

RENDERED: MARCH 10, 2006; 2:00 P.M.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2005-CA-000481-MR

CHRIS D. MCGUIRE, JR.

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT  
HONORABLE STEPHEN A. HAYDEN, JUDGE  
ACTION NO. 04-CR-00392

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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

BEFORE: TACKETT, TAYLOR, AND VANMETER, JUDGES.

TACKETT, JUDGE: Chris D. McGuire appeals from the judgment of the Henderson Circuit Court finding him guilty of possession of a controlled substance in the first degree. McGuire argues on appeal that the court should have granted a directed verdict because there was insufficient evidence of possession of drugs found in the passenger compartment of a car McGuire was driving. We disagree and affirm.

McGuire was the driver of a car stopped in Henderson, Kentucky after officers on bicycles observed him operating the vehicle after midnight without headlights. According to officers, McGuire seemed surprised and drove off rapidly when one of the officers yelled at him to turn his lights on. After a short pursuit, the two occupants of the car got out and prepared to run, but after the officers yelled "Stop, police!" they got back in the car and drove off. After other officers responded to the bicycle officers' call, the car was soon stopped and McGuire arrested for reckless driving. The passenger had already fled from the vehicle on foot and was later captured.

A subsequent search of the passenger compartment incident to arrest revealed a black bag containing 2.34 grams of crack cocaine on the passenger side floorboard. Evidence showed that the bag was accessible to both the driver and passenger. McGuire denied ownership of the cocaine, but was charged with its possession based on his dominion and control over it in the vehicle coupled with his attempts to avoid the police.

At trial, McGuire moved for a directed verdict based on the sufficiency of the proof that he had possession of the cocaine. The court denied the motion and McGuire was found guilty by the jury. This appeal followed.

The sole preserved issue for appeal is whether McGuire was entitled to a directed verdict at the close of the evidence. The standard for review is whether no reasonable jury could have found him guilty based upon the evidence. Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky. 1991). All fair and reasonable inferences from the evidence must be drawn in favor of the prosecution, when considering a directed verdict motion, and the court must decide whether it would be clearly unreasonable for a jury to believe that the defendant is guilty of the offense charged.

On appeal, McGuire focuses on the position of the bag containing the cocaine on the passenger side of the vehicle and that the passenger left the car and did not take the bag with him, and notes that being the driver of the car is only one factor to be considered, implying that the case for possession hinged on McGuire being the driver of the car. A review of the evidence shows that this is not so. True, McGuire being the driver of the car is one factor that favors a finding that he possessed the cocaine. Another factor to consider, and of which there was ample proof, is flight as evidence of consciousness of guilt. Wellborn v. Commonwealth, 157 S.W.3d 608 (Ky. 2005). The evidence showed that McGuire made great efforts to avoid the police before finally being pulled from the car by Officer Troutman. Coupled with the driver's ability to exercise

dominion and control over the bag from its relative position in the car, a reasonable jury certainly could conclude that the cocaine belonged to McGuire. Therefore, the court was correct in denying the motion for a directed verdict, and we affirm.

The remaining issue presented on appeal is not preserved for review. McGuire argues that the prosecutor misstated the law of constructive possession in closing arguments. We disagree. The prosecutor's comments were in accordance with Dixon v. Commonwealth, 149 S.W.3d 426 (Ky. 2004), and Burnett v. Commonwealth, 31 S.W.3d 878 (Ky. 2000). We perceive no manifest injustice resulting from the prosecutor's comments, and therefore reject this argument.

For the foregoing reasons the judgment of the Henderson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

J. Brandon Pigg  
Assistant Public Advocate  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky  
  
Courtney J. Hightower  
Assistant Attorney General  
Frankfort, Kentucky