

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-000766-MR

TIMOTHY KIMBLE

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE REBECCA M. OVERSTREET, JUDGE
ACTION NO. 03-CR-01033

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE AND GUIDUGLI, JUDGES.

GUIDUGLI, JUDGE: Timothy Terrell Kimble appeals from a judgment of the Fayette Circuit Court reflecting a jury verdict of guilty on the charge of first-degree rape. Kimble maintains that the evidence presented at trial was insufficient to support his conviction. For the reasons stated below, we affirm the judgment.

On May 22, 2003, O. W. invited Kimble to come to her house that evening and watch a movie. The two were acquainted from work. After speaking on the phone with O. W. and receiving

directions, Kimble arrived at her house around 2:30 a.m. on May 23, 2003. The record indicates that after O. W. and Kimble watched part of a movie and kissed, O. W. asked Kimble to come to her bedroom and spend the remainder of the night. They got in bed and Kimble began to fondle her, so she got out of bed, took her pants off, and got back in bed.

Kimble and O. W. disagree as to what happened next. Kimble claims that they engaged in consensual sexual intercourse, and that O. W. got mad when his girlfriend called on his cell phone. O. W. alleges that Kimble started having sexual intercourse with her and she told him to stop. She said that at first he complied, but sometime thereafter put his hands on her neck and forced her to have non-consensual sexual intercourse with him. She claimed that she told him to quit and was able to push him off of her and get out of bed. She noticed that she was bleeding and put her underwear in the trash can. She maintained that she told him to leave, and that she walked with him to the parking lot.

O. W. went to a hospital with a female friend. An examination revealed injuries to O. W.'s cervix. A subsequent evaluation of the evidence by the Kentucky State Police crime lab indicated the presence of semen.

O. W. filed a police report and an investigation followed. As part of the investigation, O. W. called Kimble

from a police station and the conversation was recorded. The matter went before the Fayette County grand jury, which indicted Kimble on one count of first-degree rape.

A jury trial was conducted in Fayette Circuit Court on February 19, 2004. Kimble moved for a directed verdict at the close of the Commonwealth's case and at the close of all of the evidence. Both motions were denied. After hearing all of the evidence, the jury initially stated that it was deadlocked. After further deliberations, it returned a guilty verdict. Kimble received a sentence of ten years in prison, and this appeal followed.

Kimble now argues that the evidence presented at trial was insufficient to support his conviction. He maintains that the Commonwealth did not prove beyond a reasonable doubt the element of forcible compulsion.¹ As such, he contends that it was clearly unreasonable for the jury to return a guilty verdict and that accordingly he was entitled to a directed verdict.

We have closely examined the record and the law, and find no error in the circuit court's denial of Kimble's motions

¹ KRS 510.040 states, (1) A person is guilty of rape in the first degree when: (a) He engages in sexual intercourse with another person by forcible compulsion "Forcible compulsion" means physical force or threat of physical force, express or implied, which places a person in fear of immediate death, physical injury to self or another person, fear of the immediate kidnap of self or another person, or fear of any offense under this chapter. KRS 510.010(2).

for a directed verdict. Commonwealth v. Benham, 816 S.W.2d 186 (Ky. 1991), sets forth the standard for reviewing motions for a directed verdict. It states that,

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.²

We cannot conclude that it would be clearly unreasonable for a jury to find guilt in the matter at bar. While the evidence is conflicting, in addressing the motions for a directed verdict the trial court was bound to draw all fair and reasonable inferences from the evidence and assume that the evidence for the Commonwealth is true.

² Benham, 816 S.W.2d at 187.

For purposes of ruling on the directed verdict motion, O. W.'s account must be regarded as true.³ As such, the trial court was bound to assume that Kimble had non-consensual sexual intercourse with O. W., that he did so by compulsion (i.e., his hand on her throat or neck), and that he continued after having been told to stop. The corroborating evidence such as the findings of blood and semen, O. W.'s medical examination, and the testimony of the examining nurse and lab technician must be viewed by the trial court in a light most favorable to the Commonwealth.⁴

With respect to Kimble's claim that the Commonwealth failed to prove the element of forcible compulsion (see footnote 1), O. W.'s testimony that Kimble held her by her neck and placed her in fear of greater harm satisfies this requirement. Again, the question is not whether O. W.'s testimony proves the elements of first-degree rape beyond a reasonable doubt, but whether when taken in a light most favorable to the Commonwealth and regarded as true it overcomes Kimble's motions for a directed verdict.

When considering the totality of the evidence against Kimble and viewing it in a light most favorable to the Commonwealth, the trial court properly concluded that Kimble was

³ Benham, supra.

⁴ Id.

not entitled to a directed verdict. Similarly, under the evidence as a whole, we cannot find that it would clearly be unreasonable for the jury to find guilt.⁵ As such, we must conclude that the Fayette Circuit Court correctly denied Kimble's motions for a directed verdict.

For the foregoing reasons, we affirm the judgment of the Fayette Circuit Court.

ALL CONCUR.

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⁵ Id.