

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001682-MR

MICHAEL F. SANDERS

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE SHEILA R. ISAAC, JUDGE
ACTION NO. 02-CR-01021

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Michael F. Sanders brings this appeal from a June 22, 2003, judgment of the Fayette Circuit Court. We affirm.

Appellant was indicted by the Fayette County Grand Jury upon the felony offenses of theft by unlawful taking over \$300.00 and for being a persistent felony offender in the first degree. Appellant also was indicted upon the misdemeanor offenses of fleeing and evading the police, second degree, and of giving an officer a false name or address. Appellant

allegedly shoplifted groceries from a Kroger store in Lexington, Kentucky. When confronted by a store security employee, appellant abandoned his grocery cart and ran out of the store. Appellant was later arrested by police behind a nearby restaurant. The charge of giving a false name to an officer was eventually dismissed. Appellant was convicted of the remaining offenses and was sentenced to a total of eleven years' imprisonment. This appeal follows.

Appellant initially contends the circuit court committed reversible error by failing to grant his motion for directed verdict. A motion for directed verdict is proper if under the evidence as a whole it would have been clearly unreasonable for a jury to have found appellant guilty. Commonwealth v. Benham, Ky., 816 S.W.2d 186 (1991).

Here, appellant specifically contends the Commonwealth failed to identify him as the individual who shoplifted from Kroger and attempted to evade police. After having reviewed the videotape of the trial, it is clear that Kroger's assistant manager testified that appellant was the shoplifting suspect on the Kroger surveillance tape. As such, we believe there was sufficient identification of appellant as the perpetrator of the crime during trial. Additionally, appellant never argued before or during the trial that he was not the person arrested and indicted for the crimes alleged. Consequently, we hold the

circuit court did not commit reversible error by denying appellant's motion for directed verdict.

Appellant also asserts the circuit court committed reversible error by failing to strike juror 612 for cause.

During voir dire, the following exchange occurred:

Defense counsel: Would any of you be inclined to believe the testimony of a police officer over that of another witness?

Juror 612: Yes. They are not perfect, they make mistakes, but they are trained to do that job.

Defense counsel: [To Juror 612]: Would you be able to weigh everybody's testimony against each other, if a police officer took the stand?

Juror 612: I think so. . . .

Commonwealth's Brief at 9.

In Gamble v. Commonwealth, Ky., 68 S.W.3d 367, 373 (2002), the Supreme Court held that "whether a juror should be excused for cause is a matter within the sound discretion of the trial court" If that discretion was abused, reversal could be required only if appellant exhausted all of his peremptory challenges. Id. Appellant has failed to demonstrate or even allege that he exhausted all of his peremptory challenges at trial. Even if the trial court should have struck juror 612 for cause, we cannot conclude that any prejudice resulted requiring reversal.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

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