

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-001520-MR

HERBERT HOOD

APPELLANT

v.

APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE PAUL E. BRADEN, JUDGE
ACTION NO. 99-CR-00071

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Herbert Hood brings this appeal from a November 20, 2000, judgment of the Whitley Circuit Court. We affirm.

On October 28, 1998, appellee, along with two accomplices, Edward Clark and Andy Potter, allegedly burglarized a warehouse in Corbin, Kentucky and stole four big screen televisions. The televisions were later recovered on the premises of appellee's aunt.

The Whitley County Grand Jury indicted appellant upon the offenses of theft by unlawful taking of property valued over

\$300.00 (Kentucky Revised Statutes (KRS) 514.030) and for burglary in the third degree (KRS 511.040). The jury found appellant guilty of both offenses, and the trial court sentenced appellant to a total of ten years' imprisonment. This appeal follows.

Appellant's sole contention of error is that the trial court erred by failing to grant his motion for a directed verdict of acquittal. Ky. R. Civ. P. (CR) 50.01. Appellant is entitled to a directed verdict if under the evidence as a whole it would have been clearly unreasonable for a jury to have found appellant guilty of unlawful taking of property valued over \$300.00 and third degree burglary. See Commonwealth v. Benham, Ky., 816 S.W.2d 186 (1991).

Specifically, appellant contends that the Commonwealth failed to prove beyond a reasonable doubt that he was guilty of theft by unlawful taking of property over \$300.00 and of third degree burglary. To support this contention, appellant asserts the only evidence proving his guilt was the testimony of an alleged accomplice, Andy Potter. Appellant contends Potter's testimony is insufficient to sustain the jury verdict because:

[I]t is also clear that Potter had freedom's interest in testifying. Clearly, he took part in the burglary along with Edward Clark and Potter remains free. Potter was bought and paid for. His freedom was dangled before his eyes and he knew that if he gave the Commonwealth the ammunition against Herb

then Potter would walk free. He also knew that had he not given a name he would have remained in jail.

Potter's a thief and in 1998 he conducted a master plain [sic] to burglarize. He was the sole testimony to prove the elements and, therefore, the evidence was weak and insufficient at its best. . . .

Appellant's Brief at 4.

Essentially, appellant is arguing Potter's testimony is insufficient to support a conviction because he possessed a motivation to lie. It is well established that a witness's alleged motivation to testify falsely goes to the credibility and weight of that witness's testimony and is ultimately a matter within the scope of the jury's determination. Darnell v. Commonwealth, Ky., 558 S.W.2d 590 (1977). For these reasons, we reject appellant's contention that Potter's testimony could not support the jury's verdict.

Appellant also maintains that Potter's testimony as an accomplice must be "corroborated by other evidence tending to connect the defendant with the commission of the offense" under RCr 9.60. Appellant's Brief at 5. The record demonstrates that the stolen items (televisions) were found upon the property of appellant's aunt. Moreover, the Supreme Court has held that "corroboration is required only of the fact 'that such an offense was committed.' Corroboration of the accused's criminal agency is not required." Taylor v. Commonwealth, Ky., 461

S.W.2d 920, 923 (1970). We, thus, view appellant's contention to be without merit.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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