

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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED."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THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE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UNPUBLISHED KENTUCKY APPELLATE DECISIONS,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BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED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.

Supreme Court of Kentucky

2013-SC-000049-MR

CHRISTOPHER HILL

APPELLANT

V. ON APPEAL FROM CRITTENDEN CIRCUIT COURT
HONORABLE C. RENÉ WILLIAMS, JUDGE
NO. 11-CR-00042

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

On July 25, 2011, Cody Welch was walking home from work. He turned the corner to his street and saw a red Ford Cougar pulling out of his driveway. Welch was familiar with this car and knew that it belonged to Appellant, Christopher Hill. Welch stated that Appellant was driving and was accompanied by his friend, Chase Bingham, who was in the passenger's seat. Before reaching Welch, Appellant turned the vehicle and drove down a side street.

Once Welch arrived home, he discovered that his 46" Sanyo LCD television was missing. Almost immediately, Welch received a telephone call from Bingham stating, "I heard your house was broken into!" Bingham then hung up. Welch directly called the police to report the burglary and identified

Appellant and Bingham as the alleged offenders. Notably, Bingham and Welch were once roommates and both had recently resided at the residence.

However, Welch evicted Bingham a few weeks earlier for failure to pay his share of the rent.

Bingham and Appellant were later arrested and indicted. Bingham pled guilty and received the minimum five-year sentence that ran concurrently with several other burglaries to which he also pled guilty. A Crittenden Circuit Court jury found Appellant guilty of second-degree burglary by complicity and of being a persistent felony offender (“PFO”) in the second degree. The jury recommended a sentence of ten years for the burglary conviction, enhanced to twenty years by the PFO conviction. The trial court sentenced Appellant in accord with the jury’s recommendation. Appellant now appeals his conviction and sentence as a matter of right pursuant to the Ky. Constitution § 110(2)(b).

Directed Verdict

Appellant’s sole argument on appeal is that the trial court erred in denying his motion for a directed verdict of acquittal for the offense of burglary in the second degree. We will reverse the trial court’s denial of a motion for a directed verdict “if under the evidence as a whole, it would be *clearly unreasonable* for a jury to find guilt[.]” *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991) (citing *Commonwealth v. Sawhill*, 660 S.W.2d 3 (Ky. 1983)) (emphasis added). Our review is confined to the proof at trial and the statutory elements of the alleged offense. *Lawton v. Commonwealth*, 354 S.W.3d 565, 575 (Ky. 2011).

Appellant was convicted of burglary in the second degree under a theory of complicity. Therefore, the Commonwealth was required to present evidence establishing that Appellant affirmatively acted with the intention of promoting or facilitating the commission of the burglary offense. See KRS 502.020; KRS 511.030. The record demonstrates that the Commonwealth presented sufficient evidence which would allow a jury to reasonably convict Appellant under this theory.

Bingham testified at Appellant's trial that the two of them went to Welch's residence to steal the television. Bingham also stated that Appellant picked him up and drove to Welch's residence, where they then removed Welch's television and placed it into Appellant's car. Bingham further testified that, as he and Appellant were driving away from Welch's residence, they saw Welch walking towards them and immediately turned down a side street in order to avoid detection. Bingham stated that "we saw [Welch] and we couldn't drive right by him." In addition, Bingham testified that he and Appellant temporarily concealed the television in a hidden location. They subsequently retrieved the television from this concealed location and once again placed it in Appellant's vehicle for transport. Appellant then sold the television.

Appellant also testified at his trial, stating that, although he received a call from Bingham to pick him up at Welch's residence, there was no television involved. Appellant further denied any involvement in the burglary. Appellant's father also testified that he measured the back of Appellant's car

and that the 46" television alleged to have been stolen could not have fit in the vehicle.

We agree with the Commonwealth that this is a case of credibility. Accordingly, it is well-settled that the Commonwealth's evidence is presumed to be true and issues of credibility are within the province of the jury. *Benham*, 816 S.W.2d at 187; *see also Allen v. Commonwealth*, 410 S.W.3d 125 (Ky. 2013). In the present case, the jury was allowed to hear and consider Bingham's testimony implicating Appellant in the burglary, as well as Appellant's testimony wherein he expressly denied all criminal involvement. We have held that "when the evidence is contradictory, the credibility of witnesses and the weight to be given to sworn testimony are for the jury to decide." *Roark v. Commonwealth*, 90 S.W.3d 24, 38 (Ky. 2002); *see also Edmonds v. Commonwealth*, 906 S.W.2d 343, 347 (Ky. 1995) (recognizing that the jury is not required to believe self-serving statements from the defendant or any of his witnesses).

In addition, Welch's testimony placed Appellant and Bingham at his residence immediately prior to discovering the theft of the television. However, Welch did not actually see the television in Appellant's car. This unbiased testimony is consistent with Bingham's testimony and was available for consideration by the jury when determining the issue of credibility.

Thus, reviewing the evidence as a whole, it was not clearly unreasonable for the jury to convict Appellant of the offense charged. We find that the trial

court did not err in denying Appellant's motion for a directed verdict of acquittal.

Conclusion

For the foregoing reasons, the judgment of the Crittenden Circuit Court is hereby affirmed.

All sitting. All concur.

COUNSEL FOR APPELLANT:

Roy Alyette Durham, II
Assistant Public Advocate

COUNSEL FOR APPELLEE:

Jack Conway
Attorney General

Kenneth Wayne Riggs
Assistant Attorney General