

SUPREME COURT OF KENTUCKY

Harry Finn, Jr. v. Commonwealth of Kentucky

2008-SC-000749-DG · No. 2008-SC-000749-DG · Decided May 19, 2010

SUMMARY

The Kentucky Supreme Court affirmed Harry Finn Jr.'s conviction for possession of cocaine based on microscopic cocaine residue that was not visible to the naked eye. The court held that Kentucky law does not require possession of a measurable, usable, or visible quantity of a controlled substance, provided that other evidence establishes knowing possession. The court also upheld the denial of a directed verdict on the possession and drug-paraphernalia charges.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Chief Justice Minton; Justice Abramson; Justice Cunningham; Justice Noble; Justice Schroder; Justice Venters
JURISDICTION	Kentucky
DECIDED	May 19, 2010
DOCKET	2008-SC-000749-DG
DISPOSITION	affirmed
PROCEDURAL POSTURE	Finn sought discretionary review of the Court of Appeals' affirmance of his convictions, arguing that microscopic or unmeasurable cocaine residue was insufficient to support convictions for possession of a controlled substance and use of drug paraphernalia. The Supreme Court of Kentucky affirmed.
STANDARD OF REVIEW	A directed verdict is warranted only when, considering the evidence as a whole, it would be clearly unreasonable for a jury to find guilt.
PRECEDENTIAL VALUE	published
PARTIES	Harry Finn, Jr. v. Commonwealth of Kentucky

TOPICS

- criminal procedure
- evidence
- statutory interpretation
- standard of review
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a conviction for possession of a controlled substance may be sustained when the quantity of cocaine residue is microscopic, unmeasurable, and invisible to the naked eye.
2. Whether the evidence was sufficient to deny Finn's motion for a directed verdict on the cocaine-possession and drug-paraphernalia-use charges.
3. Whether the possibility of cross-contamination and the jury's acquittal on marijuana possession rendered the convictions inconsistent or unsupported.

HOLDINGS

1. Under Kentucky law, possession of any amount of a controlled substance, including a microscopic or invisible residue, satisfies the actus reus of first-degree possession of a controlled substance when the defendant knowingly and unlawfully possessed it. The prosecution need not prove a measurable, usable, or naked-eye-visible quantity.
2. The trial court properly denied the directed-verdict motion because the evidence, viewed as a whole, was sufficient for a jury to find that Finn knowingly possessed cocaine and used drug paraphernalia.
3. Neither the possibility of cross-contamination nor the jury's acquittal on marijuana possession required reversal because the jury could reasonably attribute the cocaine residue and paraphernalia use to Finn, and inconsistent verdicts are not necessarily reversible when each conviction is supported by sufficient evidence.

KEY QUOTATIONS

"We conclude that Kentucky law allows a conviction under those circumstances, particularly when, as here, other evidence tends to prove that the defendant knowingly possessed the substance." (at 1)

"Instead, we hold that a conviction for possession of a microscopic quantity of a controlled substance is valid so long as there is other evidence that the defendant possessed the requisite mental state for the possession offense for which the defendant is charged." (at 1)

"Possession of any amount - no matter how small - of a controlled substance suffices for a first-degree possession of controlled substances conviction so long as the person has knowingly and unlawfully possessed the substance." (at 8)

"In short, we find no reason to require that the prosecution directly prove that the defendant was in possession of the substance in a measurable quantity or a quantity visible to the naked eye when other evidence shows that the defendant knowingly possessed a controlled substance without legal justification." (at 11)

FACTUAL BACKGROUND

During a traffic stop, police arrested Finn for driving under the influence and searched his vehicle and person incident to arrest. Police found a glass pipe with suspected cocaine residue, a white plastic pen casing with

suspected cocaine residue, and other drug-related items; laboratory testing confirmed cocaine on the pipe and pen casing, although the residue was microscopic and the items may have cross-contaminated each other. Finn told the arresting officer that the pen casing was his push rod, that he used it to ingest cocaine, and that he had already consumed all of his cocaine. His urine also tested positive for cocaine metabolites.

PROCEDURAL HISTORY

After a traffic stop and arrest, Finn was charged with possession of cocaine, possession of drug paraphernalia, and other offenses. The jury convicted him of possession of cocaine, second offense, drug paraphernalia use, and several traffic-related offenses, and the trial court imposed the recommended ten-year sentence. The Court of Appeals affirmed, and the Kentucky Supreme Court granted discretionary review.

DISPOSITION

affirmed

CASES CITED

- Bolen v. Commonwealth, 31 S.W.3d 907, 909-10 (Ky. 2000)
- Commonwealth v. Shivley, 814 S.W.2d 572, 573-74 (Ky. 1991)
- Commonwealth v. Harrell, 3 S.W.3d 349, 351 (Ky. 1999)
- Commonwealth v. Harrelson, 14 S.W.3d 541, 549-50 (Ky. 2000)
- State v. Vance, 602 P.2d 933, 944 (Haw. 1979)
- People v. Vaughn, 504 N.W.2d 2, 5-6 (Mich. Ct. App. 1993)
- Joseph v. State, 897 S.W.2d 374, 376-77 (Tex. Crim. App. 1995)
- Pelham v. State, 298 S.W.2d 171, 173 (Tex. Crim. App. 1956)
- Coleman v. State, 545 S.W.2d 831, 835 (Tex. Crim. App. 1977)
- Benham v. Commonwealth, 816 S.W.2d 186, 187 (Ky. 1991)