

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000115-MR

ANDRE LAW

APPELLANT

v. APPEAL FROM CUMBERLAND CIRCUIT COURT
HONORABLE EDDIE C. LOVELACE, JUDGE
ACTION NO. 02-CR-00021

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: JOHNSON, TAYLOR, AND VANMETER, JUDGES.

VANMETER, JUDGE: This is an appeal from a judgment entered by the Cumberland Circuit Court after a jury convicted appellant Andre E. Law of ten counts of second-degree criminal possession of a forged instrument. Appellant contends that the trial court erred by failing to enter a directed verdict in his favor as to each count. However, our review of the evidence as a whole shows that it was not clearly unreasonable for the jury to find appellant guilty of the charges. Hence, we affirm.

It is undisputed that Jean Hicks' purse was stolen in January 2002, and that checks from the stolen purse, purportedly inscribed with Hicks' signature, later were used by appellant to purchase items. Appellant admitted using the checks but asserted that a third party had given him permission to do so.

At trial, Hicks testified that she promptly closed her checking account after her purse was stolen since the purse contained blank checks as well as her social security card and driver's license. In May 2002, the bank where Hicks worked and where the closed account was located began receiving stolen checks which attempted to draw against the closed account. Although the checks purported to be inscribed with Hicks' signature and social security number, Hicks testified that she neither signed the checks nor authorized their use by anyone else. Moreover, Hicks denied that she had written a note authorizing an unnamed nephew to use her checking account, although it was undisputed appellant used such a note on one occasion when attempting to pass a check on the closed account.

Several store employees testified regarding appellant's use of Hicks' checks to purchase items from their respective stores. Although the checks apparently were signed with Hicks' name before appellant presented them to store employees, appellant filled in the payees and the amounts at the

stores, and in some instances he added driver's license or social security numbers.

Appellant was arrested after he returned to a store where he previously had written a check on the closed account. The investigating police officer testified that appellant initially stated he thought he was entitled to use the checks because a friend, Jessie McGuire, had given him the checks and the permission slip. Appellant subsequently recanted his story and stated that the documents in fact had been given to him by Sabreen Barnes. The officer testified that he found some of the items purchased with the checks after appellant's wife consented to a search of their residence, and that Barnes admitted knowing appellant but denied knowing anything about the documents.

After the court denied appellant's motion for a directed verdict, appellant testified that Barnes gave him the checks and the alleged permission slip after he complained of financial problems. Appellant stated Barnes both advised him to use the checks, and indicated that Hicks later would call him to arrange for repayment. He admitted to using the checks and the note identifying him as Hicks' nephew, as well as to writing numbers on checks which falsely purported to be his social security or driver's license numbers. At the close of the evidence, the court denied appellant's renewed motion for a directed verdict.

The jury found appellant guilty and recommended three years' imprisonment on each count, with the sentences to run consecutively for a total of thirty years. The court sentenced appellant in accordance with the jury's recommendation but subsequently entered an amended order reducing the sentence to a total of eighteen years in compliance with KRS 532.110, which prohibited the total sentence from exceeding twenty years. A pending charge of first degree PFO was dismissed on the Commonwealth's motion. This appeal followed.

Appellant's sole contention on appeal is that the trial court erred by failing to grant him a directed verdict. We disagree.

The longstanding rule pertaining to directed verdict cases was described in *Commonwealth v. Benham*, Ky., 816 S.W.2d 186, 187 (1991), as follows:

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.

Moreover, on appellate review the test is whether, "under the evidence as a whole, it would be clearly unreasonable for a jury

to find guilt[.]” *Id.* at 187. Only in such a case would an appellate court find that the defendant was improperly denied a directed verdict at trial. *Id.*

Here, it was undisputed that appellant used checks stolen from Hicks, that the checks contained her forged signature, and that he presented to a merchant a note which falsely identified him as a nephew who had permission to use the checks. Thus, the only issues of fact for the jury were whether appellant’s admitted possession of the forged instruments was with the knowledge that they were forged and with the “intent to defraud, deceive or injure another.” KRS 516.060.

Intent may be inferred from the circumstances surrounding a given case. *See Beaty v. Commonwealth, Ky.*, 125 S.W.3d 196 (2003). In the absence of a satisfactory explanation, it may conclusively be presumed that a person passing a forged instrument as genuine either forged the instrument or knew that it was forged. *Smith v. Commonwealth, Ky.*, 307 S.W.2d 201 (1957); *Gregory v. Commonwealth, Ky. App.*, 557 S.W.2d 439 (1977). Here, although the jury certainly could have chosen to believe appellant’s account of the circumstances leading to his use of the stolen checks, our review of the evidence

clearly indicates that the trial judge correctly determined that a reasonable juror could fairly find guilt beyond a reasonable

doubt. The prosecution produced evidence that was considerably more than a mere scintilla and the case was properly presented to the jury for determination.

816 S.W.2d at 188.

The court's judgment is affirmed.

ALL CONCUR.

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