

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002423-MR

JIMMY ANGLIAN

APPELLANT

v. APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE RON JOHNSON, JUDGE
ACTION NO. 01-CR-00015

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, GUIDUGLI AND McANULTY, JUDGES.

GUIDUGLI, JUDGE. Jimmy Anglian ("Jimmy") appeals from a judgment of the Harlan Circuit Court convicting him of tampering with physical evidence. He maintains that the trial court improperly denied his motion for a directed verdict. We affirm the judgment on appeal.

On August 8, 2000, Jimmy and his twin brother, Harold Anglian ("Harold"), held a party at their residence in Harlan County, Kentucky. Evidence would later show that the brothers

consumed a large amount of beer and vodka at the party. It would also show that Harold was addicted to pain medication and apparently injected drugs at the party. After the party, the brothers fell asleep in the living room. The following morning, Jimmy awoke to find Harold dead.

It appears from the record that Jimmy first contacted some family members, who then came to the residence. One of them apparently called the police. The first law enforcement officer to arrive was the Evarts Chief of Police, Guadalupe Blas ("Blas"). An investigation followed, and Blas noted that the kitchen and living room had been cleaned and showed no signs that a party had taken place nor that alcohol had been consumed. Deputy Sheriff Kenneth Abner ("Abner") would also later state that he found nothing to indicate that Harold had received drug injections the previous night.

Later at the Harlan County funeral home, the coroner took eye fluid, blood and urine samples from the deceased. He also examined the body and noted the presence of a needle mark. It was later determined that Harold died from a drug and alcohol overdose.

On March 19, 2001, the Harlan County grand jury indicted Jimmy on one count of tampering with physical evidence, to wit, that he removed evidence of Harold's drug and alcohol use from the Anglians' residence. Trial on the charge was

conducted on October 11, 2001. During the course of the proceeding, Jimmy moved for a directed verdict at the close of the Commonwealth's case and at the close of all of the evidence. The motions were denied, and the jury ultimately returned a guilty verdict. Jimmy received a sentence of two years in prison, and this appeal followed.

Jimmy's sole claim of error is that the trial court improperly denied his motion for a directed verdict. He maintains that the Commonwealth failed to offer sufficient proof that he tampered with physical evidence in violation of KRS 524.100.¹ He argues that no evidence exists that he anticipated the involvement of the police in Harold's death, nor that sufficient evidence exists that he removed evidence in anticipation of such an investigation. He seeks to have his conviction and sentence vacated.

We have closely examined the record, the law, and the arguments of counsel, and find no error in the circuit court's denial of Jimmy's motion for a directed verdict. As the parties are aware, Commonwealth v. Benham, Ky., 816 S.W.2d 186

¹ KRS 524.100 states that

(1) A person is guilty of tampering with physical evidence when, believing that an official proceeding is pending or may be instituted, he:

(a) Destroys, mutilates, conceals, removes or alters physical evidence which he believes is about to be produced or used in the official proceeding with intent to impair its verity or availability in the official proceeding.

. . . .

(1991), sets forth the standard for reviewing motions for a directed verdict. It states that,

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.

On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal.

Benham, 816 S.W.2d at 187.

In the matter at bar, the Commonwealth offered the testimony of two of the Anglians' neighbors that Jimmy stated that he removed beer cans, drugs and needles from the residence before the sheriff and deputy sheriff arrived. This testimony, taken alone, forms a sufficient basis for the trial court's denial of the motion for a directed verdict. Similarly, circumstantial evidence existed to support the Commonwealth's case. Jimmy stated that a party occurred where drugs and alcohol were consumed, but it is uncontroverted no evidence of it was present when the sheriff arrived. For the purpose of

ruling on the motion, the trial court was required to draw all fair and reasonable inferences from this testimony in favor of the Commonwealth, and to assume that it was true. Id.

We may tamper with the ruling on appeal only if, under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt. Id. Since evidence exists in support of the Commonwealth's theory of the case, and as the trial court was required to view this evidence in a light favorable to the Commonwealth, we find no basis for tampering with the order on appeal. Accordingly, we find no error.

For the foregoing reasons, we affirm the judgment of the Harlan Circuit Court.

ALL CONCUR.

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