

RENDERED: FEBRUARY 23, 2007; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2005-CA-002624-MR

HENRY O. LAWRENCE, SR.

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT  
HONORABLE JOHN R. GRISE, JUDGE  
ACTION NO. 05-CR-00481

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, JUDGE; BUCKINGHAM AND HENRY, SENIOR JUDGES.<sup>1</sup>

ACREE, JUDGE: Henry Lawrence appeals from a judgment of the Warren Circuit Court finding him guilty of first-degree trafficking. He argues the trial court erred in denying his motions for a directed verdict due to the lack of credibility of the Commonwealth's eyewitnesses. However, the Kentucky Supreme Court has previously determined that

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<sup>1</sup> Senior Judges David C. Buckingham and Michael L. Henry sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

“judgment as to the credibility of witnesses and the weight of the evidence are left exclusively to the jury.” *Fairrow v. Commonwealth*, 175 S.W.3d 601, 609 (Ky. 2005). Consequently, the trial court's judgment is affirmed.

Appellant's arrest resulted from the work of a confidential informant for the Warren County Drug Task Force. James Cooper, a convicted felon, received \$50.00 for each misdemeanor drug buy and \$100.00 for each felony drug buy. The transactions were recorded on audiotape and the officers did not visually observe the drug buys. While Cooper was in their employ, police detectives targeted Appellant's son, Henry Lawrence, Jr. for a drug buy. Detectives Todd Young and Greg Sutter told Cooper to call Lawrence, Jr.'s cell phone. The detectives recorded the call.

Brittany Filleatro, Lawrence, Jr.'s girlfriend, answered the phone. She told Cooper that Appellant and his son had gone to buy scales and that they currently did not have anything to sell. Half an hour later, Cooper called back and was told that it would still be a few minutes before he could purchase crack cocaine.

Before leaving the police station, the detectives searched Cooper for drugs and weapons and gave him bills with recorded serial numbers to buy drugs. They drove him, in an unmarked car, to the house where the buy was to take place and parked in a nearby alley. Appellant and his son were away from the home, so after waiting for a few minutes, Cooper returned to the police car. The detectives drove Cooper around looking for the Lawrences unsuccessfully before returning with him to the house. During this second visit, Appellant and Lawrence, Jr. arrived at the house carrying crack cocaine to

sell to Cooper. They took Cooper to a back bedroom and sold him a \$50.00 piece of crack cocaine.

Cooper then returned to the detectives and presented them with the drugs and the audio recording. He identified Appellant as the person who sold him the cocaine. The substance tested positive for cocaine, and the Commonwealth obtained an indictment charging Appellant with first-degree trafficking.

At trial, the Commonwealth called both Cooper and Filleatro as witnesses. Appellant moved for a directed verdict on the basis that the Commonwealth failed to establish beyond a reasonable doubt that he was the person who sold drugs to Cooper. He argued that Cooper and Filleatro were not credible witnesses. Since Appellant's identity as the seller of the drugs depended solely on their testimony, he claimed the Commonwealth failed to present sufficient evidence to support a conviction. The trial court overruled Appellant's motions. The jury convicted Appellant of first-degree trafficking. He was sentenced to seven years' imprisonment. This appeal followed.

On appeal, Appellant presents the identical argument regarding the credibility of the Commonwealth's eyewitnesses. He points out that Cooper, a convicted felon, worked as an undercover informant for money, earning approximately \$800.00 for his work. Between the date of his drug buy and Appellant's trial, Cooper became embroiled in further legal problems. When he testified against Appellant, Cooper had new felony charges pending against him. He admitted the Commonwealth's Attorney visited him in jail, accompanied by Detective Sutter, to discuss his testimony. Cooper

further stated that he had not been promised anything in exchange for his testimony and had no expectation of leniency.

Filleatro, who was Lawrence, Jr.'s ex-girlfriend by the time of Appellant's trial, testified that the Commonwealth had not offered her a deal in exchange for her testimony. Nevertheless, she hoped that prosecutors would "go lighter" with regard to the pending charges against her. Appellant contended that Cooper and Filleatro had sufficient motivation to fabricate testimony; thus, their statements implicating Appellant as the seller of the drugs did not furnish sufficient evidence to support his conviction. Nevertheless, the trial judge overruled his motions for directed verdict. Appellant seeks to persuade us that decision was erroneous.

The law in Kentucky clearly states

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. Benham*, 816 S.W.2d 186, 187 (Ky. 1991). (Citation omitted.)

Cooper testified that Appellant was the one who sold him the crack cocaine. Filleatro told the jury that Appellant broke off a piece of crack. Then, after she began to weigh it,

he took over and showed her how to use the scales. According to Filleatro, Appellant was the person controlling the sale. Their testimony, if accepted as credible, was enough to allow a reasonable juror to find Appellant guilty of first-degree trafficking. “A witness' expectation of a benefit or motive to testify falsely is a factor that goes to the credibility of the witness and to the weight of his testimony. Such matters are within the scope of the jury's duty.” *Darnell v. Commonwealth*, 558 S.W.2d 590, 595 (Ky. 1977). (Citation omitted.)

Since Appellant's sole argument on appeal concerns the credibility of the eyewitnesses who testified against him, he fails to persuade this Court that the trial court erred in allowing the jury to determine whether he was guilty of the offense charged. Consequently, the judgment of the Warren Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. Brandon Pigg  
Assistant Public Advocate  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

Michael L. Harned  
Assistant Attorney General  
Frankfort, Kentucky