

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2003-CA-000726-MR

BILLY RAY HUFF

APPELLANT

v.

APPEAL FROM MENIFEE CIRCUIT COURT  
HONORABLE WILLIAM B. MAINS, JUDGE  
INDICTMENT NO. 02-CR-00026

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION

### AFFIRMING

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BEFORE: BUCKINGHAM, DYCHE, AND TAYLOR, JUDGES.

DYCHE, JUDGE. On April 2, 2002, Kentucky State Police Trooper Shannon Jones observed someone driving an all terrain vehicle (ATV) on U. S. 460, an activity prohibited on federal roads. Trooper Jones gave chase, but the driver of the ATV left the paved roadway and began to drive creek beds. Jones kept up as long as he could but eventually lost sight of the driver. He stopped at a nearby house, where the occupant informed the policeman that she thought the driver she observed was appellant, Billy Ray Huff.

The officer went to the Huff household, where appellant's father answered the door and informed Jones that his son was inside. Jones found Huff, intoxicated, lying on a couch in his boxer shorts. Jones felt appellant's ice cold feet and arrested him for fleeing/evading a police officer (KRS 520.095) and driving under the influence, second offense (KRS 189A.010(5)(b)). Huff was later indicted, tried, and convicted of the offenses. He was sentenced to one year for the felony, and seven days plus costs and fines for the DUI. Huff was later granted shock probation.

Huff appeals, first arguing that the evidence was insufficient to support his conviction. He specifically questions the sufficiency of the evidence employed to identify him as the perpetrator. He emphasizes the testimony offered on his behalf that he was home at the time the officer was giving chase.

Unfortunately, that is not our standard of review. The emphasis should be on the Commonwealth's rather than appellant's evidence:

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.

On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal.

Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991)(citing Commonwealth v. Sawhill, Ky., 660 S.W.2d 3, 5 (1983)). It was not clearly unreasonable for the jury to believe that Huff was the driver of the ATV in question. No other facts were in dispute. Huff was not entitled to a directed verdict of acquittal.

Huff secondly argues that he is entitled to a new trial because of a sleeping juror. The record does not support his allegation that the juror was asleep. Nor did he properly preserve this matter for appeal. RCr 9.22. Moreover, he is unable to demonstrate that he was prejudiced by the juror's alleged inattentiveness. The allegation was made during the sentencing, not penalty, phase of the trial, after which Huff was given the minimum sentence. See Powell v. Louisville & Nashville Railroad Co., 172 Ky. 285, 189 S.W. 213 (1916).

The judgment of the Menifee Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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