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Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000376-MR

KEITH EDWARD FRANCIS MEYERS

APPELLANT

v. APPEAL FROM HICKMAN CIRCUIT COURT
HONORABLE TIMOTHY A. LANGFORD, JUDGE
ACTION NO. 08-CR-00034

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, KELLER, AND VANMETER, JUDGES.

VANMETER, JUDGE: Keith Edward Francis Meyers appeals from the judgment of the Hickman Circuit Court sentencing him to eighteen-years' imprisonment for possession of a firearm by a convicted felon and for being a second-degree persistent felony offender (PFO). For the following reasons, we affirm.

Stemming from a course of events on May 10, 2008, involving Meyers, his wife S.C., and others, Meyers was indicted on nine charges: first-degree rape, first-degree sodomy, kidnapping, first-degree wanton endangerment, possession of a firearm (handgun) by a convicted felon, tampering with physical evidence, theft by unlawful taking over \$300, criminal attempt to commit murder, and first-degree PFO. Meyers pled guilty to the amended charges of first-degree sexual abuse and tampering with physical evidence, and upon motion by Meyers, the trial court severed for trial the charges of possession of a handgun and PFO.

Prior to trial, Meyers moved to preclude S.C. from testifying against him on the basis that her testimony was inadmissible under the marital privilege of KRE¹ 504. The trial court denied his motion and admitted S.C.'s testimony as an exception to the marital privilege under KRE 504(c)(2)(A). S.C. testified that on May 10, 2008, she and Meyers got into an argument at Todd Rushing's residence and Meyers took a handgun from Rushing's bedroom wall and pointed it at her, stating "he was going to shoot at the cops and make them shoot him because he didn't want to go back to jail."

During trial, Meyers admitted to committing the offense of possession of a handgun by a convicted felon; specifically, that he took a handgun from the bedroom wall of Rushing's residence. Meyers pleaded to the jury for mercy during sentencing. The jury returned a verdict of guilty and recommended a

¹ Kentucky Rules of Evidence.

sentence of eighteen-years' imprisonment, which the trial court imposed. This appeal followed.

Meyers claims the trial court abused its discretion by denying his motion to prevent S.C. from testifying. Specifically, Meyers contends that S.C.'s testimony was not admissible as an exception to the marital privilege because the trial on the severed charge of possession of a handgun by a convicted felon was a separate "proceeding" from the remaining counts of the indictment and involved no allegations of wrongful conduct against S.C. He further avers that S.C.'s testimony was unnecessary and prejudicial. We disagree.

We review a trial court's evidentiary rulings for an abuse of discretion. *Penman v. Commonwealth*, 194 S.W.3d 237, 245 (Ky. 2006). The test for abuse of discretion is whether the trial court's decision was "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citations omitted).

KRE 504 provides, in relevant part:

(a) ***Spousal testimony.*** The spouse of a party has a privilege to refuse to testify against the party as to events occurring after the date of their marriage. **A party has a privilege to prevent his or her spouse from testifying against the party as to events occurring after the date of their marriage.**

....

(c) ***Exceptions.*** There is no privilege under this rule:

....

(2) In any proceeding in which one (1) spouse is charged with wrongful conduct against the person or property of:

(A) The other;

(B) A minor child of either;

(C) An individual residing in the household of either; or

(D) A third person if the wrongful conduct is committed in the course of wrongful conduct against any of the individuals previously named in this sentence;

(Emphasis added).

The trial court held that the “proceeding” for purposes of KRE 504(c)(2)(A) encompassed every count contained in the indictment, including those counts alleging wrongful conduct against S.C. Although this issue apparently has not been resolved by any Kentucky court, we note that the policy concerns of the marital privilege, and the application of its exceptions, have been addressed in *Gonzalez De Alba v. Commonwealth*, 202 S.W.3d 592 (Ky. 2006).

In *Gonzalez*, the Kentucky Supreme Court upheld the trial court’s admission of the defendant’s wife’s testimony under an exception to the marital privilege, KRE 504(c)(2)(D). Gonzalez was indicted and convicted of fourth-degree assault against his wife and murder of his wife’s adult son, both charges stemming from an argument which escalated and produced two violent crimes. While Gonzalez conceded that he could not prevent his wife from testifying about the assault, he sought to prevent her testimony concerning the murder under KRE

504(a), arguing that the murder charge “though close in time, was factually distinct from the assault he was alleged to have committed against [his wife.]” *Id.* at 596.

The trial court in *Gonzalez* allowed the wife to testify about the murder under KRE 504(c)(2)(D), reasoning that the defendant’s assault against his wife was the first in a connected series of wrongful acts that culminated in the murder of his wife’s son. On appeal, the Court affirmed, holding that “[t]o conclude otherwise, and thereby deny [the wife] the right to testify, would amount to an unjustifiable expansion of the spousal testimony privilege.” *Id.* at 596-97.

Though the wife’s testimony in *Gonzalez* was admitted under a different exception than the one applied in this case, both *Gonzalez* and the case at bar involve allegations of wrongful conduct committed by the defendant against his wife, or in her presence, evolving from a course of events on one particular day. The Court in *Gonzalez* emphasized that the marital privilege should be construed narrowly:

The exceptions provided in KRE 504(c)(2) reflect the fact that the marital privilege is considered by many to be in disfavor as a result of abuses which prevent ascertaining the truth. . . . The courts have approached the privilege by narrowly and strictly construing it because it has the potential for shielding the truth from the court system. Many courts have determined that when the reason supporting the privilege, marital harmony, no longer exists, then the privilege should not apply to hide the truth from the trier of fact.

Id. at 596 (citations omitted).

Here, the charges of wrongful conduct by Meyers against S.C., coupled with S.C.'s firsthand knowledge of his possession of the handgun, call into question the need to shield her testimony from the court under the marital privilege. Meyers maintains that since he admitted to possessing the handgun, S.C.'s testimony was unnecessary. However, as noted in *Johnson v. Commonwealth*, 105 S.W.3d 430 (Ky. 2003), "the prosecution is permitted to prove its case by competent evidence of its own choosing, and the defendant may not stipulate away the parts of the case that he does not want the jury to see." *Id.* at 438-39 (quoting *Barnett v. Commonwealth*, 979 S.W.2d 98, 103 (Ky. 1998)). In this case, the trial court determined that S.C.'s testimony concerning the facts and circumstances of Meyers' possession of the handgun was relevant for purposes of establishing her credibility, or veracity, as a witness. Further, denying S.C. the right to testify would amount to an unjustifiable expansion of the marital privilege. Thus, admitting her testimony was not an abuse of the trial court's discretion.

The judgment of the Hickman Circuit Court is affirmed.

ALL CONCUR.

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