

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001030-MR

LAURA YOUNG

APPELLANT

v. APPEAL FROM OHIO CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
INDICTMENT NO. 04-CR-00174

COMMONWEALTH OF KENTUCKY

APPELLEE

AND: NO. 2005-CA-001047-MR

CURTIS YOUNG

APPELLANT

v. APPEAL FROM OHIO CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
INDICTMENT NO. 04-CR-00175

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: HENRY, JOHNSON, AND SCHRODER, JUDGES.

HENRY, JUDGE: After peace officers confiscated methamphetamine from the marital residence of Curtis and Laura Young, the two were convicted of first-degree criminal possession of a

controlled substance (methamphetamine)¹ and of possession of drug paraphernalia.² Laura was sentenced to four years in prison, but Curtis' sentence was enhanced to five years due to his prior felony conviction. Their appeals were consolidated for our review. On appeal, Laura claims only (1) that the search and seizure of their residence was illegal. Curtis claims (2) that the Commonwealth improperly withheld the identity of its confidential informant and (3) that the Commonwealth's proof is not sufficient to support his possession convictions. On review of the briefs and the record, we affirm the convictions and sentences in both cases.

I. SEARCH AND SEIZURE

In circuit court, Laura Young attacked the validity of the affidavit supporting the search warrant that led to the seizure of methamphetamine and drug paraphernalia from the Youngs' residence. She claimed that the seized evidence should be suppressed because the affidavit supporting the search warrant was deficient under Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), in that it contained factual errors and failed to particularly describe the place to be searched. In rebuttal, the Commonwealth observes that neither the search warrant, nor its supporting affidavit, is contained

¹ Proscribed by Kentucky Revised Statutes (KRS) 218A.1415.

² Proscribed by KRS 218A.500.

in the record on appeal. Laura acknowledges this fact in her reply, but contends that both documents were sufficiently described on the record to allow us to review the trial court's decision.

In this instance, the law is clear that, without the relevant portion of the record below, we cannot review the trial court's determinations. Commonwealth v. Thompson, 697 S.W.2d 143, 145 (Ky. 1985); see also Crayton v. Commonwealth, 846 S.W.2d 684, 686 n.3 (Ky. 1992). Consequently, we affirm the trial court's decision denying Laura Young's suppression motion.

II. CONFIDENTIAL INFORMANT

In his brief, Curtis Young contends that the trial court erred by failing to compel the Commonwealth to identify its confidential informant, who tipped off the peace officers that the Youngs possessed methamphetamine in their residence. Curtis argues that under KRE³ 508, the Commonwealth must identify a confidential informant when the informant could give testimony relevant to his defense theory. Specifically, Curtis claims that, because his wife Laura testified that she bought the seized methamphetamine from a person she believed to be the informer, that person could support Laura's testimony that only she, not Curtis, knew about the transaction and the presence of contraband in the marital residence. Indeed, on its face,

³ Kentucky Rules of Evidence.

Curtis' theory makes sense: testimony by the seller of the drugs that he sold only to Laura, and not to Curtis, would tend to support Curtis' defense of ignorance. The trial court, however, denied Curtis' request for the identity of the Commonwealth's confidential informer.

The trial court's KRE 508 ruling will not be set aside unless it is clearly erroneous. CR 52.01; Com. v. Balsley, 743 S.W.2d 36, 38 (Ky.App. 1987). Curtis' argument that the identity of the Commonwealth's confidential informant is important to his defense is seriously flawed because the identity of the person who sold drugs to Laura--and who could purportedly support the theory that only Laura knew about the drugs--was known to Curtis. Indeed, Laura testified that one Steve Minton, whom she believed to be an informer, sold her the methamphetamine in question. Armed with this information, Curtis could have subpoenaed Minton in hopes that Minton's testimony would support his defense. Because Curtis knew Minton sold the drugs to Laura, he had no need to know whether Minton was a confidential informant. In sum, Curtis has not demonstrated any legitimate need to know whether the purported seller is an informer. Consequently, we hold that the trial court's KRE 508 ruling was not in error.

SUFFICIENCY OF THE EVIDENCE

Curtis Young's final claim is that the evidence at trial was insufficient to show that he had knowledge of the methamphetamine and drug paraphernalia in his house. As he points out in his brief, his wife Laura claimed that she alone purchased the drugs in question and that her husband had no knowledge of them. Nevertheless, we reject Curtis' claim for two reasons. First, it is not properly preserved for appellate review. Second, it fails on its merits.

In the trial court, at the close of proof, Curtis moved for a general verdict of acquittal without specifying that his claim, as he now presents it on appeal, hinges on the absence of proof of the element of knowledge. And, under well established law, a criminal defendant may not make only a general, non-specific directed verdict motion at trial and then advance an element-specific argument on appeal. See Anastasi v. Commonwealth, 754 S.W.2d 860, 862 (Ky. 1988); Kimbrough v. Commonwealth, 550 S.W.2d 525, 529 (Ky. 1977). Thus, we hold that Curtis' directed verdict claim is not properly before us.

Even if the issue had been properly preserved, the trial court correctly declined to direct a verdict of acquittal in Curtis' favor. Indeed, a criminal defendant is entitled to a directed verdict of acquittal only "if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt[.]" Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky.

1991). But here, Laura Young testified that she kept and used drugs in the marital residence completely without her husband's knowledge, an assertion the jury could reasonably find dubious. The jury also had reason to suspect that Laura was, colloquially speaking, 'taking the rap' for her husband because he stood a chance of serving a substantially longer prison sentence than she did under Kentucky's persistent felony offender statutes. In short, based on the evidence as a whole, the jury could reasonably infer from the evidence that Curtis Young did in fact know about the drugs and paraphernalia in his own residence.

For the foregoing reasons, we affirm the respective convictions and sentences of both Laura and Curtis Young.

ALL CONCUR.

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