

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-001630-MR

JESSIE GARCIA

APPELLANT

v.

APPEAL FROM GRAYSON CIRCUIT COURT  
HONORABLE SAM H. MONARCH, JUDGE  
ACTION NO. 05-CR-00188

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE AND NICKELL, JUDGES; GUIDUGLI,<sup>1</sup> SENIOR JUDGE.

NICKELL, JUDGE: Jessie Garcia (“Garcia”) has appealed from the July 6, 2006, judgment of the Grayson Circuit Court sentencing him to ten years' imprisonment for the offenses of criminal abuse in the second degree<sup>2</sup> and tampering with physical evidence.<sup>3</sup>

For the following reasons, we affirm.

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<sup>1</sup> Senior Judge Daniel Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

<sup>2</sup> Kentucky Revised Statutes (KRS) 508.110(1).

<sup>3</sup> KRS 524.100.

Garcia was indicted by a Grayson County grand jury on November 1, 2005, for one count each of criminal abuse in the first degree<sup>4</sup> and tampering with physical evidence. Testimony given at a jury trial on April 28, 2006, revealed the facts pertinent to this appeal. In the early morning hours of October 3, 2005, Grayson County Deputy Sheriff Matt Darst (“Darst”) was dispatched to the emergency room at Twin Lakes Regional Medical Center to investigate a report of suspicious burns on a one-year old girl. A social services worker, Amanda Portman (“Portman”), was also called and she arrived at the hospital a short time after Darst. The deputy and social worker met with the child and her mother, Wendy McAllister (“McAllister”), in the emergency room. The pair examined and photographed the child's injuries, and deemed the burns to be suspicious due to their inconsistency.<sup>5</sup> They then proceeded to the residence where the injury was alleged to have occurred.

Upon arrival, Darst and Portman encountered Garcia and his other child, a six-year old girl. Garcia had blood-shot eyes, slurred speech, and a strong odor of alcohol about his person. Garcia admitted to consuming between twenty and thirty beers on the day of October 2, 2005, and McAllister testified Garcia was drunk on the night the injury occurred. Both Garcia and McAllister testified that McAllister was preparing dinner on a hotplate in the kitchen which was plugged into an extension cord which also fed power to a fan. The child was on the floor holding onto McAllister's leg when Garcia

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<sup>4</sup> KRS 508.100(1).

<sup>5</sup> The child had received burns on her right thigh, on her side under her right arm, and down her left arm.

entered the kitchen to move the fan and “jerked” the extension cord, causing the hotplate to fall from the counter and strike the infant. Garcia stated the hotplate dangled by its cord for a moment, thus allowing it to burn the child more than once. Garcia and McAllister orally stated the burns were the result of an accident, but in a written statement, McAllister alleged the injuries were purposeful. Darst removed both children from the home and placed them into protective custody.

Darst, accompanied by a detective, returned to the residence on October 4, 2005, to continue the investigation. Upon arrival, the officers encountered Wilbur Brown (“Brown”) in his stalled vehicle at the end of Garcia's driveway. Darst noticed the hotplate from Garcia's residence in the passenger-side floorboard of Brown's vehicle. Brown explained that Garcia “wanted to get it out of the house” and had given the item to Brown. Darst collected the hotplate and booked it into evidence.

Dr. Kathy Recktenwald testified that from her examination of the photographs taken at the emergency room, the burn patterns found on the infant's leg were inconsistent with a falling object, but the other burns could have been caused by the falling hotplate. She was unable to conclusively state whether the injuries were intentional or accidental. Dr. Edward Willey, testifying as an expert for the defense, opined that the hotplate could not be safely handled as it did not have a handle and the base reached a temperature of 195 degrees. He was also unable to state whether the burns were the result of an intentional act or an accident.

Garcia moved for directed verdict at the close of the Commonwealth's case-in-chief, and renewed his motion at the close of all of the evidence. Both motions were denied. The jury returned a guilty verdict for tampering with physical evidence as charged in the indictment, and criminal abuse in the second degree, a lesser included offense of criminal abuse in the first degree. Punishment was fixed at ten years' imprisonment, and judgment was entered accordingly. This appeal followed.

Garcia contends the trial court erred in denying his motions for directed verdict based upon an alleged insufficiency of the evidence presented by the Commonwealth. We disagree and affirm the circuit court's judgment.

When presented with a motion for directed verdict, a trial court must accept the evidence for the Commonwealth as true, but must reserve for the jury any question as to weight or credibility of such evidence. *Commonwealth v. Sawhill*, 660 S.W.2d 3, 4 (Ky. 1983). All fair and reasonable inferences should be drawn in favor of the Commonwealth, and “if the totality of the evidence is such that the trial judge can conclude that reasonable minds might fairly find guilt beyond a reasonable doubt, the evidence is sufficient and the case should be submitted to the jury.” *Id.* If the proof fails this test, a directed verdict should be granted.

The standard for appellate review of a directed verdict was restated in *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991). The test on appeal 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.” *Id.* (citing *Sawhill*,

*supra*). Further, a reviewing court is only to consider the trial court's decision in light of the evidence actually adduced at trial, not to reevaluate the proof. However, more than a mere scintilla of evidence of guilt must be presented in order to overcome the motion for directed verdict. *Id.*

Upon a careful review of the record, it is clear the trial court correctly found that a reasonable juror could have found guilt beyond a reasonable doubt based upon the evidence presented. Contrary to Garcia's allegation, the Commonwealth presented more than the mere scintilla of evidence required. When viewed in the light most favorable to the Commonwealth, the evidence produced was sufficient to overcome a motion for directed verdict. It would not have been clearly unreasonable for a jury to find Garcia guilty of the crimes charged. Further, as Garcia was found guilty of a lesser included offense, it is apparent the jury weighed the credibility and veracity of the testimony presented when drawing its conclusion. The trial court committed no error in denying Garcia's motions for directed verdict.

For the foregoing reasons the Grayson Circuit Court is affirmed.

ALL CONCUR.

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