

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-000374-MR

BILLY ALEXANDER

APPELLANT

v. APPEAL FROM TRIGG CIRCUIT COURT  
HONORABLE BILL CUNNINGHAM, JUDGE  
INDICTMENT NO. 00-CR-00024

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

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BEFORE: BUCKINGHAM, COMBS, AND DYCHE, JUDGES.

DYCHE, JUDGE. Billy Alexander appeals from his sentence of six years' imprisonment based upon a jury conviction for Trafficking in a Controlled Substance, First Degree. We affirm.

Alexander complains that the instructions given to the jury were in error, and deprived him of a unanimous verdict. The Commonwealth argues, and Alexander admits, that the alleged error was not preserved for our review by contemporaneous objection. RCr 9.54(2). Alexander nevertheless maintains that

we should consider his argument as the alleged error is palpable, and affects his substantial rights. We have done so, and find no error.

Alexander complains that the inclusion of definitions of the terms "Traffic," "Sell," and "Transfer" confused the jury, as these definitions offer alternative theories of guilt not supported by the evidence. The instruction under which Alexander was convicted required that the jury believe beyond a reasonable doubt that he "sold a quantity of cocaine to Ronald Hampton." The inclusion of the definitions for "Traffic" and "Transfer" were mere surplusage, and does not constitute palpable error. The result would not have changed absent the additional definitions.

The judgment of the Trigg Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Euva Hess  
Assistant Public Advocate  
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BRIEF FOR APPELLEE:

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