RENDERED: FEBRUARY 6, 2004; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000451-MR

CHRISTOPHER FLOYD CHENAULT — APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
ACTION NO. 01-CR-00527

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION

AFFIRMING

** ** ** ** **

BEFORE: COMBS, McANULTY, AND VANMETER, JUDGES.

McANULTY, JUDGE: Christopher Floyd Chenault (Chenault) appeals from the judgment of the Fayette Circuit Court convicting him of first degree wanton endangerment, possession of marijuana, and being a persistent felony offender, second degree. Chenault argues that he was entitled to a directed verdict of acquittal on the offense of first degree wanton endangerment. Finding no error, we affirm.

Around midnight on April 3, 2001, Chenault was sitting in the front passenger seat of a parked car. The engine of the car was running. Upon completion of an undercover "buy bust" in the vicinity of the car, Detective Diane Lewis, an officer with the Narcotics Unit of the Lexington Police Department, told two other detectives in the same unit, Detectives Hart and Smoot, to check out the car in which Chenault was sitting. Detective Hart approached the car along the driver's side, and Detective Smoot approached the car from the passenger's side. The two officers identified themselves and yelled at Chenault not to move. As Detective Hart stood at the driver's side and Detective Smoot reached in the open window of the passenger's side, Chenault slid into the driver's seat, put the car in gear, and drove about 100 yards, at which point he ditched the vehicle and attempted to flee on foot. Detective Smoot had to push himself out of the car window as Chenault was driving away.

On appeal, Chenault argues that the Commonwealth failed to prove that he was guilty of first degree wanton endangerment. Specifically, the Commonwealth did not prove that Chenault acted with extreme wantonness when he drove away with an individual partially hanging from the passenger's side window of the vehicle. Chenault admits that this issue was not properly preserved for our review; however, even if it had been

preserved, the record reveals there was sufficient evidence to support the jury's verdict.

Chenault further argues that the trial court should have affirmatively inquired whether he was making a knowing and intelligent waiver of his constitutional right to testify. Chenault admits that this issue is also not preserved for our review, but seeks review under RCr 10.26. In his brief, Chenault does not assert that he did, in fact, desire to testify, nor does he argue that his trial counsel prevented him from testifying. In short, Chenault fails to identify any circumstance that would have suggested to the trial court that he wanted to testify. In the absence of any indication to the trial court that Chenault's attorney "frustrated his desire to testify[,]" the "court had no obligation to inquire of Appellant whether he knowingly and voluntarily waived his right." Riley v. Commonwealth, Ky., 91 S.W.3d 560, 562-63 (2002) (citing United States v. Pennycooke, 65 F.3d 9, 13 (3d Cir. 1995).

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

ALL CONCUR.

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BRIEF FOR APPELLEE:

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