

RENDERED: May 30, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000145-MR

CARLOS M. PRYOR

APPELLANT

v. APPEAL FROM FULTON CIRCUIT COURT
HONORABLE WILLIAM L. SHADOAN, JUDGE
INDICTMENT NO. 01-CR-00011

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING IN PART AND

REVERSING AND REMANDING IN PART

** ** * * *

BEFORE: DYCHE AND McANULTY, JUDGES; AND JOHN WOODS POTTER¹,
SPECIAL JUDGE.

DYCHE, JUDGE. On May 28, 2000, at 11:47 p.m., Fulton Police
Officer Wiley Penson entered the 3J's Market to arrest Carlos
Pryor. Pryor had been purchasing gasoline and some convenience

¹ Senior Status Judge John Woods Potter sitting as Special Judge
by Assignment of the Chief Justice pursuant to Section 110
(5)(b) of the Kentucky Constitution.

items at the store when Penson arrived. Penson approached Pryor with handcuffs, but Pryor resisted and, after a brief scuffle, Pryor fled the premises on foot. Pryor abandoned his girlfriend's car at the gas pump. During an inventory search conducted when the vehicle was impounded, a plastic bag containing a rock of crack cocaine was discovered in the ashtray.

Pryor was arrested the following February and indicted in March 2001 for Possession of a Controlled Substance (Cocaine) in the First Degree and First Degree Persistent Felony Offender (PFO). He was tried by jury on August 15, 2001, and found guilty as charged. He was sentenced to one year for the drug charged, enhanced to ten years' imprisonment on the PFO charge.

On appeal, Pryor first argues that he is entitled to a new trial because the Commonwealth used its peremptory strikes to remove all African American males from the jury. (An African American female remained on the jury.) The three part procedure outlined in Batson v. Kentucky, 476 U.S. 79 (1986), was followed, but Pryor complains that the Commonwealth's reasons for striking the three African American males were "nothing more than a ruse," and the trial court's acceptance of those reasons was clearly erroneous. We have examined the trial record and agree with Pryor that the Commonwealth's reasons for striking the three African American males were pretextual. While we

would ordinarily defer to the trial court's discretion in evaluating the Commonwealth's reasons, in this case the trial court "merely accept[ed] the reasons proffered at face value." Gamble v. Commonwealth, Ky., 68 S.W.3d 367, 371 (2002) (citation omitted). We thus reverse Pryor's conviction and remand this matter to the Fulton Circuit Court for a new trial.

Pryor secondly asserts that he was entitled to a mistrial for the Commonwealth's repeated attempts to portray appellant as a drug dealer. Pryor specifically protests that the Commonwealth elicited testimony regarding the size of the crack cocaine rock seized from the vehicle. Because Pryor was merely charged with possession, he insists that the frequent references to the "large" rock of cocaine prejudiced him in the eyes of the jury. Pryor fails to convince us that there was a manifest necessity requiring the granting of a mistrial. Commonwealth v. Scott, Ky., 12 S.W.3d 682, 684-5 (2000). The trial court did not abuse its discretion in denying same.

Pryor thirdly asserts that there was insufficient evidence to support his conviction for possession of cocaine. Because the car belonged to his girlfriend and because Pryor testified that his friend Lorenzo Guerin was driving the car, Pryor feels he was entitled to a directed verdict of acquittal on the possession charge because there was not sufficient evidence connecting the rock of cocaine to him. We disagree.

The jury was amply apprised of Pryor's defense. Lorenzo Guerin did not appear as a witness at the trial, and no one other than Pryor could place Guerin at the scene; Pryor's girlfriend denied that the drugs belonged to her. There was more than sufficient circumstantial evidence of Pryor's constructive possession of the cocaine. Burnett v. Commonwealth, Ky., 31 S.W.3d 878, 881 (2000). It was not clearly unreasonable for a jury to find guilt beyond a reasonable doubt. Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991).

Appellant's final argument is not properly preserved for review. Suffice it to say that we have examined the issue under the "manifest injustice" standard in Kentucky Rule of Criminal Procedure 10.26 and can find no palpable error. Jackson v. Commonwealth, Ky. App., 717 S.W.2d 511, 514-5 (1986).

The judgment of the Fulton Circuit Court is affirmed in part, reversed in part, and remanded for a new trial.

ALL CONCUR.

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