

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001706-MR

DANNY LEE BATCHELOR

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BARRY WILLETT, JUDGE
ACTION NO. 03-CR-003001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: KNOPF AND TACKETT, JUDGES; ROSENBLUM, SENIOR JUDGE.¹

TACKETT, JUDGE: Danny Batchelor appeals from the judgment of the Jefferson Circuit Court finding him guilty of third-degree rape and sentencing him to two years, six months' imprisonment. He entered a conditional guilty plea after the trial court denied his motion to admit evidence of the victim's alleged sexual relationship with another man and his motion challenging the trial court's subject matter jurisdiction. For reasons

¹ Senior Judge Paul W. Rosenblum sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

which will be discussed below, we agree with the trial court's decision declining to find such evidence admissible under the rape shield rule. Further, Batchelor's motion challenging the trial court's subject matter jurisdiction fails because the indictment specifies a range of dates after his eighteenth birthday. Thus, the trial court's judgment is affirmed.

The twelve year-old victim, J.E., was admitted to Kosair Children's Hospital in Louisville on July 20, 2003. After she was found to be suffering from a severe outbreak of genital herpes and trichomonas, the police were called to informally interview her. On August 7, 2003, J.E. spoke with a detective from the Crimes Against Children Unit and described being raped by Batchelor in the downstairs bathroom of her old house. She was referred to Children First where she gave a full account of the incident to a forensic interviewer.

Batchelor was a friend of D.O. who was dating the victim's sister at the time of the assault. He would accompany D.O. to the victim's home when D.O. visited his girlfriend, but had little interaction with J.E. prior to the assault. Sometime between April 18 and May 31, Batchelor was at J.E.'s home and her older sister, M.W., temporarily left the two of them alone while she went upstairs to wash some clothes. While they were alone, Batchelor dragged J.E. into the bathroom, locked the door and raped her. J.E. stated that she had no prior sexual contact

and had not engaged in sexual activity since the assault. During the rape, J.E. observed that Batchelor's penis was covered in bumps. She said that he stopped what he was doing and pulled her pants up when he heard her sister coming back downstairs. M.W. found J.E. locked in the bathroom with Batchelor. J.E., who was clothed at the time, ran upstairs and did not tell her sister what had happened. M.W. noticed that Batchelor was holding his pants and ordered him to leave their house. Some time later, J.E. noticed bumps around her vaginal area and told her mother who took her to the hospital.

Officers investigating the case tried to set up an interview with Batchelor, but he failed to show up twice. The case was presented to the grand jury which returned an indictment charging Batchelor with second-degree rape. After his arrest, Batchelor waived his right against self-incrimination and gave a statement to the investigating officers. He denied having sex with J.E. and told police that the actual perpetrator was his friend, D.O. According to Batchelor, J.E.'s home was a crack house, D.O. lived there with the victim's sister, but also had sexual relations with J.E. with both D.O and J.E. bragging about their sexual encounters. Batchelor said J.E. wanted him to have sex with her, but he refused because she was dirty and a minor.

The investigating officers followed up by interviewing D.O. He denied any sexual contact with the victim, and said that he occasionally stayed the night at the house during the three to four months when he was dating her sister, M.W. D.O. also told police that, according to M.W., she had caught the victim in the bathroom with Batchelor engaging in some type of sexual activity.

Batchelor filed a pretrial motion requesting that he be allowed to present evidence that the victim had engaged in a sexual relationship with D.O. He argued that this evidence was admissible under the rape shield rule because it would account for the fact that a twelve year-old girl had contracted two sexually-transmitted diseases. The trial court denied the motion. Batchelor also unsuccessfully challenged the trial court's subject matter jurisdiction, arguing that some of the discovery materials indicated that he was still a minor when the sexual contact with J.E. allegedly occurred. After both motions were denied, Batchelor pled guilty to the amended charge of third-degree rape, but reserved the right to appeal from the trial court's pretrial rulings. This appeal followed.

Batchelor contends that evidence of an alleged sexual relationship between D.O. and J.E. was improperly excluded in light of the victim's young age. Although evidence of a rape victim's prior sexual conduct is generally inadmissible,

Kentucky Rule of Evidence 412(b)(1)(B) allows such evidence if it is "offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence[.]"

During a hearing on his motion, Batchelor attempted to establish that D.O. was the source of J.E.'s sexually-transmitted diseases. According to Batchelor, D.O. bragged about his sexual relationship with J.E. to the extent that it was common knowledge in the neighborhood. However, D.O. and J.E. both denied engaging in sexual activity with each other, and the only hearsay evidence Batchelor proposed to offer was the testimony of his niece, also twelve years old, that J.E. had talked about having sex with D.O.

With regard to the sexually-transmitted diseases, J.E. was diagnosed with a severe case of genital herpes and trichomonas. Both the victim's sister and the appellant's sister had been sexually involved with D.O. The appellant's sister also had trichomonas. According to the appellant, this proves that D.O. was the source of J.E.'s trichomonas. This evidence is deficient for several reasons. First of all, appellant's sister did not have herpes as the victim did. Second, D.O. spoke with police investigators and, without being informed what diseases the victim had, he admitted that he had gonorrhoea, rather than herpes or trichomonas. In fact, the victim's sister, who was dating D.O. at the time of the assault,

also had gonorrhoea, but not herpes or trichomonas. Batchelor's status could not be confirmed since he refused, as a matter of defense strategy, to be tested for STDs, and there were no medical records showing that D.O. tested positive for herpes or trichomonas. The trial judge disagreed with Batchelor's argument that his sister provided the missing link needed to establish that D.O. had infected J.E. with trichomonas.

Batchelor has failed to demonstrate that the trial court abused its discretion in refusing to allow evidence of an alleged sexual relationship between J.E. and D.O.

Batchelor next argues that the trial court denied him the right to present a defense since he could not argue that D.O. had infected J.E. with sexually-transmitted diseases. Kentucky Rule of Criminal Procedure 8.09 allows a defendant to enter a conditional guilty plea reserving the right to appeal from "the adverse determination of any specified trial or pretrial motion." At the time of his guilty plea, Batchelor specified that he was appealing from the trial court's rulings on two matters. The first was the determination that any evidence of an alleged sexual relationship between D.O. and J.E. was inadmissible under the rape shield rule. The second was the trial court's denial of his motion challenging subject matter jurisdiction. The motion to enter a conditional guilty plea failed to specify that the trial court's ruling regarding J.E.'s

alleged prior sexual conduct amounted to a denial of his constitutional right to present a defense. Therefore, we decline to further consider the issue.

Finally, Batchelor argues that the trial court lacked subject matter jurisdiction over him because some of the discovery materials could be interpreted to allege that the assault happened before his eighteenth birthday in March 2003. We would first point out that the indictment charges Batchelor with engaging in sexual relations with J.E. between April 18 and May 31, 2003. In order to preside over a case, a trial court must have jurisdiction over the subject matter and the person charged. Malone v. Commonwealth, 30 S.W.3d 180 (Ky. 2000). The indictment charged the crime of second-degree rape, allegedly committed by a person over the age of eighteen. Circuit courts in the Commonwealth have jurisdiction over felony cases involving adult defendants.

Although he challenged the trial court's subject matter jurisdiction, Batchelor is actually arguing that the court lacked **personal** jurisdiction over him since he may have been only seventeen at the time of the charged conduct. Thus, he contends that the matter should have been properly handled by the juvenile court. He bases this claim on comments by the victim and her mother who both stated uncertainty as to whether he was seventeen or eighteen at the time of the offense. In

addition, because no one was certain of the exact date of the offense, he argues that the discovery materials could be interpreted to allege that J.E. was raped in mid-March, before Batchelor's eighteenth birthday. Batchelor's date of birth is March 24, 1985. The indictment charges Batchelor with engaging in sexual relations with J.E. between April 18, 2003 and May 31, 2003. Thus, even if Batchelor had properly phrased his motion as a challenge to the trial court's personal jurisdiction over him, his argument would fail.

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

ROSENBLUM, SENIOR JUDGE, CONCURS.

KNOFF, JUDGE, CONCURS AND FILES SEPARATE OPINION.

KNOFF, JUDGE, CONCURRING IN RESULT: While I agree with much of the reasoning and the result of the majority opinion, I disagree with the position taken by the Commonwealth and adopted by the majority characterizing Batchelor's third argument as a challenge to the circuit court's personal jurisdiction over him rather than an issue of subject matter jurisdiction. KRS 610.010(1) vests the district court with exclusive jurisdiction "in proceedings concerning any child living or found within the county who has not reached his or her eighteenth birthday or any person who at the time of committing a public offense was under the age of eighteen (18) years, who allegedly (a) [h]as committed

a public offense prior to his or her eighteenth birthday”
The circuit court may be vested with jurisdiction over youthful offenders only following the transfer proceedings set forth in KRS 635.020 and KRS 640.010. See also Humphrey v. Commonwealth, 153 S.W.3d 854 (Ky.App. 2004).

Nevertheless, the point is moot because it would not make any difference in this case. First, as the majority correctly points out, the indictment charged Batchelor with offenses allegedly committed after his eighteenth birthday on March 24, 2003. Therefore, the indictment is sufficient on its face to vest jurisdiction in the circuit court. Moreover, since jurisdiction was properly lodged in the circuit court over the charges against Batchelor as an adult, the circuit court could properly exercise jurisdiction over charges arising out of the same course of conduct. Osborne v. Commonwealth, 43 S.W.3d 234, 238-39 (Ky. 2001). Consequently, the circuit court could properly exercise jurisdiction over Batchelor even if the jury had found that he committed the offenses prior to his eighteenth birthday.

BRIEF FOR APPELLANT:

Jason Anthony Dattilo
Louisville, Kentucky

BRIEF FOR APPELLEES:

Gregory D. Stumbo
Attorney General of Kentucky

Matthew R. Krygiel
Assistant Attorney General
Frankfort, Kentucky