

RENDERED: AUGUST 23, 2013; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2011-CA-001989-MR

CHRISTOPHER SPEROS

APPELLANT

v. APPEAL FROM PENDLETON CIRCUIT COURT  
HONORABLE JAY DELANEY, JUDGE  
ACTION NO. 11-CR-00016

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \*\* \* \*\* \*

BEFORE: CLAYTON, LAMBERT, AND THOMPSON, JUDGES.

CLAYTON, JUDGE: This is a direct appeal of a guilty verdict in the Pendleton County Circuit Court. Based upon the following, we affirm the decision of the trial court.

## BACKGROUND SUMMARY

On March 6, 2011, the appellant, Christopher Speros, was at the home of Tisa Pompillio (his fiancé) with Pompillio's daughter, L.P., and her grandmother, Billy Russell. The three of them were watching a movie while seated on an L-shaped sofa. L.P. asserts that while they were on the couch, Speros inserted his toe into her vagina. She stated that she was scared and got up and went to the bathroom. L.P. further stated that Speros then followed her into the bathroom, but left when Russell came to the door and asked if they were okay.

Later that evening, while Pompillio was giving L.P. a bath, the child started to cry and told her mother what had happened. Pompillio confronted Speros and he stated that if such a thing had happened, it must have been while he was sleeping on the sofa. Pompillio had her daughter examined and injuries were discovered which were consistent with L.P.'s assertions.

On March 7, 2011, Pompillio and Speros went to the Kentucky State Police and informed them of what L.P. had said. On March 9, 2011, Speros was arrested for first-degree sexual abuse. After a jury trial, Speros was convicted of first-degree sexual abuse. He then brought this appeal.

## STANDARD OF REVIEW

We review evidentiary rulings under an abuse of discretion standard. *Commonwealth v. English*, 993 S.W. 2d 941, 945 (Ky. 1999). It is within the discretion of the trial judge to determine whether the probative value of evidence is outweighed by its possible prejudicial effect. *Id.* In determining whether the trial

court abused its discretion, we must decide whether the trial judge's decision was arbitrary, unreasonable or unsupported by sound legal principles. *Id.* With this standard in mind, we will discuss Speros's arguments.

## DISCUSSION

Speros first contends that the trial court erred when it sustained the Commonwealth's objections to his counsel's motion to introduce the sofa cushions. Speros asked to introduce the cushions because he contended that the accusations made against him were physically impossible. The trial court denied Speros's motion because it agreed with the Commonwealth that the entire couch would then need to be used and that such was not necessary as a visual aid to the jury.

Kentucky Rules of Evidence (KRE) 401 provides that 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." Visual aids may be used to aid a witness's testimony, but are not a substitute for his or her testimony. They may not be admitted as exhibits in the trial. *Hellstrom v. Commonwealth*, 825 S.W.2d 612 (Ky. 1992).

The trial court allowed Speros to use a photograph of the couch as a visual aid to the jury to enable him to show the seating arrangement of himself, L.P. and Russell at the time of the incident. Speros, however, argues that the sofa cushions should have been introduced so the jury could have seen how soft they were. We

do not find that it was an abuse of discretion to deny Speros's motion to use the cushions as a visual aid.

Speros was allowed to tell the jury that the cushions were soft. The jury also saw a picture of the sofa, which enabled them to have a visual aid of the placement of each person on the couch at the time of the incident. We found this is sufficient and the trial court did not abuse its discretion in denying Speros's motion to use the sofa cushions.

Next, Speros contends that the trial court erred when it overruled his objection to rebut the Commonwealth's evidence with language redacted from the March 7<sup>th</sup> statement which referred to his willingness to take a polygraph test. Speros argues that he wanted to let the jury hear the emotion in his voice when Pompillio suggested that he could have made the movements on the couch while he was sleeping. He argues that it was important for him to rebut the circumstantial evidence with his statement that he was willing to take a polygraph to prove to Pompillio that he would never hurt her children. In denying Speros's motion, the trial court ruled that Kentucky case law provided that references to a polygraph were irrelevant. The trial court allowed Trooper Jones to testify that Speros had professed his innocence during the statement.

Evidence of a polygraph examination is not allowed to be introduced in a trial within the Commonwealth. *Morton v. Commonwealth*, 817 S.W.2d218 (Ky. 1991). This is true even if the evidence would be offered as rebuttal. *Mahmoud v. Commonwealth*, 2009 WL 960721 (Ky. App. 2009)(2006-CA-1838-MR). The

redacted statements only dealt with Speros's statements that he would take a polygraph test. The jury was informed through Trooper Jones's testimony that Speros stated his innocence multiple times. Thus, we find that the trial court did not abuse its discretion in admitting the statement with the language redacted.

Speros next asserts that the trial court erred when it allowed the March 7<sup>th</sup> and 8<sup>th</sup> recordings of his statements to remain improperly redacted without knowing what specifically had been redacted. Speros argues allowing statements to be redacted which went to his innocence without referencing a polygraph was in error. The trial court admits that it was not familiar with the original recording, but only the redacted version. Speros does not, however, set forth specific parts of the redacted portions which were in error. As set forth above, the redacted statements regarding the polygraph were not in error. Thus, we find no error in the trial court's admission of the redacted version of Speros's statements regardless of the fact that it had not heard the original version of the statements.

Finally, Speros contends that he was denied effective assistance of counsel at the trial court level. Ineffective assistance of counsel claims are generally not brought on direct appeal but as a collateral attack on the judgment. In *Leonard v. Commonwealth*, 279 S.W.3d 151 (Ky. 2009), the Supreme Court of Kentucky set forth that appeals may only be taken from issues which were originally presented to the trial court. Ineffective assistance of counsel claims may be taken in the form of a direct appeal if they were presented to the trial court through either a motion for a new trial or an evidentiary hearing. Such is not the case before us. Speros

did not bring the ineffective assistance of counsel claim before the trial court and, consequently, it is not part of his direct appeal. Thus, we will not entertain arguments on this issue as it is not properly before us.

For the foregoing reasons, we affirm the evidentiary rulings of the trial court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jodie Drees Ganote  
Cincinnati, Ohio

BRIEF FOR APPELLEE:

Jack Conway  
Attorney General of Kentucky

Courtney J. Hightower  
Frankfort, Kentucky