

RENDERED: JUNE 2, 2006; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000291-MR

JOHN W. LYONS

APPELLANT

APPEAL FROM MUHLENBERG CIRCUIT COURT
v. HONORABLE DAVID JERNIGAN, JUDGE
ACTION NO. 04-CR-00101

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, KNOPF, AND MINTON, JUDGES.

BARBER, JUDGE: Appellant, John W. Lyons (Lyons), appeals a jury verdict finding him guilty of fraudulent insurance acts over \$300. We affirm the jury's verdict.

Appellant worked for Michael Mallory, a truck hauler. On July 17, 2003, Mallory was involved in a one vehicle accident as he was driving Lyons' truck. Lyons promptly reported the accident to his insurer. Lyons' insurer paid the property damage claim on the vehicle in the amount of \$6,091.30. A

personal injury claim was filed for lost wages in the sum of \$800.00. Lyons informed his insurer that he had injured his shoulder when the truck hit a deer. Medical expenses in the sum of \$16,000 were submitted to the insurer, but were never paid. The personal injury claim form was submitted using Mallory's name and address. Mallory signed the wage and salary form showing that Lyons earned \$650 a week as a truck driver.

At trial, Mallory claimed that he had not signed the wage and salary form as Lyons' employer. He initially denied ever giving Lyons a paycheck for his employment, but later admitted that he had given Lyons at least one paycheck. Most of Lyons' work was paid "in kind," with Mallory providing Lyons with a residence, food, cigarettes and vehicle expenses.

The insurance company investigator testified that Mallory had admitted signing the wage and salary form. The investigator testified that Lyons had initially made a personal injury claim, but had contacted the investigator in March of 2004 to say that he wanted to drop the claim. The insurance agent who took the claim stated that he had known Lyons for fifteen years, and recognized his voice when the claim was made. The insurance agent testified that Lyons informed him that he had been in the truck when the accident occurred, and that he had injured his shoulder in the accident. Lyons made a taped statement to that effect. The agent stated that in March, 2004,

Lyons recanted that statement, and admitted that he had not been in the vehicle at the time of the accident. Lyons then told the agent that he did not want anything to do with the claim.

Lyons testified at trial. He stated that he had not filed the personal injury claim, and that he believed Mallory had filed the claim. Lyons admitted receiving the \$800 check from the insurer, but claimed that he did not know that it was for a personal injury claim.

Lyons claimed that reversible error occurred when the trial court denied his motion for directed verdict. Lyons argues that the Commonwealth failed to prove that he had submitted the false claim for insurance benefits. Lyons also contends that the insurer did not prove that he intended to defraud the insurance company.

The Commonwealth shows the Court that Mallory and his wife testified as to statements Lyons had made about wanting to make a false claim against his insurer. Mallory and his wife also testified that Lyons was not in the truck at the time of the accident.

On motion for directed verdict, the trial court "must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth." Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky. 1991). On appellate review, this Court must determine whether, "under the evidence as a whole, it would be

clearly unreasonable for the jury to find guilt. . . ." Id.
Lyons has failed to show this Court that it would have been
clearly unreasonable for the jury to find him guilty as charged.
For this reason, we must affirm the jury verdict.

At trial, the insurer's agent testified that he was
familiar with Lyons and recognized his voice. He testified that
Lyons called him the day after the accident and reported
property damage and personal injury. Lyons called the agent a
few weeks later and reported a doctor visit for the injury
allegedly sustained in the crash. Lyons also gave a recorded
statement to the agent and the insurance investigator regarding
his alleged injury. Medical bills were submitted, and a wage
loss claim was submitted, both containing Lyons' name and social
security number. Lyons cashed the wage loss check. The insurer
did not provide coverage for the medical expenses submitted.
Lyons called the insurer several months later, and asked to drop
the claim. This would appear to indicate that Lyons had
knowledge of the claim.

Lyons claimed at trial that the wage loss and medical
expenses may have been filed by his employer, and indicated that
he had no knowledge of or involvement in that filing. The
credibility of witnesses and the weight to be given evidence
presented is the province of the jury. Reynolds v.

Commonwealth, 113 S.W.3d 647, 649 (Ky.App. 2003). This Court has held:

The standard of review for an appeal of a directed verdict is firmly entrenched in our law. A trial judge cannot enter a directed verdict unless there is a complete absence of proof on a material issue or there are no disputed issues of fact upon which reasonable minds could differ. Bierman v. Khapheke, Ky., 967 S.W.2d 16, 18 (1998). Where there is conflicting evidence, it is the responsibility of the jury to determine and resolve such conflicts. Id. at 16. A motion for directed verdict admits the truth of all evidence favorable to the party against whom the motion is made. National Collegiate Athletic Association v. Hornung, 754 S.W.2d 855, 860 (Ky. 1988) citing Kentucky Indiana Terminal R. Co. v. Cantrell, 184 S.W.2d 111 (Ky. 1944). Upon such motion, the court may not consider the credibility of evidence or the weight it should be given, this being a function reserved for the trier of fact. National Collegiate Athletic Association v. Hornung, 754 S.W.2d 855, 860 (Ky. 1988) citing Cochran v. Downing, 247 S.W.2d 228 (Ky. 1952). The trial court must favor the party against whom the motion is made, complete with all inferences reasonably drawn from the evidence. The trial court then must determine whether the evidence favorable to the party against whom the motion is made is of such substance that a verdict rendered thereon would be "palpably or flagrantly" against the evidence so as "to indicate that it was reached as a result of passion or prejudice." In such a case, a directed verdict should be given. Otherwise, the motion should be denied. National Collegiate Athletic Association v. Hornung, 754 S.W.2d 855, 860 (Ky. 1988) citing Nugent v. Nugent's Ex'r., 135 S.W.2d 877 (Ky. 1940).

Gibbs v. Wickersham, 133 S.W.3d 494, 495 (Ky.App. 2004). Lyons has not made such a showing. For this reason, the verdict below is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Lisa Bridges Clare
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Todd D. Ferguson
Assistant Attorney General
Frankfort, Kentucky