

RENDERED: OCTOBER 21, 2005; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-002294-MR

GREGORY THOMPSON

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE STEPHEN A. HAYDEN, JUDGE
ACTION NO. 04-CR-00182

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: DYCHE AND GUIDUGLI, JUDGES; PAISLEY, SENIOR JUDGE.¹

DYCHE, JUDGE: On February 1, 2004, Bobby Harper, Jr., noticed that his garage had been burglarized. Harper notified the sheriff's office, and he gave a detailed list of the items (estimated to be worth \$17,000.00) he deemed missing. Two weeks later, Harper received a phone call advising him of the location of some of his missing property. Harper drove to the address he

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

had been given and was able to identify several of the items. He again notified the sheriff's department. Randa Willingham, the tenant to whom the storage building had been leased, permitted a search of the premises. Objects belonging to Harper which were recovered included two race car transmissions, a Honda generator, a welder, a power washer, and a jumper box.

Willingham gave a statement to the police alleging that Gregory E. Thompson recently had arrived at her residence and had asked to store some of belongings in her shed. The phone tip to Harper had also implicated appellant.

Thompson was indicted and tried for Receiving Stolen Property Over \$300.00 (KRS 514.110) and Persistent Felony Offender (PFO) in the Second Degree (KRS 532.080). He was found guilty on both counts; his five year sentence on the former charge was enhanced to ten years' imprisonment. Thompson appeals.

Appellant first argues that the trial court erred in denying his motions for directed verdict of acquittal. Thompson insists that there was insufficient evidence connecting him to the stolen property. He contends that the Commonwealth's three witnesses merely placed him at "key locations" but were unable to place him "in possession of any property nor [was there] any direct evidence that he had ever possessed such property."

We disagree. Harper was acquainted with Thompson, who had been to Harper's property on at least two previous occasions. Harper had been told by the tipster (a man named Richard Joiner, known to both Harper and appellant) that Thompson was in possession of Harper's goods. Willingham testified that, although she was the tenant of the property where the storage shed was located, she did not use it and had never even been in it. She placed Thompson, with a laden pickup truck, at her residence between the time of the burglary and the discovery of Harper's property in her building. Willingham, Harper, and the deputy sheriff all placed Thompson at Willingham's address on the date of the inventory of the shed. At least one of those witnesses testified that Thompson left hurriedly when he detected the presence of the authorities. There was no dispute that the recovered property belonged to Harper or that it had been recently stolen. KRS 514.110(2); Brown v. Commonwealth, 914 S.W.2d 355 (Ky.App. 1996).

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.

Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky. 1991)(citation omitted). And “[c]ircumstantial evidence is sufficient to support a criminal conviction.” Reynolds v. Commonwealth, 113 S.W.3d 647, 652 (Ky.App. 2003)(citations omitted). It was not clearly unreasonable for a jury to find Thompson guilty given the evidence presented. Benham, supra. The trial court properly denied the motions for directed verdict of acquittal.

Thompson secondly argues that certain remarks made by the Commonwealth during closing argument effected an impermissible shift in the burden of proof. Thompson concedes that this issue is not preserved for appellate review, but he maintains that the offending remarks resulted in manifest injustice, requiring reversal. See RCr 10.26.

Again we cannot agree with appellant. “When prosecutorial misconduct is claimed, the relevant inquiry on appeal should always center around the overall fairness of the trial, not the culpability of the prosecutor. In this case, the overall fairness of the trial was not compromised in any manner by the prosecutor's comment[s].” Maxie v. Commonwealth, 82 S.W.3d 860, 866 (Ky. 2002).

The judgment of the Henderson Circuit Court is affirmed.

ALL CONCUR.

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