

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002576-MR

KEVIN TROYER

APPELLANT

v. APPEAL FROM CALLOWAY CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 03-CR-00065

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND HENRY, JUDGES.

COMBS, CHIEF JUDGE: Kevin Ray Troyer appeals from the judgment of the Calloway Circuit Court convicting him of trafficking in a controlled substance and sentencing him to prison for two and one-half years. Troyer argues that the trial court erred by denying his motions for directed verdict. We affirm.

In April 2003, Troyer was charged by sealed indictment with trafficking in a controlled substance within 1000 yards of

East Elementary School in Calloway County. On September 25, 2003, he was arrested on a warrant in Illinois and was extradited to Kentucky. His case proceeded to trial in October 2004.

At trial, the Commonwealth presented testimony from two Murray police detectives, Chris Garland and Donald Bowman. During 2003, the detectives had been assigned to positions with a multi-county drug task force. Bowman had established a working-relationship with Robert Tucker, a confidential informant. When Tucker indicated that he could purchase marijuana from Kevin Troyer, Bowman and Garland set up a simple undercover operation. Tucker was searched, he was given "buy money," and he was wired for sound before meeting with Troyer. The detectives monitored an audio-listening device from an unmarked car parked nearby.

Tucker testified that he met with Troyer at a residence on Post Oak Drive in Murray and that Troyer sold him a bag of marijuana for \$45.00. Tucker admitted on cross-examination that he may have stated to a defense investigator that James Brown, Troyer's brother, had given Troyer the marijuana and that he (Tucker), in turn, had purchased it from Troyer. Brown testified for the defense that he rather than Troyer sold Tucker the marijuana. Brown is the father of

Tucker's grandchild, and the defense insinuated that Tucker lied to the detectives about Troyer in an effort to protect Brown.

At the end of the trial, Troyer moved for a directed verdict. The trial court denied the motion, and the jury convicted Troyer of trafficking in a controlled substance. A judgment reflecting the verdict and the sentence was entered on November 23, 2004. This appeal followed.

On appeal, Troyer claims that in light of the flimsy state of the evidence against him, the trial court should have granted his motion for a directed verdict. Troyer contends that Tucker was thoroughly impeached on cross-examination and that his testimony was rendered completely unreliable. Consequently, he contends, the evidence presented was insufficient to support his conviction. We disagree.

The standard of review for failure to grant a directed verdict is whether under the evidence as a whole, it would be clearly unreasonable for a jury to find the defendant guilty. Benham v. Commonwealth, 816 S.W.2d 186 (Ky. 1991). "[I]n ruling on a directed verdict motion, the trial court must draw all reasonable inferences from the evidence in favor of the Commonwealth and assume that the Commonwealth's evidence is true, leaving questions of weight and credibility to the jury." Slaughter v. Commonwealth, 45 S.W.3d 873, 875 (Ky.App. 2000). "A reviewing court does not reevaluate the proof because its

only function is to consider the decision of the trial judge in light of the proof presented." Benham, supra at 187.

In this case, Troyer argues that the testimony of Robert Tucker, the Commonwealth's key witness, was inconsistent and motivated solely by self-interest. Troyer contends that Tucker's testimony was insufficient as a matter of law to establish that he -- and not James Brown -- sold the marijuana.

Any contradiction in the informant's testimony goes to his credibility, which must be weighed by the jury and not by the judge. Similarly, the informant's motivation for providing the testimony must be evaluated by the jury in terms of assessing its reliability. Considering all of the circumstances, the jury must determine whether the testimony presented is sufficiently credible, reliable, and persuasive.

At different points during his cross-examination, Tucker's credibility was effectively undermined. However, Tucker remained steadfast in his testimony. He adamantly denied that he purchased the marijuana from anyone other than Troyer. He stated repeatedly and without reservation that Troyer -- and not his brother -- had sold him the marijuana at the residence on Post Oak Drive. When presented with this testimony, the jury could have reasonably believed that Troyer had sold the marijuana to Tucker. Thus, the trial court did not err in denying the motion for directed verdict.

The judgment of the Calloway Circuit Court is affirmed.

ALL CONCUR.

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