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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001273-MR

LARON COBB — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANN BAILEY SMITH, JUDGE
ACTION NOS. 17-CR-000250 AND 18-CR-000631

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, CHIEF JUDGE; COMBS AND KRAMER, JUDGES.

KRAMER, JUDGE: Laron Cobb appeals from the final judgment and sentence of the Jefferson Circuit Court after a jury convicted him of second-degree robbery, enhanced by a finding of first-degree persistent felony offender. He was sentenced to twelve years of imprisonment. Cobb asserts that the circuit court erred when it

failed to instruct the jury on voluntary intoxication. After careful review of the record and applicable law, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2017, Kendrick Redding was working at a Thorntons gas station located on Shelbyville Road in Louisville, Kentucky. Redding and Cobb had become familiar with each other because Cobb had previously visited this gas station on two prior occasions that past December.

On the night of January 10, 2017, at around 2:50 a.m., Cobb entered the Thorntons gas station where Redding worked. Redding noticed that Cobb had a "blank stare" on his face and was not acting as he previously had on the other occasions he was at the store. To Redding, Cobb had a "hard-core vibe" and had "glossy eyes" like he was under the influence of either drugs or alcohol. Redding asked Cobb if he wanted his usual order. Redding turned his back to grab the merchandise for Cobb. When he turned back around, Cobb slid a demand note to Redding stating, "give me all the cash an[d] you will live." Redding complied with Cobb's request by giving him the money in the cash register, while simultaneously hitting the silent alarm. After receiving the money from the cash register, Cobb asked Redding if he had access to any other registers or the safe. Redding answered no. Thereafter, Cobb left. The security company that was alerted when Redding hit the silent alarm contacted Redding shortly after Cobb

left. While on the phone with the security company, the police arrived. The police collected evidence, which included a surveillance video of the incident.

One week later, on January 17, 2017, Officer Wayne Kauffman with the St. Matthews Police Department responded to a suspicious person call at a BP gas station on New LaGrange Road. When Officer Kauffman arrived, he saw Cobb standing there with bags full of his belongings. Cobb asked Officer Kauffman for a ride to The Healing Place[1] because he wanted to get into its twelve-step program. While driving Cobb to The Healing place, Officer Kauffman became suspicious that Cobb was the suspect in the Thorntons robbery. After dropping off Cobb, Officer Kauffman relayed his suspicion to Robbery Detective Keith Simpson with the Louisville Metro Police Department. Detective Simpson investigated the lead by comparing the image of the suspect at the Thorntons with the image of Cobb from the BP surveillance camera. Based upon the similarities between the two images, Detective Simpson compiled a photo-pack. Redding identified Cobb as being the one who robbed the Thorntons gas station.

Subsequently, Cobb was arrested. Following his arrest, Cobb waived his rights and confessed to committing the robbery. Ultimately, Cobb was indicted for one count of robbery in the first degree and later indicted for persistent felony

[1] The Healing Place is a recovery program that offers treatment to men and women who desire to get sober.

offender in the First Degree. In April 2018, a three-day jury trial was held.[2] The Commonwealth presented several witnesses, including Officer Kaufman and Detective Simpson. The Commonwealth also played an excerpt from Cobb's confession, where Cobb explained to Detective Simpson that he: (1) was scared for Redding, (2) was "high as hell," (3) noticed Redding shaking, and (4) did not remember giving Redding the demand letter.

After the testimony of Detective Simpson, the Commonwealth rested its case. The defense moved for a directed verdict regarding first-degree robbery, which the circuit court granted, only giving the jury an instruction on second-degree robbery. Following the discussion of the directed verdict, defense counsel also moved to have the proposed voluntary intoxication instruction given to the jury. The circuit court denied giving the instruction of voluntary intoxication, finding that Cobb was not so intoxicated that he did not know what he was doing and was able to recall some specific details about the robbery.

The defense did not put on any witnesses and rested its case. Following jury deliberations, Cobb was found guilty of robbery in the second degree and of being a persistent felony offender. Cobb was sentenced to twelve years of imprisonment. This appeal followed.

[2] As an aside, Cobb refused to attend the entire jury trial. The circuit court held a hearing concluding that Cobb had waived his right to appear. Cobb had made threatening comments while in the holding area; therefore, the circuit court elected not to order Cobb to attend the trial.

STANDARD OF REVIEW

In cases involving a trial court's decision whether to give a requested jury instruction, this Court reviews that decision under the abuse of discretion standard.

> In a criminal case, it is the duty of the trial judge to prepare and give instructions on the whole law of the case, and this rule requires instructions applicable to every state of the case deducible or supported to any extent by the testimony. A defendant has a right to have every issue of fact raised by the evidence and material to his defense submitted to the jury on proper instructions.

Taylor v. Commonwealth, 995 S.W.2d 355, 360 (Ky. 1999) (citations omitted).

> A decision to give or to decline to give a particular jury instruction inherently requires complete familiarity with the factual and evidentiary subtleties of the case that are best understood by the judge overseeing the trial from the bench in the courtroom. Because such decisions are necessarily based upon the evidence presented at the trial, the trial judge's superior view of that evidence warrants a measure of deference from appellate courts that is reflected in the abuse of discretion standard.

Sargent v. Shaffer, 467 S.W.3d 198, 203 (Ky. 2015).

ANALYSIS

The circuit court denied Cobb's request to give a voluntary intoxication jury instruction because there was insufficient evidence to prove the required level of intoxication to support the instruction. However, Cobb argues that: (1) because he could not recall giving Redding the demand note; and (2)

because he had a history of drug addiction, there was sufficient evidence to support a voluntary intoxication instruction. We disagree.

Under KRS[3] 501.080(1), voluntary intoxication is only a defense to a criminal charge if the intoxication "[n]egatives the existence of an element of the offense[.]" It is well established that KRS 501.080(1) is interpreted "to mean that the [voluntary intoxication] defense is 'justified only where there is evidence reasonably sufficient to prove that the defendant was so drunk that he did not know what he was doing.'" *Harris v. Commonwealth*, 313 S.W.3d 40, 50 (Ky. 2010) (citations omitted).

Cobb told Detective Simpson that he was "high as hell" when he committed the robbery; however, he also told Detective Simpson that he "felt bad" for Redding and that he remembered telling Redding that he was not going to hurt him. A surveillance video was introduced displaying Cobb as being perfectly normal. There was no showing on the surveillance video of Cobb swaying back and forth or stumbling while walking. The only witness testimony that would conceivably indicate that Cobb was intoxicated is that of Redding where he described Cobb as having a "blank stare," a "hard-core vibe," and "glossy eyes." However, this is not reasonably sufficient evidence to prove that Cobb was so intoxicated that he did not know what he was doing. *See id.*

[3] Kentucky Revised Statute.

Cobb also alleges that because he requested a ride to The Healing Place to seek treatment and was ultimately arrested there, this corroborates his history of drug addiction. Regardless of Cobb's drug history, there is no evidence that at the time of the robbery he did not know what he was doing. To the contrary, Cobb was able to recall details of the robbery in his interview with Detective Simpson, which included his feeling bad for Redding, telling Redding he was not going to hurt him, and telling Redding he was sick. The only thing Cobb alleges that he does not recall is giving Redding the demand note. The fact that Cobb was able to recall that he felt bad for Redding during the robbery is enough for the circuit court to conclude that he knew what he was doing. In the absence of any evidence that Cobb did not know what he was doing or could not form the requisite intent, the circuit court was not required to instruct the jury on the defense of intoxication. Therefore, Cobb was not entitled to a voluntary intoxication instruction.

We pause to note that Cobb's appellate brief cites several cases which he relies upon to support his position that he was entitled to a voluntary intoxication jury instruction. However, his reliance on these cases is misdirected because they are distinguishable from the present case. The cases relied upon involve defendants who were either arrested in close proximity to their intoxicated state or they presented witnesses at trial who testified to their intoxicated state at

the time of the crime. *See King v. Commonwealth*, 513 S.W.3d 919 (Ky. 2017) (allowing a voluntary intoxication instruction when the evidence showed that there was more than half of a 1.75 liter bottle of bourbon that was placed in the freezer earlier that night that was found empty; witness testified that he was the only one who continued drinking that night; when arrested he was initially unresponsive, appeared unconscious, and appeared intoxicated; and witnesses testified that they had never seen him act this way before); *Nichols v. Commonwealth*, 142 S.W.3d 683 (Ky. 2004) (allowing a voluntary intoxication instruction when the evidence showed that he was acting erratically that evening; testimony was provided from three witnesses that his behavior was that of an intoxicated person; in his statement to an officer he stated that he was "f—ked up," but the officer also testified that it was apparent he had consumed alcohol that evening); *Jewell v. Commonwealth*, 549 S.W.2d 807 (Ky. 1977) (allowing a voluntary intoxication instruction when an officer testified that he was "pretty well drunk at the scene[;]" another officer testified that he was drunk when taken to jail, and he took a breathalyzer, some four and a half hours later, that indicated he was still intoxicated), *overruled on other grounds by Payne v. Commonwealth*, 623 S.W.2d 867 (Ky. 1981); and *Parido v. Commonwealth*, 547 S.W.2d 125 (Ky. 1977) (allowing a voluntary intoxication instruction when he testified that he was so drunk that he "didn't

remember going to the service station, ever being there, buying any gasoline, robbing the man, or fleeing with the loot.").

Unlike the cases above, in the case presently under review, Cobb was arrested a week later; therefore, there was no evidence of his condition at the time. Also, Cobb presented no witnesses who could testify as to the amount of alcohol or drugs he ingested prior to the robbery. Consequently, Cobb's reliance on the above cases is misplaced because they are all distinguishable. We conclude, therefore, that the circuit court did not abuse its discretion.

CONCLUSION

For the above-stated reasons, the judgment and sentence of the Jefferson Circuit Court is AFFIRMED.

ALL CONCUR.

BRIEF FOR APPELLANT:

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