

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000047-MR

SHELDON EDWARDS

APPELLANT

v. APPEAL FROM ROCKCASTLE CIRCUIT COURT
HONORABLE JEFFREY T. BURDETTE, JUDGE
ACTION NO. 14-CR-00019

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CLAYTON, CHIEF JUDGE; DIXON AND JONES, JUDGES.

CLAYTON, CHIEF JUDGE: Sheldon Edwards appeals from the Rockcastle Circuit Court's final judgment entered December 12, 2016, following his conviction for trafficking in a controlled substance. We affirm the trial court's judgment.

On August 1, 2012, Sergeant Jesse Owens of the Kentucky State Police was on I-75 in Rockcastle County, Kentucky, when he conducted a routine

traffic stop of Edwards's vehicle for following a tractor trailer too closely.¹ Upon walking up to the vehicle, Sergeant Owens observed Edwards in the driver's seat and a hunting knife next to him in the passenger seat. Sergeant Owens asked Edwards to step out of the car. Edwards did so, but then he began to engage in what the sergeant considered to be abnormally confrontational behavior. Sergeant Owens would later testify how most people are compliant during a traffic stop, but Edwards instead became demanding, asking why the sergeant stopped him. Edwards also shoved his hands into his pockets during this confrontation. Sergeant Owens asked Edwards to remove his hands from his pockets. When Edwards complied, Sergeant Owens noticed a bulge in Edwards's pocket.

Based on Edwards's abnormal behavior, the hunting knife in the passenger seat, and the bulge of an unknown object in Edwards's pocket, Sergeant Owens believed it was a necessary safety measure to pat Edwards down for weapons. Edwards pulled away from the pat down and began walking away with a clenched fist, which the sergeant construed as a menacing gesture. Sergeant Owens repeatedly ordered Edwards to stop and put his hands behind his back, but Edwards ignored his commands. Sergeant Owens drew his Taser. Edwards did

¹ The record does not specify the exact statutory code violation Sergeant Owens observed. However, *see, e.g.*, Kentucky Revised Statute (KRS) 189.340(9): "[T]he operator of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having regard for the speed of the vehicle and the traffic upon and condition of the highway."

not become compliant until Sergeant Owens tased him with two complete five-second cycles of electricity.

Once Edwards was compliant, Sergeant Owens patted him down and found the bulge in Edwards's pocket was a plastic bag containing marijuana. A subsequent search of Edwards's vehicle revealed the following: a wallet and a plastic bag, each containing methamphetamine; a spiral-bound ledger with entries indicating what Sergeant Owens believed were references to drug trafficking, as well as lists of radio frequencies used by law enforcement agencies; the hunting knife Sergeant Owens viewed in the passenger seat; a pipe used for smoking narcotics; plastic bags; and a set of digital scales. Edwards's cellphone contained text messages to an unidentified person referencing the sale of an "eight-ball." Detective William Cowan, also with the Kentucky State Police, would later testify an "eight-ball" is a slang term for a crystal or rock of methamphetamine. Finally, Sergeant Owens found a Chinese SKS semiautomatic rifle in the trunk of Edwards's vehicle.

The Rockcastle County grand jury indicted Edwards on one count of first-degree trafficking in a controlled substance (methamphetamine)² enhanced by possession of a firearm.³ The Commonwealth's evidence consisted of testimony

² KRS 218A.1412(1)(b).

³ KRS 218A.992(1)(a).

from Sergeant Owens and Detective Cowan conforming to the above narrative, as well as physical exhibits of the items recovered from Edwards's vehicle.

Edwards testified in his own defense, in which his strategy appeared to be a denial of any intent to sell drugs within Kentucky. He admitted he was a drug addict at the time of his arrest, and further admitted he was a marijuana dealer in his home state of Georgia. Edwards denied being a methamphetamine dealer, claiming instead the methamphetamine in the vehicle was for his personal use. However, he admitted he would sometimes function as a "middle-man" for friends in Georgia, using his friends' money to provide them with methamphetamine he would procure from his own sources. Edwards claimed he did not know any individuals in Kentucky. Edwards also claimed the SKS rifle in the vehicle was for hunting and target shooting, and he was taking the rifle to his parents' home in rural Michigan for those purposes.

Following deliberation, the jury returned a guilty verdict and recommended a sentence of ten years' imprisonment. The trial court entered final judgment on December 12, 2016, sentencing Edwards in accordance with the jury's recommendation. This appeal follows.

Edwards presents six issues on appeal. His first two issues are properly preserved, in which he argues: (1) the trial court erroneously permitted Sergeant Owens to testify about the circumstances leading up to his arrest, and (2)

the trial court erroneously declined to direct a verdict based on his lack of intent to traffic methamphetamine within the Commonwealth of Kentucky. Edwards's next three issues are unpreserved, in which he argues: (1) the trial court erroneously allowed the firearm in his trunk to enhance his trafficking offense, (2) the Commonwealth engaged in misconduct by improperly cross-examining him, and (3) he was denied a fair trial due to the Commonwealth's improper *voir dire*. In his sixth and final issue on appeal, Edwards argues the effect of these cumulative errors rendered his trial fundamentally unfair. We consider each argument in turn below.

For his first preserved issue, Edwards argues the trial court erroneously allowed Sergeant Owens to testify regarding Edwards's noncompliant behavior during the traffic stop and his subsequent tasing. He contends the testimony was not relevant under Kentucky Rule of Evidence (KRE) 402 and unduly prejudicial under KRE 403. Furthermore, Edwards asserts the testimony should have been excluded as a "prior bad act" under KRE 404(b), which forbids "[e]vidence of other crimes, wrongs, or acts . . . to prove the character of a person in order to show action in conformity therewith."

KRE 402, in pertinent part, simply states "[a]ll relevant evidence is admissible" and "[e]vidence which is not relevant is not admissible." An appellate court affords substantial deference to a trial court's relevancy rulings. *Kerr v.*

Commonwealth, 400 S.W.3d 250, 259 (Ky. 2013). We will not disturb the trial court’s decisions on relevance “without a clear showing of abuse of discretion.” *Id.* (citation omitted). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

KRE 403 allows the trial court to weigh relevant evidence, excluding evidence where, *inter alia*, “probative value is substantially outweighed by the danger of undue prejudice[.]” A trial court has substantial discretion in performing this balancing test. *Doneghy v. Commonwealth*, 410 S.W.3d 95, 109 (Ky. 2013). KRE 403 provides a high level of deference to the trial court because “[t]he trial judge has a better vantage point to both detect and assess the concerns in [KRE 403] and to balance them against probative value as [the trial judge] hears and sees the witnesses, the performances of the lawyers, and the reactions of the jury.” *Id.* (citations and internal quotation marks omitted).

Despite Edwards’s arguments to the contrary, Sergeant Owens’s testimony regarding the circumstances of his arrest is relevant and admissible under KRE 402 and KRE 403. “To avoid leaving triers of fact with mere fragments of information[,] . . . relevant evidence is and must be viewed as including evidentiary facts needed to portray the general nature and character of litigation, what the drafters of the Federal rules described as ‘background.’” *Kerr*,

400 S.W.3d at 259-60 (quoting ROBERT G. LAWSON, THE KENTUCKY EVIDENCE LAW HANDBOOK Ch. 2 § 2.05(3) (4th ed. 2003)) (internal quotation marks omitted). In a criminal case, it is important for the jury to understand the context of the investigation and subsequent arrest. “[A] jury is entitled to know the circumstances and background of a criminal charge” in order to provide “proper context in which to understand [an officer’s] actions.” *Id.* at 262 (quoting *United States v. LaDue*, 561 F.3d 855, 857-58 (8th Cir. 2009)).

Similarly, character evidence which would otherwise be excluded under KRE 404(b) as a prior bad act may be nonetheless admitted if it is “inextricably intertwined with other evidence essential to the case[.]” KRE 404(b)(2). Courts consistently deem the circumstances leading up to arrest as inextricably intertwined with the arrest itself; the Kentucky Supreme Court found it persuasive that “[e]very circuit now applies some formulation of the inextricably intertwined ‘test[.]’” regarding the admission of prior bad act evidence. *Kerr*, 400 S.W.3d at 261 (quoting *United States v. Bowie*, 232 F.3d 923, 927 (D.C. Cir. 2000) (citations omitted)). “[T]he acts that constitute crimes cannot be understood without at least some reference to acts, events, or conditions that lead up to them[.]” *Id.* (quoting CHRISTOPHER B. MUELLER AND LAIRD C. KIRKPATRICK, 1 FEDERAL EVIDENCE Ch. 4 § 4:33 (3d ed. 2012)). The trial court did not abuse its

discretion in permitting Sergeant Owens to testify about the sequence of events leading to Edwards's arrest.

For his second preserved argument, Edwards contends the trial court erred in denying his motion for a directed verdict on the trafficking charge on the basis of venue, asserting there was no evidence he possessed methamphetamine with the specific intent to traffic it within Kentucky. According to Edwards, he was merely on his way to Michigan when apprehended. Edwards asserted he had no personal or professional contacts in Kentucky, and the Commonwealth failed to prove—by a controlled purchase, confidential informant, or any other method—that he provided methamphetamine to anyone in Kentucky. In its denial of the motion, the trial court ruled against Edwards's reading of the law, finding such an interpretation would prevent prosecution under the trafficking statute upon a defendant's mere claim he or she was "just passing through."

Because this issue concerns interpretation of a statute, it is a question of law we review *de novo*. *Commonwealth v. Love*, 334 S.W.3d 92, 93 (Ky. 2011). "When interpreting statutes, our utmost duty is to 'effectuate the intent of the legislature.'" *Brewer v. Commonwealth*, 478 S.W.3d 363, 371 (Ky. 2015) (quoting *Commonwealth v. Plowman*, 86 S.W.3d 47, 49 (Ky. 2002)). "A basic rule in statutory interpretation is that the 'plain meaning' of the statute controls." *Commonwealth v. McBride*, 281 S.W.3d 799, 803 (Ky. 2009). However,

“technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed according to such meaning.”

KRS 446.080(4); *Love*, 334 S.W.3d at 93 n.3.

Edwards was convicted for trafficking in a controlled substance under KRS 218A.1412(1)(b): “A person is guilty of trafficking in a controlled substance in the first degree when he or she knowingly and unlawfully traffics in . . . [t]wo (2) grams or more of methamphetamine[.]” As defined by the General Assembly, “[t]raffic . . . means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance[.]” KRS 218A.010(55).

According to the instructions and the verdict form contained in the record, Edwards’s jury convicted him by finding he possessed two or more grams of methamphetamine with the intent to sell it. Nothing more was required for the jury to find Edwards guilty of trafficking under the statutes. Neither KRS 218A.1412(1)(b) nor KRS 218A.010(55) requires the Commonwealth to prove venue, *i.e.*, where Edwards intended to sell the drugs, as an element of the offense, and we may not insert such a requirement into the statutes. “[W]e are not free . . . to add to or subtract from the statutory language.” *Ballinger v. Commonwealth*, 459 S.W.3d 349, 354 (Ky. 2015); *see also Commonwealth v. Harrelson*, 14 S.W.3d 541, 546 (Ky. 2000) (“Where a statute is intelligible on its face, the courts

are not at liberty to supply words or insert something or make additions which . . . cure an omission.”). The trial court correctly declined to accept Edwards’s interpretation of the trafficking statute.

For his unpreserved issues, Edwards requests review for palpable error pursuant to Kentucky Rule of Criminal Procedure (RCr) 10.26:

Under Criminal Rule 10.26, an unpreserved error may only be corrected on appeal if the error is both palpable and affects the substantial rights of a party to such a degree that it can be determined manifest injustice resulted from the error. For error to be palpable, it must be easily perceptible, plain, obvious and readily noticeable. The rule’s requirement of manifest injustice requires showing . . . [a] probability of a different result or error so fundamental as to threaten a defendant’s entitlement to due process of law.

Young v. Commonwealth, 426 S.W.3d 577, 584 (Ky. 2014) (citations and internal quotation marks omitted). “For an error to be palpable, it must . . . involve prejudice more egregious than that occurring in reversible error.” *Brewer v. Commonwealth*, 206 S.W.3d 343, 349 (Ky. 2006) (citation and internal quotation marks omitted). In addition, “[a]n error is palpable only if it is shocking or jurisprudentially intolerable.” *Allen v. Commonwealth*, 286 S.W.3d 221, 226 (Ky. 2009) (citation and internal quotation marks omitted).

For his first unpreserved issue, Edwards argues the trial court erred by its failure to grant a directed verdict on the firearm enhancement. KRS 218A.992(1)(a) provides that “any person who is convicted of any violation of this

chapter who, at the time of the commission of the offense and in furtherance of the offense, was in possession of a firearm, shall . . . [b]e penalized one (1) class more severely than provided in the penalty provision pertaining to that offense if it is a felony[.]” Edwards was convicted of first-degree trafficking in a controlled substance, first offense, which is ordinarily a Class C felony. KRS 218A.1412(3)(a). The firearm enhancement elevated Edwards’s sentence to that of a Class B felony, or ten to twenty years’ imprisonment. KRS 532.060(2)(b). The trial court ultimately sentenced Edwards to ten years’ imprisonment.

Edwards now argues the firearm enhancement was improperly applied to his trafficking offense. In *Commonwealth v. Montaque*, 23 S.W.3d 629 (Ky. 2000), the Kentucky Supreme Court explained that enhancement of an offense under KRS 218A.992 “requires a nexus between the crime committed and the possession of a firearm.” *Id.* at 632. Furthermore, “mere contemporaneous possession of a firearm is not sufficient to satisfy the nexus requirement.” *Id.* The Supreme Court then provided the following guidance:

While we decline to draw a bright-line rule to conclusively determine whether a nexus between the commission of the offense and the firearm possession has been established, we can make some general observations. First, whenever it is established that a defendant was in actual possession of a firearm when arrested, or that a defendant had constructive possession of a firearm within his or her “immediate control when arrested,” then, like under the federal sentencing guidelines, the Commonwealth should not have to prove

any connection between the offense and the possession for the sentence enhancement to be applicable. However, the defendant should be allowed to introduce evidence to the contrary, which would create an issue of fact on the issue.

Id. at 632-33 (citation and footnote omitted). Following *Montaque*, the General Assembly amended KRS 218A.992 to incorporate the nexus requirement, adding the firearm must be “in furtherance of the offense[.]” 2005 Ky. Acts, ch. 150, § 12 (effective June 20, 2005).

Edwards contends the Commonwealth failed to prove a nexus between the SKS rifle and the trafficking charge. He asserts the rifle was in his trunk and thus not within his “immediate control” at the time of his arrest. Consequently, Edwards argues the Commonwealth did not show a sufficient nexus between the firearm and the trafficking offense. We disagree. *Montaque* was a trafficking case which involved a firearm hidden inside the trunk of a vehicle. *Montaque*, 23 S.W.3d at 631. The Kentucky Supreme Court found no sufficient nexus in that case because the drugs were inside the appellant’s apartment; therefore, “there [was] nothing to connect the gun or the [vehicle] to the possession or the trafficking of drugs.” *Id.* at 633. *Montaque* contemplates a fact pattern similar to the instant case, hypothesizing the presence of a firearm with drugs inside a vehicle would, of itself, suffice to create a question of fact for the jury regarding enhancement. *Id.* In short, *Montaque* does not support Edwards’s

contention that the firearm must be in the passenger compartment of the vehicle to show a nexus to the trafficked drugs, but only that the firearm should be found within the vehicle.

Subsequent case law has reinforced this point. “[C]onstructive possession of a firearm within a vehicle at the time of arrest and the commission of the offense, as here, satisfies the ‘nexus’ requirement of KRS 218A.992.” *Kotila v. Commonwealth*, 114 S.W.3d 226, 247 (Ky. 2003), *overruled on other grounds by Matheney v. Commonwealth*, 191 S.W.3d 599 (Ky. 2006). Furthermore,

[o]nce it is established that a defendant was in possession of a weapon during the commission of an offense, a presumption arises that such possession was connected to the offense. . . . [T]he government does not have to produce any further evidence establishing a connection between the weapon and the offense[.]

Lunsford v. Commonwealth, 139 S.W.3d 926, 932 (Ky. App. 2004) (citation and internal quotation marks omitted). “This presumption is not conclusive, however, as the defendant may introduce evidence to the contrary which would create an issue of fact for the jury to resolve.” *Id.* at 932 n.35 (citing *Montaque*, 23 S.W.3d at 633).

Edwards claimed his rifle was for target practice in Michigan, while the Commonwealth asserted Edwards possessed the rifle to further his drug trafficking activities. This was a factual question the jury ultimately resolved in the Commonwealth’s favor. Consistent with *Montaque* and KRS 218A.992, the

trafficking instruction in Edwards's trial required the jury to find "[t]he firearm furthered the offense." We discern no manifest injustice resulting in palpable error under RCr 10.26.

In Edwards's second unpreserved issue, he contends the Commonwealth engaged in prosecutorial misconduct based on its cross-examination of him. Specifically, Edwards argues the trial court erroneously permitted the Commonwealth to ask him whether Sergeant Owens was truthful in describing the circumstances of his arrest, whether Edwards was discharged from the military based on drug offenses, and whether he was a convicted felon. Edwards now argues this improper questioning deprived him of a fair trial.

Edwards correctly asserts the Commonwealth's question about the truthfulness of Sergeant Owens's testimony was improper:

A witness should not be required to characterize the testimony of another witness, particularly a well-respected police officer, as lying. Such a characterization places the witness in such an unflattering light as to potentially undermine his entire testimony. Counsel should be sufficiently articulate to show the jury where the testimony of the witnesses differ without resort to blunt force.

Moss v. Commonwealth, 949 S.W.2d 579, 583 (Ky. 1997). Although the Commonwealth's questioning on this point was certainly erroneous, the Kentucky Supreme Court notes it "has never found a *Moss* violation to rise to palpable error under RCr 10.26." *Parker v. Commonwealth*, 482 S.W.3d 394, 406 (Ky. 2016)

(citing *Luna v. Commonwealth*, 460 S.W.3d 851 (Ky. 2015)). The Commonwealth's error does not rise to the level of manifest injustice, showing "[a] probability of a different result or error so fundamental as to threaten a defendant's entitlement to due process of law." *Young*, 426 S.W.3d at 584. Accordingly, we discern no palpable error on this issue.

Next, Edwards correctly contends the Commonwealth's questions about his military discharge and status as a felon were improper. KRE 609 permits the Commonwealth to impeach the credibility of a witness by asking, subject to certain conditions, whether the witness is a convicted felon. However, it is imperative for the Commonwealth to have a reasonable basis to ask the question. Edwards denied he was a convicted felon and denied he was discharged from the military for drug-related reasons, yet the Commonwealth produced no evidence to impeach his answers. "While KRE 609 permits impeachment with a felony conviction, the Commonwealth may not deliberately inject into the case an issue prejudicial to the rights of defendant without some reasonable basis for the questions." *Chavies v. Commonwealth*, 374 S.W.3d 313, 322 n.6 (Ky. 2012) (citation and internal quotation marks omitted).

Although the Commonwealth's questions about Edwards's military discharge and status as a felon were improper, a careful examination of the facts in *Chavies* distinguishes it from the case *sub judice*. In *Chavies*, the Kentucky

Supreme Court found palpable error based on overwhelming amounts of inappropriate testimony elicited by the Commonwealth, which included hearsay, impermissible bolstering, and improper character evidence. *Id.* at 322-23. As noted by the Supreme Court, “[f]rom 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. Furthermore, the outcome in *Chavies* hinged on the credibility of witnesses without corroborating physical evidence, which meant the Commonwealth’s repeated improper attacks on the appellant’s character and credibility heightened their prejudicial effect. *Id.*

Here, the Commonwealth’s errors on cross-examination are relatively few, compared to the number of those found in *Chavies*. More significantly, the Commonwealth’s case against Edwards had substantial evidence in the number and type of physical exhibits indicative of trafficking, including drugs, digital scales, plastic bags, a sales ledger, and text messages from Edwards’s cellphone referencing the sale of a “eight-ball.” A palpable error is that which is “so egregious that it jumps off the page . . . and cries out for relief.” *Id.* (quoting *Alford v. Commonwealth*, 338 S.W.3d 240, 251 (Ky. 2011) (Cunningham, J., concurring)). The Commonwealth’s questions were improper, but they were not so

egregious as to cry out for relief, as in *Chavies*, nor were they so “shocking or jurisprudentially intolerable,” *Allen*, 286 S.W.3d at 226, as to result in palpable error.

For Edwards’s third unpreserved issue, he contends the Commonwealth deprived him of a fair trial by its improper questioning of the venire during *voir dire*. Specifically, Edwards points to the following exchange:

Commonwealth: Who has an idea of what a prosecutor does?

Venireperson: I think that you help put bad people in jail. I mean, that’s some of it.

Commonwealth: Is that fair? Does anybody agree or disagree with that? That’s a very common perception, and to a large extent, that is what I do. I’ve had it explained to me this way, and through my readings, I see it this way—if that’s what the case calls for, then I agree with you. But as I stand here in the courtroom, my duty is broader than that. I have a duty to make sure that this case is tried fairly, too. I can’t do anything that would be prejudicial to Mr. Edwards. I have to make sure that I prove the case beyond a reasonable doubt. And those are concepts I feel very heavy about. It’s something I don’t take lightly. Can we all agree here today that the burden of proof today is beyond a reasonable doubt? I can’t define that for you; however, we can all agree that’s the proof. And secondly, can we all agree that Mr. Edwards deserves a fair trial? And I agree very wholeheartedly with that.

Edwards asserts the Commonwealth’s response to the venireperson, which is admittedly difficult to understand from the recording, was “that’s fair,” instead of

“is that fair?” Under either interpretation of the phrase, Edwards now argues the Commonwealth condoned the *venireperson*’s comment, thereby misrepresenting the role of a prosecutor as someone who was there to “put bad people in jail.” Edwards then argues this allowed the improper assertion to take root in the juror’s minds and misrepresented the jury’s role as deciding whether Edwards was a “bad person.”

Edwards’s allegation may be categorized as prosecutorial misconduct on *voir dire*. In analyzing such allegations of error, the Kentucky Supreme Court has stated, “A wide latitude is allowed counsel in examining jurors on their *voir dire*. The scope of inquiry is best governed by a wise and liberal discretion of the court. The exercise of the discretion does not constitute reversible error unless clearly abused[.]” *Lawson v. Commonwealth*, 53 S.W.3d 534, 539 n.3 (Ky. 2001) (quoting *Webb v. Commonwealth*, 314 S.W.2d 543, 545 (Ky. 1958)).

Demonstrating clear abuse of discretion is even more difficult when the purported error is unreserved. “Where there was no objection, we will reverse only where the misconduct was flagrant and was such as to render the trial fundamentally unfair.” *Duncan v. Commonwealth*, 322 S.W.3d 81, 87 (Ky. 2010).

Based on these principles, we cannot conclude the Commonwealth’s comments during *voir dire* were in any way prejudicial to Edwards. First, we must point out it was the *venireperson*, not the Commonwealth, who remarked that the

prosecutor's role was to "put bad people in jail." Once the comment was uttered, the Commonwealth took the venireperson's errant response and turned it into a lesson about the prosecutor's responsibility to try the *case*: "I have a duty to make sure that this case is tried fairly, too. I can't do anything that would be prejudicial to Mr. Edwards. I have to make sure that I prove the case beyond a reasonable doubt." Furthermore, the Commonwealth, unprompted, took the extra step to emphasize Edwards should be given a fair trial. There was nothing improper in the Commonwealth's *voir dire* and certainly no flagrant misconduct which would render the trial unfair. There was no palpable error on this issue.

For his last argument on appeal, Edwards contends he suffered cumulative error from the combined weight of the preceding issues, rendering his trial fundamentally unfair. As previously discussed, however, the Commonwealth only erred in its cross-examination of Edwards, and those unpreserved errors did not rise to the level of prejudice required to find palpable error. Therefore, Edwards cannot demonstrate his trial was fundamentally unfair from cumulative error. "Where . . . none of the errors individually raised any real question of prejudice, we have declined to hold that the absence of prejudice plus the absence of prejudice somehow adds up to prejudice." *Brown v. Commonwealth*, 313 S.W.3d 577, 631 (Ky. 2010) (citing *Furnish v. Commonwealth*, 95 S.W.3d 34 (Ky. 2002)).

For the foregoing reasons, we affirm the Rockcastle Circuit Court's judgment of conviction entered December 12, 2016.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Molly Mattingly
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Andy Beshear
Attorney General of Kentucky

M. Brandon Roberts
Assistant Attorney General
Frankfort, Kentucky