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NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-002451-MR

MONTE LARON COOMER

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JAMES D. ISHMAEL, JR., JUDGE
ACTION NO. 04-CR-00430

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM AND McANULTY, JUDGES; PAISLEY, SENIOR JUDGE.¹

McANULTY, JUDGE: Monte Laron Coomer appeals his conviction following a jury trial in the Fayette Circuit Court for trafficking in a controlled substance in the first degree, possession of marijuana, and giving a peace officer a false name. In this appeal, he contends that the evidence was insufficient to convict him of the charges of trafficking in a controlled substance and possession of marijuana. Coomer

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 KRS 21.580.

concedes that he did not preserve this claim of error for appellate review since he failed to move for a directed verdict at the close of all the evidence after the Commonwealth introduced rebuttal evidence. Yet he asserts correctly that this error may be reviewed as palpable error pursuant to RCr 10.26, since the failure to convict on sufficient evidence would be an error affecting the defendant's substantial due process rights. Schoenbachler v. Commonwealth, 95 S.W.3d 830, 836-37 (Ky. 2003).

The standard for reviewing a sufficiency question as palpable error is that we examine the whole case to determine if failure to direct a verdict was error, using the standard set forth in Commonwealth v. Benham, 816 S.W.2d 186 (Ky. 1991), and Commonwealth v. Sawhill, 660 S.W.2d 3, 4-5 (Ky. 1983):

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 reserv[e] 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 is the

defendant entitled to a directed verdict of acquittal.

Schoenbachler, 95 S.W.3d at 837. Thus, we examine whether in this case a reasonable juror could believe beyond a reasonable doubt that Coomer had possession of the controlled substances, or whether it was clearly unreasonable for the jury to have found him guilty. Coomer complains because he believes that the evidence of trafficking and possession alone, independent of the evidence of admissions he made, was insufficient to convict him.

First, we note that the Sawhill standard above makes clear that this Court is to look at the whole of the evidence in determining whether a directed verdict was warranted at trial. Second, we believe the jury verdict was reasonable because there was evidence to link Coomer to the controlled substances found beneath his seat in the vehicle. While he indeed was not the owner or the driver of the vehicle, Officer Shirley found the cocaine and marijuana behind the seat in which Coomer was riding. Ownership and control of the vehicle is only one factor to consider when examining possession and control of contraband within a vehicle; the issue is who had dominion and control over the contraband. Burnett v. Commonwealth, 31 S.W.3d 878, 880-81 (Ky. 2000). The fact that the contraband was nearest to Coomer in the vehicle and that it was located together with his picture

ID indicated that Coomer had exercised dominion and control over the cocaine and marijuana.

In addition, one of Coomer's fellow passengers testified that Coomer stated that he had removed cocaine from his pocket and placed it in the back seat. Another of the passengers in the vehicle testified that Coomer told him later at the Fayette County detention center that there had been "about four ounces" of cocaine under the seat. Therefore, other evidence besides the contraband's proximity to him indicated that Coomer had constructive possession. Finally, there is certainly no question that the crime was committed, which is all the corroboration needed under RCr 9.60. Thus we conclude that there was sufficient evidence for the jury to conclude beyond a reasonable doubt that Coomer, rather than anyone else in the vehicle, possessed the controlled substances, and so there was no palpable error under RCr 10.26.

For all the foregoing reasons, we affirm Coomer's conviction in the Fayette Circuit Court.

ALL CONCUR.

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