

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002603-MR

RODNEY L. SHIELDS

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 04-CR-00100

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER AND McANULTY, JUDGES; POTTER, SENIOR JUDGE.¹

BARBER, JUDGE: Appellant, Rodney L. Shields (Shields), appeals a jury verdict and the judgment of the Muhlenberg Circuit Court finding him guilty of promoting contraband, first degree, and of being a persistent felony offender, and sentencing him to ten years imprisonment. The conviction and sentence are affirmed.

Shields was an inmate in the Green River Correctional Facility at all times relevant to this action. Correctional officers received a tip from an officer in the outdoor

¹Senior Judge John W. Potter, sitting as Special Judge by assignment of the Chief Justice pursuant to Section (110)(5)(b) of the Kentucky Constitution and KRS 21.580.

recreation yard to detain and physically check Shields for contraband. Shields was detained, and his clothing and shoes were examined for contraband. Contraband determined to be marijuana was found during the search of Shields.

Shields asserts that three officers, Officer Pepper, Officer Yates, and Officer Pennington were present during the search. Shields claimed that Officer Pepper took Shields' left shoe, and placed five marijuana cigarettes wrapped in a piece of toilet paper into the shoe. He stated that the shoe and contraband were given to Officer Pennington by Officer Pepper. Shields denied having any contraband. He argued that the cigarettes must have already been on the floor, and that the officers may have mistakenly believed them to be his, or intentionally made it appear as though the contraband was his.

Officer Pennington testified that only he and Officer Pepper were present during the search. He testified that Officer Pepper found marijuana cigarettes in Shields' right shoe. Officer Pepper testified that he found the cigarettes wrapped in toilet paper in the right side of one of Shields' shoes. Officer Pepper did not specify which shoe it was.

Shields argues that the difference between his testimony and that of the officers was significant enough to require that the court grant his request for a new trial. Counsel for the appellant fails to provide an argument in

support of this contention. At trial the jury is charged with the task of determining the weight to be given conflicting evidence. Young v. Commonwealth, 50 S.W.3d 148, 159 (Ky. 2001). No reversible error has been shown in the jury's determination of the weight to be given the testimony of Shields and the officers.

At trial Shields attempted to cross-examine Officer Pennington by asking him questions about the Prison Procedures Manual. The court sustained the Commonwealth's objection that this evidence was irrelevant. Shields argues on appeal that the manual was crucial evidence supporting his defense at trial. He contends that the Officer's violation of pat-down procedure showed motive to claim to have found contraband on Shields' person. Shields argues that the court's ruling denied him the opportunity to provide a defense to the charges against him. Shields asserts that the manual does not provide for a removal of an inmate's shoes during a pat-down. Shields claims that Officer Pepper violated pat-down procedure by having Shields remove his shoes. He asserted that Officer Pepper's actions showed a motive to fabricate evidence against him.

At trial, Shields informed the jury that the correction officers did not follow prison procedure. Shields did not place the manual in evidence, or preserve its contents by express avowal. The Commonwealth claims that this failure to

preserve the error avoids review. Commonwealth v. Ferrell, 17 S.W.3d 520, 523 (Ky. 2000), requiring preservation of objection to testimony by avowal. Even had the manual been preserved as part of the record, we find that Shields' claim that violation of the manual was evidence of fabrication by the Officer was a factual issue which was resolved by the jury. The jury is the entity charged with determining the weight to be given conflicting testimony. Roark v. Commonwealth, 90 S.W.3d 24, 37 (Ky. 2002). No reversible error has been shown in the jury's verdict.

The Commonwealth asserts that Shields failed to show the relevance of the manual such that its exclusion was an abuse of discretion. An appellate court reviews evidentiary rulings only to determine if there was an abuse of discretion by the trial court. Barnett v. Commonwealth, 979 S.W.2d 98, 103 (Ky. 1998). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." Commonwealth v. English, 993 S.W.2d 941, 945 (Ky. 1999). To be successful, Shields had the burden of showing this Court that exclusion of the manual "significantly undermines fundamental elements of the defendant's defense." Beaty v. Commonwealth, 125 S.W.3d 196, 204 (Ky. 2003), extensive citation to authority omitted. Shields has failed to make such a showing. There was no

evidence supporting the contention that the manual was relevant such that its exclusion constituted an abuse of discretion.

Shields contends that the penalty he received was too harsh for the charged offense. No argument is provided in support of this contention. Shields was found guilty by the jury of promoting contraband, a class D felony. Sentence for that offense was set at one year, in accordance with law. Evidence was provided at trial of Shields' past criminal offenses. The jury also found Shields guilty of being a persistent felony offender in the first degree, which enhanced his penalty to ten years imprisonment, pursuant to the terms of KRS 532.080. The record contains evidence showing Shields' criminal history. The law provides for such an enhanced penalty for a defendant found guilty of being a persistent felony offender. No reversible error is found in this regard.

For the foregoing reasons, the conviction is affirmed.

POTTER, SENIOR JUDGE, CONCURS.

McANULTY, JUDGE, CONCURS IN RESULT.

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