

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-001579-MR

JODY LEE MOORE

APPELLANT

v.

APPEAL FROM FLEMING CIRCUIT COURT
HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 08-CR-00009

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: FORMTEXT LAMBERT AND TAYLOR, JUDGES; HENRY,
SENIOR JUDGE.

TAYLOR, JUDGE: Jody Lee Moore brings this appeal from an August 8, 2008,
judgment of the Fleming Circuit Court upon a jury verdict finding Moore guilty of
fleeing or evading police and being a persistent felony offender in the second
degree. We affirm.

Moore was originally indicted upon three counts of first-degree wanton endangerment, one count of first-degree fleeing or evading police, one count of second-degree fleeing or evading police, and with being a second-degree persistent felony offender. It was alleged that Moore was driving a vehicle belonging to his girlfriend, Molly Teter, and sped through a police safety checkpoint without stopping on December 22, 2007. Three police officers at the scene described the vehicle as being grey and identified Moore as the driver of the vehicle.

After speeding through the safety checkpoint, the police officers pursued the vehicle. The vehicle turned onto a gravel driveway and parked behind a mobile home. It was later discovered that Moore resided at the mobile home. The driver of the vehicle successfully fled the scene on foot. However, Teter was a passenger in the vehicle and was apprehended. Moore's wallet was also retrieved from under the driver's seat of the vehicle. Teter was arrested for alcohol intoxication. At the police station, Teter made a written statement, which read, "Jody [Moore] was driving home from Mac Daddy's. 2001 Nissan Altima."¹ Later, Moore was arrested.

Following a jury trial, Moore was found guilty of first-degree fleeing or evading police, second-degree fleeing or evading police, and of being a second-degree persistent felony offender. By judgment entered August 8, 2008, Moore was sentenced to a total of ten-years' imprisonment. This appeal follows.

¹ Mac Daddy's is a bar located in Maysville, Kentucky.

Moore contends that his “right to a fair trial, . . . the right of confrontation and to due process . . . were denied” when the trial court failed to *sua sponte* order a continuance of trial. Moore’s Brief at 10. On the morning of trial, defense counsel informed the trial court that the Commonwealth failed to produce Teter’s written statement prior to trial as required by a court discovery order. Kentucky Rules of Criminal Procedure (RCr) 7.24 and RCr 7.26. The Commonwealth responded that it was unable to locate the written statement. After additional inquiry, the Commonwealth learned that the county attorney possessed Teter’s written statement. After finishing jury selection, the written statement was produced by the Commonwealth. At this time, defense counsel “failed to ask for any relief pre-trial; there was no motion for continuance or a mistrial made.” Moore’s Brief at 4. Moore requests this Court to review the alleged error under the palpable error standard of RCr 10.26.

RCr 10.26 reads:

A palpable error which affects the substantial rights of a party may be considered by the court on motion for a new trial or by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.

Here, it is clear that the Commonwealth failed to comply with the trial court’s discovery order, RCr 7.24, and RCr 7.26. However, such discovery violation does not automatically result in reversible error absent a showing of prejudice. *See Hodge v. Com.*, 17 S.W.3d 824 (Ky. 2000); *Beaty v. Com.*, 125

S.W.3d 196 (Ky. 2003). And, we believe that Moore failed to demonstrate such prejudice. Although Teter's testimony identifying the driver of the vehicle was not consistent at trial or at the preliminary hearing, three police officers testified that Moore was the driver of the vehicle.² These police officers were eyewitnesses and positively identified Moore. Additionally, defense counsel was aware of Teter's written statement well before trial. Considering these unique facts, we are simply unable to conclude that Moore demonstrated prejudice necessitating reversal of the jury verdict. Consequently, we hold that any error was merely harmless.

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

ALL CONCUR.

BRIEFS FOR APPELLANT:

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² At the scene, Molly Teter identified Jody Lee Moore as the driver. At the preliminary hearing, Teter testified that a man named Jason was the driver. And, at trial, Teter, once again, asserted that Moore was the driver.