

Commonwealth Of Kentucky

Court of Appeals

NO. 2000-CA-000077-MR

KAHLIL G. TURNER

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE STEPHEN A. HAYDEN, JUDGE
ACTION NO. 99-CR-00086

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, SCHRODER, AND VANMETER, JUDGES.

BARBER, JUDGE: The sole issue in this appeal is whether there was sufficient evidence to support the conviction of Kahlil G. Turner (Turner) of the felony offense of trafficking in a controlled substance, first degree (cocaine), in violation of KRS 218A.1412. Having conducted our review in accordance with the standard contained in Commonwealth v. Benham, Ky., 816 S.W.2d 186 (1991), we affirm.

Benham and its progeny require that a conviction challenged based on sufficiency of the evidence be examined by the same standard as is applicable to whether the defendant is

entitled to a directed verdict. Benham, 816 S.W.2d at 187. See also, Commonwealth v. Suttles, Ky., 80 S.W.3d 424, 426 (2002); Commonwealth v. Jones, Ky., 880 S.W.2d 544, 545 (1994). That is, taking the evidence in the light most favorable to the Commonwealth would it be unreasonable for a jury to find the defendant guilty beyond a reasonable doubt.

As an appellate court we are not permitted to reevaluate the evidence or substitute our judgment on the credibility of the witnesses for the judgment of the jury. Suttles, 80 S.W.3d at 426. Even one witness is sufficient to support a finding of guilt since the trier of fact may choose to believe that witness to the exclusion of other evidence presented depending upon the credibility it attaches to the evidence produced. Id.

Taking the evidence in the light most favorable to the Commonwealth, the following facts could have been believed by the jury: On the evening of April 7, 1999, Turner and others were standing on a street corner in Henderson, Kentucky, that was known for drug activity. Officer James Morgan and Officer Todd Seibert were observing the corner because of this reason.

During their surveillance they noticed Anthony McFarland walked up to a pay telephone booth close to the corner and removed the receiver. McFarland then walked away from the booth. Immediately after McFarland walked away from the booth

Turner walked over to the booth and placed something on the tray of the phone booth. McFarland then returned to the phone booth, picked up and pocketed the object from the tray. Turner then got McFarland's attention, the two spoke and McFarland gave Turner money.

The police officers pursued McFarland and recovered from his person a crack pipe and, from the ground where he threw it, a small bag containing crack cocaine.

It is clear from this recitation that the jury could believe beyond a reasonable doubt that Turner was guilty of trafficking in a controlled substance, first degree.

Turner makes much of the fact that McFarland testified at trial Turner did not transfer any drugs to him, and that the money McFarland gave to Turner was as the result of a bet on a game of pool.¹ However, the jury was free to disbelieve McFarland's testimony in the face of the evidence offered via the observations of the police officers. Where there is a conflict in the evidence, then the weight and credibility to be afforded that evidence is peculiarly within the province of the jury and will not be disturbed on appeal "unless it is so incredible on its face as to require its rejection as a matter

¹ Turner's brief states that McFarland owed Turner the money for promising to move Turner's car and not following through on that promise. However, there is a narrative statement in the record that was certified by the circuit court stating that McFarland's testimony was that he owed Turner the money because of a bet he lost.

of law." Taylor v. Commonwealth, 301 Ky. 109, 113, 190 S.W.2d 1003, 1005 (1945); Suttles, supra 80 S.W.3d at 426.

There is sufficient evidence to support the verdict of the jury and the judgment of the court. Thus, the judgment of conviction entered by Henderson Circuit Court is affirmed.

ALL CONCUR.

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