

RENDERED: JULY 29, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001391-MR

GARY JONES

APPELLANT

APPEAL FROM MONTGOMERY CIRCUIT COURT
v. HONORABLE WILLIAM B. MAINS, JUDGE
ACTION NO. 03-CR-00164

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: TACKETT AND TAYLOR, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

TAYLOR, JUDGE: Gary Jones brings this appeal from a July 8, 2004, judgment of the Montgomery Circuit Court sentencing him to fifteen years' imprisonment upon his conviction after a jury trial on two counts of trafficking in a controlled substance, second degree, and one count of being a persistent felony offender, first degree. We affirm.

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

Jones was indicted by the Montgomery County Grand Jury upon two counts of trafficking in a controlled substance in the second degree and one count of being a persistent felony offender in the first degree. The indictment followed two controlled drug buy transactions conducted by the Buffalo Trace Narcotics Task Force. Roy Whisman, a confidential informant for the Task Force, purchased hydrocodone from Jones on both occasions. Following a jury trial, Jones was convicted of the charges and sentenced to a total of fifteen years' imprisonment. This appeal follows.

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

In the case sub judice, Jones asserts numerous grounds to support his assertion that the evidence against him was insufficient to support a conviction. Initially, Jones contends the cooperating witness, Whisman, was a convicted felon with a drug problem who arranged drug buys when he needed money. Jones further contended that Whisman was routinely paid for his cooperation.

It is well-established that the weight and credibility of a witness are questions exclusively within the province of the jury. Commonwealth v. Sawhill, 660 S.W.2d 3 (Ky. 1983). Jones' attack upon Whisman's testimony goes to the weight and credibility of Whisman's testimony. Jones was entitled to bring this information to the jury's attention, and he did so; however, he was not entitled to a directed verdict.

Jones next contends that the audiotapes of the phone conversations between him and Whisman and the videotape of the alleged drug transactions are of poor quality, never mentions a drug buy, and are not evidence of any wrongdoing. Jones basically complains that the evidence, taken as a whole, was insufficient to justify a conviction.

The evidence revealed Jones and Whisman engaged in two taped phone conversations. One conversation revealed Whisman stating, "Bring me ten. Okay?" Following the phone calls, an officer searched Whisman, gave him money for the drug purchase, and returned him to his home to await Jones' arrival. On both occasions, Whisman met Jones on the front porch. The first meeting was observed by two officers and the second meeting was videotaped. Following both meetings, Whisman immediately turned over the pills he had purchased to the officers. The samples tested positive for hydrocodone. Thus, a review of the record in this case reveals that a reasonable juror could certainly

believe that Jones was guilty beyond a reasonable doubt of trafficking in a controlled substance. As such, the circuit court properly denied Jones' motion for a directed verdict.

Jones also argues that "Whisman was not searched properly and there was no evidence that he was not impaired by drugs or alcohol" on the day of the alleged drug transaction that resulted in Jones' conviction. For these reasons, Jones maintains that he was entitled to a directed verdict of acquittal. Jones' argument consists of some five sentences and does not include a citation to a single legal authority. Viewing the totality of the evidence presented at trial, we conclude that a reasonable juror could have found Jones guilty of two counts of trafficking in a controlled substance in the second degree. See Benham, 816 S.W.2d 186.

Jones' final contention is that the chain of custody for identification of the audiotapes, the videotape, and the hydrocodone were not proper, and thus, were inadmissible at trial. As these items of evidence were inadmissible, Jones maintains that he is entitled to a directed verdict. To address Jones' contention, it is first necessary to determine if the audiotapes, videotape, and hydrocodone were properly admitted into evidence. However, Jones has not indicated to this Court how his objection to the admissibility of this evidence was preserved for our review.

It was incumbent upon Jones to specifically state in his brief the method by which the error was preserved and where in the record it was preserved for our review. See Ky. R. Civ. P. 76.12(4)(c)(v). As Jones' brief failed to specify how the admissibility of the audiotapes, videotape, and hydrocodone were preserved for appellate review, we will not address this issue. See Elwell v. Stone, 799 S.W.2d 46 (Ky.App. 1990).

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

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT FOR
APPELLANT:

Lisa Bridges Clare
Assistant Public Advocate
Department for Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky
George G. Seelig
Assistant Attorney General
Frankfort, Kentucky

ORAL ARGUMENT FOR APPELLEE:

George G. Seelig
Assistant Attorney General
Frankfort, Kentucky