

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001061-DR

ALI AL-MAQABLAH

MOVANT

v.  
ON MOTION FOR DISCRETIONARY REVIEW  
APPEAL FROM TRIMBLE CIRCUIT COURT  
ACTION NOS. 18-XX-00001 AND 18-XX-00002

COMMONWEALTH OF KENTUCKY

RESPONDENT

ORDER

\*\* \* \* \* \* \* \*

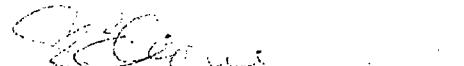
BEFORE: ACREE, JONES AND KRAMER, JUDGES.

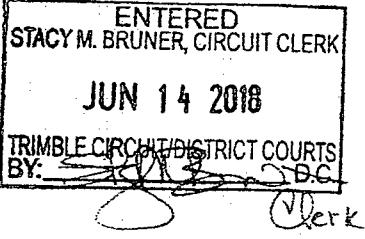
Having considered the movant's motion to dismiss the Commonwealth's response to the motion for discretionary review, the Commonwealth's response to the motion, and being otherwise sufficiently advised, this Court ORDERS that this motion is hereby DENIED.

Having considered the motion for discretionary review filed herein by the movant, the Commonwealth's response, and being otherwise sufficiently advised, this Court ORDERS that the motion for discretionary review is hereby DENIED.

ENTERED:

02/07/19

  
JUDGE, COURT OF APPEALS



COMMONWEALTH OF KENTUCKY  
TRIMBLE CIRCUIT COURT  
CASE NO. 18-XX-00001  
CASE NO. 18-XX-00002

COMMONWEALTH OF KENTUCKY

APPELLEE

VS.

OPINION

ALI AL-MAQABLI

APPELLANT

\*\*\* \*\*\* \*\*\*

This Appeal is before the Court to determine whether the trial court abused its discretion by not directing a verdict of acquittal based on pertinent statutes and case law. Appellant filed a Brief and Appellee timely responded by filing a Counter Statement of Appeal. After reviewing the file, the Court finds as follows:

The underlying action stems from reports made by Lindsey Alley alleging that Appellant made a false report regarding suspected child abuse or neglect and harassment during a period from March 26, 2016 to April 2, 2016 and for filing a false report on May 16, 2016 to the Cabinet for Health and Family Services. On November 2, 2017 a Trimble County jury returned verdicts finding the Appellant guilty of all charges under Trimble County District Court File No. 16-M-0020 and 16-M-0043. Thereafter, on January 23, 2018 the trial court entered a judgment of conviction based on the verdict of the jury sentencing Appellant to 180 days confinement, 60 days to be served, 120 days to be conditionally discharged for 2 years and fines. This Appeal stems from that conviction.

The Court chooses to adopt Appellee's counter statement of the case. When considering these facts and applying them to the relevant statutes, it is clear that the trial court did not abuse its discretion in denying a verdict of acquittal. Before proceeding, it is worth mentioning that

xAppx Rxx  
Exhibit 11

Appellant briefly asserted that the trial court committed palpable error. However, this was not even addressed in his "Argument". Even withstanding that, the Court agrees with the trial court's Order overruling Appellant's motion based on the facts of the case and the law, showing that there was no palpable error committed.

Appellant's next argument flows from KRS 620.010(1), which requires any person who knows or has "reasonable cause" to believe that a child is dependent, neglected, or abused to report it. Furthermore, KRS 620.050(1) grants immunity to those acting upon reasonable cause in the making of a report or acting in good faith. Appellant asserts that he is entitled to such immunity and should have received a directed verdict.

However, the trial court's Order denying Appellant's motion for a directed verdict properly handled this matter. "[A] trial judge has no authority to weigh the sufficiency of the evidence prior to trial or to summarily dismiss indictments in criminal cases." *Commonwealth v. Bishop*, 245 S.W.3d 733, 735 (Ky. 2008). While there are certain exceptions to this premise, the trial court correctly concluded that none of them applied to the case. Even when weighing the evidence, Appellant's current and past conduct/intentions are questionable. Therefore, the trial court did not abuse its discretion and the jury clearly believed that Appellant did not act upon reasonable cause or in good faith.

Appellant also asserts that he should have received a directed verdict on the harassment charge. Appellant correctly argues that under KRS.070(1)(e), there is a requirement of intent to alarm or annoy that serves no legitimate purpose under. However, as stated above, the trial court did not have the authority to weigh the evidence. This issue being left to the jury, they had the power to determine whether such intent was present. Therefore, the trial court acted properly.

Finally, Appellant argues that the actions taken against him by the government were motivated by the fact that this is a family matter issue between a Caucasian woman and a Muslim man. Not only is this argument not reviewable since it was never raised until now, there is no evidence at all that could support it.

In conclusion, the trial court acted properly in denying Appellant's motion for a directed verdict. The trial court does not have the authority to weigh the sufficiency of the evidence. This was a matter that was within the power of the jury, who was entitled to draw reasonable inferences from the evidence and who clearly believed that Appellant was guilty of all charges. Therefore, the trial court's judgment of conviction and sentencing is AFFIRMED and the case is REMANDED for proceedings consistent with this Opinion.

This is a final and appealable Opinion with no just cause for delay.

DATE: June 13 2018

Karen Conrad  
KAREN A. CONRAD, JUDGE  
OLDHAM CIRCUIT COURT

Exhibit 11

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Exxxxxx

# Supreme Court of Kentucky

2019-SC-000140-D  
(2018-CA-001061)

ALI AL-MAQABLH

MOVANT

v.

TRIMBLE CIRCUIT COURT  
2016-M-00020, 2016-M-00043,  
2018-XX-00001 & 2018-XX-00002

COMMONWEALTH OF KENTUCKY

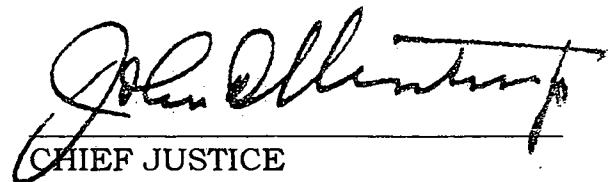
RESPONDENT

## **ORDER DENYING DISCRETIONARY REVIEW**

The motion for review of the decision of the Court of Appeals is denied.

Movant's motion for expedited ruling is hereby denied as moot.

ENTERED: June 5, 2019.

  
John D. Meier  
CHIEF JUSTICE