against Appellant. The following testimony was given by Campbell.

The two planned to rob the Booths and entered the home under the guise of purchasing some marijuana from Phillip Booth. They brought a gun from Campbell's home and purchased ammunition from a Wal-Mart to accomplish the robbery. The two arrived at the Booth home and sat with Phillip Booth for about an hour, but neither man initiated the plan. As they returned to their vehicle, however, Appellant decided to go back to the house and complete the robbery. Appellant knocked on the door and pulled out his gun when Phillip opened the door. The two men fought, crashing into a glass coffee table which caused Shonda to come to the front of the house. Appellant shot Phillip in the head, then turned and fired a shot at Shonda. Meanwhile, Campbell noticed that the Booths' two young children were in the doorway. He pushed them into a bathroom and barricaded the door. When he returned to the living room, he saw Appellant stabbing Shonda. At this point, both Phillip and Shonda were dead. Thereafter, Campbell ushered the children out the door and into his car at the bottom of the driveway. When he returned to the house, he assisted Appellant in dousing the home with gasoline and setting it on fire.

The Booth children's testimony partially corroborated Campbell's version of events. Both children were familiar with Campbell. He was a friend to their parents and they called him "Pat." In their testimony, they referred to Appellant as "the other man." Both children testified that it was Campbell who took them into the bathroom and then out of the house. The older child testified that she saw "the other man" with a gun in his hand, though she further stated that she saw Campbell stabbing her mother. The younger child likewise told investigators that "the other man" shot Phillip, and that Campbell was stabbing Shonda.

Appellant took the stand and testified to a much different version of events. According to Appellant, no plan to rob the Booths ever existed; rather, the two went to the Booth home to purchase drugs. Appellant testified that Campbell went alone to the front door, and thereafter he heard gunshots from inside the house. When he got to the front door, Phillip started attacking Appellant with a knife. He managed to get the knife from Phillip, wounding his own arm in the process. As Campbell was struggling with Shonda, Appellant testified that he took the children into the bathroom. When he returned to the front room, Campbell was stabbing Shonda. Campbell told Appellant to pour the gasoline, which he did. Appellant then went to get the children out of the house as Campbell prepared to light the fire.

Both men agreed to their actions thereafter. They fled the scene, leaving the children in the front yard as the house burned, and went to a motel. After cleaning themselves, they purchased new clothing at a nearby Wal-Mart. They took the weapons and their bloodied clothing to an embankment on the interstate, and set it on fire. Both men were arrested the following day.

When ruling on a motion for a directed verdict, the trial court must consider all evidence in a light which is most favorable to the Commonwealth. Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky. 1991). In addition, the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. Id. 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. On appeal, the reviewing court must determine if, under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt. Id.

Appellant seems to argue that the contradictory nature of the evidence precluded a finding of guilt and, therefore, the trial court improperly denied a directed verdict. However, it is well established that, where the evidence is conflicting, the jury must be the final judge of credibility. Webb v. Commonwealth, 904 S.W.2d 226, 229 (Ky. 1995).

Although Appellant presented a much different version of the events, the forensic evidence seriously discredited his story. Appellant testified that he heard gunshots prior to entering the house, whereupon Phillip attacked him. The medical examiner in this case, however, stated that the gunshot wound to Phillip's head was highly traumatic and that Phillip would have been dead within moments. Moreover, both children contradicted Appellant's claim that he was taking them into the bathroom when Campbell shot Phillip and started stabbing Shonda. In light of the evidence presented, it was clearly not unreasonable for the jury to believe that Appellant committed both murders. The motion for a directed verdict was properly denied.

Accordingly, the judgment of the Boyd Circuit Court is hereby affirmed.

All sitting. Lambert, C.J., Cunningham, Minton, Noble, Schroder, Scott, JJ.,
concur.

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