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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002326-MR

STACY LAUREN MCQUEARY — APPELLANT

v.

APPEAL FROM MADISON CIRCUIT COURT
HONORABLE JULIA HYLTON ADAMS, JUDGE
ACTION NO. 05-CR-00100

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: STUMBO AND TAYLOR, JUDGES; HENRY,[1] SENIOR JUDGE.

HENRY, SENIOR JUDGE: A jury found Stacy Lauren McQueary guilty of complicity to commit robbery in the first degree and she was sentenced to serve ten years. She brings two allegations of error to our attention. Her first argument is that the trial court erred when it allowed a police officer to testify that the robbery was an "inside job;" that is, that someone associated with the store in some manner was involved in the robbery. She then claims the trial court abused its discretion when it allowed the replaying of her

[1] Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

testimony during cross examination without also replaying her testimony during direct examination. We find no error and affirm.

Wendell Nall entered a guilty plea to robbery in the first degree resulting from the armed robbery of the Hastings video store on April 16, 2005. McQueary, Nall's former fiancé, worked at the store. Nall testified at McQueary's trial that she provided him with information he used to commit the robbery and that she helped plan it. Specifically, she drew diagrams of the store, the office and the safe and provided keypad codes for the area where the safe was located and for the safe itself.

The police investigator testified that he believed someone involved with the store's operation was involved with the robbery. Although none of the keypad codes were needed to open any doors or the safe, the robber motioned one of the employees toward the office area. The police officer testified that he requested a list of all employees because the robber seemed to have knowledge of the store's layout. We find this brief testimony was permissible and was not error.

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Kentucky Rules of Evidence (KRE) 401. "[E]vidence may be excluded if its probative value is substantially outweighed by the danger of undue prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence." KRE 403. The trial court must balance the inclusive nature of KRE 401 with the exclusive nature of KRE 403 when it is determining the admission of evidence.

Here, the testimony was clearly relevant. It explained how the police officer came to suspect Nall and McQueary were involved in the crime. He used the information discovered during his investigation to form that opinion based on his

perceptions. *See* KRE 701. The probative value of that evidence far exceeded any possibility of undue prejudice, confusion of the issues, misleading the jury, or considerations of undue delay, or needless presentation of cumulative evidence. McQueary's argument has failed to disclose any situation where the police officer's testimony about someone with inside knowledge of the store being involved in the robbery should have been excluded pursuant to KRE 403. There simply was no error in that regard.

During the jury deliberations, the jury requested an opportunity to review McQueary's testimony during cross examination; when she was being questioned by the Commonwealth. She argued then and now that the jury should have been provided with her entire testimony because it unduly emphasized just a portion of her statements. The Kentucky Supreme Court has answered that question in *Harris v. Commonwealth,* 134 S.W.3d 603 (Ky. 2004). "A trial judge is only required to provide the jury with the requested portion of the testimony and has a duty to ensure that the trial is not unnecessarily prolonged." *Id.* at 610 (citing *Jarvis v. Commonwealth,* 245 Ky. 790, 54 S.W.2d 307, 310 (1932)). We need look no further. There was no error.

The judgment of the Madison Circuit Court is affirmed.

ALL CONCUR.

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