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NOT TO BE PUBLISHED

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

NO. 2017-CA-000173-MR

DEJUAN WILLIAMS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE JAMES D. ISHMAEL, JR., JUDGE  
ACTION NO. 15-CR-00211-001

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, JONES, AND MAZE, JUDGES.

JONES, JUDGE: The Appellant, Dejuan Williams (“Dejuan”), was charged with having committed burglary in the first degree and assault in the fourth degree.

Following a criminal trial, a jury sitting in Fayette Circuit Court found him guilty of both charges. Dejuan was sentenced to a maximum of ten years’ imprisonment for the burglary and six months’ imprisonment for the assault to run concurrently.

Dejuan now appeals as a matter of right. On appeal, Dejuan asserts: (1) that the

trial court erred when it did not declare a mistrial after a prosecution witness informed the jury that Dejuan was out on bail; (2) that the trial court erred when it failed to grant a directed verdict of acquittal on the burglary charge because the Commonwealth failed to prove all elements necessary to support a conviction; and (3) that the trial court erred when it answered a jury question thereby prejudicing Dejuan. Having reviewed the record in conjunction with all applicable legal authority, we find no error. Therefore, we AFFIRM.

### **I. BACKGROUND**

On November 21, 2014, Dejuan traveled with his stepfather, Jesse Hopkins (“Jesse”), to Lexington, Kentucky, from Detroit, Michigan. They were travelling to visit Dejuan’s on-again, off-again girlfriend, Joi Knighton (“Joi”). Dejuan and Jesse met Joi at her apartment at about 11:00 in the morning. Dejuan took a shower in Joi’s apartment, and then Dejuan and Jesse left to spend time in Lexington while Joi left to get groceries. After Joi returned from the grocery store, Dejuan and Jesse met her at her apartment. Jesse began cooking dinner for the three, but realized he needed some additional ingredients. Joi and Dejuan made two different trips to the grocery to get the additional supplies Jesse requested. While out, Joi and Dejuan also purchased beer and cognac.

The three ate the dinner Jesse prepared and began having drinks. Jesse was drinking the beer; Joi and Dejuan were drinking the cognac. After

having several drinks, they decided to go bowling together. They took the cognac and got into Joi's car. Joi drove them to a local bowling alley. By this time, it was between 9:00 and 9:30 p.m.

The three bowled for a few hours. In addition to the cognac they brought with them, they also purchased several drinks from the bar. At one point, while Dejuan was at the bar, Jesse and Joi started discussing the relationship problems between Joi and Dejuan. Dejuan joined the conversation when he returned from the bar. The evening soon took a turn for the worse. Joi and Dejuan began arguing with one another. Eventually, Joi left the bowling alley with Dejuan pursuing her. Jesse joined the two in the parking lot. They all got back in Joi's car where the argument between Joi and Dejuan continued.

Joi drove the three back to her apartment complex where she parked the car. By the time they got out of the car, all three were arguing. The verbal disagreement quickly escalated into a physical altercation. At trial, Joi testified while the three were arguing in the parking lot, Dejuan punched her and that when she pushed him back, he punched her a second time. Dejuan denied punching Joi in the parking lot. Jesse testified that the two were "tussling" with each other in the parking lot. At this point, Joi yelled that she was going to call the police. She then ran up to her third-story apartment, went inside, and locked the door. Once inside, Joi began looking for her cell phone so that she could call the police.

Within sixty seconds of entering her apartment, Joi heard a loud “boom.” Jesse stumbled into her apartment, having broken down the door with his shoulder. In response, Joi ran to the kitchen to grab a knife from the butcher block. Joi, however, discarded the knife because it was too sharp and grabbed a duller breadknife. Close behind Jesse, Dejuan entered the apartment. Joi yelled at both Jesse and Dejuan to leave her apartment, but neither Jesse nor Dejuan left. Instead, Jesse wrapped Joi in a “bear hug” from behind, pinning her arms at her side. Dejuan then hit Joi in the head several times, even ripping Joi’s weave out of her hair.<sup>1</sup> After Joi was finally able to escape Jesse’s grasp, Joi fled her apartment with the breadknife still in her hand and knocked on her neighbor’s door. After no one answered, Joi ran into the parking lot and made a mental note of Jesse’s license plate number.

When Dejuan and Jesse made their way toward the parking lot, Dejuan confronted Joi and shoved her. Joi fell face-first onto the concrete sidewalk. Dejuan then sat on top of Joi, pushing her face into the dirt beside the sidewalk. While Joi screamed for help, Dejuan hit her and tried to take the breadknife from her hand. Dejuan grabbed the breadknife’s blade, and Joi held onto the breadknife’s handle. A struggle for the breadknife ensued until Joi let go

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<sup>1</sup> It was undisputed that Dejuan hit Joi at least once while Jesse had her wrapped in a “bear hug.”

of it. At that point, Jesse came into the fray, grabbing the breadknife and throwing it away from the fracas.

Despite Joi's hope that letting go of the knife would end the assault, Dejuan flipped Joi over and began "chewing" on her face, locking his teeth onto her chin, and growling. Dejuan even allegedly taunted Joi for her inability to fend him off, but Jesse came back into the fray to tell Dejuan that they had to leave. At that point, Dejuan got off of Joi and left with Jesse. The two men drove out of the parking lot. They returned to Detroit.

A neighbor, Cornelia Jackson ("Cornelia"), who had heard Joi's screams, approached Joi after Dejuan and Jesse had left and asked her if she needed help. Cornelia told Joi that she had already called the police. Cornelia took Joi to Cornelia's apartment and then walked with Joi to Joi's apartment. There, Joi finally found her phone on her couch and called the police herself, since the police had not arrived yet.

Officers Ethan Jennings and Charles Davis of the Lexington Police Department arrived at the scene around 12:30 a.m. Joi was then transported by ambulance to the hospital. Photographs show blood on Joi's face, a busted lip, cuts and bruises on her arm, a swollen eye, and missing hair.

After returning to Detroit, Dejuan telephoned the Lexington Police Department. He told police that before leaving town, he had an altercation with his

ex-girlfriend at her apartment. Dejuan explained to police that he and Joi were having a verbal dispute when she suddenly pulled a knife. Dejuan maintained that he attempted to defend himself by grabbing the knife away from her and that he sustained cuts to his hands in the process.

Dejuan was eventually arrested and brought back to Lexington to face charges of burglary in the first degree and assault in the fourth degree. He was tried before a jury and found guilty of both charges. This appeal followed.

## **II. ANALYSIS**

### ***A. Mistrial***

Logically, Joi was the Commonwealth's main witness at trial. Following Joi's direct testimony, Dejuan's counsel was provided with the opportunity to cross-examine her. As part of its cross-examination, Dejuan's counsel asked Joi to recount what she said to Dejuan in the parking lot before Dejuan allegedly punched her for the first time. At first, Joi responded that she could not recall exactly what she said because she was just yelling whatever came into her mind at the time. Defense counsel then asked Joi what Dejuan said to her. At this point, Joi interrupted and responded to the first question regarding what she had said to Dejuan. She stated: "one of the things that I said was that I was going to have his bail revoked." Dejuan's counsel then asked to approach the bench and moved for a mistrial on the ground that Joi's testimony referenced Dejuan's other

pending case and indicated that he had been in trouble before. The trial judge refused to declare a mistrial, but offered to admonish the jury to disregard any testimony related to bail or other charges. Dejuan's counsel declined the admonition, reasoning that it would not cure the matter and would only call attention to the utterance.

“Mistrials are an extreme remedy that should be granted only sparingly and upon a showing of manifest necessity.” *Dickerson v. Commonwealth*, 485 S.W.3d 310, 322 (Ky. 2016) (citing *Graves v. Commonwealth*, 285 S.W.3d 734, 737 (Ky. 2009)). “[A]dmonitions are preferred over mistrials.” *St. Clair v. Commonwealth*, 455 S.W.3d 869, 892 (Ky. 2015). There are only two situations in which the trial court's admonition will not be presumed to cure a reference to inadmissible evidence:

(1) when there is an overwhelming probability that the jury will be unable to follow the court's admonition and there is a strong likelihood that the effect of the inadmissible evidence would be devastating to the defendant, or (2) when the question was asked without a factual basis and was “inflammatory” or “highly prejudicial.”

*Johnson v. Commonwealth*, 105 S.W.3d 430, 441 (Ky. 2003) (internal citations omitted). “The standard for reviewing the denial of a mistrial is abuse of discretion.” *Bray v. Commonwealth*, 68 S.W.3d 375, 383 (Ky. 2002); *see also Woodard v. Commonwealth*, 147 S.W.3d 63, 68 (Ky. 2004).

Dejuan argues on appeal that Joi's reference to Dejuan's bail in another pending case during cross-examination was impermissible character evidence prohibited by KRE<sup>2</sup> 404(b). KRE 404(b) provides: "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Accordingly, Dejuan argues that the jury was improperly made aware of Dejuan's bail in another pending case and that such information resulted in an error of such character and magnitude that Dejuan was denied a fair and impartial trial, meaning that the trial court should have granted a mistrial. But because the trial court did not grant Dejuan's motion for a mistrial, Dejuan argues that the trial court abused its discretion.

We disagree. "[A]n isolated, non-responsive reference to prior crimes [is] insufficient to create a manifest necessity for a mistrial[.]" *Matthews v. Commonwealth*, 163 S.W.3d 11, 18 (Ky. 2005). "[A]dmonitions have been successfully used both in this Commonwealth and in federal court to address improper testimony about a defendant's prior incarceration." *Hilton v. Commonwealth*, 539 S.W.3d 1, 16 (Ky. 2018). While Dejuan ultimately rejected the trial court's offer of an admonition, we believe that the trial court acted appropriately when it offered to give one instead of declaring a mistrial. Joi's statement was isolated and brief. It mentioned only bail without reference to any

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<sup>2</sup> Kentucky Rules of Evidence.



underlying facts. Additionally, Joi was responding to counsel's questions on cross-examination indicating that there was a factual basis for the answer she gave. Nothing in the record indicates that either the Commonwealth or Joi acted in bad faith or out of some ill motive to get this information before the jury. The trial court appropriately balanced the nature and possible effect of the statement on the jury against the implications of having a mistrial. Having done so, the trial court determined that a mistrial was not warranted. We agree with both the trial court's actions and its ultimate conclusion. The statement did not warrant a mistrial. Accordingly, we find no error.

### ***B. Directed Verdict***

Next, Dejuan argues that the trial court erred when it overruled his motion for a directed verdict on the burglary charge. According to Dejuan, it was impossible for the Commonwealth to prevail on the burglary charge because it failed to offer proof sufficient to establish each element necessary to support the burglary charge.

As a preliminary matter, the Commonwealth argues that we should not address the substance of Dejuan's arguments because he did not properly preserve them for appeal. The Commonwealth explains that while Dejuan moved for a directed verdict at the close of the Commonwealth's case-in-chief, he failed to renew his motion at the close of all the evidence. In his reply brief, Dejuan

concedes that the record is devoid of any indication that he preserved this issue by renewing his motion at the close of all the evidence. As such, he requests us to review the trial court's failure to direct a verdict on the burglary charge for palpable error.

To properly preserve a motion for a directed verdict for appellate review, “[a] defendant must renew his motion for a directed verdict [at the close of all of the evidence], thus allowing the trial court the opportunity to pass on the issue in light of all the evidence, in order to be preserved for our review.” *Baker v. Commonwealth*, 973 S.W.2d 54, 55 (Ky. 1998) (overruling *Dyer v. Commonwealth*, 816 S.W.2d 647 (Ky. 1991) and upholding *Kimbrough v. Commonwealth*, 550 S.W.2d 525 (Ky. 1977)). In this case, however, Dejuan did not renew his motion for a directed verdict at the close of all of the evidence. Therefore, his motion for a directed verdict has not been properly preserved for appellate review. Nevertheless, our Supreme Court has been clear that a trial court's erroneous failure to direct a verdict of acquittal justifies relief under the palpable error standard. *See Baker v. Commonwealth*, 545 S.W.3d 267, 278 (Ky. 2018) (citing *Schoenbachler v. Commonwealth*, 95 S.W.3d 830, 837 (Ky. 2003)).

“On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal.” *Commonwealth v.*

*Benham*, 816 S.W.2d 186, 187 (Ky. 1991) (citing *Commonwealth v. Sawhill*, 660 S.W.2d 3 (Ky. 1983)). It would be clearly unreasonable for a jury to find guilt if the Commonwealth has produced “no more than a mere scintilla of evidence.” *Id.* at 187-88.

KRS<sup>3</sup> 511.020(1) defines first-degree burglary as follows:

A person is guilty of burglary in the first degree when, with the intent to commit a crime, he knowingly enters or remains unlawfully in a building, and when in effecting entry or while in the building or in the immediate flight therefrom, he or another participant in the crime:

(a) Is armed with explosives or a deadly weapon; or

(b) Causes physical injury to any person who is not a participant in the crime; or

(c) Uses or threatens the use of a dangerous instrument against any person who is not a participant in the crime.

First, Dejuan argues that the Commonwealth failed to present sufficient evidence to establish that Dejuan knew it was unlawful for him to enter or remain in Joi’s apartment. He asserts that the evidence clearly showed that he was Joi’s guest on the night in question as documented by the fact that he and Jesse had dinner in the apartment, Joi took the men back to her apartment complex, and his overnight bag was inside the apartment along with Jesse’s car keys. The fact that Dejuan had

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<sup>3</sup> Kentucky Revised Statutes.

permission to be in the apartment at one time does not mean that he had permission to be in it for all time. Privilege can be revoked by conduct and/or words sufficient to show permission to be inside a dwelling has been withdrawn. *See Hedges v. Commonwealth*, 937 S.W.2d 703, 706 (Ky. 1996).

In this case, the Commonwealth presented sufficient evidence to establish that Joi withdrew her permission. While still in the parking lot, Joi told Dejuan and Jesse she was calling the police. She then retreated to her apartment without them. Once inside, she closed and locked the door behind her. Dejuan was able to gain entry to the apartment only after Jesse knocked the door down with his shoulder. Based on testimony at trial, it was reasonable for the jury to infer that Dejuan no longer had permission to be inside of Joi's apartment, and that he entered the apartment unlawfully.

Next, Dejuan argues that the Commonwealth failed to present evidence that he intended to commit a crime inside the apartment. Once again, we disagree with Dejuan. "A person's state of mind may be inferred from actions preceding and following the charged offense." *Stopher v. Commonwealth*, 57 S.W.3d 787, 802 (Ky. 2001). Joi testified that Dejuan punched her outside the apartment before he entered it, attacked her in the apartment, and pursued her outside of the apartment where he continued his attack. Based on her testimony, the jury could infer that Dejuan unlawfully entered Joi's apartment with the intent

to criminally assault her. The fact that Dejuan was only charged with the assault that occurred outside the apartment is of no consequence. The issue of consequence is whether he entered the apartment with the intent to engage in a criminal act. There is no separate requirement that the defendant must be separately charged with actually committing the intended act.

In sum, we hold that the trial court did not err when it denied Dejuan's motion for a directed verdict of acquittal on the charge of burglary. The evidence was sufficient to allow a jury to find Dejuan guilty of burglary.

### *C. Jury Questions*

The third issue is whether the trial court erred when it answered the jury's second question but not its first question. Approximately forty-five minutes after retiring to deliberate, the jury asked the trial court to explain the phrase "not a participant in the crime" as it was used in the burglary instruction.<sup>4</sup> Dejuan's

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<sup>4</sup> The instruction as given to the jury stated:

You will find the defendant, Dejuan Williams, guilty of First Degree Burglary under this Instruction if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:

- A. That in this county on or about November 22, 2014, and before the finding of the Indictment herein, he entered or remained in the dwelling occupied by Joi Knighton without the permission of Joi Knighton or any other person authorized to give such permission; AND
- B. That in so doing, he knew he did not have such permission; AND
- C. He did so with the intention of committing a crime therein; AND

counsel agreed with the trial court and the Commonwealth that the question should not be answered. As a result, the trial court sent the jury back a note stating that it was unable to answer the question.

Another forty-five minutes passed before the jury sent a second question to the trial court about the burglary instruction. This time the jury asked the trial court to explain:

Regarding the law of the Commonwealth; According to the law can the intention of committing a crime occur prior to entering the apartment, as well as, after entering the apartment? In other words according to the law, can the intent occur at any point in the scenario?

This time a disagreement arose regarding whether and how to answer the question. Dejuan's counsel objected to providing any answer. The Commonwealth wanted the trial court to simply respond affirmatively. Ultimately, the trial court responded as follows: "A person can commit the crime of Burglary 1<sup>st</sup> Degree if he/she enters a dwelling with the intent to commit a crime therein or remains in the dwelling and then forms the intent to commit a crime therein."

Dejuan argues that the trial court's answer to the jury improperly introduced evidence after both sides had rested. We disagree. The trial court's answer did not put forth any new or additional "evidence" before the jury. In fact,

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D. That when effecting entry or while in Joi Knighton's apartment or in immediate flight therefrom, he caused physical injury to Joi Knighton and she was not a participant in the crime.

it did not refer to any evidence at all. The trial court merely explained and elaborated on the “intent to commit” portion of the instruction. “[I]n the absence of something prejudicial in his remarks, the act of a trial judge in explaining or elaborating on the written instructions given to the jury does not warrant a reversal.” *Shelton v. Commonwealth*, 372 S.W.3d 433, 435 (Ky. App. 2012) (quoting *Young v. Commonwealth*, 421 S.W.2d 857, 859 (Ky. 1967)).

The trial court’s written response to the jury’s second question clarified a point of law regarding intent to commit a crime and did not comment on the facts. The trial court’s statement was legally correct and was not slanted toward the benefit of one party or the other. Likewise, we fail to appreciate the significance of the trial court’s decision to answer one question and not another. Dejuan did not object to the trial court’s decision not to answer the first question. He agreed with it. Therefore, he has waived any argument that the first question should have been answered. With respect to the second question, the trial court made a reasoned determination that it merited a response. Its response was limited to an explanation of the law, did not comment on the facts, and was not slanted to benefit the Commonwealth.

Dejuan, lastly, argues that the trial court failed to comply with RCr<sup>5</sup> 9.74 when the jury’s second question was answered in a writing sent to the jury

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<sup>5</sup> Kentucky Rules of Criminal Procedure.

room instead of being given in open court. Dejuan concedes he did not object to the form of the trial court's response and seeks palpable error review. Even if the trial court did not technically comply with RCr 9.74, we cannot see how the process used was either fundamentally unfair or how it impacted the jury's verdict. Dejuan and the Commonwealth were provided with the jury's question and allowed to argue regarding the proper approach to answering it. They were also provided with the trial court's proposed answer before it was given to the jury. The trial court's answer was made available to the entire jury and was entered into the record. The goals of RCr 9.74 were satisfied even if the exact procedures were not followed. There was no palpable error with respect to how the jury's question was answered by the trial court.

### **III. CONCLUSION**

For these reasons set forth above, we affirm the Fayette Circuit Court.

ALL CONCUR.

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