

Commonwealth Of Kentucky

Court Of Appeals

No. 1996-CA-003496-MR

ARTHUR LEROY SMITH

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 95-CR-0648

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: HUDDLESTON, JOHNSON, and MILLER, Judges.

MILLER, JUDGE. Arthur Leroy Smith brings this appeal from a December 23, 1996 judgment of the Fayette Circuit Court. We affirm.

On December 23, 1996, appellant, pursuant to a jury verdict, was adjudged guilty of third-degree sodomy (Ky. Rev. Stat. (KRS) 510.090) and third-degree sexual abuse (KRS 510.130). Appellant was sentenced to two years' imprisonment with ninety days' to serve and the balance probated, and was fined \$250.00. This appeal follows.

Appellant maintains that the circuit court committed reversible error by failing to grant a mistrial based upon improper prosecutorial remarks. Appellant contends that the prosecutor commented that "she wished she had this much proof in all her

cases." The circuit court thereupon admonished the jury to consider only the evidence submitted. Appellant, however, believes the admonition was insufficient and a mistrial should have been ordered. We disagree. We are of the opinion that any prejudice that may have resulted from the prosecutorial remarks was cured by the court's timely admonition of the jury. See Mitchell v. Commonwealth, Ky., 280 S.W.2d 189 (1955). As such, we are of the opinion that the prosecutor's comments were not so prejudicial as to require reversal. Id.

For the foregoing reasons, the judgment of the circuit court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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