

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-001942-MR

TRESS E. PARKER

APPELLANT

v. APPEAL FROM BOURBON CIRCUIT COURT
HONORABLE ROBERT G. JOHNSON, JUDGE
ACTION NO. 13-CR-00082

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: DIXON, JONES, AND MAZE, JUDGES.

DIXON, JUDGE: Tress E. Parker appeals from a Bourbon Circuit Court judgment entered upon a jury verdict convicting him of first-degree trafficking in a controlled substance. We affirm.

On May 30, 2013, drug task force officers from the Kentucky State Police and the Paris Police Department executed a search warrant on the home of Melissa

Adams. Adams was charged with trafficking in a controlled substance, and she agreed to act as a cooperating witness against Parker. Adams, via text message, set up a meeting with Parker to purchase 100 Oxycodone pills for \$26.00 each. Parker was subsequently arrested when he arrived at the agreed-upon location. A search of Parker and his vehicle revealed a cellophane wrapper containing 102 tablets that included three different logoed types of pills, along with \$10,145 in cash and a cellular telephone. A grand jury indicted Parker on one count of trafficking in a controlled substance first degree and being a persistent felony offender (PFO) in the first degree.

A jury trial was held in October 2015. The Commonwealth introduced text messages sent to Adams from Parker's cellular telephone, along with the pills, which tested positive for Oxycodone, and money seized from Parker. Adams testified regarding her role in setting up the transaction to purchase Oxycodone from Parker. Lieutenant Robert Puckett, the arresting officer, testified as to the items seized from Parker, and he also offered expert testimony describing general practices used by persons trafficking in narcotics.¹ The jury found Parker guilty of the charges and recommended an enhanced sentence of ten-years' imprisonment. The court sentenced Parker pursuant to the jury's recommendation, and this appeal followed.

At issue on appeal is the admissibility of Puckett's testimony regarding the general practices of drug traffickers.

¹ At the time of Parker's arrest, Puckett was a narcotics detective with the Paris Police Department working with the KSP Drug Enforcement Special Investigation squad.

Puckett testified regarding his years of experience and training in law enforcement, noting he had investigated at least 200 trafficking cases as a narcotics detective. Puckett differentiated between traffickers and users, explaining drug users typically had only one to three pills in their possession because they tended to ingest the drugs immediately. Puckett also noted his observation that drug traffickers tended to carry substantial amounts of cash in small denominations. At a bench conference to address Parker's objection to these statements, Parker conceded Puckett was qualified to testify as to "drug culture" but argued the objected-to testimony was not relevant. The court overruled Parker's objection.

Our standard of review of a trial court's evidentiary decision is abuse of discretion. *Barnett v. Commonwealth*, 979 S.W.2d 98, 103 (Ky. 1998). Accordingly, we will not disturb the court's ruling unless it was "arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

In *Sargent v. Commonwealth*, 813 S.W.2d 801, 802 (Ky. 1991), the Court approved of an officer's expert opinion the defendant possessed a large quantity of marijuana for sale, rather than personal use, noting the testimony "aided the jury in understanding the evidence and resolving the issues." The Court has also recently explained:

KRE 702, "Testimony by experts," permits testimony of a witness whose "knowledge, skill, experience, training, or education" enables him or her "to assist the trier of

fact to understand the evidence.” Pursuant to this rule, we have allowed duly experienced and trained law enforcement officials to testify as experts concerning the modus operandi of drug dealers with respect to activities outside the knowledge of most jurors

Goben v. Commonwealth, 503 S.W.3d 890, 918 (Ky. 2016)

Based on Puckett’s law enforcement training and experience, he was clearly qualified to testify as an expert regarding the general practices of drug traffickers. Furthermore, evidence is relevant if it has “any tendency to make a material fact more or less probable.” *Id.* at 919. In the case at bar, Puckett testified as to the street value of Oxycodone, asserting it was sometimes as much as \$35 to \$40 per pill and noting drug sellers he had encountered tended to carry large amounts of cash in smaller bills. He further explained that a drug user would not have a large quantity of pills in his possession because he would ingest the drugs quickly. Our review of the record indicates Puckett’s testimony was relevant to assist the jury in understanding aspects of drug culture outside the common knowledge of most jurors and tended to prove Parker possessed the Oxycodone for the purpose of selling it. *Burdell v. Commonwealth*, 990 S.W.2d 628, 634 (Ky. 1999). We conclude the trial court did not abuse its discretion by admitting Puckett’s testimony.

Finally, Parker contends the court abused its discretion by admitting another portion of Puckett’s testimony, wherein the prosecution asked why Puckett charged Parker with possession of Oxycodone with intent to sell. Puckett explained the charge was based on the planned transaction of Adams purchasing 100 Oxycodone

from Parker and that he was found with pills in a cellophane wrapper and large amount of cash.

Parker argues this testimony was inadmissible because it allowed Puckett to convey to the jury that Parker was guilty. Our review of the record indicates Parker failed to timely object to this testimony; consequently, the alleged error was not preserved for appellate review. RCr 9.22. In his reply brief, Parker requests palpable error review.

“A palpable error which affects the substantial rights of a party may be considered . . . 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. To establish manifest injustice, “the required showing is probability of a different result or error so fundamental as to threaten a defendant's entitlement to due process of law.” *Martin v. Commonwealth*, 207 S.W.3d 1, 3 (Ky. 2006).

In the case at bar, the Commonwealth's evidence included Adams's testimony that she set up a meeting with Parker to purchase 100 Oxycodone pills for \$26.00 each, and her testimony was supported by the text messages between Adams and Parker. Puckett's testimony, as the investigating officer, established Parker arrived at the meeting location with 102 pills and \$10,145 cash in his possession. The allegedly impermissible testimony, Puckett's reasoning for charging Parker with trafficking, was essentially a summary of the evidence presented by the Commonwealth. The record clearly reveals ample evidence of

Parker's guilt was presented at trial; consequently, even if we assume the admission of Puckett's testimony was improper, we are not persuaded the error resulted in manifest injustice.

For the reasons stated herein, the judgment of the Bourbon Circuit Court is affirmed.

ALL CONCUR.

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