

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-002029-MR

LINDA FIELDS COATNEY

APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 06-CR-00208

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: LAMBERT AND THOMPSON, JUDGES; KNOPF,¹ SENIOR JUDGE.

KNOPF, SENIOR JUDGE: Linda Fields Coatney appeals from a jury verdict and judgment arising from the Laurel Circuit Court in which she was found guilty of multiple counts of theft by unlawful taking and was sentenced to sixteen years'

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

imprisonment. She now appeals from that decision and argues that the circuit court erred by: (1) permitting the Commonwealth to introduce evidence of other uncharged offenses; and (2) ordering her to pay restitution in addition to serving a sentence of imprisonment. After our review, we affirm.

Facts and Procedural History

On September 15, 2006, the Laurel County Grand Jury indicted Coatney on sixty counts of theft by unlawful taking of the value of \$300.00 or more. The indictment alleged that Coatney had knowingly and unlawfully taken money from the office of the Laurel County Circuit Court Clerk on numerous occasions beginning on or about October 29, 2001 and continuing through June 6, 2006. Coatney subsequently appeared in open court with counsel and entered a “not guilty” plea to all charges.

On May 22, 2007, the Commonwealth moved to amend the indictment and gave notice that it was electing to go to trial on only eight of the sixty charges for purposes of judicial economy and because Coatney could not receive more than a twenty-year sentence regardless of the number of counts on which she was convicted. The trial court granted the motion, and the case proceeded to trial on August 5 and 6, 2008.

At trial, Roger Schott testified that he has been the Laurel County Circuit Court Clerk since January 1994. He indicated that Coatney was already employed by the clerk’s office as the office bookkeeper when he became clerk and that she remained in that position afterwards. Schott testified that Coatney had

total control of all of the money that came in and out of the clerk's office. He also testified that as bookkeeper, Coatney had the responsibility of going to the county jail every morning and obtaining all information regarding bonds that had been posted at the jail. She also picked up all bond money and brought it back to the clerk's office so that the bonds and their amounts could be recorded.

According to Schott, the clerk's office had been subjected to three state audits during his time as clerk, including once in 2006. After this particular audit, a question arose as to why Coatney had used an out-of-sequence check. The questioned check had been written in September 2004, but the checks that immediately preceded and followed it had been written months earlier – in March 2004. Schott eventually discovered that the check had been written out for a bond refund to a defendant who was not listed in the office system. Schott subsequently researched all cases that were recorded in the system for September 2004, but he could not find a case that matched the name on the check. At that point, Schott notified an auditor that something was not right about the check, and he called the Director of the Administrative Office of the Courts and requested additional auditors.

Steven Hall, a field supervisor in the auditing services department of the Administrative Office of the Courts, also testified at trial. He indicated that as part of his duties he reviews documents from the offices of court clerks to ensure that they are in proper order by auditing standards. Hall noted that the bookkeeper in a court clerk's office is responsible for maintaining all of the office's financial

records, as well as counting money, preparing deposits, posting those amounts to the books, writing checks to disperse money the court is required to pay, and keeping monthly reports.

Hall testified that he was sent to Laurel County in response to Schott's request for additional auditors. Hall testified that his initial review of office records uncovered errors with prior audit information, so he and his supervisor confiscated the office's accounting books and records for the preceding five-year period. Hall indicated that his review of this data uncovered 141 accounting discrepancies, all of which involved the use of checks that had been signed by Coatney. Hall then testified in detail as to the eight specific discrepancies that led to the charges for which Coatney was being tried. In doing so, Hall explained how money was taken and how office accounting books were correspondingly made to appear to be in balance. At the close of his testimony, Hall indicated that the total amount missing from the clerk's office was \$475,942. He also stated his belief that Coatney was responsible for the accounting discrepancies and the missing money in light of her position as bookkeeper and the fact that her name was attached to every suspect check.

Coatney presented no evidence on her own behalf after the Commonwealth finished its case-in-chief. The case then went to the jury, which found Coatney guilty of all eight counts of theft by unlawful taking of the value of \$300 or more and recommended that she serve a total of sixteen years in prison. Coatney's subsequent motions for a new trial and for a judgment of acquittal were

denied. On September 18, 2008, the trial court entered a judgment and sentence consistent with the jury's verdict and sentencing recommendations and also ordered Coatney to pay restitution in the amount of \$475,942.² This appeal followed.

Analysis

On appeal, Coatney first argues that the trial court committed reversible error by allowing the Commonwealth, through its examination of Steven Hall, to introduce evidence that: (1) 141 accounting irregularities had been discovered and (2) a total of \$475,942 was missing from clerk's office accounts. Coatney contends that the Commonwealth should have been limited to introducing evidence relating solely to the eight counts on which she was being tried and that the subject testimony from Hall was irrelevant pursuant to KRE 402 and unduly prejudicial pursuant to KRE 403. This particular issue is complicated by the fact that Coatney failed to offer any contemporaneous objection to either Hall's testimony regarding the total number of accounting discrepancies he had found or his testimony regarding the total amount of money missing from the clerk's office.

On May 22, 2007, the Commonwealth filed a "Notice Pursuant to KRE 404(b)" advising Coatney that it intended to produce evidence of other uncharged acts of theft by unlawful taking that she had allegedly committed while working in the Laurel County Circuit Court Clerk's office. At a subsequent pre-

² The circumstances surrounding the trial court's order of restitution will be explained more fully below. Payment of restitution was deferred until after Coatney's release from custody.

trial conference, the Commonwealth indicated that it wished to offer this evidence of other instances where Coatney had allegedly taken money from the clerk's office in order to show that the eight counts being tried were part of a common plan or scheme. The Commonwealth also indicated that it wished to introduce evidence regarding the total amount taken from the clerk's office for purposes of establishing the amount of restitution that would be owed in the event Coatney was convicted.

In response, Coatney raised a general concern about the Commonwealth introducing any "factual evidence" relating to any of the charges on which she had been indicted but was not being tried. Her attorney specifically told the court:

From talking to [the Commonwealth's Attorney,] what he said is all he wants to get in is the total number of money that is missing in the sixty or so counts, along with . . . our biggest question with that was whether they were going to try to show any factual evidence as far as those sixty counts go, which we wouldn't want them to do if they're just trying or electing to do the eight counts.

He subsequently indicated that he wanted to be able to cross-examine witnesses about the "facts of some of those" other counts if evidence about them was introduced. From our review of the record, it is, at best, unclear whether Coatney actually objected to testimony about the total amount missing from the clerk's office account being introduced into evidence or even to a general statement concerning the number of accounting discrepancies uncovered by auditors. It is also unclear what the specific grounds were for Coatney's objection. In any event,

the trial court overruled the objection, but permitted Coatney to cross-examine witnesses regarding testimony as to any other alleged instances of theft.

However, at some point – for reasons that are not explained or discussed anywhere within the record – the trial court apparently reconsidered the matter and entered an order on August 5, 2008, indicating that the Commonwealth could “not introduce evidence regarding the facts of unindicted conduct nor of conduct which is not contained in the eight counts upon which it elected to proceed to trial.” However, the court allowed the parties to “mention or discuss the total amount contained in the original indictment which is in excess of the amounts listed in the remaining eight counts to be tried” without opening the door to any other evidence regarding unindicted offenses.

As noted above, Steven Hall subsequently testified at trial that his review of clerk’s office financial records uncovered 141 accounting discrepancies, all of which involved the use of checks that had been signed by Coatney. However, he only went into detail about the incidents leading to the eight charges for which Coatney was being tried. Hall also indicated that the total amount missing from the clerk’s office was \$475,942. Coatney failed to offer an objection or a motion to strike as to either of these instances of testimony.

Despite this fact, Coatney now argues that it was error to allow this testimony to come into evidence. She contends that her argument was preserved for review by way of her earlier objection to the Commonwealth’s notice of KRE³

³ Kentucky Rules of Evidence.

404(b) evidence offered during the pre-trial conference discussed above. The Commonwealth argues in response that Coatney’s argument is not preserved for our review and that – even assuming that it is – the testimony was admissible pursuant to KRE 404(b). As a general rule, “[a]n appellate court’s standard of review for admission of evidence is whether the trial court abused its discretion.” *Brewer v. Commonwealth*, 206 S.W.3d 313, 320 (Ky. 2006). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

KRE 404(b)(1) provides that “[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible . . . [i]f offered for some other purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident[.]” Our Supreme Court has held that three inquiries need to be separately addressed before “prior acts” evidence may be admitted: (1) it must be relevant for a reason other than proof of criminal disposition; (2) it must be sufficiently probative; and (3) its potential for undue prejudice cannot substantially outweigh its probative value. *See Bell v. Commonwealth*, 875 S.W.2d 882, 889-91 (Ky. 1994); *see also Matthews v. Commonwealth*, 163 S.W.3d 11, 19 (Ky. 2005).

We first address Coatney’s claim that it was error for the trial court to allow Steven Hall to testify that there were 141 accounting discrepancies in the

clerk's office records, along with the Commonwealth's claim that this error is unpreserved for our review. Coatney acknowledges that she did not object to this testimony during trial, but she contends that she objected to such during a pre-trial conference via a motion *in limine* and, therefore, the issue is preserved for our review. KRE 103(d) provides that "[a] party may move the court for a ruling in advance of trial on the admission or exclusion of evidence. . . . A motion *in limine* resolved by order of record is sufficient to preserve error for appellate review." Thus, there are instances in which a motion *in limine* made prior to trial can sufficiently preserve an evidentiary issue for appellate review – even if a party's objection to evidence is not raised again during trial – as long as the motion is resolved "by order of record."

With this said, however, in *Lanham v. Commonwealth*, 171 S.W.3d 14 (Ky. 2005), our Supreme Court reaffirmed that:

An objection made prior to trial will not be treated in the appellate court as raising any question for review which is not strictly within the scope of the objection as made, both as to the matter objected to and as to the grounds of the objection. It must appear that the question was fairly brought to the attention of the trial court. . . . One claiming error may not rely on a broad ruling and thereafter fail to object specifically to the matter complained of.

Id. at 21, quoting *Tucker v. Commonwealth*, 916 S.W.2d 181, 183 (Ky. 1996).⁴

Consequently, a pre-trial motion *in limine* is sufficient to preserve an evidentiary error under KRE 103(d) only if the motion: (1) specifically identifies the evidence

⁴ *Tucker* was overruled, in part, on other grounds by *Lanham*, but the principle of law cited above was reaffirmed as good law.

to which the party objects; (2) provides a specific reason why the party thinks the evidence should not be admitted; and (3) is resolved by an order of the trial court. *See id.* at 21-22. A motion *in limine* is most typically found to have failed to preserve a particular objection for appellate review when the motion was directed only at a “general area of inquiry” and “not a particular evidentiary fact.” *See Metcalf v. Commonwealth*, 158 S.W.3d 740, 743 (Ky. 2005).

In this case, it is highly questionable whether Coatney’s complaint about Steven Hall testifying that he had uncovered 141 accounting discrepancies is preserved for our review. During the pre-trial hearing on the Commonwealth’s motion to introduce KRE 404(b) evidence, Coatney offered only a general objection to any “factual evidence” relating to any of the charges on which she had been indicted but was not being tried. No written response to the Commonwealth’s motion was filed, and Coatney failed to provide any specific grounds for her objection. Given the specificity requirement for pre-trial evidentiary objections set forth in *Lanham, supra*, and related cases, we believe that the objection noted above falls short of this requirement, at least as to the specific evidentiary fact in issue. We also note our belief that Coatney’s objection was actually targeted only towards testimony relating to the factual details of any offense or act for which Coatney was not being tried, *i.e.*, the particular factual background of those incidents. This conclusion is supported by the fact that the trial court’s evidentiary order provided only a general pronouncement that the Commonwealth could “not introduce evidence regarding *the facts of unindicted*

conduct nor of conduct which is not contained in the eight counts upon which it elected to proceed to trial.” (Emphasis added).

However, even assuming that this issue is preserved for our review, we do not believe that reversible error occurred as a result of the testimony indicating that Hall uncovered 141 accounting irregularities. The testimony was essentially limited to a single statement about the total number of discrepancies, and the Commonwealth did not ask any questions about any of the factual details of any of those discrepancies other than the ones for which Coatney was being tried. The testimony was also relevant because it related to Steven Hall’s investigation and because all of the acts in question involved checks that had been signed by Coatney and, consequently, were possible indicators of a common plan or scheme by Coatney.⁵ Thus, we cannot say that allowing this single piece of information into evidence constitutes reversible error.

Coatney also complains about the fact that the Commonwealth was allowed to introduce evidence that a total of \$475,942 was missing from clerk’s office accounts. Again, it is questionable whether this claim of error is preserved for review. During the pre-trial conference discussed above, counsel for Coatney told the court: “From talking to [the Commonwealth’s Attorney,] what he said is all he wants to get in is the total number of money that is missing in the sixty or so counts, along with . . . our biggest question with that was whether they were going

⁵ We note that Coatney fails to raise the issue of whether this evidence is sufficient to demonstrate a common plan or scheme or a *modus operandi* pursuant to KRE 404(b). Therefore, we decline to discuss the issue any further.

to try to show any factual evidence as far as those sixty counts go, which we wouldn't want them to do if they're just trying or electing to do the eight counts.” He subsequently stated that he wanted to be able to cross-examine witnesses about the “facts of some of those” other counts if evidence about them was introduced. Although the trial court ruled that this evidence could be introduced at trial, the issue of whether Coatney lodged a proper objection to it is up for interpretation. Indeed, from the exchange provided above, it is difficult to see where an objection to the evidence was ever made.

However, even assuming that this claim of error is preserved, we do not believe that the trial court abused its discretion in allowing this evidentiary fact into evidence. This amount reflected what Steven Hall uncovered during his investigation into the clerk's office's accounting records, and it was relevant for purposes of calculating restitution in the event of a conviction. Accordingly, Coatney's claims of error in the admission of evidence are rejected.

Coatney finally argues that the trial court committed reversible error by ordering her to pay restitution even though she had been sentenced to a term of imprisonment. Following trial and prior to sentencing, the Commonwealth moved for an order requiring Coatney to pay restitution in the amount of \$475,942, pursuant to KRS 532.032. The Commonwealth based its request on the fact that AOC auditors uncovered 141 improper transactions – all allegedly attributable to Coatney – that totaled this amount. Coatney objected to the motion, but her objection only concerned the *amount* of restitution and did not raise the question of

whether the court was somehow prohibited from ordering her to pay restitution altogether because she had been given a term of imprisonment. The trial court indicated that Coatney was entitled to a hearing to determine the amount of restitution to be paid if she disputed the amount owed, but it does not appear that such a hearing was ever requested or otherwise took place.

Coatney now contends that the trial court had no authority to order her to pay restitution since she was sentenced to serve time in prison. However, as noted above, this specific argument was not presented to the trial court and is, therefore, not preserved for our review. *Kennedy v. Commonwealth*, 544 S.W.2d 219, 222 (Ky. 1976). Even assuming that Coatney's arguments were preserved for review, the very same positions taken therein have already been squarely rejected by this Court, and we have been provided with no grounds that would convince us to overturn that precedent. *See Commonwealth v. O'Bryan*, 97 S.W.3d 454, 456-57 (Ky. App. 2003) (holding that KRS 532.032(1) must be read "as requiring both payment of restitution and imprisonment" where a defendant is ordered to serve a term of imprisonment). Consequently, Coatney's argument must be rejected.

Conclusion

For the foregoing reasons, the judgment of the Laurel Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

J. Brandon Pigg
Assistant Public Advocate
Department of Public Advocacy
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General

Jason B. Moore
Assistant Attorney General
Frankfort, Kentucky