

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000514-MR

ERIC JEROME BARNETT, SR.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 02-CR-00690

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; DYCHE AND TACKETT, JUDGES.

EMBERTON, CHIEF JUDGE. Eric Jerome Barnett, Sr., was convicted of possession of a controlled substance, first degree, and sentenced to three years' imprisonment, probated for a period of three years. On appeal, he alleges that there was insufficient evidence to sustain the conviction. We affirm.

On April 26, 2002, Sgt. Edward Hart of the Lexington Police Department and several other officers were investigating Gerry Booth for narcotics violations. The officers observed

Booth drive to a local gas station where he was later arrested. Hart approached the passenger's side of the vehicle where Barnett was sitting. At trial, Hart testified that Barnett, while exiting the vehicle, took his left hand, reached into his right sleeve, removed a white piece of paper and placed it on the passenger's side of the vehicle. Hart searched the vehicle, unwrapped the white paper, and found individual baggies of powdered cocaine. Barnett was then arrested. Barnett, the only defense witness, denied that he threw anything on the passenger's side of the vehicle.

A motion for directed verdict is proper only when, under the evidence as a whole, it would be clearly unreasonable for a jury to find the defendant guilty.¹ Using this standard as our guide, we reject Barnett's contention that the Commonwealth failed to prove beyond a reasonable doubt that he knowingly and unlawfully possessed the cocaine, a required element of the offense under KRS² 218A.1415. Possession may be proven by circumstantial evidence.³ The testimony of Hart that he personally saw Barnett holding the cocaine and throw it on the passenger's side of the vehicle is sufficient to support a reasonable juror's finding of guilt. Although Barnett's

¹ Commonwealth v. Sawhill, Ky., 660 S.W.2d 3 (1983).

² Kentucky Revised Statutes.

³ Spears v. Commonwealth, Ky. App., 78 S.W.3d 755 (2002).

testimony contradicted Hart's, the jury obviously found Hart to be a more credible witness.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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