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Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000575-MR

TED BELLE — APPELLANT

v.

APPEAL FROM MARION CIRCUIT COURT
HONORABLE DAN KELLY, JUDGE
ACTION NO. 10-CR-00106

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, CHIEF JUDGE; CAPERTON, AND TAYLOR, JUDGES.

CAPERTON, JUDGE: Ted Belle was found guilty of trafficking in a controlled substance, possession of drug paraphernalia, and being a first-degree persistent felony offender (PFO), as a result of which he was sentenced to fifteen years' imprisonment. He now appeals from those convictions. After our review, we

conclude that none of the claims of error raised by Appellant merit reversal or remand for additional proceedings. Thus, we affirm.

Facts and Procedural History

On December 14, 2009, the Kentucky State Police Special Enforcement Operations Division and local law enforcement were working a drug sting operation focused on Appellant. The police had been advised by an informant that Appellant was a drug dealer, and the informant had agreed to participate in a monitored drug deal with him.

After patting down the informant, "wiring" him with audio/video equipment, and supplying him with five $20 bills, Detective Dennis Allen drove him to Appellant's home in an undercover police vehicle. The informant then left the vehicle and entered Appellant's home. The informant subsequently conducted a transaction for cocaine inside the home and returned to the vehicle, where he handed over a package that was later field-tested and revealed to contain cocaine. The money used in the transaction was ultimately recovered from Appellant.

Following a jury trial, Appellant was found guilty of trafficking in a controlled substance, first offense, and possession of drug paraphernalia. He was also found guilty of being a first-degree persistent felony offender. Per the jury's recommendations, the trial court sentenced Appellant to ten years' imprisonment on the trafficking conviction, with that sentence enhanced to fifteen years due to

the PFO 1st conviction, and twelve months on the conviction for possession of drug paraphernalia.[1] This appeal followed.

Analysis

Appellant first argues that the trial court erred during voir dire when it allowed the Commonwealth to use a peremptory strike to remove the last remaining African-American juror from the jury panel. Appellant – who is also African-American – contends that his rights to due process and equal protection were denied because the juror was struck for discriminatory purposes due to her race in violation of *Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986), and not because of the race-neutral grounds offered by the Commonwealth to explain the strike.

During voir dire, Juror #37, an African-American woman who had been added to the panel after two other jurors were stricken for cause, approached the bench in response to a question by the defense. She informed the court that she had known Appellant some twenty years earlier and that she and Appellant had been friends and had "partied" together in their youth. She also told the court that she was a recovering drug addict but that she had been clean for six years. She also denied ever using drugs with Appellant. Juror #37 further advised the court that she did not believe her previous relationship with Appellant would affect her judgment or her ultimate verdict. Based upon her answers, the court declined to dismiss her for cause.

[1] The sentences were ordered to run concurrently.

At the end of voir dire, the Commonwealth's Attorney approached the bench and informed the trial court that he intended to use a peremptory strike to remove Juror #37 – who was at that point the only remaining African-American – from the venire.[2] Not awaiting a *Batson* challenge by the defense, he indicated that his decision to strike Juror #37 was based upon the fact that she had been friends with Appellant in the past and was a recovering drug addict. He advised the court that he ultimately did not believe that a juror with that history could be unbiased and that her personal history would affect her objectivity, especially in the penalty phase.

In response, the defense objected and pointed out that in a community as small as Lebanon, it was likely that all African-American members of the venire knew Appellant. Defense counsel also noted that the Commonwealth had not struck a white juror who had coached Appellant's younger brother in basketball when he was a child and who acknowledged knowing one of the arresting officers. Because of this, defense counsel questioned the genuineness of the Commonwealth's race-neutral reasons for the strike. After listening to both arguments, the court determined that the Commonwealth's reason for striking Juror #37 was not race-based, overruled defense counsel's objection, and allowed the strike.

[2] During the course of voir dire, twenty-one potential jurors responded to questions from the court and the parties. Fifteen of those individuals - twelve of whom were white and three of whom were African-American - were stricken for cause after indicating that, for whatever reason, they could not be fair to Appellant. Of the six remaining jurors, five were white and one - Juror #37 - was African-American.

It is well-established that "[t]he government cannot use its peremptory challenges in a criminal case to exclude members of the venire from the jury solely on the basis of their race." *United States v. Hill*, 146 F.3d 337, 340 (6th Cir. 1998). Under *Batson v. Kentucky*, *supra*, and its progeny, claims of a race-based peremptory challenge by the prosecution are examined by use of a three-step test. First, the defendant must make a prima facie showing that a peremptory challenge has been exercised on the basis of race. *Batson*, 476 U.S. at 96-97, 106 S. Ct. at 1722-23; *see also Hernandez v. New York*, 500 U.S. 352, 358, 111 S. Ct. 1859, 1865-66, 114 L. Ed. 2d 395 (1991) (plurality opinion); *Thomas v. Commonwealth*, 153 S.W.3d 772, 777 (Ky. 2004). "Once the defendant makes a prima facie showing, the burden shifts to the State to come forward with a neutral explanation for challenging black jurors." *Batson*, 476 U.S. at 97, 106 S. Ct. at 1723; *see also Thomas*, 153 S.W.3d at 777. After such an explanation is offered, "The trial court then will have the duty to determine if the defendant has established purposeful discrimination." *Batson*, 476 U.S. at 98, 106 S. Ct. at 1724; *see also Thomas*, 153 S.W.3d at 777.

In this case, the Commonwealth's Attorney defended his use of the peremptory strike without any prompting or inquiry from the trial court and before any *Batson* challenge could be offered by Appellant. The court then ruled on the ultimate issue of intentional discrimination. Because of this, the preliminary issue of whether Appellant made a prima facie showing became moot. *Hernandez*, 500

U.S. at 359, 111 S. Ct. at 1866; *Commonwealth v. Snodgrass*, 831 S.W.2d 176, 179 (Ky. 1992).

The initial question for our consideration, then, is whether the Commonwealth stated an adequate race-neutral basis for the strike. "A neutral explanation in the context of our analysis here means an explanation based on something other than the race of the juror." *Hernandez*, 500 U.S. at 360, 111 S. Ct. at 1866. Thus, "The issue is the facial validity of the prosecutor's explanation. Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral." *Id.* The burden of meeting this standard is slight since, "The prosecutor's explanation need not rise to the level justifying exercise of a challenge for cause." *Batson*, 476 U.S. at 97, 106 S. Ct. at 1723; *see also Snodgrass*, 831 S.W.2d at 179. Indeed, it does not even "demand an explanation that is persuasive, or even plausible." *Purkett v. Elem*, 514 U.S. 765, 768, 115 S. Ct. 1769, 1771, 131 L. Ed. 2d 834 (1995). As long as the reason given does not deny equal protection, it is enough to satisfy the Commonwealth's burden. *See id.*, 514 U.S. at 769, 115 S. Ct. at 1771.

As noted above, the Commonwealth's Attorney expressed concern that Juror #37 had been friends with Appellant in the past and was a recovering drug addict. Because of this history, the Commonwealth's Attorney believed that her objectivity would inevitably be affected, particularly when it came to sentencing. This explanation for the Commonwealth's desire to exercise a peremptory strike on Juror #37 is race-neutral on its face and does not reveal any

discriminatory intent. Thus, the Commonwealth met its burden under the second *Batson* step.

The third step of the *Batson* analysis required the trial court to determine whether the Commonwealth's race-neutral reason was actually a pretext for racial discrimination. "Because the trial court's decision on this point requires it to assess the credibility and demeanor of the attorneys before it, the trial court's ultimate decision on a *Batson* challenge is like a finding of fact that must be given great deference by an appellate court." *Commonwealth v. Coker*, 241 S.W.3d 305, 308 (Ky. 2007); *see also Gray v. Commonwealth*, 203 S.W.3d 679, 691 (Ky. 2006); *see also Batson*, 476 U.S. at 98 n.21, 106 S. Ct. at 1724 n.21. Accordingly, "On appeal, a trial court's ruling on the issue of discriminatory intent must be sustained unless it is clearly erroneous." *Snyder v. Louisiana*, 552 U.S. 472, 477, 128 S. Ct. 1203, 1207, 170 L. Ed. 2d 175 (2008); *see also Wells v. Commonwealth*, 892 S.W.2d 299, 303 (Ky. 1995).

Appellant argues that the reason for the strike offered by the Commonwealth is suspect since the Commonwealth failed to strike a white juror who had coached Appellant's brother and who knew one of the arresting officers. In response, the Commonwealth contends that the relationship between the panelists and Appellant differed in each case. The white juror stated that he had coached Appellant's brother in middle school, but he did not indicate whether he knew Appellant. In contrast, Juror #37 had a direct connection to Appellant since

she was friends with him in the past, and she also had a history of drug addiction, which was obviously a point of concern in a case involving drug-related charges.

In light of these facts, we cannot say that the trial court clearly erred by rejecting Appellant's claim of discriminatory intent and allowing the Commonwealth to exercise a peremptory strike on Juror #37. Even assuming that Appellant provided sufficient evidence of discriminatory intent, our case law holds that "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Snodgrass*, 831 S.W.2d at 180, quoting *Anderson v. Bessemer City*, 470 U.S. 564, 574, 105 S. Ct. 1504, 1511, 84 L. Ed. 2d 518 (1985). Therefore, we reject Appellant's first claim of error.

Appellant next argues that he was denied his right to a fair trial because he was forced to exercise a peremptory strike on a juror whom the trial court should have struck for cause. Kentucky Rules of Criminal Procedure ("RCr") 9.36(1) provides that, "When there is reasonable ground to believe that a prospective juror cannot render a fair and impartial verdict on the evidence, that juror shall be excused as not qualified." We review a trial court's denial of a motion to strike for cause under an "abuse of discretion" standard. *Ratliff v. Commonwealth*, 194 S.W.3d 258, 266 (Ky. 2006).

In response to a question from defense counsel during voir dire, Juror #3 indicated that he believed a person who had been indicted must have done something to have deserved it. He subsequently approached the bench and told the

trial judge that he thought Appellant, "[M]ust have done a little something wrong, or he wouldn't be here."

The trial judge noted that this was a common feeling among jurors and then asked Juror #3 if he could follow the court's instructions, which would direct him to presume that Appellant was innocent and to base his decision solely on the evidence presented to him and the applicable law. Juror #3 indicated that he could listen to everything said and follow the court's instructions, but he still believed that Appellant had to have done something.

The trial judge then stated, "You feel that there must be some suspicion," to which Juror #3 responded affirmatively. However, Juror #3 then acknowledged again that he could follow instructions and weigh the evidence appropriately in reaching a decision. However, when asked by defense counsel if the judge had changed his feelings in any way, Juror #3 paused before responding, "No, not really." Defense counsel then asked that he be stricken for cause. The trial judge again addressed Juror #3, stating: "I think everybody has those kinds of feelings. The question is: Can you put that feeling aside and follow instructions?" Juror #3 immediately answered, "Yes," and the court denied the motion to strike. Juror #3 remained on the jury panel until the defense used a peremptory strike to remove him.

While the right to an impartial jury is a fundamental constitutional right, "A potential juror should be excused for cause only when the juror cannot conform his/her views to the requirements of law and render a fair and impartial

verdict." *Id.* Ultimately, "It is the probability of bias or prejudice that is determinative in ruling on a challenge for cause." *Pennington v. Commonwealth*, 316 S.W.2d 221, 224 (Ky. 1958). "The court must weigh the probability of bias or prejudice based on the entirety of the juror's responses and demeanor. There is no 'magic question' that can rehabilitate a juror as impartiality is not a technical question but a state of mind." *Shane v. Commonwealth*, 243 S.W.3d 336, 338 (Ky. 2007). Consequently, determining the credibility of the juror's answers is critical. "For instance, a juror might say he can be fair, but disprove that statement by subsequent comments or demeanor so substantially at odds that it is obvious the judge has abused his discretion in deciding the juror is unbiased." *Id.*

We believe that the issue presented here is somewhat close. While Juror #3 affirmed multiple times that he could follow the court's instructions and render a verdict solely on the evidence, he also affirmed multiple times that he believed Appellant had to have done "something" wrong in order to be arrested and put on trial. Frankly, however, we believe that it would defy common sense to suggest that this was not a prevailing feeling among many potential jurors. Indeed, striking all jurors who expressed such a perspective – with no other grounds – would likely lead to a considerable depletion of the Commonwealth's jury pools.

In this instance, Juror #3 knew nothing about the details of the case and did not suggest that he had already concluded that Appellant was guilty of the charged offenses. Instead, he only expressed a vague sentiment that Appellant had to have done "something" to be put on trial. "To hold that the mere existence of

any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard." *Irvin v. Dowd*, 366 U.S. 717, 723, 81 S. Ct. 1639, 1642-43, 6 L. Ed. 2d 751 (1961); *see also Peters v. Commonwealth*, 505 S.W.2d 764, 765 (Ky. 1974). Moreover, our Supreme court has held that, "If after expressing an opinion about an aspect of the case the juror claims to be able to render a fair and impartial verdict based solely on the evidence, a trial court does not necessarily abuse its discretion by allowing that juror to remain on the case." *Allen v. Commonwealth*, 276 S.W.3d 768, 773 (Ky. 2008).

Sub judice, Juror #3 did not even go so far as to offer "an opinion about an aspect of the case," but only noted a general suspicion in light of the fact that Appellant was on trial. Consequently, we cannot say that the trial court abused its discretion in denying Appellant's motion to strike the juror for cause. Therefore, Appellant's second argument is also rejected.

Appellant next contends that the trial court committed reversible error when it failed to admonish the jury during several recesses, including the first recess after the jury was sworn in, a recess towards the end of the reception of evidence, and a recess for dinner during the penalty phase of trial. Defense counsel did not object to any of these failures. Therefore, the issue is not preserved for appellate review. *Salinas v. Commonwealth*, 84 S.W.3d 913, 917 (Ky. 2002).

However, Appellant asks us to consider the issue under the "palpable error" standard set forth in RCr 10.26. That rule provides:

> 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.

RCr 10.26. "In general, a palpable error 'affects the substantial rights of a party' only if 'it is more likely than ordinary error to have affected the judgment.'" *Wiley v. Commonwealth*, 348 S.W.3d 570, 574 (Ky. 2010), quoting *Ernst v. Commonwealth*, 160 S.W.3d 744, 762 (Ky. 2005). "An unpreserved error that is both palpable and prejudicial still does not justify relief unless the reviewing court further determines that it has resulted in a manifest injustice, unless the error so seriously affected the fairness, integrity, or public reputation of the proceeding as to be 'shocking or jurisprudentially intolerable.'" *Id.*, quoting *Martin v. Commonwealth*, 207 S.W.3d 1, 4 (Ky. 2006).

RCr 9.70 provides that jurors:

> [M]ust be admonished by the [trial] court that it is their duty not to permit anyone to speak to, or communicate with, them on any subject connected with the trial, and that all attempts to do so should be immediately reported by them to the court, and that they should not converse among themselves on any subject connected with the trial, nor form, nor express any opinion thereon, until the cause be finally submitted to them.

RCr 9.70. The rule further provides that, "This admonition must be given or referred to by the court at each adjournment." *Id.* The Commonwealth concedes that the trial court did not admonish the jury on the occasions mentioned above. It

notes, however, that the court did properly admonish the jury on all other occasions when the jury was excused from the courtroom.

While the trial court did err in failing to admonish the jury prior to each recess, Appellant has not suggested or shown that he was actually prejudiced by this failure or that a member of the jury behaved contrary to the mandate of the admonitions actually given. Because of this, we assume that any such error was harmless and that reversal is not merited, particularly since we are reviewing the issue under a palpable error standard. *See, e.g.*, *Salinas*, 84 S.W.3d at 917; *Commonwealth v. Messex*, 736 S.W.2d 341, 342 (Ky. 1987); *Daniels v. Commonwealth*, 404 S.W.2d 446, 447 (Ky. 1966).

Appellant next argues that the Commonwealth failed to prove each element of the offense of being a first-degree persistent felony offender. Therefore, he asserts that he was entitled to a directed verdict as to that charge. Appellant specifically contends that the Commonwealth failed to prove beyond a reasonable doubt that he completed service of the sentence on one of his prior felony convictions on December 14, 2009, within five years of the date of his commission of the offenses *sub judice*. It does not appear that Appellant raised this particular claim before the trial court. Therefore, we review it for palpable error pursuant to RCr 10.26.

"The burden is on the government in a criminal case to prove every element of the charged offense beyond a reasonable doubt and the failure to do so is an error of Constitutional magnitude." *Miller v. Commonwealth*, 77 S.W.3d

566, 576 (Ky. 2002); *see also* Kentucky Revised Statutes ("KRS") 500.070(1). A claim that the evidence was insufficient to support a finding that Appellant was a first-degree persistent felony offender "[i]s such that, if the trial court did, in fact, err by failing to direct a verdict of acquittal, that failure would undoubtedly have affected Appellant's substantial rights." *Schoenbachler v. Commonwealth*, 95 S.W.3d 830, 837 (Ky. 2003). Moreover, the trial result necessarily would have been different if the trial court had directed a verdict in Appellant's favor on this issue. *Id.* Consequently, we are compelled to address the merits of Appellant's allegation.

KRS 532.080 defines a first-degree persistent felony offender as:

> [A]person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of two (2) or more felonies, or one (1) or more felony sex crimes against a minor as defined in KRS 17.500, and now stands convicted of any one (1) or more felonies.

KRS 532.080(3). Thus, a finding of guilt for PFO 1st requires at least two prior felony convictions. Of particular note, before an accused may be convicted of PFO 1st, the Commonwealth must also prove that he/she meets one of the following five criteria:

> 1. Completed service of the sentence imposed on any of the previous felony convictions within five (5) years prior to the date of the commission of the felony for which he now stands convicted; or
>
> 2. Was on probation, parole, postincarceration supervision, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release

> from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or
>
> 3. Was discharged from probation, parole, post-incarceration supervision, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
>
> 4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or
>
> 5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.

KRS 532.080(3)(c)(1-5).

The record reflects that on April 5, 2005, the Marion Circuit Court sentenced Appellant to three years' imprisonment after he pled guilty to three counts of flagrant non-support. However, that sentence was probated for a concurrently running period of three years. As noted above, Appellant was found to have committed the offenses *sub judice* on December 14, 2009, less than five years later. The record, though, does not explicitly reveal when Appellant was discharged from probation (KRS 532.080(3)(c)(3)) or otherwise completed his sentence (KRS 532.080(3)(c)(1)) in the other action. Citing to *Davis v. Commonwealth*, 899 S.W.2d 487 (Ky. 1995), Appellant argues that this silence merits reversal on the PFO 1st conviction because, "The Commonwealth has the burden to prove, through direct evidence, that a defendant meets all the criteria for

first degree felony offender status." *Id.* at 490. However, in this instance we disagree.

> Our Supreme Court has recently clarified that it:
>
> > [H]as retreated somewhat from the position "that it is improper for proof of an inferential nature to be used to obtain [a PFO enhancement] and sentence a conviction under its terms," *Davis v. Commonwealth*, 899 S.W.2d 487, 490 (Ky. 1995) (quoting *Hon v. Commonwealth*, 670 S.W.2d 851, 853 (Ky. 1984)), to hold instead that "[a] reasonable inference is sufficient to meet the requirements of the PFO statute," *Martin v. Commonwealth*, 13 S.W.3d 232, 235 (Ky. 1999).

Whittle v. Commonwealth, 352 S.W.3d 898, 907 (Ky. 2011).[3] A reasonable inference, as opposed to mere guesswork, "is a process of reasoning by which a proposition is deduced as a logical consequence from other facts already proven." *Martin*, 13 S.W.3d at 235; *see also Carver v. Commonwealth*, 303 S.W.3d 110, 122 (Ky. 2010).

Under the circumstances, we believe that the jury could reasonably infer that Appellant completed his three-year sentence, was discharged from his three-year term of probation, or was otherwise legally released within five years of commission of the instant offenses. Indeed, no other conclusion can be reached since the convictions that resulted in the probated sentence were entered within five years of the current offenses. *See Shabazz v. Commonwealth*, 153 S.W.3d 806, 814-15 (Ky. 2005). Therefore, Appellant's argument is rejected.

[3] In a footnote, the *Whittle* Court additionally observed that "it is clear that to some extent *Martin* and *Davis* are simply incompatible (especially since *Davis* relied in large part on *Hon*). *Martin* clearly rejected *Davis*'s holding that PFO can only be proved by direct evidence." *Whittle*, 352 S.W.3d at 907 n.3.

Appellant finally argues that the Commonwealth was erroneously allowed to introduce unexemplified federal convictions to support its PFO 1st charge. During the PFO penalty phase, the Commonwealth produced a copy of a judgment showing that Appellant had been convicted on two felony drug possession charges in the United States District Court for the Western District of Kentucky in July 1999. Defense counsel offered a general objection on the grounds that the judgment had not been properly certified; however, the trial court overruled the objection and allowed the judgment to be introduced as evidence.

It is well-established that in order to reliably prove a defendant's prior convictions for PFO purposes, "the evidence of prior convictions must come from the official court record, or certified copies thereof." *Finnell v. Commonwealth*, 295 S.W.3d 829, 835 (Ky. 2009). Appellant contends that the Commonwealth was instead allowed to introduce *a copy of a certified copy* of the judgment, in violation of the self-authentication provisions of Kentucky Rules of Evidence ("KRE") 902 and KRE 1005.

It does not appear that this particular argument was raised below, however. Therefore, it is unpreserved for our review. *Keeton v. Lexington Truck Sales, Inc.*, 275 S.W.3d 723, 726 (Ky.App. 2008); *Jewell v. City of Bardstown*, 260 S.W.3d 348, 350-51 (Ky.App. 2008). Moreover, the copy of the judgment in question is clearly certified under seal by John Sparling, the Deputy Clerk of the U.S. District Court in Louisville, Kentucky, and is affixed with Sparling's original signature and the date of December 2, 2010. Thus, the PFO evidence was properly

admitted as self-authenticating under KRE 1005 and KRE 902(4) since the certificate was made by a public officer having a seal of office and having official duties in the district where the record was kept.[4]

Appellant also argues that the judgment was additionally required to be certified by the judge who presided over it – and not just the court's clerk or other record-holder – before it could be given "full faith and credit" under KRS 422.040. "Proof of Appellant's prior convictions was an indispensable element of the PFO charge…. Thus, when the Commonwealth is seeking to use a prior conviction to enhance a sentence, it is, in fact, seeking 'full faith and credit' of that prior conviction and the requirements of KRS 442.040 must be satisfied." *Merriweather v. Commonwealth*, 99 S.W.3d 448, 452 (Ky. 2003). Where the Commonwealth fails to meet its burden of establishing the authenticity of the prior judgments of conviction, a PFO conviction must be reversed. *Id.* at 453.

While the argument raised by Appellant holds true for records and judicial proceedings from other states ("The records and judicial proceedings of any court of any state, attested by the clerk thereof in due form, with the seal of the court annexed if there be a seal, and certified by the judge, chief justice, or presiding magistrate of the court, shall have the same faith and credit given to them in this state as they would have at the place from which the records come."), KRS

[4] While Belle complains of a copy of a copy, we note that Belle does not allege that the document has been adulterated in comparison to the original or altered or incorrect. Further, the last sentence of KRE 1005, "other evidence of the contents may be given" would appear to be applicable to a situation where, as here, a copy of a copy is submitted and certified in all proper respects.

422.040 does not require this for records and judicial proceedings from federal courts ("The record and judicial proceedings of any court of the United States attested by the clerk thereof, with the seal of the court annexed if there be a seal, shall have the same faith and credit given to them in this state as they would have in the courts of the United States."). The record in question here was attested by a Deputy Clerk of the U.S. District Court and annexed with the Court's seal. Therefore, it was sufficient under KRS 422.040.

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

ALL CONCUR.

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