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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001882-MR

DEWEY R. JUMP — APPELLANT

v.

APPEAL FROM GALLATIN CIRCUIT COURT
HONORABLE JAMES R. SCHRAND II, JUDGE
ACTION NO. 12-CR-00016

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, DIXON AND D. LAMBERT, JUDGES.

COMBS, JUDGE: Dewey Jump appeals a judgment of conviction by the Gallatin Circuit Court following a jury trial. He alleges multiple errors in his trial – some preserved and some unpreserved. After our review of the record and the pertinent law, we affirm.

Jump was arrested as an accomplice in the theft of a John Deere tractor. He was convicted by a jury of theft by unlawful taking of property valued at more than $10,000 in violation of KRS[1] 514.030 and of being a persistent felony offender (PFO) in violation of KRS 532.080. The jury recommended a sentence of fifteen years to serve, and the judge sentenced him to that recommended sentence to run consecutively with another outstanding sentence.

On the morning of December 16, 2011, Doug Parker noticed that his tractor was missing from his farm on Spencer Road in Gallatin County. Tire tracks led toward U.S. 127. Following a tip from a local farmer, Parker and a deputy conducted a search and found the tractor off Highway 16. Parker drove his tractor home that day.

According to John Mullins, who was the principal witness against Jump, it had been Jump's idea to steal the tractor. Jump promised to pay Mullins $1,500 to help steal the tractor, and Mullins was "desperate" for money to buy drugs. They needed a trailer but were unable to obtain one. They set out the next morning without a trailer. They drove a white Chevy Cavalier belonging to Mullins's mother. After arriving at Parker's farm, Jump approached the tractor, found the key in the ignition, and drove the tractor to U.S. 127. They then switched places, and Mullins drove the tractor with Jump following behind in the white Cavalier. They planned to take the tractor to property owned by Mullins's

[1] Kentucky Revised Statutes.

grandmother, a distance of ten to fifteen miles away. The trip would require between two and three hours at tractor speed.

During this trek, Mullins was sighted by Boone County Deputy Sheriff Ken Burcham, who had been advised to look out for the tractor. Deputy Burcham pulled Mullins over. Mullins denied knowing the driver of the white car who had appeared to the officer to be following Mullins. Mullins claimed that he had found the tractor abandoned. Jump had driven away at that point without the officer's having determined his identity or obtaining his license plate number. The officer arrested Mullins. After his arrest, Mullins gave a statement implicating Jump.

Meanwhile, Jump abandoned the car on Ambrose Road and called a friend, Terry McIntyre, to pick him up. McIntyre is Mullins's cousin. Another witness who lived in the area, Larkin LeGrand, testified that he had seen Jump walking along Ambrose Road near where it meets Steel Bottom Road and getting into a car driven by McIntyre. McIntyre testified that he had heard about the tractor theft earlier. He also testified that Jump insisted that McIntyre take him to his house rather than to Jump's own home nearby on Steel Bottom Road. After arriving at McIntyre's house, Jump called his mother to pick him up.

Jump was later arrested at the home he shared with his mother. He denied being with Mullins on the day of the theft, claiming instead to have been splitting wood with McIntyre. However, McIntyre contradicted that alibi in his testimony at trial.

Jump offered no evidence in his defense at trial aside from cross-examination of the Commonwealth's witnesses. He was convicted by the jury and sentenced as noted above. By leave of the Court, he was granted this belated appeal. He argues that the trial court committed multiple errors in regard to the evidence introduced against him.

Jump argues that the trial court committed at least five errors related to the admission of evidence. However, he also concedes that four of these errors were not adequately preserved for this Court to consider on appeal. He requests that this Court review them for palpable error.

Admissibility of evidence is entirely within the discretion of the trial court. *Love v. Commonwealth*, 55 S.W.3d 816, 822 (Ky. 2001). Therefore, we review properly preserved evidentiary rulings of a trial court for abuse of discretion. *Dunlap v. Commonwealth*, 435 S.W.3d 537, 553 (Ky. 2013).

Where alleged errors are not properly preserved for appellate review, RCr[2] 10.26 allows this Court to review and to reverse when an error is "palpable" in that it "affects the substantial rights of a party"; or when it would constitute a "manifest injustice" if allowed to stand. "An error is 'palpable,' we have explained, only if it is clear or plain under current law," and it affects the substantial rights of a party when "it is more likely than ordinary error to have affected the judgment." *Commonwealth v. Jones*, 283 S.W.3d 665, 668 (Ky. 2009) (quoting *Brewer v.*

[2] Kentucky Rules of Criminal Procedure.

Commonwealth, 206 S.W.3d 343 (Ky. 2006), *Ernst v. Commonwealth*, 160 S.W.3d 744 (Ky. 2005)).

Jump's first assignment of error relates to the testimony of Boone County Deputy Sheriff Burcham, who arrested Mullins in the course of responding to the call from dispatch after Parker reported the missing tractor. That call indicated that a tractor had been sighted proceeding on Route 16, followed by a vehicle with its flashers activated.

He read from the notes that he took during the call from dispatch and after the stop and Mullins's arrest. "The driver was asked if he was driving his own tractor. . . . He was asked who was following him in the white vehicle and denied knowing who they were." His notes further stated that the white vehicle was allowed to leave because Burcham was not able to take Mullins into custody and to pursue the vehicle simultaneously.

KRE[3] Rule 801(c) defines hearsay as "a statement other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Jump contends that Burcham's notes were inadmissible because they clearly fell within the definition of hearsay and did not fit within any of the exceptions to the hearsay rule.

Jump cites *Sanborn v. Commonwealth*, 754 S.W.2d 534 (Ky. 1988) (overruled on other grounds by *Hudson v. Commonwealth*, 202 S.W.3d 17 (Ky. 2006)), to argue against the admission of the content of these notes. In *Sanborn*,

[3] Kentucky Rules of Evidence.

the Kentucky Supreme Court held that an officer may testify about information supplied to him only where it explains action the officer takes as the result of having received such information -- and even then, only where an issue as to the officer's action is presented. *Id*. at 541. Reading from the notes does explain why Burcham pulled over the tractor and arrested Mullins instead of pursuing the white car. However, Jump notes that he did not challenge or create an issue concerning the officer's actions on these two points. Thus, *Sanborn* does not apply.

Jump also makes a constitutional argument pursuant to the Confrontation Clause regarding these notes. He contends that the notes were "testimonial" hearsay because they were made in "circumstances which would lead an objective witness to reasonably believe that the statement would be available for use at a later trial." *Crawford v. Washington*, 541 U.S. 36, 51-52 (2004). Testimonial hearsay is admissible only where the declarant is unavailable and the statement is subject to cross-examination. *Id.* In this case, Burcham was available, and he took the stand to offer the hearsay statements. Thus, the argument based on a Confrontation Clause infringement is unavailing.

However, even assuming the presence of a Confrontation Clause violation, we must determine whether the trial court's admission of the evidence was harmless error beyond a reasonable doubt. *Sparkman v. Commonwealth*, 250 S.W.3d 667, 670 (Ky. 2008) (citing *Greene v. Commonwealth*, 197 S.W.3d 76 (Ky. 2006), *Chapman v. California*, 386 U.S. 18 (1967)). The Supreme Court previously defined a test to determine when an evidentiary error is harmless:

> Our inquiry is not simply 'whether there [is] enough [evidence] to support the result, apart from the phase affected by the error. It is rather, even so, whether the error itself had substantial influence. If so, or if one is left in grave doubt, the conviction cannot stand.'

Ordway v. Commonwealth, 391 S.W.3d 762, 774 (Ky. 2013) (quoting *Winstead v. Commonwealth*, 283 S.W.3d 678 (Ky. 2009)).

The testimony offered by Burcham was far less crucial to the Commonwealth's case than was that of Mullins, and it was corroborated by the testimony of other witnesses. This Court must conclude that based on the evidence, any error on this issue was harmless.

Jump next alleges that the testimony of several witnesses contained improper "bolstering" hearsay. KRE 801A(a)(2) prohibits testimony which bolsters the credibility of a witness **unless** his credibility has been impeached. When analyzing KRE 801A(a)(2), the Kentucky Supreme Court has previously held as follows:

> [i]t is improper to permit a witness to testify that another witness has made prior consistent statements, absent an express or implied charge against the declarant of recent fabrication or improper influence. . . . Otherwise the witness is simply vouching for the truthfulness of the declarant's statement, which we have held to be reversible error.

Dickerson v. Commonwealth, 174 S.W.3d 451, 472 (Ky. 2005) (citing *Bussey v. Commonwealth*, 797 S.W.2d 483 (Ky. 1990)).

We have examined the testimony of four witnesses to determine whether it included improper bolstering. Terry McIntyre testified that he learned

of the tractor theft the day that it occurred, the same day that Jump called him to request a ride from Steel Bottom Road to McIntyre's home. John Mullins's brother, Timothy Mullins, testified that he became aware of the theft when he heard that his brother had been arrested for it. He further testified that he was requested by their mother to look for her car. He drove to Jump's house because he knew that John Mullins had spent time with Jump the previous day. Warren McIntyre was working with Timothy Mullins when Parker informed them both of the theft. Warren McIntyre also accompanied Timothy Mullins in his search for his mother's car. Denny French testified that he learned of the theft from Parker, who requested his help in locating his missing tractor.

The testimony of each witness consisted of how he had learned of the disappearance of the tractor. The testimonies did not bolster Burcham's testimony. Instead, they supplemented Burcham's testimony with additional facts obtained independently. Thus, the trial court did not err in admitting this evidence.

We shall next address the issue of "bad act" evidence. Jump filed a motion *in limine* seeking to preclude the introduction of evidence of bad acts allegedly attributable to him. The trial court's order resolving the matter is sufficient to preserve the ruling for appellate review. KRE 103(d). The standard of review for this allegation of error is abuse of discretion. *Dunlap, supra.*

In general, evidence of prior bad acts is not admissible. KRE 404(b) provides that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of the person in order to show actions in conformity

therewith." "Generally speaking, evidence of other crimes or prior bad acts is not admissible unless there is an applicable exception to the rule." *Doneghy v. Commonwealth*, 410 S.W.3d 95, 105-06 (Ky. 2013). However, the Commonwealth contends the evidence fits within the exception found in KRE 404(b)(1), which the Supreme Court has discussed as follows:

> To determine whether evidence of prior bad acts is admissible, we must decide if the evidence is relevant "for some purpose other than to prove the criminal disposition of the accused[,]" probative as to the actual commission of the prior bad act, and not overly prejudicial under KRE 403.

Kerr v. Commonwealth, 400 S.W.3d 250, 260 (Ky. 2013) (quoting *Meece v. Commonwealth*, 348 S.W.3d 627 (Ky. 2011)).

In the case before us, the bad acts at issue were Jump's threats to burn down the home of Mullins and his family and a threat to use "the force of hand" against Mullins. Under *Rodriguez v. Commonwealth*, 107 S.W.3d 215 (Ky. 2003), evidence is properly admitted when it tends to show consciousness of guilt. Case law provides pertinent examples of evidence admissible under KRE 404(b)(1) to demonstrate consciousness of guilt. Threats against third parties are admissible for the purpose of showing consciousness of guilt (*Gabbard v. Commonwealth*, 297 S.W.3d 844 (Ky. 2009)), as are threats against witnesses (*Foley v. Commonwealth*, 942 S.W.2d 876 (Ky. 1997)). Jump's threats clearly fall within the precedent of these cases; but we must consider whether the introduction of evidence of these threats was overly prejudicial.

When reviewing a trial court's conclusion as to the arguably prejudicial effect of evidence under KRE 403, an appellate court "must consider the evidence in the light most favorable to its proponent, giving the evidence its maximum reasonable probative force and its minimum prejudicial value." *Yates v. Commonwealth*, 430 S.W.3d 883, 897 (Ky. 2014) (citing *Major v. Commonwealth,* 177 S.W.3d 700, 707 (Ky. 2005)). Jump's actions near the time of the offense included: driving away when Mullins was pulled over, disposing of the Chevy Cavalier, and attempting to fabricate an alibi. They all reflect a consciousness of guilt, which was also a factor in his threats to Mullins and his family after his indictment. KRE 403 is not a basis for excluding evidence simply because it may have a negative impact or is "prejudicial in the sense that it is detrimental to a party's case." *Webb v. Commonwealth*, 387 S.W.3d 319, 326 (Ky. 2012).

Applying these precedents to the facts, this Court cannot conclude that the trial court abused its discretion in allowing admission of the evidence of Jump's threats against Mullins.

Jump next alleges that the trial court committed reversible, palpable error **during the guilt phase** by allowing Parker to testify as to how he was affected by the theft of his tractor. Once again, this allegation of error was not preserved during the trial proceedings, and Jump requests this Court to review for palpable error.

Parker testified as to the impact the theft had on him. He stated that he changed his habits as the result of being the victim of a crime. He further

testified that his insurance on the tractor had lapsed and that if the tractor had not been recovered, he would have lost more than $20,000. Jump contends that this evidence served no purpose other than to arouse the sympathy of the jury for Parker. The Commonwealth argues that admission of this testimony – even if it were deemed to be erroneous – did not rise to the level of the palpable.

KRS 532.055(2) provides that evidence of victim impact only becomes relevant "[u]pon return of a verdict of guilty. . . ." KRS 532.055(2) and (2)(a)(7). Moreover, the Supreme Court has explicitly found that victim impact testimony in **the guilt** phase of a trial is reversible error. *Clark v. Commonwealth*, 833 S.W.2d 793, 797 (Ky. 1991).

We conclude that the admission of this evidence – even if arguably a close call as to error – did not rise to the level of palpable error under the circumstances of this case. While it would have been more appropriately introduced **during the penalty phase** of the trial, it arguably did serve a function other than being merely an emotional appeal to passion. It did tend to establish the pecuniary loss to Parker of an asset worth at least $20,000 and thus did serve to reinforce an element of the crime charged (*i.e.*, property worth more than $10,000).

Jump finally argues that several instances of prosecutorial misconduct were present in the trial proceedings and that such behavior was so blatant as to render the verdict reversible. *Matheney v. Commonwealth*, 191 S.W.3d 599 (Ky. 2006). Under *Matheney*, a reviewing court must reverse the conviction for prosecutorial misconduct when the "misconduct is 'flagrant' *or* if each of the

following three conditions is satisfied: (1) proof of the defendant's guilt is not overwhelming; (2) defense counsel objected; and (3) the trial court failed to cure the error with a sufficient admonition to the jury." *Matheney* at 606 (emphasis in original).

During the trial proceedings, a series of four events occurred which Jump contends are examples of prosecutorial misconduct. In its case-in-chief, the Commonwealth asked John Mullins to testify about what his parents would think about his role in the theft. When the Commonwealth asked Parker about the impact of the theft, the Commonwealth asserted an impermissible "Golden Rule" argument. In its closing argument during the guilt phase, the Commonwealth asked the jury to compare Doug Parker's worth to that of Dewey Jump. In its penalty phase closing argument, the Commonwealth made an appeal to the jury's sense of community responsibility, noting that a "Gallatin County problem" required a "Gallatin County solution." We shall address each of these allegations of prosecutorial misconduct.

We cannot agree that the Commonwealth's examination of Mullins regarding his parents' thoughts on his involvement constituted prosecutorial misconduct. And Jump failed to object to any possible error on the part of the trial court in allowing such testimony. The Kentucky Supreme Court has addressed with disapproval the attempt to characterize unpreserved evidentiary errors as prosecutorial misconduct. *Noakes v. Commonwealth*, 354 S.W.3d 116 (Ky. 2011);

Davis v. Commonwealth, 967 S.W.2d 574 (Ky. 1998). Consequently, this Court finds no prosecutorial misconduct on this issue.

The concept of the impermissible "Golden Rule" argument is discussed and defined in *Lycans v. Commonwealth*, 562 S.W.2d 303 (Ky. 1978). In a criminal case, a Golden Rule argument is one that "urges the jurors collectively or singularly to place themselves . . . in the place of the person who has been offended and to render a verdict as if they . . . [were] similarly situated." *Id.* at 305. After spending time during the guilt phase characterizing Parker as a hard-working individual and developing evidence on Parker of the impact of the theft of his tractor, the Commonwealth again invited the jury during its guilt phase closing argument to "think about Doug Parker." The Commonwealth disagrees that a Golden Rule argument occurred at all, but we disagree with the Commonwealth that no vestige of the Golden Rule issue existed. Nonetheless, we cannot agree that it was so blatant under these circumstances as to amount to reversible error.

Our Supreme Court has discussed the ramifications of the Golden Rule issue in *Dean v. Commonwealth*, 777 S.W.2d 900 (Ky. 1989) (*overruled on other grounds by Caudill v. Commonwealth*, 120 S.W.3d 635 (Ky. 2003)). In *Dean*, the court condemned "impermissible glorification of the victim" in conjunction with "sensationalizing the victim's suffering." *Id*. at 904.

After our review of the testimony, we cannot agree that either victim glorification or sensationalism was involved. The testimony merely

revealed that Parker was indeed impacted by the crime in that he had changed his habits as a result. There was no sensationalism or drama – merely the straightforward testimony of the possible loss of an asset valued at $20,000. We cannot agree that prosecutorial misconduct occurred on this issue.

We shall now consider the third allegation of prosecutorial misconduct, the Commonwealth's request that the jury compare the worth of the victim with the worth of the defendant in its sentencing phase summation. The Commonwealth claims that it merely requested the jury to consider Jump's criminal history, suggesting he had learned nothing from his prior convictions. It also asked the jury to consider the impact on the victim. Jump correctly argues that it is improper for a jury to base its decisions on who the victim is (*Sanborn* at 676). However, that is not what occurred in this case. After reviewing the record, we conclude that in its closing remarks, the Commonwealth did not ask the jury to compare the relative worth of the victim and defendant. No prosecutorial misconduct occurred.

The fourth and final allegation of prosecutorial misconduct is that the Commonwealth made an impermissible appeal to the jury to act on its "community responsibility." Jump argues that during its closing remarks in the penalty phase of the trial, the Commonwealth engaged in misconduct by referring to him as a "Gallatin County problem" which required the jury to impose a "Gallatin County solution." The Commonwealth contends that Jump has intentionally taken the remarks out of context. Instead, it claims that the phrases at issue were intended to

indicate the special prosecutor's lack of connection to Gallatin County and his hesitance in recommending too harsh a punishment as a result of that fact. The special prosecutor did mention that he was not from Gallatin County. But his comments did come directly after the Commonwealth's discussion of Jump's criminal history and immediately before his reference to Jump as a "Gallatin County problem."

Kentucky Courts have found reversible error in similar comments by prosecutors; *e.g.,* when they stated that the harshest penalty should be imposed if the jurors were "good citizens" (*King v. Commonwealth*, 70 S.W.2d 667, 669 (Ky. 1934)), stated that the death penalty should be imposed to "send a 'message to everyone else similarly situated'" (*Ice v. Commonwealth*, 667 S.W.2d 671, 676 (Ky. 1984)), when the Commonwealth "place[d] upon the jury the burden of doing what is necessary to protect the community" (*Commonwealth v Mitchell*, 165 S.W.3d 129, 132 (Ky. 2005)), and when the Commonwealth made remarks "which tend to cajole or to coerce a jury to reach a verdict which would meet with the public favor" (*Stasel v. Commonwealth*, 278 S.W.2d 727, 729 (Ky. 1955)).

In the case before us, the comments were indeed questionable in context. But they did not rise to the level of the blatant or the prejudicial. Indeed, the record does not reveal the effect of the prejudice alleged with sufficient certainty, and we cannot conclude that the element of manifest injustice is satisfied. Nor can we conclude that the error rises to the level of the palpable.

Jump also alleges the penalty phase of his trial contained several errors. Because these errors were not preserved for appellate review, Jump again requests palpable error review, which we are granting.

Jump first contends that his penalty phase was fatally defective because of a failure to adhere strictly to RCr 9.42(a), which requires the Commonwealth to "state the nature of the charge and the evidence upon which the Commonwealth relies to support it." RCr 9.42(a). According to Jump, violations of the rule occurred when the Commonwealth failed to read the PFO charge of the Indictment to the jury during its opening statement.

While a reading of the Indictment is certainly the most direct means of apprising the jury of the nature of the charge, it is not specifically required under the plain language of the rule. Moreover, in *Calhoun v. Commonwealth*, 378 S.W.2d 222, 224 (Ky. 1964), the Court held that the drafters of RCr 9.42 intentionally abandoned the previous requirement of a full reading of the Indictment for the jury and that the "new rules […] provide for its satisfaction otherwise." The *Calhoun* Court further noted that because the primary purpose of the rule was to describe the nature of the offense, the requirement of a summary of the evidence in an opening statement was "blindly literal" and unnecessary. *Id.*

The Commonwealth's penalty phase opening remarks adequately described the nature of the charge and the evidence supporting it. We can find no error on this issue present in the record.

Jump next contends that the Commonwealth impermissibly introduced evidence of charges for which he had not been convicted. The Commonwealth's witness, an officer from Probation and Parole, gave three instances of testimony which fell outside the range of permissible testimony under KRS 532.055(2)(a)(2). The officer testified that Jump had previously been charged with PFO in the second degree, a charge which was dismissed. The officer next testified that in one of Jump's prior convictions for burglary, he had originally been indicted for a higher degree of burglary. The third instance of impermissible testimony offered by the Commonwealth was that in Jump's prior wanton endangerment conviction, he was originally indicted for a higher degree of wanton endangerment.

The Commonwealth conceded that these errors occurred and admitted that they were in clear violation of the governing statute. However, the Commonwealth downplays these errors as minor. It argues that Jump must show "a reasonable probability that, but for the admission of the prior charges which were dismissed or amended, a different sentence would have been imposed." *Martin v. Commonwealth*, 409 S.W.3d 340 (Ky. 2013). Jump cites to *Blane v. Commonwealth*, 364 S.W.3d 140 (Ky. 2012), for the proposition that admission of evidence of previously dismissed or pre-amendment charges is palpable error. Jump's situation is more factually similar to *Martin* than to *Blane*, and the *Martin* Court ably noted the reasons for the disparate rulings:

In *Blane,* we found palpable error and reversed. There,

> however, the prosecutor had elicited direct testimony about the original charges and then compounded the error by emphasizing them in his closing argument. Embellishing the defendant's criminal history by the explicit reference to the original charges, instead of the offenses of final conviction, resulted in prejudice and led directly to our conclusion in *Blane* that the error was palpable. In contrast to *Blane* where there was testimonial or argumentative reference to the originally charged, but later dismissed or amended, offenses, in this case there is only the *possibility* that the jurors might have gleaned that information if they looked at the judgments during their deliberations.

Martin at 348-49 (internal citations omitted) (emphasis in original).

This Court must conclude that, even though erroneous, the trial court's admission of this evidence did not amount to palpable error.

We have reviewed the record of this case and the pertinent law, and we conclude that overwhelming evidence supported Jump's conviction. After our review for palpable error, we conclude that the majority of the errors alleged did not constitute reversible error.

Therefore, we affirm the judgment of the Gallatin Circuit Court.

DIXON, JUDGE, CONCURS.

D. LAMERT, JUDGE, DISSENTS BY SEPARATE OPINION.

D. LAMBERT, JUDGE, DISSENTING: I respectfully dissent from my colleagues in the majority. I would rule that the trial court committed reversible, palpable, error in allowing clearly improper evidence into the record at trial, and that blatant prosecutorial misconduct permeated both the guilt phase and the sentencing phase, resulting in a questionable verdict.

The Commonwealth's introduction of Parker's testimony, during which he testifies about his personal history and the impact the theft of the tractor had on him serves little purpose other than to enflame the emotions of the jury and prejudice them against Jump. Though the majority is correct in that his testimony established the value of the tractor as an element of the offense, it was hardly as straightforward as the majority stated. No legitimate purpose was served by the Commonwealth eliciting guilt phase testimony that the insurance on the tractor had lapsed and if the tractor had not been returned to him, Parker would have suffered a significant loss. In light of the fact that Parker suffered no actual permanent loss of the property, *any* evidence of the impact of its theft is sensationalized and overly inflammatory.

Additionally, the Commonwealth's characterization of Parker in its closing remarks as a hard-working and law-abiding citizen, who retired from a lifetime of work to take up farming, serves only to impermissibly glorify him, much like the Supreme Court condemned in *Dean v. Commonwealth*, 777 S.W.2d 900 (Ky. 1989) (*overruled on other grounds by Caudill v. Commonwealth*, 120 S.W.3d 635 (Ky. 2003)). This is particularly true when the Commonwealth also casts Jump as a career criminal, and a "Gallatin County problem" in need of a "Gallatin County solution," then invited the jury to "think about Doug Parker" during deliberations. The Supreme Court found palpable error to be evident in a trial prosecuted in a similar manner in *Chavies v. Commonwealth*, 374 S.W.3d 313 (Ky. 2012). "From the beginning of trial to the end, the prosecutor, without

objections from defense counsel, was a runaway train—committing voluminous intentional errors meant to prejudice the jury against the Appellant based on evidence of his character, rather than on evidence of the crime." *Id.* at 323.

The majority even agreed that the Commonwealth presented an impermissible "Golden Rule" argument to the jury in this case, yet found that such an intentional and impermissible act was not so blatant as to amount to reversible error.

Given the authority of *Dean* and *Chavies*, I must respectfully dissent.

BRIEF FOR APPELLANT:

Julia K. Pearson
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway
Attorney General of Kentucky

Jeffrey A. Cross
Assistant Attorney General
Frankfort, Kentucky