

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001193-MR

MICHAEL FAIRROW

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE HENRY M. GRIFFIN, III, JUDGE
ACTION NO. 05-CR-00511

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

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

WINE, JUDGE: Michael Fairrow (“Fairrow”) was indicted by the Daviess County Grand Jury for one count of first-degree assault, one count of second-degree assault and eleven counts of first-degree wanton endangerment. These charges arose from a shooting which occurred on February 27, 2005, at James Mason Park in Owensboro, Kentucky. The shooting took place shortly after a group of people had finished playing a game of football at the park. Injured during the shooting were Jason Taylor and DeAndre Bennett. Taylor was struck in the leg and Bennett was wounded in the back.

Farrow's trial for the above charges began on April 11, 2006. Following the close of proof, the jury returned a verdict of guilty on all charges. The jury sentenced Farrow to ten years' imprisonment for the first-degree assault, five years for the second-degree assault, and one year each for the eleven counts of first-degree wanton endangerment, with all sentences to run concurrently. The trial court entered a final judgment and sentence on May 11, 2006, sentencing Farrow to a total of ten years in accord with the jury's verdict. This appeal followed.

Farrow's only issue on appeal is the trial court erred in denying his motion for a directed verdict of acquittal pursuant to CR 50.01. Specifically, Farrow maintains he was entitled to a directed verdict because the prosecution's primary witness, John Gray ("Gray"), lacked any degree of credibility. However, Farrow's contention is not properly before this Court as the issue was not preserved for review. Farrow's trial counsel made a motion for a directed verdict but failed to state any grounds in support of that motion. Pursuant to CR 50.01, "[a] motion for a directed verdict shall state the specific grounds therefor." *See also Pate v. Commonwealth*, 134 S.W.3d 593, 597 (Ky. 2004).

At the close of the Commonwealth's case, Farrow's counsel stated, "I would move for a verdict of acquittal based on the insufficiency of the record. Obviously, I am making that argument largely for purposes of appeal at this point if that becomes necessary, and I won't elaborate farther than that." (Tape 2, 4/12/06, 3:03:05 – 3:03:17). Farrow's counsel then moved for directed verdict again at the close of proof

stating, “For the reasons stated at the close of the Commonwealth’s evidence previously, we move for a verdict of acquittal at this time.” (Tape 2, 4/13/06, 12:56:26). Failure to specify grounds for a directed verdict, at the time the motion was made, forecloses appellate review of the circuit court’s denial of the motion for directed verdict. *Hercules Powder Co. v. Hicks*, 453 S.W.2d 583, 589 (Ky. 1970).

Even assuming, *arguendo*, Fairrow’s motion for directed verdict had been stated with specific grounds, the credibility and weight to be given to the testimony of a witness is an issue to be decided exclusively by the jury. *Reynolds v. Commonwealth*, 113 S.W.3d 647, 649 (Ky.App. 2003). In reviewing such matters, “the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Potts v. Commonwealth*, 172 S.W.3d 345, 349 (Ky. 2005), quoting *Jackson v. Virginia*, 443 U.S. 307, 318-19, 99 S. Ct. 2781, 2788-789, 61 L. Ed. 2d 560 (1979). A court should only consider a witness’s credibility where his testimony asserts the occurrence of physically impossible or inconceivable events. *Potts*, 172 S.W.3d at 349-50.

In this case, while there were some inconsistencies in Gray’s testimony, his account did not assert events which were inconsistent with physical laws or basic human experiences. *Id.* at 350. Moreover, Fairrow’s trial counsel had every opportunity to cross-examine Gray and place his credibility into question before the jury. Further, there was other testimony at trial, besides Gray’s, implicating Fairrow as the shooter.

Consequently, the trial court properly let the jury determine the weight and credibility of Gray's testimony.

Thus, we find no error in the trial court's decision to deny Fairrow's motion for directed verdict and the judgment and sentence of the Daviess Circuit Court are affirmed.

ALL CONCUR.

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