

RENDERED: JANUARY 14, 2005; 2:00 p.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2003-CA-002479-MR  
AND  
NO. 2003-CA-002746-MR

VINCENT ADAMS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE F. KENNETH CONLIFFE, JUDGE  
ACTION NOS. 03-CR-000889 & 03-CR-002231

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION AFFIRMING

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BEFORE: TACKETT, TAYLOR, AND VANMETER, JUDGES.

VANMETER, JUDGE: This is an appeal from a Jefferson Circuit Court judgment sentencing appellant Vincent Adams to five years imprisonment for promoting contraband in the first degree and for being a persistent felony offender (PFO) in the second degree. Adams argues that the trial court erred by failing to grant his motions for a directed verdict, and by sustaining the Commonwealth's objection to certain evidence. We affirm the Jefferson Circuit Court's judgment.

While Adams was an inmate in the Louisville Metro Corrections facility, he was charged with promoting contraband in the first degree after Officer Nichols discovered, during a routine inspection of Adams' cell, a non-prison issue toothbrush which had been sharpened to a point. The item was confiscated as contraband and an Inmate Disciplinary Report and criminal charges were filed. A jury convicted Adams of promoting contraband in the first degree and of being a second-degree PFO. He was sentenced to five years imprisonment. This appeal followed.

Adams argues on appeal that the court erred by denying his motions for a directed verdict because the evidence against him was insufficient to support a conviction of promoting contraband in the first degree. We disagree. On appellate review, a directed verdict is appropriate only "if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt."<sup>1</sup> The evidence presented by Adams, as well as the evidence presented by the Commonwealth, did not create such a situation. The evidence presented provided the jury with competing explanations upon which to make their determination. For this reason a directed verdict would not have been appropriate and we affirm the circuit court's denial of Adams' motion.

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<sup>1</sup> *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991).

Under KRS 520.050(1)(b), a person promotes contraband in the first degree if, "[b]eing a person confined in a detention facility or a penitentiary, he knowingly makes, obtains, or possesses dangerous contraband." The Official Commentary to KRS 520.050 states, "[T]his provision is satisfied if the actor knows that the article in question endangers the safety or security of the detention facility or persons within it."

Here, Adams claims that the evidence was insufficient to show either that the altered toothbrush was dangerous contraband or that he knew it would be considered dangerous contraband. Adams testified below that although he was aware that shanks were not allowed in the jail, he did not believe the toothbrush was such an instrument, and that he only used the item to tuck a towel into his window for privacy when using the restroom. However, Adams subsequently admitted that he could understand why the toothbrush was considered a weapon. The Commonwealth adduced testimony, by contrast, that items similar to the seven inch long sharpened toothbrush had been used to injure prison officials in the past. Given this evidence as a whole, we cannot say that it was clearly unreasonable for the jury to find Adams guilty of promoting contraband in the first degree. Thus, the trial court did not err by denying his motion for a directed verdict.

Adams also argues that the court erred by sustaining the Commonwealth's objection to a particular line of questioning during the cross-examination of Officer Nichols. More specifically, Adams' counsel inquired whether Adams had been involved in violent behavior with anyone in jail prior to the discovery of the sharpened toothbrush, apparently in order to show that Adams was not a threat and had no intention or need to make, use, or obtain a weapon. The court sustained the Commonwealth's objection.

Under KRE 402, "[e]vidence which is not relevant is not admissible." While limitations on cross-examination must be cautiously applied,<sup>2</sup> trial courts are given great leeway in regulating the conduct and scope of cross-examination.<sup>3</sup> Here, we cannot say that the circuit court abused its discretion by concluding that Adams' prior behavior in jail was not relevant to prove or disprove the elements of the charged offense, i.e., that Adams knowingly possessed dangerous contraband.

Adams also contends that he is entitled to relief because certain prejudicial statements were made during the prosecutor's closing arguments that were not supported by evidence adduced at trial. However, Adams did not object to the

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<sup>2</sup> *Commonwealth v. Maddox*, 955 S.W.2d 718, 720 (Ky. 1997).

<sup>3</sup> *Id.* at 721.

statements so as to preserve this issue for appellate review.<sup>4</sup>  
Further, Adams is not entitled to relief in order to prevent  
manifest injustice.<sup>5</sup>

For the reasons discussed above we affirm the judgment  
of the Jefferson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Elizabeth B. McMahon  
Assistant Public Offender  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky  
  
Susan Roncarti Lenz  
Assistant Attorney General  
Frankfort, Kentucky

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<sup>4</sup> RCr 9.22, *West v. Commonwealth.*, 780 S.W. 2d 600, 602 (Ky. 1989).

<sup>5</sup> RCr 10.26.