

RENDERED: AUGUST 24, 2007; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2005-CA-001828-MR

PEGGY GRIFFIN

APPELLANT

v. APPEAL FROM CLINTON CIRCUIT COURT
HONORABLE EDDIE C. LOVELACE, JUDGE
ACTION NO. 04-CR-00167

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: COMBS, CHIEF JUDGE; MOORE AND NICKELL, JUDGES.

NICKELL, JUDGE: Peggy Griffin (hereinafter “Griffin”) appeals from the August 15, 2005, final judgment of the Clinton Circuit Court which sentenced her to ten years in prison following her conviction by jury for trafficking in methamphetamine.¹ For the reasons stated herein, we affirm.

¹ Kentucky Revised Statutes (KRS) 218A.1412.

On September 21, 2004, Detective Scott Hammond of the Kentucky State Police and Detective Danny Burton of the Adair County Sheriff's Department² met with Danny Blevins (hereinafter "Blevins"), a confidential informant, for the purpose of making a controlled drug buy from Griffin. After Blevins and his vehicle were thoroughly searched,³ Blevins was given \$110.00 in cash to purchase one gram of methamphetamine. A recording device was placed on Blevins's body.

After arriving at Griffin's house, Blevins asked to purchase a quantity of methamphetamine. Griffin stated she only had one-quarter of a gram, and Blevins purchased it for \$25.00. Because Griffin did not have any change, Blevins gave her \$23.00 in cash and promised to return to the house later that evening to give Griffin a ride.

Blevins then returned to Detectives Hammond and Burton and gave them the methamphetamine he had purchased from Griffin. It was packaged in a small plastic bag secured by a twist tie. He also returned to the detectives the recording device and the remainder of the money he had been given to purchase the drugs.

On November 1, 2004, Griffin was indicted by a Clinton County grand jury on one count of trafficking in methamphetamine. A jury trial was held on July 25, 2005. Jurors found Griffin guilty as charged and fixed a ten -year prison sentence. Griffin filed

² Detective Hammond and Detective Burton were working for the High Intensity Drug Trafficking Area (HIDA) Drug Task Force.

³ Blevins's wife accompanied him to Griffin's house. Detective Hammond searched her pockets and her purse, but did not frisk her.

a motion on July 27, 2005, requesting a new trial. On August 15, 2005, the trial court denied Griffin's motion and sentenced her to ten years in prison. This appeal followed.

First, Griffin argues that the trial court erred in denying her motion for a directed verdict of acquittal due to insufficient evidence. She claims for the first time on appeal that the tape recording of the drug transaction "was of such a distorted quality that no reasonable jury could have discerned from it that [Griffin] ever engaged in a drug transaction." In her brief, Griffin specifies that she "is not asserting that the trial court improperly admitted the tapes into evidence because the state's witness, Danny Blevins, can be heard clearly and understood on the tape. What cannot be understood however is the voice that is speaking to Blevins." Since Griffin never objected to the quality of the audiotape at trial, the issue has not been preserved for review.

We agree with the Commonwealth that a motion for directed verdict based on insufficient evidence at the close of the Commonwealth's case and at the close of all of the evidence is vastly different from a complaint about the sound quality of an audiotape. At trial, defense counsel never objected to the introduction of the audiotape of the drug buy. Therefore, the trial court never had an opportunity to rule on this issue, and we will not address it as "[e]rror on appeal cannot be considered in the absence of a proper objection to preserve that error for appellate review." *Farmer v. Commonwealth*, 6 S.W.3d 144, 147 (Ky.App. 1999) (quoting *Sherley v. Commonwealth*, 889 S.W.2d 794, 796 (Ky. 1994) and citing *Hunter v. Commonwealth*, 560 S.W.2d 808 (Ky. 1977)).

Within her first argument, Griffin states that both Blevins and the Commonwealth's Attorney improperly "interpreted" statements that were made on the audiotape. However, we note that Griffin failed to object to the prosecutor's comments and questions or to Blevins's responses at trial. Therefore, as this argument is not preserved for our review, no further discussion is necessary. *Id.*

Griffin finally argues that the trial court erred by allowing the Commonwealth to introduce evidence of two misdemeanor convictions in another county that had not been provided to her during the period of discovery. The Commonwealth does not attempt to justify the failure to disclose the convictions, but argues that any error in this regard was harmless pursuant to Kentucky Rules of Criminal Procedure (RCr) 9.24. However, upon a careful review of the record, we are unable to conclude any error occurred, therefore making a harmless error analysis unnecessary.

Our review of the record reveals the Commonwealth introduced testimony during the penalty phase showing Griffin had two misdemeanor convictions from Cumberland County, Kentucky. Written records of these convictions were not published to the jury. Jurors learned of the convictions from a probation officer's testimony. The Commonwealth did not specifically disclose to Griffin its intention to utilize these convictions prior to trial. Griffin alleges such failure to disclose was in direct contravention of the discovery order entered in this case. However, our review of the discovery order fails to reveal any support for Griffin's contention. Nowhere in the record do we find a specific obligation placed upon the Commonwealth to disclose the

information. The Commonwealth was required only to permit the defense to inspect, copy or photograph any evidence intended to be introduced at trial, but had no affirmative duty to deliver the evidence to the defense. The discovery order placed the burden of initiating inspection squarely upon the shoulders of the defense. Griffin does not allege the Commonwealth concealed the information from her nor that she was denied access to discoverable information, only that the Commonwealth was obliged to give her advanced notice of its intent to use these two convictions during the penalty phase. We do not find such a requirement in the record, nor do we see how Griffin was prejudiced by the lack of such notice. Thus, we hold there was no error.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Donald H. Morehead
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General

Clint E. Watson
Assistant Attorney General
Frankfort, Kentucky