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RENDERED: OCTOBER 17, 2002
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2000-SC-0821-MR

ARTHUR STALLWORTH — APPELLANT

V.

APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DARREN PECKLER, JUDGE
99-CR-169

COMMONWEALTH OF KENTUCKY — APPELLEE

AND

2001-SC-0569-TG

ARTHUR STALLWORTH — APPELLANT

V.

TRANSFER FROM COURT OF APPEALS
2001-CA-1468
BOYLE CIRCUIT COURT
HONORABLE DARREN PECKLER, JUDGE
99-CR-169

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant Arthur Stallworth was convicted by a Boyle Circuit Court jury of one count of trafficking in a controlled substance (second or subsequent offense) and one count of possession of marijuana. He received an enhanced sentence of twenty years

in prison for the trafficking conviction and a $500.00 fine for the marijuana conviction. He appeals to this Court as a matter of right. Ky. Const. §110(2)(b). During the pendency of his direct appeal (2000-SC-0821-MR), Appellant filed an RCr 11.42 motion alleging ineffective assistance of counsel. His appeal from the denial of that motion (2001-SC-0569-TG) has now been consolidated with the direct appeal. We affirm the Boyle Circuit Court on both appeals.

I. FACTS.

A. December 4th Drug "Buy."

Sometime prior to December 1999, Detectives Anthony Gray and Robert Williamson of the Danville Police Department employed Julius Calhoun as a confidential informant for the purpose of consummating controlled drug purchases ("buys") from suspected narcotics dealers. At 7:20 p.m. on December 4, 1999, Gray and Williamson met with Calhoun in preparation for an attempted "buy" from Appellant at a residence at 117 Circle Drive, Danville, Kentucky. Appellant did not reside at that address, but the police had reason to believe that he sold controlled substances there at night and on weekends. The detectives first searched Calhoun to ensure that he was carrying no personal funds or drugs, then furnished him with $100 in marked bills to purchase the drugs and a microcassette recorder to record the transaction. The detectives observed Calhoun enter the residence and emerge therefrom a few minutes later. Calhoun rejoined the detectives and delivered a "rock" of crack cocaine and the recorder to Detective Gray. He was again searched to ensure that he had kept no money or drugs for himself. Calhoun then drafted and signed a handwritten statement to the effect that he had purchased the cocaine from Appellant. When the recording of

the December 4th transaction proved to be virtually inaudible, Detectives Gray and Williamson decided that Calhoun should attempt another controlled "buy" from Appellant.

B. December 12th Drug "Buy."

On December 12, 1999, the two detectives again met with Calhoun near 117 Circle Drive. Again, Gray searched Calhoun, provided him with $100 in marked bills to purchase the drugs and furnished him with a microcassette recorder to record the transaction. The detectives again observed Calhoun enter the residence at 117 Circle Drive and emerge therefrom a few minutes later. Calhoun delivered the recorder and $50 each worth of crack ("hard") and powdered ("soft") cocaine. He was again searched and again drafted a handwritten statement to the effect that he had purchased the cocaine from Appellant. Appellant's black Jeep was allegedly parked in the driveway of the Circle Drive residence at the time of both "buys." Detective Gray paid Calhoun a total of $300 for his participation in the two "buys."

C. Search and Arrest.

On December 13, 1999, the Boyle District Court issued a search warrant for Appellant's residence at 145 Cheryl Lane, Danville. Probable cause was premised upon evidence obtained during the December 4th and 12th drug "buys" and information furnished by Calhoun that Appellant transported the drugs in his vehicle from his Cheryl Lane residence to 117 Circle Drive. During the search of Appellant's residence, police discovered a burnt marijuana cigarette, a baggie containing 2.1 grams of marijuana, two plastic cups containing a white powder residue (later determined to be Alka Seltzer), and a brass pipe. Specifically, they found no cocaine, no wrapping equipment, and no marked money. Appellant was immediately placed under arrest and was indicted by a

grand jury on December 17, 1999, for two counts of trafficking in a controlled substance in the first degree (second or subsequent offense) and one count of possession of marijuana.

D. Assault on Calhoun.

Shortly after Appellant's arrest, someone assaulted Calhoun with a baseball bat in an apparent attempt to deter him from testifying against Appellant and/or others from whom Calhoun had made controlled "buys" in cooperation with the police. Calhoun's assailant was not identified at trial but the prosecutor suggested during cross-examination of Appellant that the assailant was a "Mr. Ray" who was then present in the courtroom and who Appellant admitted was his "friend."

E. Pertinent Evidence at Trial.

Detective Gray testified to his participation in the December 4th and 12th drug "buys" and the December 13th search of Appellant's residence. He identified and played for the jury the audiotapes that he had received from Calhoun. While the tape of the December 4th transaction was, indeed, virtually inaudible, the tape of the December 12th transaction was reasonably clear. On cross-examination, defense counsel questioned Gray about Calhoun's December 12th handwritten statement in which he indicated that two men answered the door, Appellant who was wearing a black coat, blue jeans and a sweat shirt, and an unidentified man who was wearing blue jeans and a "blue jean coat." Gray was also questioned on cross-examination concerning the contents of a one-page transcript of the December 12th transaction that had been prepared by the Danville Police Department. On redirect examination, both of Calhoun's written statements and the transcript of the December 12th transaction were introduced and marked as exhibits.

Detective Williamson also testified to his participation in the December 4th and 12th transactions and the search of Appellant's residence. On cross-examination, he testified that in past experience with Appellant, he had seen "equipment" packaged in the same unique way as the cocaine that was purchased on December 4th and 12th. A chemist from the Kentucky State Police Laboratory identified the substances obtained by Calhoun on December 4th and 12th as cocaine and the substances obtained from Appellant's residence on December 13th as marijuana.

Recanting his previous statements, Julius Calhoun testified that he did not purchase any cocaine from Appellant. Instead, he testified that although Appellant was present at the Circle Drive residence when the cocaine was purchased, the person who sold him the cocaine was a stranger from out of town. When confronted with his two inconsistent handwritten statements, Calhoun identified his handwriting but claimed that he only wrote what the detectives told him to write. He claimed he did not know who had attacked him with the baseball bat and could not recall having previously identified his assailant or having sworn out a criminal complaint against that person.

Appellant testified in his own behalf. He admitted being present at 117 Circle Drive on December 12th but denied selling cocaine to Calhoun. In an obvious strategy to defuse his anticipated impeachment, Appellant testified on direct examination that he had previously been convicted of a felony in 1993. On cross-examination, Appellant admitted that he recognized the voices on the audiotapes as being his voice and Calhoun's voice. He also testified that he had never sold drugs. When the prosecutor began to question him about the latter statement, Appellant literally invited the prosecutor to inquire further: "I ain't never sold no drugs. And if you want to go back and bring it up, we can talk about it. Go on and bring it up." The prosecutor obliged

and Appellant admitted that his 1993 felony conviction was for trafficking in a controlled substance -- though he maintained that he had been intimidated into pleading guilty despite his innocence.

The jury found Appellant not guilty with respect to the December 4th transaction but guilty of the charges premised upon the December 12th transaction and the December 13th search of his residence.

II. ISSUES ON DIRECT APPEAL.

Only one issue raised on appeal, the "unique packaging" testimony of Detective Williamson, was even marginally preserved for appellate review. Appellant requests review of the other issues for palpable error, i.e., an error affecting the substantial rights of a party and that has resulted in "manifest injustice." RCr 10.26. "Manifest injustice" means that there is a substantial possibility that the outcome would have been different except for the error. Partin v. Commonwealth, Ky., 918 S.W.2d 219, 224 (1996).

A. Unique packaging.

Appellant asserts that Detective Williamson's testimony linking Appellant to the unique packaging of the cocaine constituted reversible error as improper "other bad acts" evidence. We disagree. Apparently, Williamson had testified at the preliminary hearing that the cocaine obtained from Calhoun had been packaged in a unique way. During cross-examination of Williamson at trial, defense counsel attempted to make the point that the equipment necessary to package the cocaine so "uniquely" was not found during the December 13th search of Appellant's home:

> Q. Now supposedly the cocaine that Mr. Stallworth was supposed to have sold was in a special sealing. In fact, I think you testified at the preliminary hearing in all your years, you've never seen it packaged that way.

A. That is incorrect.

Q. Tell me why it's incorrect?

A. Because in past experience with Mr. Stallworth, I've seen equipment [sic] in Mr. Stallworth's possession packaged in the same method and manner.

Q. Do you have any proof of that? Objection to hearsay.

Court: Overruled. It was responsive to the question that was asked.

A. Do you want me to explain?

Q. Was it unique?

A. Yes, very unique.

Q. When you entered his home on the thirteenth, you didn't find any such equipment at all, did you?

A. No.

The trial court's ruling was correct. "One who asks questions which call for an answer has waived any objection to the answer if it is responsive." Hodge v. Commonwealth, Ky., 17 S.W.3d 824, 845 (2000); Mills v. Commonwealth, Ky., 996 S.W.2d 473, 485 (1999); Estep v. Commonwealth, Ky., 663 S.W.2d 213, 216 (1983). Regardless, the evidence would have been admissible even if offered during direct examination. It is unclear whether Williamson meant that he had seen other cocaine purchased from Appellant packaged in the same unique manner, or whether he meant that he had seen Appellant in possession of the equipment necessary to package cocaine in that fashion. Either way, the evidence was both relevant and admissible as tending to identify Appellant as the person who sold the uniquely packaged cocaine to Calhoun on these occasions. KRE 404(b)(1).

B. Prior conviction.

As stated, Appellant chose to defuse his anticipated impeachment, see Robert G. Lawson, The Kentucky Evidence Law Handbook § 4.05 III, at 173-76 (3d ed. Michie 1993), by introducing the fact of his 1993 felony conviction without requesting a limiting admonition that it could be considered only for the purpose of assessing his credibility as a witness, i.e., impeachment. Golden v. Commonwealth, 275 Ky. 208, 121 S.W.2d 21, 26-27 (1938). That, of course, did not open the door for the prosecutor to identify the prior conviction as being for the same offense for which Appellant was presently being tried. KRE 609(a). Appellant asserts it was palpable error to permit the prosecutor to elicit that fact during cross-examination of Appellant.

Two additional factors exist here that preclude automatic application of the general rule expressed in KRE 609(a). First, Appellant testified that he had never sold any drugs, thus "opening the door" to impeachment by contradiction on a collateral fact. Although this type of impeachment, like evidence of bias, interest or hostility, is not specifically addressed in the Kentucky Rules of Evidence, Professor Lawson explains that, when appropriate, this type of evidence falls within the scope of KRE 402, the general rule of admissibility of relevant evidence. Lawson, supra, § 4.10 V, at 181. As an example, Lawson cites to Dixon v. Commonwealth, Ky., 487 S.W.2d 928 (1972), where the defendant, who was charged with indecent and immoral acts with a minor, testified that he had never been arrested on any morals charge. The prosecutor was then permitted to impeach that statement by contradictory evidence that the defendant had, in fact, previously been arrested for indecent exposure. Despite the fact that the impeachment was clearly of a collateral fact, our predecessor court held that the evidence was admissible to rebut the defendant's effort to introduce false information in

order to help his own case. Id. at 930; Lawson, supra, at 182. See also Bixler v. Commonwealth, Ky., 712 S.W.2d 366, 369 (1986). The impeachment evidence was even more relevant here because the prior conviction was for the exact criminal act that Appellant denied having ever committed. The additional factor of significance here is that Appellant literally invited the prosecutor to address the issue: "I ain't never sold no drugs. And if you want to go back and bring it up, we can talk about it. Go on and bring it up." Under these circumstances, we find no error, much less palpable error, in the admission of this evidence.

C. Prior statements of Calhoun.

Remember, Calhoun's written statements were introduced during the testimony of Detective Gray. The statements were pure hearsay, KRE 801(c), and, when introduced, not admissible under any exception to the hearsay rule. Arguably, they could have been admitted under the theory of "curative admissibility," i.e., defense counsel "opened the door" for their admission by referring to the December 12th statement during cross-examination of Gray. Lawson, supra, § 1.10 IV, at 30-33. However, such would not have authorized admission of the December 4th statement. Nevertheless, any error in that respect was rendered harmless when Calhoun changed his story and the statements became prior inconsistent statements, which were then admissible for both impeachment and substantive purposes. KRE 801A(a)(1); Jett v. Commonwealth, Ky., 436 S.W.2d 788, 792 (1969).

D. Transcript of audiotape.

In Sanborn v. Commonwealth, Ky., 754 S.W.2d 534 (1988), we held that the trial court committed reversible error by admitting into evidence, over the defendant's objection, the prosecutor's self-prepared and partially inaccurate transcript of an

audiotape of the defendant's alleged confession. Id. at 540-41. On the other hand, the Court of Appeals held in Norton v. Commonwealth, Ky. App., 890 S.W.2d 632 (1994), that it was not error to permit the jurors to read a transcript of an audiotape of a narcotics transaction while the audiotape was being played because (1) no question was raised as to the accuracy of the transcript and (2) the transcript was not admitted as an exhibit and was not available to the jury during deliberations. Id. at 637. Also relevant to this issue is United States v. Robinson, 707 F.2d 872 (6th Cir. 1983), in which the United States Court of Appeals for the Sixth Circuit stated a preference for using transcripts only when the parties have stipulated as to their accuracy or when the transcriber has testified to their accuracy. Id. at 878-79.

Here, the transaction between Calhoun and Appellant lasted approximately one minute and the transcript consists of one page. The audiotape is audible and the transcript is accurate. Gray testified that the audiotape was the same one that was delivered to him by Calhoun upon returning from 117 Circle Drive on December 12th. Appellant, himself, identified the voices on the tape as being those of himself and Calhoun. That was sufficient authentication to warrant admission of the tapes. Although Sanborn held it was error to admit the transcript as an exhibit to be taken to the jury room during deliberations, that transcript was of a statement that had been introduced to prove the truthfulness of its content as if it were the testimony of the declarant. That type of statement generally cannot be taken to the jury room for use during deliberations. See generally, Berrier v. Bizer, Ky., 57 S.W.3d 271, 277 (2001) (witness statements); Mills v. Commonwealth, Ky., 44 S.W.3d 366, 371-72 (2001) (witness interview tapes). The transcript here was of an audiotape of the crime as it was being committed. In that respect, the audiotape was the best evidence of the

corpus delicti. Norton v. Commonwealth, supra, at 635; see also Young v. Commonwealth, Ky., 50 S.W.3d 148, 169 (2001) (videotape of victim's death throes recorded by video surveillance camera). We see no conceptual distinction for purposes of relevancy, competency and authenticity between a videotape of a crime being committed and an audiotape of a crime being committed. And so long as the transcript of the audiotape is accurate, it stands on the same footing as the audiotape, itself.

One other issue relates to the fact that whereas the typed transcript shows one of Appellant's statements as being inaudible, there follows a handwritten interlineation of the words, "Looks to me its alright." From the videotape of the trial, it is apparent that the interlineation was not on the transcript when it was introduced. Thus, it is probable that the interlineation was added by one of the jurors. (The equipment used to play the audiotape for the jurors had the capability of deleting static and background noise so as to make the spoken words more audible.) Regardless, no one claims that the handwritten interlineation is inaccurate and a review of the audiotape reveals that it is, indeed, accurate. No error, much less palpable error, occurred with respect to the admission of the transcript of the audiotape.

E. Witness intimidation.

Appellant claims that it was palpable error for the prosecutor to improperly interject during cross-examination of Appellant that a friend of Appellant's, identified only as "Mr. Ray," had assaulted Calhoun with a baseball bat. The interjection is best understood in the context in which it occurred:

> Q. Have you had some other friends who have been arrested on drug charges out of his [Calhoun's] testimony?
>
> A. Yes.

Q. Who are some of the others that you know have been arrested out of Julius's testimony?

A. I know everybody that's been arrested and everybody in Danville should know them because we're right around here together. Now, as far as saying they're my friends, I know them, they're acquaintances. I know people, you know, but they ain't my friends.

Q. So you're not the only one, then, are you?

A. Only one what?

Q. That he says he bought drugs from?

A. No, I'm not the only one. No sir.

Q. There are several more.

A. Yes sir.

Q. And, in fact, you're also aware that some of these people beat him up and put him in the emergency room and [have been] charged with assault since this happened, aren't you?

A. That's what I heard here today.

Q. You didn't know that until today? You hadn't heard about that?

A. No.

Q. Same people that are friends of yours that are charged with assault but you didn't know they were charged with assault?

A. Well, you tell me who's been charged with assault and I'll tell you whether he's my friend or not.

Q. OK, Mr. Ray who's sitting in the courtroom today [gesturing] is one of them.

A. Yeah, he's my friend. He's a good friend.

Q. He's your friend?

A. Yes, he's a good friend.

Q. And he's the one who is charged with assault for beating the guy up that was here testifying today, with a baseball bat?

A. I didn't know he done that.

The fact that a good friend of Appellant (such a good friend that he attended Appellant's trial) assaulted Calhoun with a baseball bat was clearly relevant evidence, especially in view of the fact that Calhoun subsequently recanted his prior statements identifying Appellant as the person who sold him the cocaine.

> Any attempt to suppress a witness' testimony by the accused, whether by persuasion, bribery, or threat, or to induce a witness not to appear at trial or to swear falsely, or to interfere with the processes of the court is evidence tending to show guilt.

Foley v. Commonwealth, Ky., 942 S.W.2d 876, 887 (1996). See also Tamme v. Commonwealth, Ky., 973 S.W.2d 13, 29-32 (1998) (subornation of perjury); Collier v. Commonwealth, Ky., 339 S.W.2d 167, 168 (1960) (threat to kill the complaining witness if she did not take action to have the charges dismissed); Davis v. Commonwealth, 204 Ky. 601, 265 S.W. 10, 11 (1924) (letter from defendant to prospective witness offering to bribe him to testify in a certain manner); Wilhite v. Commonwealth, 203 Ky. 543, 262 S.W. 949, 950 (1924) (threat to kill witness if he told what he knew and attempt to carry out the threat after the witness testified before the grand jury); Turpin v. Commonwealth, 140 Ky. 294, 130 S.W. 1086, 1087 (1910) (attempt by defendant to bribe a juror). Thus, the inquiry as to whether Appellant was involved in the assault on Calhoun was relevant and the prosecutor had a good faith factual basis for making the inquiry.

Further, the prosecutor did not identify "Mr. Ray" as the person charged with assault until Appellant, himself, insisted that he do so. Thus, if the identification of Ray as the perpetrator of the assault was error, it was certainly invited error. Regardless, any prejudice to Appellant from the identification of Ray was minimal. Upon being

informed that Ray was accused of the assault, Appellant expressed surprise and freely admitted that Ray was his "good friend." Thus, we conclude that this incident did not constitute "manifest injustice."

F. Failure to sever.

Appellant belatedly claims that the trial judge's failure to sua sponte sever the marijuana count from the two trafficking counts of the indictment was palpable error. RCr 6.18 states, "[t]wo (2) or more offenses may be charged . . . in the same indictment . . . if the offenses are of the same or similar character or are based on the same acts or transactions connected together or constituting parts of a common scheme or plan." Misjoinder must be raised by a defendant before the jury is sworn. McBrayer v. Commonwealth, Ky., 406 S.W.2d 855, 856 (1966). RCr 9.16 provides for severance "[i]f it appears that a defendant or the Commonwealth is or will be prejudiced by a joinder of offenses . . . for trial."

The usual test for determining whether joinder is prejudicial is whether evidence necessary to prove each offense would be admissible in a separate trial of the other. Price v. Commonwealth, Ky., 31 S.W.3d 885, 889 (2000); Rearick v. Commonwealth, 858 S.W.2d 185, 187 (1993). Technically, since the December 13th search did not reveal any evidence tending to prove the December 12th trafficking charge, the marijuana evidence was irrelevant to the cocaine charge and vice versa. However, for purposes of palpable error analysis, "[a]n appellate court's review of alleged error to determine whether it resulted in 'manifest injustice' necessarily must begin with an examination of both the amount of punishment fixed by the verdict and the weight of evidence supporting that punishment." Young v. Commonwealth, Ky., 25 S.W.3d 66, 74 (2000). It is illogical to assume that the jury convicted Appellant of trafficking in

cocaine on December 12th or fixed his sentence at twenty years because a small amount of marijuana was found in his residence on December 13th. If the jury had convicted Appellant on the cocaine charge because of the marijuana evidence, it logically would also have convicted him of the December 4th charge. And if the marijuana evidence inflamed the jury to impose the maximum sentence for the cocaine conviction, why did the jury impose less than the maximum penalty for the marijuana conviction? Appellant essentially did not raise a defense to the marijuana charge. Although he testified there were "no drugs in my house," he offered no explanation for the discovery therein of a used marijuana cigarette and 2.1 grams of marijuana. The absence of any defense to the marijuana charge and the fact that the jury imposed no jail time for that conviction indicates that the jury was not unduly influenced by the cocaine evidence in reaching its verdicts on the marijuana charge.

Even more important, however, is the fact that defense counsel's primary trial strategy was to prove that Appellant was not the person who sold the "uniquely packaged" cocaine to Calhoun on December 12th by showing that the December 13th search of Appellant's residence produced no cocaine, no cocaine-packaging equipment, and none of the marked money that Calhoun had used to purchase the cocaine. In fact, the strategy might have worked had Appellant not identified his own voice on the audiotape, not given the prosecutor an engraved invitation to introduce the nature of his previous felony conviction, and not insisted that the prosecutor identify the person accused of assaulting the confidential informant. We find no manifest injustice in the trial court's failure to grant an unrequested severance of the charges in the indictment.

G. Sufficiency of the evidence.

Appellant appears to believe that Calhoun's recantation of his previous statements identifying Appellant as the person who sold him the cocaine destroyed the Commonwealth's case on the trafficking charges. Not so. Calhoun's prior inconsistent statements were admitted for substantive as well as impeachment purposes. Jett v. Commonwealth, supra. The Commonwealth also had the audiotape of the December 12th transaction and Appellant's identification of the voices on the tape. That was sufficient evidence for reasonable jurors to find Appellant guilty beyond a reasonable doubt. Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991).

III. RCr 11.42 APPEAL.

With respect to Appellant's appeal from the denial of his RCr 11.42 motion alleging ineffective assistance of counsel, we apply the two-pronged test set forth in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984); accord Gall v. Commonwealth, Ky., 702 S.W.2d 37, 39-40 (1985). The Strickland test requires proof that (1) counsel's performance was deficient, and (2) counsel's deficient performance prejudiced Appellant's defense. Strickland, supra, at 687, 104 S.Ct. at 2064. To demonstrate prejudice, Appellant must show that without the alleged ineffective assistance of counsel there is a "reasonable probability" that the jury would have reached a different result. Id. at 694, 104 S.Ct. at 2068; see also Norton v. Commonwealth, Ky., 63 S.W.3d 175, 177 (2001). The standard of review in cases dealing with alleged ineffective assistance of counsel is highly deferential to the trial counsel. Commonwealth v. Pelfrey, 998 S.W.2d 460, 463 (1999). Also, as stated in Strickland, "a court need not determine whether counsel's performance was deficient

before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." Id. at 697.

Appellant offered no evidence at the evidentiary hearing held on his RCr 11.42 motion but relied solely on counsel's failure to object to the admission of certain evidence -- the same evidence that we have previously subjected to palpable error analysis. The trial court found that trial counsel's representation was not ineffective and that most of the RCr 11.42 complaints involved reasonable trial strategies. For example, the decision not to seek a severance of the marijuana charge from the cocaine charges was obviously strategic, as was the decision to question Detective Williamson about the absence of any packaging equipment in Appellant's residence. Appellant claims ineffective assistance in trial counsel's failure to request the usual limiting admonition upon his admission that he had previously been convicted of a felony. But if the strategy was to defuse anticipated impeachment, that strategy would have been defeated by requesting that the jury be admonished to consider the conviction only for purposes of impeachment.

Failure to register a fruitless objection is not ineffective assistance. Robbins v. Commonwealth, Ky. App., 719 S.W.2d 742, 743 (1986), overruled on other grounds, Norton v. Commonwealth, supra, at 177. As has been previously discussed, (1) the identification of the nature of Appellant's prior felony conviction, (2) the introduction of the transcript of the December 12th audiotape, and (3) the identification of "Mr. Ray" as the person accused of assaulting Calhoun were all properly admitted under the circumstances of this trial. Thus, for the reasons stated, we conclude that the trial judge correctly denied Appellant's RCr 11.42 motion.

Accordingly, the judgments of conviction and sentences imposed by the Boyle Circuit Court, and the denial of Appellant's RCr 11.42 motion, are affirmed.

All concur.

COUNSEL FOR APPELLANT (2000-SC-0821-MR):

Jerry Anderson
Barbara Anderson
120 North Upper Street
Lexington, KY 40507

COUNSEL FOR APPELLEE (2000-SC-0821-MR):

A. B. Chandler, III
Attorney General
State Capitol
Frankfort, KY 40601

Perry T. Ryan
Assistant Attorney General
Office of Attorney General
Criminal Appellate Division
1024 Capital Center Drive
Frankfort, KY 40601-8204

COUNSEL FOR APPELLANT (2001-SC-0569-TG):

Barbara Anderson
120 North Upper Street
Lexington, KY 40507

COUNSEL FOR APPELLEE (2001-SC-0569-TG):

A. B. Chandler, III
Attorney General
State Capitol
Frankfort, KY 40601

Perry T. Ryan
Assistant Attorney General
Office of Attorney General
Criminal Appellate Division
1024 Capital Center Drive
Frankfort, KY 40601-8204

Richard L. Bottoms
P.O. Box 635
Harrodsburg, KY 40330