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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000370-MR

STEVEN DODSON — APPELLANT

v.

APPEAL FROM MONROE CIRCUIT COURT
HONORABLE EDDIE C. LOVELACE, JUDGE
ACTION NO. 09-CR-00030

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CAPERTON, MOORE, AND STUMBO, JUDGES.

STUMBO, JUDGE: Steven Dodson appeals from a judgment of the Monroe Circuit Court reflecting a jury verdict of guilty on one count each of Wanton Endangerment in the First Degree and Possession of a Handgun by a Convicted Felon. Dodson contends that the trial court erred in improperly admonishing the

jury during *voir dire* that "good attorneys . . . don't object a lot," and claims that the Commonwealth improperly cajoled or coerced the jury by referring to Dodson as a "loose cannon." We have concluded that these claims of error were not preserved for appellate review, do not constitute palpable error, and even if properly preserved would not merit reversal of the judgment on appeal. Accordingly, we find no error and affirm.

On August 19, 2009, the Monroe County Grand Jury indicted Dodson on two counts of Wanton Endangerment in the First Degree and one count of being a Persistent Felony Offender with a handgun. Dodson entered a plea of not guilty, and a jury trial on the charges was conducted on January 10, 2010. During *voir dire*, the trial judge stated to the jury pool that,

> There will be some objections in this case, probably not a lot. And I say this because Mr. Hundley and Mr. Alexander are both excellent attorneys. Good attorneys present their case and don't object a lot. When you have someone that is younger they object, and of course I guess I did when I was younger too. But good attorneys don't want to do a lot of that because a lot of times it may turn the jury off but I'll rule, I say sustained or overruled. But please don't keep a scorecard of how many times I sustain or how many times I overrule because I'm just exercising my job as circuit judge. It doesn't show any favoritism towards either side by doing this.

Neither counsel objected to this statement. The Commonwealth later presented evidence in support of its contention that Dodson, while intoxicated, threatened victim Don Murphy on repeated occasions with loaded weapons and a knife, and threatened to kill Murphy. During the course of the proceedings, the

Commonwealth referred to Dodson as a "loose cannon" and opined that it was the jury's duty to convict him. Again, Dodson's counsel made no objection.

After deliberating, the jury returned a verdict of guilty on one count each of Wanton Endangerment in the First Degree, and Possession of a Handgun by a Convicted Felon. Dodson was sentenced to serve 5 years in prison on each count, to run consecutively for a total of 10 years in prison. This appeal followed.

Dodson now argues that the trial court erred by improperly stating to the jury during *voir dire* that "good attorneys . . . don't object a lot . . . ." He contends that this statement improperly ratified or endorsed any belief that the jury may have had that making an objection constituted poor advocacy. Citing the Kentucky Rules of Evidence, Dodson contends that the judge's remarks ran afoul of the general principle that the rules of evidence exist to promote fairness and justice in courtroom proceedings, and that these rules are enforced primarily via objections. Dodson goes on to maintain that as a result of the alleged improper statement to the jury, it is likely that numerous occasions that required objection actually passed without objection by defense counsel.

We have closely examined this argument and find no error. We must first note that Dodson has not complied with CR 76.12(4)(c)(v), which requires the appellant to state at the beginning of the written argument if the issue was preserved and, if so, in what manner. We are not required to consider portions of the appellant's brief not in conformity with CR 76.12, and may summarily affirm the trial court on the issues contained therein. *Skaggs v. Assad, By and Through*

Assad, 712 S.W.2d 947 (Ky. 1986); *Pierson v. Coffey,* 706 S.W.2d 409 (Ky. App. 1985).

Arguendo, even if this matter were preserved for appellate review by Dodson having given the trial court the opportunity to correct the allegedly improper statement, we would find no error. There is no basis in the record for concluding that the trial judge's admonition either affirmed the jury's pre-existing belief that objections constitute poor advocacy, or that it resulted in Dodson's counsel making fewer objections. To the contrary, the trial judge praised both counsels and characterized them to the jury as "excellent" advocates. Dodson's argument on this issue is at best speculative, and does not overcome the strong presumption that the trial court conducted the proceedings in accordance with the law. *City of Jackson v. Terry*, 302 Ky. 132, 194 S.W.2d 77 (1946) ("The presumption is that a trial court conducts the trial according to law, and renders the correct judgment under the facts developed before it."). Additionally, we find persuasive the Commonwealth's contention that if Dodson believes his counsel failed to make proper objections, that contention should be raised if at all via a collateral attack on the judgment by way of RCr 11.42.

Dodson also argues that counsel for the Commonwealth frequently and without challenge referred to Dodson as a "loose cannon," and made clear his opinion that it was the jury's duty to find Dodson guilty. Dodson contends that this characterization of him, combined with the Commonwealth's belief that it was the jury's duty to find him guilty, constituted the prohibited tactic of cajoling or

coercing a jury to reach an improper verdict. *See generally*, *Lycans v. Commonwealth*, 562 S.W.2d 303 (Ky. 1978), and *Sanborn v. Commonwealth*, 754 S.W.2d 534 (Ky. 1988). In *Lycans,* the Commonwealth made the so-called "golden rule" argument by asking the jury "to place themselves or members of their families or friends in the place of the person who has been offended and to render a verdict as if they or either of them or a member of their families or friends was similarly situated." *Id.* at 305. Though found to be improper and warranting a jury admonishment, the Kentucky Supreme Court determined that the comments were not of such significance as to prejudice the jury, and it affirmed Lycans' conviction.

Additionally, *Sanborn*, upon which Dodson also relies, was found to be "a plurality opinion of limited precedential value" and one having "no stare decisis effect." *Hudson v. Commonwealth*, 202 S.W.3d 17, 22 (Ky. 2006), citing *Fugate v. Commonwealth,* 62 S.W.3d 15, 19 (Ky. 2001). This point aside, we cannot conclude that the Commonwealth's characterization of Dodson as a "loose cannon" rises to the level of improper vilification sufficient to justify reversing the judgment on appeal. Furthermore, and as with Dodson's first argument, the instant argument was not preserved for appellate review, and we cannot conclude that it constitutes palpable error. RCr 10.26. Accordingly, we find no error.

For the foregoing reasons, we affirm the Judgment on appeal.

ALL CONCUR.

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