

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000208-MR

TONY SAWYER

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE THOMAS R. LEWIS, JUDGE
ACTION NO. 02-CR-00242

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: GUIDUGLI, McANULTY AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Tony Sawyer appeals from the January 24, 2003, judgment of the Warren Circuit Court. We affirm.

On March 27, 2002, appellant was indicted on one count of tampering with physical evidence (Kentucky Revised Statutes (KRS) 524.100). A jury trial ensued, and on December 18, 2002, a jury found appellant guilty as charged. Appellant was subsequently sentenced to five (5) years imprisonment. This appeal follows.

Appellant contends that the circuit court erred by failing to grant a directed verdict or by failing to set aside the verdict. The case of Commonwealth v. Benham, Ky., 816 S.W.2d 186 (1991), sets forth the applicable standard of review where a motion for directed verdict has been denied. Benham states 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.

Id. at 187.

Tampering with Physical Evidence is found at KRS 524.100 and states as follows:

- (1) A person is guilty of tampering with physical evidence when, believing that an official proceeding is pending or may be instituted, he:
 - (a) Destroys, mutilates, conceals, removes or alters physical evidence which he believes is about to be produced or used in the official proceeding with intent to impair its verity or availability in the official proceeding; or

(b) Fabricates any physical evidence with intent that it be introduced in the official proceeding or offers any physical evidence, knowing it to be fabricated or altered.

(2) Tampering with physical evidence is a Class D felony.

Specifically, appellant contends the Commonwealth failed to prove "beyond a reasonable doubt that he 'believed' the physical evidence was 'about to be produced or used in an official proceeding,' and further failed to prove that he 'had the intent to impair the verity or availability of that evidence in the official proceeding.'" We disagree.

Evidence introduced at trial indicated appellant drove by the home of Carol Neal early one morning and noticed her car was still parked at her residence. He stopped to check on Carol and when he knocked on the back door, her five year old son answered. The child told appellant he did not know where his mother was. The child then showed appellant the living room, where there was a large dark stain in front of the couch and on the wall behind the couch. The couch pillows were missing. Appellant testified that he thought Carol had gone to the neighbors to get some cleaning materials. He further testified that he thought the stain may be cough syrup so he started trying to clean it up using paper towels, washrags, and a glass cleaner. After about fifteen minutes of cleaning, appellant

called a carpet cleaning company and made an appointment to have the carpet cleaned that day.

Appellant eventually called Carol's mother inquiring of her whereabouts. Carol's mother told appellant to call the police. Appellant called 911 and relayed many of the facts already described herein. He further stated there were "red stains and it looks like cough syrup, but some of it looks like blood. . . and I've gotten it off. . . and it looks like there's blood on the back wall." Police arrived at the scene shortly thereafter and began treating it as a crime scene. Appellant was interrogated for over six hours and denied any knowledge of Carol's disappearance or suspected death.¹

Based upon the above evidence, and in particular the fact that appellant himself stated the substance looked like blood, we are of the opinion the jury could have found beyond a reasonable doubt that appellant was guilty of tampering with physical evidence. Therefore, the circuit court did not err when it denied appellant's motion for a directed verdict.

Appellant also contends the trial court erred by not admitting certain evidence at trial. Specifically, appellant argues he should have been allowed to introduce evidence regarding the "deteriorated relationship" between Carol and her

¹In the spring of 2003, hikers discovered a partial skull in the Daniel Boone National Forest in McCreary County, Kentucky. The skull was later determined to be that of Carol Neal. Her body has not been recovered and no one else has been charged with her murder.

husband Lee Neal, the status of their divorce proceedings and possible past physical abuse. Appellant asserts he should have been permitted to introduce such evidence to demonstrate to the jury that he did not intend to destroy evidence of a crime and to shift the focus to Carol's husband.

Ky. R. Evid. (KRE) 401 and KRE 403 set forth the guidelines under which the admissibility of evidence is evaluated. Partin v. Commonwealth, Ky., 918 S.W.2d 219 (1996). KRE 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Absent an abuse of discretion, an appellate court will not disturb a trial court's decision on the admissibility of evidence. Id.

This Court is of the opinion that any evidence relating to Carol's relationship with her husband is not relevant to the issue of whether appellant tampered with physical evidence in violation of KRS 524.100. Appellant apparently wanted to demonstrate to the jury that Lee Neal had more motivation to harm Carol. However, appellant was not being charged with the disappearance or murder of Carol. He was only charged with tampering with physical evidence. Therefore, this Court is of the opinion the trial did not abuse its discretion when it excluded such evidence.

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

ALL CONCUR.

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