

RENDERED: JANUARY 6, 2006, 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-002529-MR

JEFFREY W. ALLEN

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT  
HONORABLE DAVID JERNIGAN, JUDGE  
ACTION NO. 04-CR-00115

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \*

BEFORE: COMBS, CHIEF JUDGE; McANULTY, JUDGE; PAISLEY, SENIOR JUDGE.<sup>1</sup>

McANULTY, JUDGE: Appellant Jeffrey W. Allen appeals his conviction by a Muhlenberg County jury of one count of possession of methamphetamine and of being a persistent felony offender in the first degree. His sole allegation on appeal is that there was insufficient evidence to convict him of the charge of possession of methamphetamine.

---

<sup>1</sup> 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.

Appellant was indicted on one count of trafficking in methamphetamine, one count of possession of methamphetamine, and one count of being a first-degree persistent felony offender. The jury found him not guilty of trafficking, but guilty of one count of possession of methamphetamine as a lesser included offense to the trafficking charge, and guilty of a second count of possession of a plastic bag of methamphetamine found in a search of his hotel room. The trial court merged those two counts, pursuant to agreement of the parties, into a single count of possession of methamphetamine for sentencing purposes.

Appellant concedes that he was staying in the hotel room where a drug transaction took place. He concedes that he passed a bag of methamphetamine from the seller, Steve Smith, to the informant. However, he argues that he did not profit by this transaction and never owned or had dominion and control over the bag of the drug. He additionally concedes that, following a search of the hotel room, a bag of methamphetamine was found in the bathroom. However, he argues that he was not aware of its being there and that he had only been in the hotel room for a few hours prior to the events of that afternoon. He argues that the evidence in general was insufficient to establish that he possessed any of the illegal substances located in the hotel room.

Appellant preserved his arguments by appropriate motions for a directed verdict of acquittal. The appellate standard for reviewing a motion for directed verdict is, if under the evidence as a whole, it would not be clearly unreasonable for the jury to find the defendant guilty, he is not entitled to a directed verdict of acquittal. Commonwealth v. Sawhill, 660 S.W.2d 3, 5 (Ky. 1983). We find that the jury's verdict was eminently reasonable.

First, the informant testified that the only person he saw possess the methamphetamine in the hotel room was appellant and not Smith. At trial, appellant conceded that he held the drug in his hand, and argued that he was not trafficking, but only unwisely helping Smith's transaction. From the evidence, we observe that the jury could fairly have considered him to have been in possession of the drugs during the transaction and to have exerted control over them. The fact that he soon relinquished that control does not negate his control over the drugs.

Next, the evidence showed that a bag of methamphetamine was located in appellant's hotel room bathroom. Proof of possession of a controlled substance may consist of evidence that the defendant had constructive possession; that is, that the drugs were subject to his dominion and control rather than actual physical possession. Burnett v.

Commonwealth, 31 S.W.3d 878, 881 (Ky. 2000). The jury was instructed: "POSSESSION -- Means to have actual physical possession or otherwise to exercise actual dominion or control over a tangible object." The jury could infer that appellant exercised actual dominion and control over the items in his hotel room. The jury could also infer by his presence there that he had knowledge of it. No evidence emerged to connect these drugs with anyone else located in appellant's room. The jury was thus certainly reasonable in believing that the methamphetamine was possessed by appellant despite his assertions that he was not even aware of it. The jury as finder of fact can certainly disbelieve any evidence which it finds not credible.

In conclusion, we find ample evidence supported the verdict of the jury. We affirm appellant's conviction.

ALL CONCUR.

BRIEF FOR APPELLANT:

Thomas D. Collins  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General for Kentucky

Dennis W. Shepherd  
Assistant Attorney General  
Frankfort, Kentucky