

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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD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 OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.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 27, 2009

NOT TO BE PUBLISHED

Supreme Court of Kentucky

2008-SC-000570-MR

DATE 9/17/09 Kelly Klaber D.C.
APPELLANT

CHRISTOPHER D. FAIRCHILD

V. ON APPEAL FROM JOHNSON CIRCUIT COURT
HONORABLE JOHN DAVID PRESTON, JUDGE
NO. 06-CR-00144

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant, Christopher D. Fairchild, was convicted by a Johnson Circuit Court jury of one count of murder by complicity, two counts of receiving stolen property over three-hundred dollars, and one count of tampering with physical evidence by complicity. For these crimes, Appellant received a total sentence of twenty years' imprisonment. Appellant now appeals to this Court as a matter of right. Ky. Const. § 110.

Appellant asserts two arguments on appeal. First, Appellant argues that the Commonwealth improperly introduced prior consistent statements made by a key witness which bolstered the witness's testimony. Second, Appellant argues that the trial court erred by denying his motion for a directed verdict. For the reasons set forth herein, we now affirm Appellant's sentence.

The body of James Mollette was discovered by his girlfriend on September 25, 2006. Mollette's house had been ransacked and his four-wheeler was missing. The police investigation quickly focused on Tommy Baldrige who turned himself in and implicated Appellant in the crime. Baldrige ultimately entered into a plea agreement with the Commonwealth in exchange for his testimony at Appellant's trial.

At trial, Baldrige testified that while he stood outside, Appellant entered Mollette's house alone intending to purchase drugs. Baldrige heard one of the men yell out an expletive, then a single gunshot. Appellant came outside, and at gunpoint, ordered Baldrige to behead Mollette with an axe. Baldrige went inside and found Mollette dead. He then inflicted several wounds on Mollette's neck, but did not behead him. Appellant then, according to Baldrige's testimony, handed him the keys to Mollette's four-wheeler and stole several jars of coins from the residence. The two men took the four-wheeler and disposed of several items from the crime, including the gun, the axe, and Mollette's wallet. The Commonwealth presented twenty-four other witnesses in support of its case. These witnesses mostly testified that they saw Baldrige and Appellant together on the day of the murder.

Appellant testified at trial that he was not present when Mollette was killed. Appellant testified that he met up with Baldrige after the murder was committed and that he was unaware of what happened until he saw a news report on the television. Appellant did admit at trial that he assisted Baldrige

in hiding the stolen four-wheeler. The trial court overruled Appellant's motion for directed verdict. The case was submitted to the jury, which convicted him of the crimes listed above.

I. THE INTRODUCTION OF BALDRIDGE'S PRIOR CONSISTENT STATEMENTS WAS APPROPRIATE REBUTTAL TO APPELLANT'S ACCUSATION OF BIAS

Appellant first argues that the Commonwealth improperly introduced prior consistent statements made by Baldrige to bolster his testimony. Baldrige was the Commonwealth's key witness at trial. On cross-examination of Baldrige, Appellant's counsel focused several questions on his plea agreement with the Commonwealth and whether that plea agreement would cause him to provide false testimony. These questions implied that Baldrige initially lied to police in making his plea agreement, and that he would not be able to tell the actual truth at trial, because he would lose his plea agreement. The plea agreement expressly required that Baldrige testify consistently with the statement he gave police.

On re-direct, the Commonwealth asked Baldrige whether he would change his testimony today to differ from his initial statement to police. Baldrige denied that he would and asserted that his testimony was truthful. Baldrige also reiterated that his testimony is the same story he provided from the beginning.

The next morning, the Commonwealth asked the court to allow the admission into evidence of prior consistent statements made by Baldrige. The

prior consistent statements came from three sources: statements Baldrige made to Jolene Witten prior to his contacting police; a statement Baldrige made to Kentucky State Police Detective Mike Goble before being arrested; and a statement Baldrige made during a phone call to his father after the statement made to Detective Goble. In each instance, the statements matched Baldrige's trial testimony. The trial court ruled that the prior consistent statements were admissible to rebut Appellant's charge of improper influence or motive.

The trial court correctly admitted Baldrige's prior consistent statements into evidence. KRE 801A(a)(2) states:

[a] statement is not excluded by the hearsay rule, even though the declarant is available as a witness, if the declarant testifies at the trial or hearing and is examined concerning the statement, with a foundation laid as required by KRE 613, and the statement is . . . [c]onsistent with the declarant's testimony and is offered to rebut *an express or implied charge against the declarant of recent fabrication or improper influence or motive*"

(emphasis added). This rule is in accord with long-standing Kentucky law.

Where . . . a witness has been assailed on the ground that his story is a recent fabrication, *or that he has some motive for testifying falsely*, proof that he gave a similar account of the matter when the motive did not exist, before the effect of such an account could be foreseen, or when motive or interest would have induced a different statement, is admissible.

Eubank v. Commonwealth, 210 Ky. 150, 275 S.W. 630, 633 (1925) (emphasis added); see also Smith v. Commonwealth, 920 S.W.2d 514, 517 (Ky. 1995).

Appellant's counsel implied through his cross-examination that Baldrige was

lying or would lie to protect his plea agreement with the Commonwealth. Thus, Baldrige's prior consistent statements, made prior to his plea agreement with the Commonwealth, were admissible to rebut that implication. While Appellant argues that his questioning was an attempt to imply that Baldrige lied from the beginning, even before he contacted the police, the trial record indicates otherwise. Appellant's interrogation of Baldrige creates the strong impression that Baldrige was improperly motivated or influenced by the plea agreement and thus made the prior consistent statements admissible under KRE 801A. There is no error here.

II. APPELLANT WAS NOT ENTITLED TO A DIRECTED VERDICT

Appellant finally argues that the trial court erred in denying his motion for a directed verdict. Appellant's main argument in support of his motion for a directed verdict is that Baldrige's testimony was unreliable and his credibility was questionable. Thus, since Baldrige was the Commonwealth's key witness, Appellant argues that there was inadequate evidence to convict him.

The trial court's denial of Appellant's directed verdict motion was correct.

On motion for directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. 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. For the purpose of ruling on the motion, the trial court must assume that the evidence for the Commonwealth is true, but reserving to the jury questions as to the credibility and weight to be given to such testimony.

Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky. 1991). Accordingly,

“[c]redibility and weight of the evidence are matters within the exclusive province of the jury.” Commonwealth v. Smith, 5 S.W.3d 126, 129 (Ky. 1999).

“Jurors are free to believe parts and disbelieve other parts of the evidence including the testimony of each witness.” Reynolds v. Commonwealth, 113 S.W.3d 647, 650 (Ky. App. 2003) (citing Smith, 5 S.W.3d at 129). Here, the Commonwealth presented adequate evidence to convict Appellant. The jury was properly given the ability to judge Baldrige’s credibility. Looking at all of the evidence “in favor of the Commonwealth” the trial judge correctly denied Appellant’s directed verdict motion. Benham, 816 S.W.2d at 187.

The judgment and sentence of the Johnson Circuit Court is affirmed.

All sitting. All concur.

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