

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2003-CA-001159-MR

JAMES STIDHAM

APPELLANT

v. APPEAL FROM CLAY CIRCUIT COURT  
HONORABLE R. CLETUS MARICLE, JUDGE  
ACTION NO. 02-CR-00008

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
REVERSING

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BEFORE: BARBER, KNOPF, AND TACKETT, JUDGES.

BARBER, JUDGE: Appellant, James Stidham (James), appeals his conviction for Criminal Facilitation to Murder. We reverse Stidham's conviction.

James Stidham was indicted for murder and robbery in the first degree. These charges stemmed from the fatal shooting of Steve Marcum on December 17, 2001. On that date, Larry Stidham, the father of Appellant James Stidham, shot and killed Marcum. Larry Stidham admits to shooting Marcum, but asserts that he shot him in self-defense during a robbery attempt by

Marcum. Larry testified that James was not present when the robbery or shooting occurred. James Stidham was convicted of criminal facilitation to murder after a jury trial. The robbery charges were dismissed by the court. Stidham was sentenced to serve five years on the criminal facilitation charge.

Larry Stidham and Marcum were co-workers, who along with James Stidham socialized on occasion. The Commonwealth claimed at trial that decedent Marcum and Larry and James Stidham were working and drinking together all day prior to the shooting. The Commonwealth also contended that James was present when Larry Stidham shot Marcum three times. Larry and James Stidham both denied that assertion, and no evidence in the record indicates that James Stidham was present other than the questionable testimony of witness Mary Henson. The Commonwealth further asserted that Larry and James Stidham robbed Marcum, shot him, and left the scene. No physical evidence links James Stidham to the scene, and there were no witnesses to the incident.

At trial Stidham's father, Larry Stidham, testified that on December 17, 2001, Steve Marcum robbed him at knife point. Larry Stidham stated that in fear for his life, he shot Marcum. There was nobody else present at the scene. Larry Stidham testified that Appellant James Stidham was not present at the scene. There were no witnesses to the shooting.

DNA and other evidence collected at the scene did not show any connection between the shooting and James Stidham. James Stidham testified that he was at home at the time of the incident.

The Commonwealth presented the testimony of Mary Elizabeth Henson, who asserted that James Stidham had been present when Marcum was killed, although she was not present when the shooting occurred. Henson claimed that three days after the shooting, Larry and James Stidham showed up at her house. She claimed that James told her that Larry had shot Marcum, and that James was present when the shooting occurred. Henson contacted the police and notified them that the Stidhams were at her house. Henson did not testify that James Stidham had any prior knowledge of his father's intent to shoot Marcum.

Stidham argues that the reliance on Ms. Henson's testimony linking him to the crime scene was misplaced and that his conviction based solely on her testimony was in error. Ms. Henson was not a witness to the shooting. Ms. Henson did not testify that James Stidham had any prior knowledge that his father would shoot Marcum. Effective trial preparation and cross-examination with regard to Ms. Henson was impossible. Ms. Henson was an extremely uncooperative witness who repeatedly changed her testimony. She refused to answer numerous questions asked by defense counsel during cross-examination, either

claiming that she did not know, or giving a non-responsive reply. Ms. Henson repeatedly responded to factual inquiries by answering that she didn't remember. At trial the testimony she gave was in direct contradiction with the testimony she gave before the Grand Jury. When questioned regarding her earlier testimony, Ms. Henson refused to review the Grand Jury transcripts to refresh her memory. She used the royal "we" to refer to herself, and claimed that "we weren't even prepared" the day she was required to testify before the Grand Jury, and asserted that she had to "go in there at random and give testimony without really being able to sit down and relive everything that went on."

Ms. Henson's testimony was loud and erratic. At one point during the trial Ms. Henson actually yelled at defense counsel "Mr. Norris, you are taking up for a killer." Later, Henson claimed that "[P]eople don't have control over their minds . . . that's why we get created memory . . . if we can't remember, then we can't make ourselves to say that I'm lying." During the trial, Ms. Henson claimed to remember more and more facts, and stated that God had "created" these memories for her. Ms. Henson testified that these "created" memories were truthful recollections of what James and Larry Stidham had told her days after the shooting.

At trial, Ms. Henson claimed to be a career undercover operative. She asserted that both federal and state governments have used her as a witness, and she is part of a team working all over the world. Henson asserted to have been involved in law enforcement "throughout history," and bragged that "I can't sit here and tell you everyone I've locked up." She claimed to have several "secret numbers" and identities. No support for these extraordinary and untrue statements was ever provided. In fact, no officers involved in the case knew of her or could confirm any of the information she provided. The record does not contain any evidence tending to establish the truth of Ms. Henson's claims, or to support her veracity. Defense objection to this fanciful and self-aggrandizing testimony was overruled.

Ms. Henson's testimony was the only evidence linking Stidham to Marcum's death. Both Larry and James Stidham testified that James was not present at the scene, and was not involved in the death of Marcum. No physical evidence linked James to the scene of the incident. Defense counsel made a motion for directed verdict based on Henson's improper and prejudicial testimony, urging the court to find that Henson's testimony was unreliable and could not be used to convict James. The motion was denied by the trial court.

Stidham asserts that the trial court erred when it failed to grant a requested mistrial based on the unreliability

of Ms. Henson's evidence. Stidham argues that Ms. Henson repeatedly changed her testimony, making it impossible for his counsel to prepare to question her. He asserts that his right to a fair trial was denied because of Henson's improper and erratic testimony. The trial court denied the motion, stating that the issue was one of witness credibility, which had to be decided by the jury. While it is true that witness credibility is properly reserved for the jury to determine, where, as here, the witness behaves outrageously and admits to "creating" memory and altering testimony, a mistrial may properly be granted.

Stidham argues the motion for mistrial based on the inflammatory and prejudicial statements made by Ms. Henson was improperly denied. Ms. Henson stated that when she first met Larry Stidham, he had just gotten out of jail. The trial court denied an objection based on this statement, finding that it was a proper response to the defense question "When did you meet Larry?" During the course of the trial, Henson persisted in calling Marcum's death a murder. The trial court admonished the jury regarding that statement. She speculated that she was in danger of being killed by Larry and James Stidham. The trial court did not admonish the jury regarding that statement.

The trial court must exercise its discretion in ruling on a motion for mistrial. Grimes v. McAnulty, 957 S.W.2d 223, 225 (Ky. 1997). Where the rights of the defendant have been

prejudiced such that he cannot receive a fair trial, a mistrial should be granted. Id. In the present case, however, Stidham was entitled to a directed verdict as no evidence other than Henson's suspect testimony linked him to the charged offense.

Stidham asserts that his motion for directed verdict was improperly denied. No evidence was presented at trial tending to support the claim that Stidham had prior knowledge of the incident or of Larry's intent to shoot Marcum. In fact, the only evidence at all linking James with the fatality was the questionable testimony of Ms. Henson. A motion for directed verdict must be granted where, under the evidence as a whole, it would be clearly unreasonable for the jury to find the defendant guilty. Reynolds v. Commonwealth, 113 S.W.3d 647, 650 (Ky.App. 2003). As no credible evidence supported the charged offense, the motion for directed verdict should have been granted. The court's failure to grant the motion for directed verdict warrants reversal of the conviction below.

ALL CONCUR.

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