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Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000618-MR

JERRY LAWSON — APPELLANT

v.

APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE JOHN KNOX MILLS, JUDGE
ACTION NO. 10-CR-00222

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING IN PART,
REVERSING IN PART AND REMANDING

** ** ** ** **

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

ACREE, CHIEF JUDGE: Jerry Lawson appeals the September 21, 2011 judgment of the Laurel Circuit Court entered upon a jury verdict convicting him of several drug-related offenses and sentencing him to ten years' imprisonment. For the

following reasons, we affirm in part, reverse in part, and remand for additional proceedings consistent with this opinion.

I. Facts and Procedure

On the evening of May 20, 2010, Lawson and Heaven Roaden encountered a traffic checkpoint. Lawson was driving. Upon approaching the vehicle, the police officer detected the smell of alcohol. Lawson submitted to a preliminary breath test (PBT), which indicated his blood-alcohol level was below the legal limit of .08.[1] Lawson granted the officer permission to search the vehicle, but cautioned that the vehicle belonged to Roaden. Upon request, Roaden also consented to the search.

The officer discovered numerous drug-related items in the vehicle. Specifically, the officer found: under Roaden's seat, a bottle of whiskey; in the vehicle's center console, a container of coffee creamer with "DONT TOUCH" written on the side; and in the passenger side door slot, two plastic bags of white powder that tested positive for methamphetamine. Further, the officer discovered the following in Roaden's purse: a glass pipe with burn marks and a white powder residue; another bag of white powder; a ziplock bag with four coffee filters that were wet and had a white powdery substance; another coffee filter with "H J" written on the edge of the filter; and a bag of marijuana.

[1] "(1) A person shall not operate or be in physical control of a motor vehicle anywhere in this state: (a) Having an alcohol concentration of 0.08 or more[.]" Kentucky Revised Statutes (KRS) 189A.010(1)(a).

Lawson and Roaden were both indicted for first-degree possession of a control substance; unlawful possession of methamphetamine precursors; possession of an open alcohol beverage container in a motor vehicle; possession of drug paraphernalia; and possession of marijuana. Lawson was also charged with being a second-degree persistent felony offender (PFO II).

Roaden pleaded guilty to possession of methamphetamine and received a three-year probated sentence along with drug court.

Lawson's case came on for trial on August 8, 2011. At the beginning of the trial, the Commonwealth moved to dismiss the unlawful possession of methamphetamine precursors and possession of marijuana charges. At trial, Roaden testified that, upon approaching the traffic checkpoint, Lawson handed her the bags of methamphetamine. Roaden also claimed that she and Lawson shared the methamphetamine pipe, and that Lawson had been drinking out of the whiskey bottle.

The jury returned a guilty verdict, and recommended a sentence of five years' imprisonment for the possession of a controlled substance conviction, enhanced to ten years' imprisonment by virtue of the PFO II status. The jury also recommended a $250.00 fine for the possession of drug paraphernalia conviction, and a $50.00 fine for the possession of an open alcoholic beverage container conviction. The circuit court accepted the jury's recommendation and, by Judgment and Sentence entered on September 21, 2011, sentenced Lawson accordingly. The circuit court also imposed upon Lawson a $250.00 partial public

defender fee. Lawson appealed. We will discuss additional facts as they become relevant to our review.

II. Standard of Review

Lawson concedes that none of the issues raised on appeal are preserved.[2] Therefore, we need only review them for palpable error. *See* RCr[3] 10.26. An error is palpable if it results in manifest injustice. *Id.* "When we engage in palpable error review, our 'focus is on what happened and whether the defect is so manifest, fundamental and unambiguous that it threatens the integrity of the judicial process.'" *Baumia v. Commonwealth*, 402 S.W.3d 530, 542 (Ky. 2013); *Brewer v. Commonwealth*, 206 S.W.3d 343, 349 (Ky. 2006) ("what a palpable error analysis 'boils down to' is whether the reviewing court believes there is a 'substantial possibility' that the result in the case would have been different without the error").

III. Analysis

Before this Court, Lawson asserts: (1) the prosecutor improperly questioned his co-indictee, Roaden, regarding the terms of her plea agreement and

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[2] There is one exception. Lawson accurately points out that he objected, on relevancy grounds, to the admission of any testimony concerning the coffee-creamer container. Lawson did not, however, object on Kentucky Rules of Evidence (KRE) 404(b) grounds, which is the basis for reversal he raises before this Court.

> "It goes without saying that errors to be considered for appellate review must be precisely preserved and identified in the lower court." Or, as Justice Lukowsky stated it in easily understood language, "The appellants will not be permitted to feed one can of worms to the trial judge and another to the appellate court."

Carrier v. Commonwealth, 142 S.W.3d 670, 676-77 (Ky. 2004) (footnotes omitted).

[3] Kentucky Rules of Criminal Procedure

improperly vouched for her credibility; (2) the circuit court erroneously admitted evidence of Lawson's dismissed charges and prior bad acts; (3) during the PFO portion of the trial, the prosecutor improperly elicited testimony concerning the factual details of one of Lawson's prior felony convictions; and (4) numerous sentencing-related errors.

A. Co-Indictee Questioning

Lawson first asserts that the prosecutor improperly questioned Roaden about the terms of her plea agreement and conviction, and improperly vouched for her credibility during closing arguments, resulting in palpable error. We disagree.

During opening arguments, the prosecutor described Roaden's testimony as "very important" and noted that she had already pleaded guilty. During Roaden's direct testimony, the prosecutor elicited testimony about her plea deal, including the fact that she had received a three-year probated sentence on the condition that she complete drug court, and that she had agreed to testify truthfully at Lawson's trial.

Lawson argues he was prejudiced by the prosecutor's opening statement and the admission of Roaden's testimony concerning her guilty plea. Customarily, it is "improper for the Commonwealth to show during its case-in-chief that a co-indictee has already been convicted under the indictment." *St. Clair v. Commonwealth*, 140 S.W.3d 510, 544 (Ky. 2004). "However, if it is apparent from the record that the defendant did not object to the introduction of this evidence and that the defendant tried to use that information as part of his trial

strategy, no reversible error occurred." *King v. Commonwealth*, 276 S.W.3d 270, 277 (Ky. 2009).

Lawson's trial strategy in this case was to pin the drugs and contraband on Roaden. As part of that strategy, Lawson heavily cross-examined Roaden both regarding the terms of her plea agreement and where the various items of contraband were located in the vehicle on the night in question. Lawson also focused his closing argument almost exclusively on Roaden. Lawson reiterated that the whiskey bottle was found under Roaden's seat, the pipe and coffee filters in her purse, and the bags of methamphetamine in a compartment on the passenger-side door where Roaden was seated. Lawson further pointed out that, despite the abundance of contraband found in Roaden's possession, she only received probation. Lawson further attempted to impeach Roaden by noting that, despite her agreement to testify truthfully, she also testified that she was high on the night in the question and could not recall how and why some of the illegal items ended up in her purse.

We are convinced that this case falls squarely into the "exception to the rule . . . [by which] the defendant permits the introduction of such evidence without objection for the purpose of trial strategy[.]" *Tamme v. Commonwealth*, 973 S.W.2d 13, 32-33 (Ky. 1998). While perhaps improper, the Commonwealth merely elicited on direct examination information Lawson intended to – and did – seek on cross-examination; the information played into and directly supported Lawson's defense strategy that the contraband did not belong to him. In such

circumstances, "[h]aving employed that strategy, [Lawson] cannot be heard to complain after the strategy failed." *Id.* at 33. No palpable error occurred.

Along the same line, Lawson contends the prosecutor improperly vouched for Roaden's credibility. During the Commonwealth's closing argument, the prosecutor stated that it was his decision not to include prison time as part of Roaden's plea agreement, and that Roaden "appears to be doing well, doesn't appear to be meth'ed up today[.]"

We agree with Lawson that a prosecutor may not vouch for his or her witnesses. "Improper vouching occurs when the prosecutor supports the credibility of a witness by indicating a personal belief in the witness's credibility thereby placing the prestige of the [prosecutor's] office . . . behind the witness." *United States v. Francis*, 170 F.3d 546, 550 (6th Cir. 1999). Generally, improper vouching consists of blunt comments, such as "I think the witness was candid," or "I think he is honest." *Id.* On the other hand, the prosecutor is allowed great leeway in closing argument to comment on the evidence, including the demeanor of witnesses. *Stopher v. Commonwealth*, 57 S.W.3d 787, 806 (Ky. 2001); *Woodall v. Commonwealth*, 63 S.W.3d 104, 125 (Ky. 2001) (the prosecutor was entitled during closing argument to make a comment on the demeanor of the defendant).

In this case, the prosecutor did not directly comment on Roaden's truthfulness. Instead, the prosecutor was careful to base his statements on Roaden's demeanor, *i.e.*, she *appeared* to be doing well and *appeared* not to be under the influence of methamphetamine. There is no palpable error here.

B. Kentucky Rules of Evidence (KRE) 404(b) Issues

Lawson next argues that the circuit court improperly admitted evidence of Lawson's dismissed crimes and prior bad acts. Specifically, Lawson takes issue with the admission of testimony concerning: the coffee-creamer container with "DONT TOUCH" written on the side; the discovery of marijuana in Lawson's vehicle; and the disparity in age between Lawson and Roaden.

During Lawson's trial, the police officer who conducted the traffic stop testified as to what he discovered in Lawson's vehicle. This included the coffee-creamer container and the marijuana. Another witness testified that testing confirmed that the powder contained in the coffee-creamer container had a pH level of 12, meaning the powder could have been a substance used to manufacture methamphetamine. This witness also confirmed that the coffee-creamer container did not rise to the level of an active one-step methamphetamine laboratory. During Roaden's testimony, she admitted that the marijuana found in the vehicle belonged to her, but she did not know who owned the coffee-creamer container. Roaden also testified that she and Lawson were dating at the time of the traffic stop; she was born in 1990 while Lawson was born in 1959; and that they were drawn together when they "started getting high together."

Lawson argues this evidence is irrelevant and that the Commonwealth introduced it simply to "prove the character of a person in order to show action in conformity therewith." KRE 404(b). The Commonwealth did not elicit this evidence to impugn Lawson's character. Rather, the Commonwealth sought to

paint a complete picture of the crime scene. "One of the accepted bases for the admissibility of evidence of other crimes arises when such evidence 'furnishes part of the context of the crime' or is necessary to a 'full presentation' of the case[.]" *Norton v. Commonwealth*, 890 S.W.2d 632, 638 (Ky. App. 1994). Thus, "where evidence is needed to provide a full presentation of the offense, or to 'complete the story of the crime,' there is no reason to fragment the event by suppressing parts of the *res gestae*." *Webb v. Commonwealth*, 387 S.W.3d 319, 326 (Ky. 2012).

In this case, the Commonwealth asked the arresting police officer and Roaden to describe the contraband found in the car. Their resulting testimony necessarily included the marijuana and coffee-creamer container. Notably, Lawson also questioned Roaden concerning both the marijuana and the coffee-creamer container on cross-examination. Roaden's admission that the marijuana was hers actually lent credence to Lawson's trial position that the contraband discovered in the vehicle did not belong to him, but to Roaden. We are not convinced that the admission of this evidence resulted in palpable error.

Finally, while we certainly question the relevancy of Roaden's testimony concerning the age gap between her and Lawson, it is not evidence of a prior bad act, nor is such testimony "shocking or jurisprudentially intolerable" such that it amounts to palpable error. *Summe v. Gronotte*, 357 S.W.3d 211, 216 (Ky. App. 2011) (citation omitted).

C. Nature of the Prior Offense[4]

During the PFO phase of Lawson's trial, the Commonwealth introduced evidence of Lawson's prior felony convictions through the testimony of a probation and parole officer. The officer testified that Lawson had a 2005 Knox County felony conviction and a 2005 Laurel County felony conviction; in both cases, Lawson was found guilty of manufacturing methamphetamine. In response to questions by the Commonwealth, the officer provided the name and date of birth of Lawson's co-defendant in the 2005 Laurel County case; the co-defendant was twenty years old at the time of conviction. Subsequently, as part of the Commonwealth's closing argument, the prosecutor stated that Lawson cannot learn a lesson, noting that both the 2005 Laurel County case and Lawson's current case involved a twenty-year-old co-defendant.

Lawson argues that the officer's testimony concerning the name and age of his co-defendant in the 2005 Laurel County case coupled with the prosecutor's closing statement prejudiced him by permitting the jury to convict him not only based on what he did, but partly on the ages of his co-defendants. We are not persuaded.

[4] The Commonwealth's brief addressed only one of Lawson's arguments. The Commonwealth is charged with representing the people of this Commonwealth; therefore, its position on each of a criminal appellant's arguments is important to our review. In this case, the page limitation of CR 76.12(4)(b)(i) did not prevent the Commonwealth from fully addressing each of Lawson's claims of error, and yet the Commonwealth's brief is a mere seven pages. The Commonwealth chose not to address most of Lawson's arguments. It is within our discretion to consider that decision a confession of error and rule in Lawson's favor without considering the merits. CR 76.12(8)(c)(iii). While we have decided not to do so in this case but, instead, to address the merits of each of this appellant's issues in this opinion, we might not be so inclined in future cases.

At sentencing, the jury was required to consider Lawson's prior felony conviction(s) to determine his appropriate sentence on his underlying crime, whether he was a PFO II, and an appropriate sentence. *See* KRS[5] 532.055; KRS 532.080; *Cuzick v. Commonwealth*, 276 S.W.3d 260, 263 (Ky. 2009). Under KRS 532.055(2)(a) the Commonwealth was permitted to offer evidence of "the nature of the prior offenses for which [Lawson] was convicted." KRS 532.055(2)(a)(2) Our Supreme Court recently held that "evidence of prior convictions is limited to conveying to the jury the elements of the crimes previously committed." *Mullikan v. Commonwealth*, 341 S.W.3d 99, 109 (Ky. 2011) (discussing KRS 532.055(2)(a): "Evidence may be offered by the Commonwealth relevant to sentencing including . . . prior convictions of the defendant, both felony and misdemeanor [and t]he nature of prior offenses for which he was convicted.").

We agree with Lawson that the officer's testimony regarding the name and birth date of Lawson's co-defendant in the prior felony case exceeded that which is permissible under KRS 432.005(2)(a). Our Supreme Court has clearly stated that the Commonwealth may not introduce factual details of prior crimes beyond their statutory elements. *See Mullikan v. Commonwealth*, 341 S.W.3d at 109. However, we are not convinced that the error in this case was prejudicial, and do not find it to be palpable.

In *Chavies v. Commonwealth*, 354 S.W.3d 103 (Ky. 2011), the Kentucky Supreme Court found the admission of amended and dismissed charges

[5] Kentucky Revised Statutes.

in the penalty phase of the trial to be prejudicial, but not palpable error. *Id.* at 114. The Supreme Court reasoned that the defendant in that case did not receive the maximum penalty for the relevant convictions and that it was more likely that the jury reached its verdict based on the multiple prior convictions presented to them, rather than the improper and prejudicial evidence. *Id.* at 115.

As in *Chavies*, Lawson did not receive the maximum sentence for any of his convictions. Instead, he received modest fines for the possession of an open alcoholic beverage container and possession of drug paraphernalia charges, and the minimum sentence allowed by statute for the possession of methamphetamine charge; with respect to that latter and by far most serious charge, it was simply not possible for the jury to impose a lesser sentence. There was sufficient evidence to convict Lawson of being a PFO II. There is nothing in the record to indicate the jury was inflamed or substantially swayed by the improper evidence. We cannot say the error in this case was one that "so seriously affected the fairness, integrity, or public reputation of the proceeding as to be 'shocking or jurisprudentially intolerable.'" *Summe*, 357 S.W.3d at 216. We find no palpable error.

D. Sentencing Issues

As noted, Lawson concedes he failed to preserve all of the alleged sentencing errors raised before this Court. "[A]n appellate court is not bound to affirm an illegal sentence just because the issue of the illegality was not presented to the trial court." *Jones v. Commonwealth*, 382 S.W.3d 22, 27 (Ky. 2011). Consequently, "true 'sentencing issue[s]' . . . cannot be waived by failure to

object" and may be raised for the first time on appeal. *Roberts v. Commonwealth*, 410 S.W.3d 606, 611 (Ky. 2013).

(i). Statutory Amendments to KRS 218A.1415 and KRS 532.080

Lawson contends the circuit court erroneously sentenced him under the versions of KRS 218A.1415 (first-degree possession of a controlled substance) and KRS 532.080 (persistent felony offender sentencing) in effect at the time he allegedly committed the charged offenses instead of the amended versions of those statutes in effect at the time of his trial. Had the circuit court sentenced him properly, Lawson argues, the maximum sentence he could have received for the possession of a controlled substance conviction was three years' incarceration with either deferred prosecution or presumptive probation. Lawson also points out that, under the amended statute, he was exempt from being found to be a persistent felony offender.

As referenced, Lawson committed the charged offenses on May 20, 2010. His trial occurred on August 8, 2011, and he was convicted and sentenced on September 20, 2011.

Effective June 8, 2011, the Kentucky legislature amended KRS 218A.1415 to reduce the maximum penalty from five years to three years, and to include a preference for deferred prosecution or presumptive probation. The legislature also modified KRS 532.080 such that, in certain circumstances, a conviction under KRS 218A.1415 no longer qualifies as a "prior felony" for purposes of the persistent felony statute. Specifically, the statute provides that:

> A conviction, plea of guilty, or Alford plea under KRS 218A.1415 shall not trigger the application of this section, regardless of the number or type of prior felony convictions that may have been entered against the defendant. A conviction, plea of guilty, or Alford plea under KRS 218A.1415 may be used as a prior felony offense allowing this section to be applied if he or she is subsequently convicted of a different felony offense.

KRS 532.080(8). "Thus, [while] the first sentence of KRS 532.080(8) bars the usage of [the] current or underlying felony possession conviction as a basis for implicating the PFO statute, . . . the second sentence expressly states that *prior* felony possession offenses 'may be used.'" *Boone v. Commonwealth*, 412 S.W.3d 883, 885 (Ky. App. 2013).

Lawson argues that, because his trial started after the effective date of amended KRS 218A.1415 and KRS 532.080, the circuit court was obligated to sentence him pursuant to the amended version of those statutes. KRS 446.110 provides "[i]f any penalty, forfeiture or punishment is mitigated by any provision of the new law, such provision may, by the consent of the party affected, be applied to any judgment pronounced after the new law takes effect." Our Supreme Court has interpreted KRS 446.110 such that an amended "penalty provision" of a criminal statute "*may* be applied retroactively" to any judgment pronounced after the new law takes effect if the amendment definitely mitigates punishment *and* the defendant specifically consents to application of the amendment. *Rodgers*, 285 S.W.3d at 751 (citations omitted).

In this case, Lawson did not request to be sentenced under the amended statutes. Because he failed to do so, he forfeited his right to enjoy the remedial benefits of those amended statutes, and cannot now be heard to complain. *See Meece v. Commonwealth*, 348 S.W.3d 627, 724 (Ky. 2011); *Lawson v. Commonwealth*, 53 S.W.3d 534, 550-51 (Ky. 2001) (finding a defendant did not timely consent because he "did not raise any issue in the trial court concerning the new provisions of KRS Chapter 532"). Further, even if Lawson had requested sentencing under the amended versions of KRS 218A.1415 and KRS 532.080, the Supreme Court's use of the word "may" in *Rodgers* suggests the circuit court retains the discretion not to retroactively apply an amended penalty provision. We conclude the circuit court's decision to sentence Lawson according to the law as it existed at the time he committed the charged crimes did not amount to error.

(ii). Misdemeanor Fines

Lawson next objects to the $50.00 and $250.00 fines imposed upon him for his possession of an open alcoholic beverage contained in a motor vehicle (KRS 189A.530(2)) and possession of drug paraphernalia (KRS 218A.500) convictions, respectively. KRS 534.040 provides, in pertinent part:

> (2) ***Except as otherwise provided for an offense defined outside this code***, a person who has been convicted of any offense other than a felony shall be sentenced, in addition to any other punishment imposed upon him, to pay a fine in an amount not to exceed:
>
> > (a) For a Class A misdemeanor, five hundred dollars ($500); or

(b) For a Class B misdemeanor, two hundred fifty dollars ($250); or
(c) For a violation, two hundred fifty dollars ($250).

. . . .

(4) ***Fines required by this section shall not be imposed upon any person determined by the court to be indigent pursuant to KRS Chapter 31.***

KRS 534.040(2), (4) (emphasis added). The Kentucky Crime Commission/LRC Commentary to KRS 534.040 (1974) reiterates that "[a]s with the provision on fines for felonies, this section does not apply to misdemeanors or violations which are defined outside this Code." The Kentucky Supreme Court has defined the "code" referenced in KRS 534.040 as "the Kentucky Penal Code, KRS Chapters 500-534." *Commonwealth v. Schindler*, 685 S.W.2d 544, 544 (Ky. 1985).

In this case, it is undisputed that the circuit court found Lawson to be an indigent person and appointed a public defender to represent him. However, the violation for which Lawson was convicted – possession of an open beverage contained in a motor vehicle – is defined in KRS 189A.530(2), not KRS Chapters 500-534. This offense is an "offense defined outside the code." KRS 534.040 – including subsection (4) – simply does not apply.

Similarly, Lawson was also convicted of possession of drug paraphernalia, a misdemeanor defined outside the "code" in KRS 218A.500(2). Normally, our analysis of this offense would track our analysis of Lawson's violation conviction. However, in *Roberts v. Commonwealth*, 410 S.W.3d 606

(Ky. 2013), the Kentucky Supreme Court held the trial court "clearly erred" when it imposed a fine upon the indigent defendant for three misdemeanor crimes, one of which was use of or possession with intent to use drug paraphernalia, the same misdemeanor crime for which Lawson was convicted. Because we are bound by Supreme Court precedent, we reverse that part of the circuit court's judgment imposing a $250.00 fine upon Lawson for his misdemeanor conviction of possession of drug paraphernalia, and remand for entry of a judgment consistent with this opinion.

(iii). Partial Public Defender Fee

Finally, Lawson argues the circuit court abused its discretion when it imposed upon him a $250.00 partial public defender fee. Lawson contends he is a poor person unable to pay the fee.

An indigent or needy person is one unable to pay attorney's fees. KRS 31.110. For that reason, "a defendant is entitled to a public defender when he is indigent or a "needy person" under KRS 31.110[.]" *Miller v. Commonwealth*, 391 S.W.3d 857, 870 (Ky. 2013). "Need," however, is a matter of degree. *Maynes v. Commonwealth*, 361 S.W.3d 922, 929 (Ky. 2012). A defendant's indigent (needy) status does not automatically prohibit the circuit court from requiring him "to contribute to his defense if he is able to make such payments." *Goncalves v. Commonwealth*, 404 S.W.3d 180, 209 (Ky. 2013). Thus, a partial public defender fee can be assessed if the trial court determines, at sentencing, that the defendant is "able to pay." *Miller*, 391 S.W.3d at 870; *Gonclaves*, 404 S.W.3d at 209

("Similarly, a determination of whether an indigent defendant can pay a partial fee for his or her representation must be made when he or she is convicted and sentenced.").

In addition to being declared a "needy person," a defendant may also qualify as a "poor person." A poor person is one unable to pay court costs. KRS 23A.205; KRS 453.190(2) (defining a "poor person" as one "who is unable to pay the costs and fees of the proceeding in which he is involved without depriving himself or his dependents of the necessities of life, including food, shelter, or clothing").

These two classifications, *i.e.*, needy and poor, are not mutually exclusive; while an indigent person may not be able to pay attorney's fees, he or she may, in fact, be able to pay court costs. *Maynes v. Commonwealth,* 361 S.W.3d at 929 (explaining a "person may qualify as 'needy' under KRS 31.110 because he cannot afford the services of an attorney yet not be 'poor' under KRS 23A.205"). The inverse, however, does not necessarily hold true. Thus, while a "person can be a **'**needy person' without being a **'**poor person' . . . it does not appear that a person can be 'poor' under KRS 453.190 but nevertheless 'able to pay a partial fee for legal representation.'" *Miller v. Commonwealth*, 391 S.W.3d 857, 871-72 (Ky. 2013). Stated differently, "a person who cannot pay court costs surely cannot pay a partial public defender fee." *Id.* at 871.

In its September 21, 2011 Judgment and Sentence, the circuit court in this matter ordered Lawson to pay a $250.00 partial public defender fee. The circuit court did not declare Lawson to be a poor person. Indeed, the judgment is

wholly silent on this issue. However, during the sentencing hearing, the circuit court verbally waived court costs, implying that Lawson is in fact a poor person. KRS 23A.205 ("The taxation of court costs against a defendant . . . shall be mandatory . . . unless the court finds that the defendant is a poor person[.]").

We are certainly aware that "[c]ircuit courts speak 'only through written orders entered upon the official record.'" *Oakley v. Oakley*, 391 S.W.3d 377, 378 (Ky. App. 2012) (citation omitted). We are also convinced that the circuit court did not intend to rule inconsistently. Accordingly, we think the most prudent course of action is to reverse the imposition of the partial public defender fee and remand for additional findings. Lawson's indigent status is not in dispute. Likewise, the circuit court has already found Lawson able to contribute to his defense. Therefore, on remand the circuit court need only determine if Lawson is a poor person within the meaning of KRS 23A.205. If the circuit court finds Lawson not to be a poor person, it shall reinstate the $250.00 partial public defender fee. If the circuit court finds Lawson to be a poor person, no public defender fee may be imposed upon Lawson.

IV. Conclusion

We reverse the Laurel Circuit Court's September 21, 2011 Judgment and Sentence only to the extent that it improperly imposed a $250.00 misdemeanor fine and a $250 partial public defender fee upon Lawson. We remand for entry of a judgment consistent with this opinion. In all other respects, the judgment is affirmed.

VANMETER, JUDGE, CONCURS.

TAYLOR, JUDGE, DISSENTS WITHOUT OPINION.

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