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NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-001430-MR

CHARLES EDWARD STUBBLEFIELD, JR.

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE R. JEFFREY HINES, JUDGE
ACTION NO. 04-CR-00181

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: ABRAMSON AND VANMETER, JUDGES; KNOPF,¹ SENIOR JUDGE.

ABRAMSON, JUDGE: Charles E. Stubblefield, Jr. appeals his conviction of one count of flagrant nonsupport on the ground that the Commonwealth failed to prove that he had the ability to "reasonably provide" child support during the period of arrearage alleged in his indictment. For the reasons set forth below, we affirm.

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On April 23, 2004, the McCracken County Grand Jury indicted Stubblefield on one count of flagrant nonsupport for failure to provide support for his two minor children borne by his former wife, Julie Stubblefield. The period of nonsupport ranged from May 26, 1994, to the date of the indictment.

On May 26, 1994, the McCracken District Court ordered Stubblefield to pay child support of \$35.00 per week. When Stubblefield married Julie in May 1995, she forgave him an arrearage that he had already accumulated to that point. However, Stubblefield owed \$910.00 as reimbursement for AFDC² payments made to Julie that could not be waived.

In October 1998, Stubblefield and Julie separated. Approximately a year and a half later, on May 31, 2000, the district court entered a new support order requiring him to pay \$214.00 per month. A third order, entered on April 1, 2001, increased Stubblefield's obligation to \$215.76 per month.

At trial following the close of the Commonwealth's case, Stubblefield moved for a directed verdict on the ground that the prosecution had failed to prove that during the period of arrearage charged in the indictment he had the ability to "reasonably provide" support. The trial court denied that motion and Stubblefield's renewed motion at the conclusion of his case. The jury ultimately found Stubblefield guilty of

² Aid to Families with Dependent Children, Title IV-A of the Social Security Act, 42 U.S.C. 601, *et seq.*

flagrant nonsupport and recommended a sentence of three years' incarceration, which the court imposed at a subsequent sentencing hearing. This appeal followed.

Our review of Stubblefield's argument is guided by the standard set forth 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.

The elements of the crime of flagrant nonsupport are set forth in KRS 530.050(2).

A person is guilty of flagrant nonsupport when he persistently fails to provide support which he can reasonably provide and which he knows he has a duty to provide by virtue of a court or administrative order to a minor or to a child adjudged mentally disabled, indigent spouse or indigent parent and the failure results in:

- (a) An arrearage of not less than one thousand dollars (\$1,000); or
- (b) Six (6) consecutive months without payment of support.

In his directed verdict motion before the trial court, Stubblefield challenged the sufficiency of the Commonwealth's proof only on the requirement in KRS 530.050(2) that he was "reasonably able" to provide support during the arrearage period set forth in his indictment. According to Stubblefield, Julie waived all arrearages prior to the entry of the May 31, 2000 support order because of their marriage. Thus, he argued that any arrearages for which he could be convicted had to have occurred after that date, and the Commonwealth offered no proof of his ability to pay child support from that date forward. We disagree.

At trial, the Commonwealth presented two witnesses, Julie and Temple Bradley. Bradley, an employee with the Child Support Division of the McCracken County Attorney's Office, testified primarily with respect to Stubblefield's child support orders and his payments made thereunder.³ Though she admitted that she had no knowledge of whether Stubblefield had the ability to pay child support, she did state that he had not contacted her office to seek assistance due to his alleged inability to pay.

³ Bradley testified that Stubblefield only made two voluntary child support payments during the entire ten year period alleged in the indictment.

Julie testified that from their meeting in 1988 until 1997, Stubblefield worked most of the time. In fact, in 1995 he earned an associates degree in electrical technology which resulted in his employment with V & V Railroad as an apprentice electrician. However, starting in 1997, he decided that he no longer wanted to work, but rather aspired to be a stay-at-home dad. During this period of time, according to Julie, though Stubblefield was able to find employment when he actively sought it, most of the time he preferred to stay home and serve, as she put it, as "Mr. Mom."⁴

Julie stated that, since their separation in 1998, she knew of no physical or mental reasons why Stubblefield could not find employment. However, she also stated that since 1998, she was unaware of what Stubblefield had done to seek employment other than knowing that he worked at a Bob Evans restaurant for a period of time.

Stubblefield argues that his conviction cannot be supported by any arrearages owed prior to the May 31, 2000, support order because they were waived by Julie. The record reflects that in an Agreed Order entered by the McCracken District Court on May 17, 1995, Julie agreed to waive collection of any non-AFDC child support arrearages that Stubblefield owed

⁴ Despite his expressed desire to stay home and take care of their children, Julie testified that though he transported them when able, he neither cleaned their house nor cooked.

to her. However, the Agreed Order neither terminated Stubblefield's support obligation nor did it speak to any arrearages accumulating *after* May 17, 1995. Because of this, we are not persuaded by his argument that his conviction cannot be supported by arrearages accruing prior to May, 2000. Thus, Julie's testimony that Stubblefield was physically and mentally able to work prior to their separation in 1998 is sufficient to support a jury verdict of guilt.

Moreover, Julie testified that she had knowledge of at least one job held by Stubblefield following their separation. Thus, despite his contention to the contrary, the Commonwealth did present evidence that during the period of time following his separation from Julie (at least for a period of time) Stubblefield was employed and earning a paycheck. Based on this, we cannot conclude that the jury's verdict was unreasonable.

In further support of this conclusion we need look only to the testimony provided by the witnesses testifying on behalf of Stubblefield. Rhonda McCutcheon, Stubblefield's current girlfriend of three years, stated that during the first three or four months they were together, Stubblefield was employed. Further, though she admitted that no doctor has concluded that Stubblefield is unable to work, she testified that he had a difficult time finding a job since those first few

months. However, she did acknowledge that on occasion he would do small "handyman" type work for relatives and friends for which he got paid. She likewise stated that he was very adept at repairing small electronic devices.

Finally, Stubblefield's own testimony acknowledged that following his separation from Julie, he was employed by two temporary employment agencies that placed him in two jobs that together provided seventeen hours of work per day. He further acknowledged that he also tried working as a roofer, a handyman, and in restaurants, as well as claiming to be an inventor. During cross-examination, Stubblefield even claimed that if his children needed food, he would do anything, including washing cars.

Therefore, having "draw[n] all fair and reasonable inferences from the evidence in favor of the Commonwealth," we cannot conclude that it was "clearly unreasonable" for a jury to have concluded that Stubblefield could have "reasonably provided" support for his children. See *Schoenbachler v. Commonwealth*, 95 S.W.3d 830, 836-37 (Ky. 2003). Indeed, there was ample evidence adduced at trial from which the jury could have found that Stubblefield could have provided more financial support for his children than the mere two voluntary payments made by him during the entire ten year period from 1994 to 2004.

The judgment of the McCracken Circuit Court is affirmed.

ALL CONCUR.

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