

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001626-MR

BENJAMIN LOYD RITCHIE

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 02-CR-01131

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE, AND TAYLOR, JUDGES.

BUCKINGHAM, JUDGE: Benjamin Loyd Ritchie appeals from a judgment of the Fayette Circuit Court finding him guilty of third-degree burglary and second-degree criminal trespass and sentencing him to a term of imprisonment following a jury trial. The sole issue on appeal is whether there was sufficient evidence to support the convictions. We believe there was, and we thus affirm.

On September 16, 2002, in Lexington, Kentucky, Kenneth White and his wife were sitting in the back of their residence

at 912 Idle Wild Court when they observed Ritchie peering into the windows and door of the Whites' garage. White testified at trial that he went outside and asked Ritchie if he could help him. Ritchie responded that he was looking for Eastland, and White informed him that Eastland was not in his garage and directed him to get out of his yard.

As Ritchie was leaving, White went inside and retrieved his portable phone. He then went outside and observed Ritchie walking into a driveway two houses up the street. White called the police, and Officer Robert Terry arrived within one or two minutes.

Officer Terry and White walked up the street toward the location where White had last seen Ritchie, and Ritchie then came from the driveway of the Kirby Smith residence at 922 Idle Wild Court riding a bicycle. Officer White directed Ritchie to stop, but Ritchie continued to ride the bicycle in the officer's direction. Officer Terry then stepped to the side and pulled Ritchie off the bicycle. Ritchie had his black t-shirt in his hand, with six frozen pizzas wrapped in it. Officer Terry read Ritchie his rights, and Ritchie told the officer that he got the pizzas and bicycle from his friend, Petie, who was behind the Smith residence.

Within a few minutes the owner of the residence, Kirby Smith, arrived home. Smith identified the bicycle as one

belonging to his niece. Further, Smith stated that the bicycle had been located in his garage and that the frozen pizzas had been in a refrigerator also in his garage.

Ritchie was arrested and convicted following a jury trial of the offenses of third-degree burglary (Smith garage) and second-degree criminal trespass (White property). He was sentenced to five years on the burglary charge and 90 days on the trespassing charge. The sentences were ordered to run concurrently, and they were probated for a five-year period on various conditions. This appeal followed.

The sole argument raised by Ritchie on appeal is that the evidence was insufficient to support his conviction of the offenses. Ritchie specifically attacks the burglary conviction. He asserts that the trial court erred by failing to grant his motion for a directed verdict. The standard for directing a verdict in a criminal case was set forth by the Kentucky Supreme Court in Commonwealth v. Benham, Ky., 816 S.W.2d 186 (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. Id. at 167. Further, "[o]n 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." Id.

In order for a person to be found guilty of third-degree burglary, they must knowingly enter or remain unlawfully in a building with an intent to commit a crime. See KRS¹ 511.040(1). Ritchie argues that the Commonwealth's evidence was insufficient to prove beyond a reasonable doubt that he either entered or remained unlawfully in Smith's garage or that he had the intent to commit a crime. We believe the evidence was sufficient to prove both elements of the crime and to support the conviction.

A jury is entitled to draw reasonable inferences from circumstantial evidence. Dillingham v. Commonwealth, Ky., 995 S.W.2d 377, 380 (1999). Furthermore, where there has been a breaking and entering and property has been taken, and the property is found in the possession of the accused, such evidence is sufficient to submit the case to the jury on a charge of burglary. Jackson v. Commonwealth, Ky. 670 S.W.2d 828, 830 (1984), reversed in part on other grounds in Cooley v. Commonwealth, Ky., 821 S.W.2d 90, 92 (1991). Also, an appellate

¹ Kentucky Revised Statutes.

court cannot reexamine the evidence or substitute its judgment for that of the trial court and jury as to the credibility of a witness. Commonwealth v. Jones, Ky., 880 S.W.2d 544, 545 (1994). “[T]he verdict of a jury must be sustained if there is substantial evidence to support it, taking the view most favorable to the Commonwealth.” Id.

In this case there was sufficient evidence for the jury to find that Ritchie entered the Smith garage unlawfully and without Smith’s permission and that he did so with the intention of committing a crime. After White ran Ritchie from his property, he observed Ritchie walking in a driveway and behind other neighboring residences. Within a matter of minutes Ritchie came down the driveway with a bicycle and pizzas that had been taken from the Smith garage. No other person was seen in the vicinity, and the jury obviously rejected Ritchie’s story that he bought the bicycle and pizzas from a friend. In short, we conclude that the trial court properly denied Ritchie’s motion for a directed verdict.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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