

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1997-CA-002935-MR

RALPH PERKINS

APPELLANT

v.

APPEAL FROM FULTON CIRCUIT COURT  
HONORABLE W. L. SHADOAN, JUDGE  
ACTION NO. 97-CR-00061

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: BUCKINGHAM, EMBERTON AND HUDDLESTON, JUDGES.

EMBERTON, JUDGE: Ralph Ray Perkins appeals from a judgment convicting him of the offense of wanton endangerment in the first degree and sentencing him to five years' imprisonment. Perkins argues that the Commonwealth's violation of RCr 7.24, by failure to disclose a statement he made to a police officer at the time of his arrest, was so egregious that he was denied a fair trial. We affirm.

The wanton endangerment conviction stemmed from a July 1997, domestic disturbance at the home of his former girlfriend, Debbie Winters. Prior to trial, in a motion seeking the release of his vehicle, Perkins conceded that the windshield of his truck

had been damaged in the manner alleged in the indictment against him ("wantonly engaged in conduct which created a substantial danger of death or serious injury to Debbie Winters when he fired a gun toward Ms. Winters, striking her house"). The testimony at issue in this appeal was elicited during the Commonwealth's examination of one of the arresting officers, John Gardner.

In response to the prosecutor's question of whether Perkins made any statements at the time of his arrest, Officer Gardner responded that he had stated, "that he wasn't worried about it. Nothing really happened and he would get out of it." Perkins' counsel objected, approached the bench and made a motion for a mistrial based upon the Commonwealth's failure to list any such statement in its Bill of Particulars filed in compliance with RCr 7.24. The prosecutor informed the trial judge that the statement had not been included in the Bill of Particulars because he had just learned about it during lunch. The trial judge denied the motion for a mistrial, sustained the objection and admonished the jury not to consider the statement. Despite Perkins' protest to the contrary, we are convinced that the admonition was sufficient to cure any error.

It is the general rule in this Commonwealth that an admonition by the trial judge after sustaining an objection to improper testimony is sufficient to avoid any resulting prejudice. Willoughby v. Commonwealth, Ky., 510 S.W.2d 11 (1974). In Alexander v. Commonwealth, Ky., 862 S.W.2d 856, 859 (1993), overruled on other grounds by Stringer v. Commonwealth,

Ky., 856 S.W.2d 883 (1997), the Kentucky Supreme Court offered the following explanation as to the effect of an admonition:

It is normally presumed that a jury will follow an instruction to disregard inadmissible evidence that is inadvertently presented to it, unless (1) there is an overwhelming probability that the jury will be unable to follow the court's admonition; and (2) a strong likelihood that the effect of the inadmissible evidence would be devastating to the defendant.

As was the case in Alexander, our review of the record disclosed no "overwhelming probability" that the jury was unable to follow the trial judge's clear admonition. Neither do we, on the basis of the whole evidence adduced, perceive any likelihood that the effect of Perkins' statement to the arresting officer would be "devastating" to his defense. Because there is nothing to suggest that the Commonwealth acted in bad faith in eliciting this information from the police officer, we are confident that the admonition was sufficient to cure the error.

The judgment of the Fulton Circuit Court is affirmed.

ALL CONCUR.

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