

RENDERED: May 5, 2006; 2:00 P.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2005-CA-000387-MR

JOANIE MAE MORRIS  
(NOW BENNETT)

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT  
HONORABLE THOMAS O. CASTLEN, JUDGE  
ACTION NO. 02-CR-00450

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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

HENRY, JUDGE: Joanie Mae Morris (now Bennett) appeals from a jury verdict and judgment finding her guilty of Criminal Solicitation to Commit Murder and sentencing her to twelve (12) years imprisonment. Upon review, we affirm.

On November 5, 2002, Morris was indicted by the Daviess County Grand Jury on one count of Criminal Solicitation to Commit Murder, a Class B felony,<sup>1</sup> on the grounds that "she

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<sup>1</sup> The indictment was pursuant to Kentucky Revised Statutes ("KRS") 506.030 and 507.020.

offered Charles Schindler a sum of money to intentionally cause the death of her husband, Ernie Morris[.]” On November 12, 2002, Morris appeared in open court with her counsel and entered a plea of “not guilty” to the charge.

Morris was tried before a Daviess County jury on November 29 and 30, 2004. At trial, Schindler - Morris' ex-husband - testified that on the evening of October 11, 2002, he engaged in a conversation with Morris at his home. During this conversation, Morris asked Schindler to kill her husband, Ernie Morris, and to meet her at Legion Park to tell her whether or not he would do it. Schindler, concerned about this request, went to the police and advised them of the conversation. The police subsequently asked Schindler if he would wear a wire when he met with Morris at Legion Park. He agreed and met with Morris on October 16, 2002 while under continuous video and audio surveillance.

According to Schindler, during this meeting, Morris again asked him to kill her husband and repeated this request throughout their conversation. She picked a night and time in which he could come to her house and told him in great detail how he could get in and what he could use to commit the act. She further offered to pay Schindler \$5,000.00 from insurance proceeds that she expected to receive after her husband's death. Schindler further testified that at no time during this meeting

did Morris tell him that she was joking or otherwise indicate that she was not serious about her request.

Based on Morris' statements at Legion Park, a warrant was obtained for her arrest, and she was taken into custody on the same day. Morris subsequently waived her Miranda rights and voluntarily consented to a taped interview with Detective Mark Saffran. In this interview, Morris admitted to asking Schindler to kill her husband, to discussing a plan for carrying out the murder, and to offering Schindler \$5,000.00 if he went through with it. However, she also stated that she never actually intended for her husband to be killed, and that her multiple requests to Schindler were all part of a game to see if he still loved her. The video of this interview was played for the jury at trial.

Morris also testified in person at trial and again admitted to everything that she said in the recorded interview. She continued to maintain that she only asked Schindler to kill her husband in order to gauge whether or not Schindler still loved her, and that she never wanted her husband to be killed. She further testified that she never told Schindler that her requests were part of a game, but she claimed that she would have had she not first been arrested.

The jury ultimately found Morris guilty of Criminal Solicitation to Commit Murder and recommended a sentence of

twelve (12) years imprisonment. On January 14, 2005, the trial court entered a judgment and sentence consistent with the jury's verdict and recommendation. This appeal followed.

On appeal, Morris raises two arguments: (1) that a prior inconsistent statement made by Schindler to defense counsel should have been admitted into evidence; and (2) that she was entitled to a directed verdict of acquittal because the Commonwealth did not prove that she intended to murder Ernie Morris. We reject both contentions.

Morris first argues that the trial court erred in refusing to allow the admission of a prior statement made by Schindler to her defense counsel a few weeks before trial. The statement in question was a purported comment by Schindler that he thought Morris' requests to kill her ex-husband were a joke. Although Morris' briefs are unclear on this point, it appears from the record that her contention is that this statement was in conflict with Schindler's testimony on direct examination by the Commonwealth that he believed Morris' requests were serious. According to Morris, when her counsel attempted to question Schindler about this on cross-examination and to introduce evidence of this prior inconsistent statement, the trial court would not allow it on grounds of improper foundation.

"It is a well-settled principle of Kentucky law that a trial court ruling with respect to the admission of evidence

will not be reversed absent an abuse of discretion.”

Commonwealth v. King, 950 S.W.2d 807, 809 (Ky. 1997). “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). Accordingly, we will adhere to these standards in reviewing the trial court’s decision as to the evidence in question.

The admission of prior inconsistent statements as evidence is governed by KRE<sup>2</sup> 801A, which provides, in relevant part:

(a) Prior statements of witnesses. A statement is not excluded by the hearsay rule, even though the declarant is available as a witness, if the declarant testifies at the trial or hearing and is examined concerning the statement, with a foundation laid as required by KRE 613, and the statement is:

(1) Inconsistent with the declarant’s testimony[.]

KRE 801A(a)(1). As noted by this rule, in order for a prior inconsistent statement to be admitted as evidence, the party seeking admission must lay a proper foundation, as set forth in KRE 613. This rule provides, in relevant part:

(a) Examining witness concerning prior statement. Before other evidence can be offered of the witness having made at

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<sup>2</sup> Kentucky Rules of Evidence.

another time a different statement, he must be inquired of concerning it, with the circumstances of time, place, and persons present, as correctly as the examining party can present them; and, if it be in writing, it must be shown to the witness, with opportunity to explain it.

KRE 613(a).

Morris argues - citing to Kinser v. Commonwealth, 741 S.W.2d 648 (Ky. 1987) - that the Kentucky Supreme Court has not required rigid adherence to KRE 613(a) and has ruled that a foundation has been adequately laid when a witness acknowledges remembering having made a prior statement. See id. at 652. Accordingly - Morris argues - because Schindler indicated in his trial testimony when questioned by Morris' counsel that he remembered making prior statements to counsel regarding whether he thought Morris' requests were a joke and could recall the approximate date when they occurred, a foundation was properly laid for Schindler to be impeached with these statements.

However, what Morris' argument ignores is that the trial court's decision to sustain the Commonwealth's objection when the statement in question was first offered does not appear to have been based on a lack of foundation at all. Instead, her counsel failed to clarify which particular testimony he was attempting to impeach with it. Essentially, he attempted to introduce a prior inconsistent statement without clarifying with what testimony it was inconsistent or without offering Schindler

the opportunity to testify consistently or inconsistently with the statement. Accordingly, the trial court's decision to sustain the Commonwealth's objection to this evidence is certainly understandable, as KRE 801A requires that the prior statement be "[i]nconsistent with the declarant's testimony." KRE 801A(a)(1).

Moreover, a review of the record indicates that the trial court had no qualms about introducing the statement itself, as long as it was introduced in an appropriate fashion. Indeed, later in the cross-examination of Schindler, when the issue arose again, the court actually advised Morris' counsel to ask Schindler if he thought the requests were a joke and - if he answered "No" - the prior statement could be used to impeach him. When counsel asked Schindler if he believed this was a joke, Schindler responded that he did not know if Morris was serious or not. At that point, counsel made no further efforts to introduce the prior statement. Given these facts, we simply do not believe that the trial court abused its discretion as to this particular evidentiary issue, and we must accordingly reject Morris' contentions in this respect.

Morris finally argues that she was entitled to a directed verdict of acquittal because the Commonwealth did not prove that she intended to murder Ernie Morris. Intent is a

specific element of proof under KRS 506.030, the criminal solicitation statute, which provides, in part:

A person is guilty of criminal solicitation when, with the intent of promoting or facilitating the commission of a crime, he commands or encourages another person to engage in specific conduct which would constitute that crime or an attempt to commit that crime or which would establish the other's complicity in its commission or attempted commission.

KRS 506.030(1).

We are obligated to review this argument under the standard set forth in Commonwealth v. Benham, 816 S.W.2d 186 (Ky. 1991): "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. at 187. "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." Id. Moreover, "[f]or the purpose 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. A defendant is entitled to a directed verdict only if the

Commonwealth produces no more than a "mere scintilla" of evidence of guilt. Id. at 187-88.

After reviewing the trial record, we are convinced that the jury's guilty verdict is amply supported by the evidence. For example, as noted above, Charles Schindler set forth in specific detail his conversations with Morris and her multiple requests for him to kill her husband. Moreover, the jury heard a taped interview - as well as live testimony - from Morris, in which she admitted to asking Schindler to kill her husband, discussing a plan for carrying out the murder, and offering Schindler \$5,000.00 if he went through with it. While Morris also testified that she never actually intended for Schindler to be killed, the question of what testimony to believe or not to believe is a matter firmly within the province of the jury. See Benham, 816 S.W.2d at 187. Moreover, as our Supreme Court has repeatedly held, "intent may be inferred from actions because a person is presumed to intend the logical and probable consequences of his conduct, and a person's state of mind may be inferred from actions preceding and following the charged offense." Stopher v. Commonwealth, 57 S.W.3d 787, 802 (Ky. 2001). Thus, while Morris might argue that she did not intend for her husband to be murdered, the jury could have reached the opposite conclusion and inferred intent upon considering her actions and the testimony from other witnesses.

Accordingly, after viewing the evidence in the light most favorable to the prosecution, we hold that any rational trier of fact could have found beyond a reasonable doubt that Morris intended to commit the crime for which she was charged, and we consequently cannot say that the trial court should have ordered a directed verdict of acquittal. See Benham, 816 S.W.2d at 187.

Morris' arguments having been rejected, the judgment of the Daviess Circuit Court is affirmed.

ALL CONCUR.

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