

SUPREME COURT OF KENTUCKY

Commonwealth of Kentucky v. James Patrick Rodefer

189 S.W.3d 550 (Ky. 2006) · No. 2004-SC-0635-DG · Decided April 20, 2006

SUMMARY

The Supreme Court of Kentucky held that a jury instruction improperly allowed conviction for first-degree trafficking based on possession with intent to transfer, an alternative not included in the statutory definition of trafficking. The Court nevertheless concluded that the instructional error was not palpable because Rodefer's own testimony supported conviction under the statutory transfer alternative. The court reversed the Court of Appeals and reinstated the Fayette Circuit Court judgment.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Cooper, J.; Graves, J.; Johnstone, J.; Roach, J.; Scott, J.; Wintersheimer, J.
JURISDICTION	Kentucky
DECIDED	April 20, 2006
DOCKET	2004-SC-0635-DG
DISPOSITION	reversed
PROCEDURAL POSTURE	Following a jury conviction in Fayette Circuit Court, the Court of Appeals affirmed the misdemeanor convictions but reversed and remanded Rodefer's first-degree trafficking conviction for a new trial based on an erroneous jury instruction. The Supreme Court of Kentucky granted discretionary review.
STANDARD OF REVIEW	Unpreserved instructional error is reviewed for palpable error under RCr 10.26. Palpable error must affect substantial rights, result in manifest injustice, and seriously affect the fairness, integrity, or public reputation of judicial proceedings.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion; precedential
PARTIES	Commonwealth of Kentucky v. James Patrick Rodefer

TOPICS

- jury instructions
- statutory interpretation
- preservation of error
- appellate procedure
- criminal procedure

PRACTICE AREAS

criminal procedure

statutory interpretation

jury instructions

appellate procedure

QUESTIONS PRESENTED

1. Whether the trial court's first-degree trafficking instruction improperly authorized conviction based on possession of cocaine with intent to transfer.
2. Whether the unpreserved instructional error constituted palpable error requiring reversal and a new trial.

HOLDINGS

1. The trial court erred by instructing the jury that it could convict Rodefer of first-degree trafficking based on possession of cocaine with intent to transfer, because KRS 218A.010(34) defines trafficking to include possession with intent to manufacture, distribute, dispense, or sell, but does not include possession with intent to transfer.
2. The erroneous trafficking instruction did not constitute palpable error because Rodefer's own testimony established that he had shared the cocaine with an accomplice, supporting conviction under the statutory transfer alternative, and the error therefore did not result in manifest injustice.
3. The words of the trafficking statute must be given their plain meaning, and the inclusion of a term in one statutory provision and its exclusion from another strongly indicates purposeful legislative choice.

KEY QUOTATIONS

"The General Assembly had the prerogative to include the term transfer in the "possess with intent" language of the statute but chose not to do so." (553)

"Inclusion of a word in one part of a statute and exclusion in another is a strong indicator of legislative intent, thus leading the Court to believe that the exclusion was purposeful." (553)

"A palpable error is one which affects the substantial rights of a party and which has resulted in manifest injustice." (553)

FACTUAL BACKGROUND

Police received information that a burglary and theft of Oxycontin were planned at a CVS Pharmacy in Lexington and confirmed that the building had a structural crack. During surveillance, officers observed Rodefer and two accomplices at approximately 5:00 a.m.; Rodefer repeatedly struck a nearby business's window with a sledgehammer, and the group fled when officers approached. After Rodefer's arrest, a search incident to arrest found a crack pipe, 1.02 grams of crack cocaine, 16.46 grams of powder cocaine, and \$1,146 in cash. Rodefer testified that the cocaine was his and that he had shared it with an accomplice.

PROCEDURAL HISTORY

Rodefer was convicted by a Fayette Circuit Court jury of first-degree trafficking in a controlled substance, attempted third-degree burglary, possession of burglary tools, possession of drug paraphernalia, and being a first-degree persistent felony offender, receiving a total sentence of ten years. The Kentucky Court of Appeals

affirmed the misdemeanor convictions but reversed and remanded the trafficking conviction. The Supreme Court of Kentucky held that the instruction was erroneous but not palpable error and reinstated the circuit court's final judgment.

DISPOSITION

reversed

CASES CITED

- Commonwealth v. Whitmore, 92 S.W.3d 76, 82 n. 3 (Ky. 2002)
- Executive Branch Ethics Commission v. Stephens, 92 S.W.3d 69, 73 (Ky. 2002)
- Brock v. Commonwealth, 947 S.W.2d 24, 28 (Ky. 1997)

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