

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001424-MR

DAVID WAYNE COLLINS

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CRAIG Z. CLYMER, JUDGE
ACTION NO. 03-CR-00202

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: KNOPF, TAYLOR, AND VANMETER, JUDGES.

VANMETER, JUDGE: This is an appeal from a judgment entered by the McCracken Circuit Court after a jury convicted appellant David Wayne Collins of possession of anhydrous ammonia in an unapproved container with intent to manufacture methamphetamine, and first-degree possession of a controlled substance, methamphetamine. For the reasons stated hereafter, we affirm.

On October 22, 2002, law enforcement officers found a Mason jar containing anhydrous ammonia while conducting a

consensual search of Collins' Illinois hotel room. On October 23, law enforcement officers searched Collins' McCracken County storage unit after Collins provided them with a key. Collins, who had rented the storage unit under a false name some six weeks earlier, was the only person authorized to enter the unit under the terms of the lease. In the storage unit the officers found a five-foot cylindrical gas tank containing anhydrous ammonia, as well as empty Mason jars and a baggie containing methamphetamine residue.

Collins was indicted on charges of tampering with an anhydrous ammonia container with the intent to manufacture methamphetamine, and first-degree possession of methamphetamine. After a trial, a jury convicted him of possessing anhydrous ammonia in an unapproved container with intent to manufacture methamphetamine, and first-degree possession of methamphetamine. He was sentenced to a total of ten years' imprisonment, and this appeal followed.

Collins contends on appeal that the trial court erred by failing to grant a directed verdict as to the charges against him. However, our review of the trial videotape shows that Collins' motions for a directed verdict addressed only the charge of "tampering" with an anhydrous ammonia container with intent to manufacture methamphetamine, and not the lesser possession charge. As the jury acquitted Collins on the

tampering charge, and the charges on which he was convicted were not addressed in the motions for a directed verdict, Collins failed to preserve the issue of whether the evidence was sufficient to convict him on the remaining charges.

Moreover, Collins is not entitled to relief in order to avoid manifest injustice,¹ as the evidence was more than sufficient to support the jury's verdict against him. It was undisputed that only Collins had access to the storage unit, which contained both an unlabeled tank of anhydrous ammonia, and a baggie with methamphetamine residue. Further, the evidence showed that Collins admitted during the investigation that he had used and manufactured methamphetamine in Illinois, that anhydrous ammonia was found in his Illinois hotel room on October 22, and that the tank of anhydrous ammonia found in the McCracken County storage unit both was used to make methamphetamine, and was not identified or labeled as required by federal regulations. As it is clear from our review of the record that the evidence was more than sufficient to convict Collins, he is not entitled to relief in order to prevent manifest injustice.

The court's judgment is affirmed.

ALL CONCUR.

¹ RCr 10.26.

BRIEF FOR APPELLANT:

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