

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000709-MR

LAZARUS ROMELL PARKER

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE SHEILA R. ISAAC, JUDGE
INDICTMENT NO. 04-CR-01353

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

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

DYCHE, JUDGE: Lazarus Parker was arrested on September 10, 2004, when a police search of the store in which Parker was working revealed cocaine, marijuana, and drug paraphernalia. He was indicted, tried, and convicted of trafficking in cocaine, possession of marijuana, possession of drug paraphernalia. Parker was sentenced to ten years, twelve months, and twelve months, respectively, and the sentences were ordered to run concurrently for a total of ten years' imprisonment. He appeals.

Parker first argues that the trial court erred in denying the motions for directed verdict of acquittal at the close of the Commonwealth's case and again at the close of all evidence. He insists that there was insufficient evidence that the seized contraband belonged to him and that it was unreasonable for a jury to find him guilty of trafficking cocaine, citing Commonwealth v. Benham, 816 S.W.2d 186 (Ky. 1991).

We disagree. Although the store belonged to Parker's mother, he was the sole employee in the store at the time. While the store was under surveillance, many patrons entered the store but left carrying nothing. There was a large quantity of cocaine, a large amount of cash, and various implements for weighing, bagging, and smoking cocaine. Weighing the evidence in the light most favorable to the Commonwealth, it was not error for the trial court to deny Parker's motions for directed verdict. Benham, supra at 187.

Parker concedes that his second argument, viz., that he was unduly prejudiced by a police officer's opinionated and conclusory testimony, was not preserved for appellate review. Nonetheless, he urges this court to review the issue under the palpable error standard of Kentucky Rule of Criminal Procedure 10.26; see also Jackson v. Commonwealth, 717 S.W.2d 511 (Ky.App. 1986). Parker fails to convince us that the outcome would have

been different absent Officer Patrick's testimony. Jackson,
supra at 513-514. There was no error in this regard.

Parker's third argument (again not properly preserved) is that the trial court erred by announcing in the presence of the jury that Detective Ensminger had been established as an expert witness. Parker contends that the trial court improperly "enhance[d] the credibility of that witness in the eyes of the jury." See Luttrell v. Commonwealth, 952 S.W.2d 216, 218 (Ky. 1997).

The Commonwealth responds that the trial court's announcement was rather quietly made and defense counsel did not object. Appellee continues that the trial court was within its discretion in allowing the officer to testify under KRE 702 and that appellant once again did not demonstrate prejudice. We are constrained to agree.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gene Lewter
Lexington, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

George G. Seelig
Assistant Attorney General
Frankfort, Kentucky