

RENDERED: October 10, 2003, 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001427-MR
AND
NO. 2002-CA-001428-MR

EWELL COCHRAN

APPELLANT

v. APPEAL FROM BATH CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NOS. 99-CR-00016 & 99-CR-00030

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; McANULTY, JUDGE AND HUDDLESTON,
SENIOR JUDGE.¹

EMBERTON, CHIEF JUDGE. Ewell Cochran was indicted for three
counts of trafficking in a controlled substance within one
thousand yards of a building used primarily for classroom
instruction. His counsel filed a motion to dismiss the

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

indictment arguing that the building referenced in the indictment was not used primarily for classroom instruction. After a hearing, the trial court denied the motion and subsequently, Cochran entered a conditional guilty plea.

The facts developed at the hearing establish that part of the school is located in the church basement and part in a former parsonage located next door to the church. The school offers kindergarten through grade seven. Located in front of the building under a sign identifying the church, there is a sign that also identifies the location as the "Bath County Christian School."

KRS² 218A.1411 states that:

Any person who unlawfully traffics in a controlled substance classified in Schedules I, II, III, IV or V, or controlled substance analogue in any building used primarily for classroom instruction in a school or on any premises located within one thousand (1,000) yards of any school building used primarily for classroom instruction shall be guilty of a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply.

In Cooper v. Commonwealth,³ the court rejected the defendant's contention that the statute is vague and invites arbitrary enforcement:

² Kentucky Revised Statutes.

³ Ky., 786 S.W.2d 875 (1990).

Appellant's claims are lacking in merit. The statute is not vague. It warns those trafficking in narcotics that they will be subject to a stiffer fine and/or imprisonment for trafficking within one thousand yards of a school. The statute is not overbroad simply because the appellant may be unaware of the proximity to a school. This does not mean it curtails constitutionally protected conduct. Both the Second and Eighth Circuits of the United States Federal Courts have upheld the constitutionality of 21 U.S.C. Sec. 845a, which prohibits trafficking in narcotics within one thousand feet of a schoolyard. The statute has a rational purpose and serves to promote a legitimate governmental interest.⁴ (Citations omitted.)

The trial court rejected Cochran's contention that the building was not used primarily for classroom instruction. In Brimmer v. Commonwealth,⁵ this court recognized that a Montessori school was a building encompassed within the meaning of KRS 218A.1411. Although in this case the church that housed a part of the school was used for worship services, the parsonage building itself was used for the purpose of housing the school. Children in kindergarten through grade seven attended the school, the protection of which the statute seeks to safeguard.⁶

Cochran's contention that he was unaware that the church and adjoining building were used as a school, and

⁴ Id. at 876-877.

⁵ Ky. App., 6 S.W.3d 858 (1999).

⁶ Id. at 860.

therefore, he should escape the enhanced penalty provisions of the statute is meritless. Neither the statute nor due process require that a drug dealer know that he is dealing within one thousand yards of a school.⁷ Additionally, in this case, a visible sign plainly designated the building as a school

The judgment of the Bath Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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⁷ See United States v. Harris, 313 F.3d 1228, 1239 (2002).