

Cite as 2009 Ark. App. 638

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CACR 09-388

STEPHEN KENNEDY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered September 30, 2009APPEAL FROM THE LOGAN
COUNTY CIRCUIT COURT,
[NO. CR-2007-98]HONORABLE ELIZABETH W.
DANIELSON, JUDGE

AFFIRMED

COURTNEY HUDSON HENRY, Judge

Appellant Stephen Kennedy appeals a Logan County Circuit Court order convicting him of leaving the scene of an accident, two counts of first-degree assault, and third-degree battery. From those convictions, Kennedy received concurrent sentences totaling three-and-one-half-years' imprisonment. For reversal, Kennedy argues that the circuit court erred by failing to grant his mistrial motion. We affirm.

On December 7, 2007, Kennedy and his wife, Lori, became involved in an altercation at their home. According to Lori, she and Kennedy often argued about James Luttrell, her eighteen-year-old son from a previous relationship. After she and Kennedy drank alcoholic beverages that particular afternoon, they began to argue about Luttrell and a vehicle that he had wrecked. Luttrell was present in the home, and upon hearing loud voices, he went into the living room and witnessed Kennedy slap and kick his mother. Luttrell then tackled

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Kennedy and began hitting him. Lori and her younger son, Clifford Kennedy, escaped to a pickup truck, where they were later joined by Luttrell. Lori drove her sons from the premises, and when they reached the bottom of a hill, she stopped and allowed Luttrell to drive because she had been drinking.

Meanwhile, Kennedy decided to drive himself to the Booneville Police Department to file a report. According to Kennedy, he drove forty-five miles per hour to catch up with his family, trailed the Ford truck, and struck the truck from behind with his vehicle. Kennedy hit the pickup two more times, and Luttrell lost control of the vehicle, which hit a utility pole and overturned. As a result of the accident, Clifford sustained multiple injuries.

At trial, Kennedy admitted that he did not stop after the accident but instead drove home and parked in a place that was not visible from the driveway. Kennedy testified that he was angry that evening and intended to stop the pickup truck so he could attack his stepson.

During closing arguments, the prosecutor stated his personal opinion regarding Kennedy's intent in striking the vehicle. As a result, Kennedy moved for a mistrial, which the circuit court denied. For his sole point on appeal, Kennedy argues that the circuit court erred in denying his motion. Specifically, he asserts that the prosecutor's statement of personal opinion in his closing argument was highly prejudicial and warranted a mistrial.

Appellant's argument on appeal is based on the following events that transpired during closing argument in the guilt phase of the trial. The prosecutor stated, "There has been ample

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testimony over the aggravated assault and the battery one. There's no doubt in [my] mind that Mr. Kennedy intended to harm those individuals seriously." Defense counsel objected, requested a mistrial, and the trial court denied the motion. Defense counsel asked the court to admonish the jury, and the trial court did. The prosecutor then remarked that he did not intend to convey his personal opinion but rather that the evidence indicated what Kennedy's intentions were.

It is well settled that a mistrial is an extreme remedy that should be granted only when the error is beyond repair and cannot be corrected by curative relief. *Brown v. State*, 74 Ark. App. 281, 47 S.W.3d 314 (2001). An admonition to the jury usually cures a prejudicial statement unless the statement is so patently inflammatory that justice cannot be served by continuing the trial. *Walker v. State*, 91 Ark. App. 300, 210 S.W.3d 157 (2005). A trial court has wide discretion in granting or denying a motion for a mistrial, and the appellate court will not disturb the court's decision absent an abuse of discretion or manifest prejudice to the movant. *Id.*

Furthermore, the trial court is in the best position to evaluate the potential for prejudice based on the prosecutor's remarks. *Bullock v. State*, 317 Ark. 204, 876 S.W.2d 579 (1994). The trial court gives some leeway to counsel in closing argument, and counsel is free to argue every plausible inference that can be drawn from the testimony. *Newman v. State*, 353 Ark. 258, 106 S.W.3d 438 (2003). Therefore, a trial court is given broad discretion in controlling the arguments of counsel, such that, absent an abuse of that discretion, the trial

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court's decision will not be disturbed on appeal. *Cox v. State*, 345 Ark. 391, 47 S.W.3d 244 (2001); *Cook v. State*, 283 Ark. 246, 675 S.W.2d 366 (1984).

Here, we do not find error in the trial court's denial of Kennedy's motion for a mistrial. The trial court admonished the jury to disregard the prosecutor's statement concerning his thoughts on Kennedy's intent. The prosecutor then reaffirmed the court's admonition as he continued his closing remarks. Therefore, we hold that any potential prejudice from the prosecutor's statement was properly remedied by the trial court. We also agree with the State that the evidence of guilt is so overwhelming that there is no possibility that Kennedy suffered any prejudice as a result of the prosecutor's statement. *Moore v. State*, 87 Ark. App. 385, 192 S.W.3d 271 (2004) (declaring that error is harmless when the evidence of guilt is overwhelming). Accordingly, we affirm the circuit court's denial of Kennedy's motion for mistrial.

Affirmed.

GLADWIN and GLOVER, JJ., agree.