

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002479-MR

MARSHA L. HENDRICKSON

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE JAMES L. BOWLING, JR., JUDGE
ACTION NO. 04-CR-00050

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM AND McANULTY, JUDGES; PAISLEY, SENIOR JUDGE.¹
BUCKINGHAM, JUDGE: Marsha L. Hendrickson appeals from a judgment of the Bell Circuit Court wherein she was convicted of burglary in the second degree and was sentenced to ten years' imprisonment. The single issue in this appeal is whether the Commonwealth presented sufficient evidence to overcome Hendrickson's directed verdict motions. We conclude that it did, and we thus affirm.

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.

The log cabin residence of Bill and Donna Tate, located on Colmar Road in Bell County, was burglarized on October 12, 2003. The thieves stole a television, an antique curio cabinet, a cedar chest, and a set of cutlery knives. A neighbor, Kathy Barnett, testified at trial that she witnessed Hendrickson and her co-defendant commit the burglary. Barnett lived in one of the house trailers on a hillside that looked onto the Tate property.

Barnett's testimony was the only evidence presented by the Commonwealth that tied Hendrickson to the burglary. At the conclusion of the Commonwealth's evidence and at the conclusion of all evidence presented at the trial, Hendrickson's attorney moved the court to grant her a directed verdict. The motions were denied, and the jury found Hendrickson guilty of the burglary. On October 24, 2004, the judgment sentencing Hendrickson to ten years' imprisonment for the crime was entered. This appeal by Hendrickson followed.

The sole issue concerns whether the testimony of Barnett, standing alone, was sufficient evidence to overcome Hendrickson's directed verdict motions. Citing evidence that questioned Barnett's credibility, Hendrickson argues that the evidence was insufficient.

In Commonwealth v. Benham, 816 S.W.2d 186 (Ky. 1991), the Kentucky Supreme Court stated the rule as follows:

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 purposes 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.

Id. at 187. "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." Id.

Barnett's eyewitness identification of Hendrickson as the perpetrator was sufficient to support the conviction and overcome the directed verdict motions. See Gerlaugh v. Commonwealth, 156 S.W.3d 747, 758 (Ky. 2005); LaVigne v. Commonwealth, 353 S.W.2d 376, 378-79 (Ky. 1962), and Adams v. Commonwealth, 560 S.W.2d 825, 826-27 (Ky.App. 1977). Furthermore, it was the prerogative of the jury, not the court, to determine Barnett's credibility. In short, the court did not err in denying Hendrickson's directed verdict motions.

The judgment of the Bell Circuit Court is affirmed.

ALL CONCUR.

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