

RENDERED: JUNE 23, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-001328-MR

CHARLES JACKSON

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 05-CR-00008

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; McANULTY, JUDGE; POTTER, SENIOR JUDGE.¹

POTTER, SENIOR JUDGE: Charles Jackson (Jackson) brings this appeal from a final judgment of the Boyd Circuit Court, entered May 20, 2005, upon a jury trial, adjudging him guilty of felony receiving stolen property² and sentencing him to three-years' imprisonment, enhanced to eight years upon a guilty verdict as

¹ Senior Judge John W. Potter sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

² Kentucky Revised Statutes 514.110, class D felony.

to second-degree persistent felony offender (PFO II).³ We affirm.

On July 20, 2004, Ralph Calder left his truck unattended between 2:00 pm and 5:00 pm in the 2100 block of 29th Street in Ashland, Kentucky. Upon his return, he discovered that his tool box had been forced open and that a Snap-On brand diagnostic scanner had been removed. Upon reporting the theft to the police, he also advised that he had seen Tommy and Pooh Workman in the area, and that he knew the Workmans had previously stolen items and pawned them locally.

At 2:47 pm that same day, Jackson pawned Calder's scanner at a local pawn shop. He openly gave photo identification (a requirement to pawn items) and did not act nervous. Once the police discovered the scanner at the pawn shop they searched for Jackson at the local address listed on his identification. He was eventually located in Florida and extradited to Kentucky. The police did not investigate the involvement, if any, of the Workmans.

Before us, Jackson argues that the trial court erred in failing to grant his directed verdict motion on the basis that the Commonwealth failed to provide sufficient evidence that Jackson knew that the scanner was stolen. We disagree.

³ Kentucky Revised Statutes 532.080.

Jackson was found guilty of receiving stolen property, defined in Kentucky Revised Statutes (KRS) 514.110 as:

(1) A person is guilty of receiving stolen property when he receives, retains, or disposes of movable property of another knowing that it has been stolen, or having reason to believe that it has been stolen,
. . . .

Our standard for review of the trial court's denial of a directed verdict motion is stated in Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky. 1991):

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. For 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.

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. [Commonwealth v. Sawhill], Ky., 660 S.W.2d 3 (1983)].

The only evidence the Commonwealth presented as to Jackson's state of mind was that he pawned the stolen scanner forty-seven minutes following its having been left in the tool box of the unattended truck. Therefore the issue here becomes was this

evidence sufficient to withstand a motion for a directed verdict and support the jury's verdict of guilty.

Dawes v. Commonwealth, 281 S.W.2d 901, 903 (Ky. 1955) answers this question. It holds that evidence the defendant was in possession of recently stolen goods is sufficient to support a finding beyond a reasonable doubt that he knew the property was stolen⁴. See also Jackson v. Commonwealth, 670 S.W.2d 828 (Ky. 1984); Robinson v. Commonwealth, 572 S.W.2d 606, 609 (Ky.App. 1978); Brown v. Commonwealth, 914 S.W.2d 355 (Ky.App. 1996).

For the foregoing reasons, the judgment of the Boyd Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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⁴ KRS 514.110 contains a statutory presumption that possession of recently stolen property is "prima facie evidence" that the possessor "knew such property was stolen." Properly, the jury was not instructed on this presumption, so it played no part in its decision. Wells v. Commonwealth, 561 S.W.2d 85 (Ky. 1978). We note however that the presumption in issue here is constitutional. Barnes v. United States, 412 U.S. 837, 93 S.Ct. 2357 (1973).