

**IMPORTANT NOTICE**  
**NOT TO BE PUBLISHED OPINION**

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RENDERED: OCTOBER 19, 2006  
NOT TO BE PUBLISHED

Supreme Court of Kentucky **FINAL**

2005-SC-0211-MR

DATE 11-9-06 E. A. G. W. H. P. C.

JOSEPH ROACH

APPELLANT

V. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE KATHLEEN VOOR MONTANO, JUDGE  
2002-CR-00273-001

COMMONWEALTH OF KENTUCKY

APPELLEE

**MEMORANDUM OPINION OF THE COURT**

AFFIRMING

Roach was convicted of murder, misdemeanor theft by unlawful taking and misdemeanor sexual abuse. He was sentenced to serve life in prison. This appeal followed.

He raises five issues. He argues that the trial judge failed to exclude evidence, grant a continuance or grant a request for a mistrial when the prosecutor failed to disclose certain evidence prior to trial. He claims the trial judge improperly admitted notes written to another inmate that were never authenticated; that it was error to not order a competency evaluation and hearing; that his Miranda rights were violated resulting in the admission of tainted evidence and that he was improperly denied the opportunity to admit portions of his statement to police into evidence.

Roach and another male went to the apartment of the victim. Both went to the victim's apartment where Roach and the woman smoked crack cocaine. Roach asked

his friend to leave because he intended to have sex with the victim in exchange for giving her more crack cocaine. Roach later woke his friend who was sleeping in the car and they both returned to the apartment. The victim had been severely beaten about the head with what was believed to be a golf club and she had been choked. She was found dead by a neighbor the next day. Roach and his friend had tried to wash the victim's body and cleaned off fingerprints from her apartment. They also took several video tapes and a VCR from the apartment. The VCR was located at the friend's apartment while Roach retained possession of several video tapes. This appeal followed the conviction and sentence.

### **I. Discovery Of Evidence**

Roach argues that it was error for the trial judge to decline to exclude evidence and grant a continuance or mistrial after the belated disclosure by the prosecution of critical exculpatory and inculpatory evidence. We disagree.

There were four items of evidence that Roach argues were presented after discovery violations. A DNA expert's notes; a report regarding fingerprint evidence; letters or notes written by Roach; and a report regarding a polygraph or lie detector test administered to a witness. All were produced by the prosecution during trial.

A DNA expert testified that a cigarette butt contained DNA of a male but it did not match either Roach or his accomplice. A report had been filed previously and had been provided to the defense but it did not indicate the sex of the person who smoked the cigarette. When questioned on cross-examination, the expert for the first time testified about the sex of the smoker and that the information was contained in her notes. Those notes were then turned over to the defense for review.

Initially, the prosecution was only required to produce a copy of the report for Roach and it complied. RCr 7.24. Once the expert testified about information from the notes, the trial judge correctly ordered a copy of those notes be provided for the defense. The trial judge denied the request for a continuance by noting that the expert was available to be recalled should Roach decide to do that.

There was no discovery violation. Notes used to prepare the report are excluded from discovery by RCr 7.24(2). See Cavender v. Miller, 984 S.W.2d 848 (Ky. 1998). The notes were provided once they were referenced by the witness as is required by RCr 7.24(8). The trial judge acted properly and we do not find any abuse of discretion. See Penman v. Commonwealth, 194 S.W.3d 237 (Ky. 2006).

Fingerprints were lifted at the scene by the police. Roach was aware that this had occurred long before trial. It was, however, during the initial days of trial that the police finally provided the results of the fingerprint collection to the prosecutor. The report was immediately turned over to the defense. The report showed that the only prints identified at the scene belonged to the victim's brother. He testified that he had in the past visited and stayed at his sister's apartment. He was never a suspect in the murder and his fingerprints in no manner affected Roach. The prosecutor complied with the discovery orders and acted in good faith. Roach requested a continuance to have the fingerprint evidence reviewed by an expert. This request was denied by the trial judge.

The report was produced immediately upon being available. See RCr 7.24(8). The trial judge determined there was no prejudice that attached to Roach by the delay in receiving the report and we agree. The trial judge did not abuse any discretion in denying the continuance. See Penman, supra.

While in jail awaiting trial, Roach talked to another inmate and used that person to pass a note and a letter to another person involved in the cleaning up of the murder scene. That other defendant gave the note and letter to his own attorney. It was only during trial that the Commonwealth interviewed this other person and was informed of the note and letter. They were provided to the defense immediately.

Roach requested a one week continuance in order to have a handwriting expert evaluate the note and letter. The trial judge granted four days. It was not, however, until a week after the disclosure that the note and letter were offered into evidence by the Commonwealth.

The prosecution has a duty to provide written statements made by a defendant that are "in possession, custody, or control" of the prosecution or its agents. RCr 7.24(1). Here, the statements were in the possession of another person's attorney. The statements were provided to the defense within hours of being turned over to the Commonwealth. The trial judge correctly ruled there was no violation of the discovery order. Absent a violation, sanctions were inappropriate. See RCr 7.24(9). There was no error.

The final issue involving the ordered discovery is related to a witness who disclosed during cross-examination, that she had taken a polygraph or lie detector test. Neither of the police detectives recalled that the witness had been given a polygraph test. The prosecutor had interviewed the witness and was never informed that she had submitted to a polygraph test. The trial judge ruled that there was a discovery violation because of a previous order requiring the Commonwealth to produce copies of any polygraph test results. At that time, the Commonwealth stated there were none to turn over.

The entire issue revolving around the alleged discovery violations, while perhaps attributable to sloppy trial preparation, were never willful or undertaken in bad faith. The trial judge ruled there was insufficient prejudice to warrant a mistrial. The witness was available for recall but was never recalled for questioning by Roach after he was provided the polygraph report.

None of the polygraph evidence was admissible at trial. Tamme v. Commonwealth, 973 S.W.2d 13 (Ky. 1998). The trial judge properly denied the requested relief finding there was no prejudice. The error was harmless and it did not substantially prejudice Roach's rights. See Hicks v. Commonwealth, 488 S.W.2d 702 (Ky. 1972).

## **II. Authentication Of Written Statements**

Roach next claims that the note and letter were never properly authenticated, and therefore should have been excluded from evidence on that basis. We disagree. There was no error. The burden of authentication is slight requiring only a prima facie showing of authenticity. Johnson v. Commonwealth, 134 S.W.3d 563 (Ky. 2004). The circumstances surrounding a document may be used to authenticate it. See KRE 901(b)(4). Here, the details within the writings were sufficient to cross the threshold requirements of admissibility. There was no error or abuse of discretion.

## **III. Competency**

Roach contends that the concern of his counsel about his cognitive functioning gave the trial judge reasonable grounds to order a competency evaluation and hold a hearing. We disagree.

The trial judge must be presented with sufficient evidence to establish a reasonable doubt that a hearing is required before considering a defendant's

competency. Hunter v. Commonwealth, 869 S.W.2d 719 (Ky. 1994). Absent reasonable grounds for questioning a defendant's competency the trial judge is not required to conduct a hearing. Gilbert v. Commonwealth, 575 S.W.2d 455 (Ky. 1978). We find nothing to indicate that Roach raised sufficient doubt about his competency to require a further examination by the trial judge. See Thompson v. Commonwealth, 56 S.W.3d 406 (Ky. 2001). The trial judge remains in the best position to observe any defendant. This trial judge did not witness any behavior or actions that caused a question about Roach's competency to arise. See Dunn v. Commonwealth, 573 S.W.2d 651 (Ky. 1978). Refusal to hold a competency hearing was not error in this case.

#### **IV. Miranda Rights**

Roach complains that the trial judge erred by admitting into evidence statements taken from him that were an alleged violation of Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). We do not agree.

The trial judge ruled that Roach was advised of his rights and made a knowing and voluntary waiver before giving a statement to the police. Id. The trial judge conducted a hearing to determine if the statement should be suppressed. The only testimony before the trial judge was that Roach understood his rights and was willing to speak to the detective. The trial judge's findings of fact were supported by substantial evidence. See Owens-Corning Fiberglass Corp. v. Golightly, 976 S.W.2d 409 (Ky. 1998). Roach is unable to show that the trial judge's failure to suppress the statements was clearly erroneous. See Sampson v. Commonwealth, 609 S.W.2d 355 (Ky. 1980). There was no error of any kind.

## V. Exclusion Of Portions Of Roach's Taped Statement

Roach argued to the trial judge that once the Commonwealth presented a portion of his statement given to the police, the entire statement should be played for the jury. That request was denied on the condition that Roach could not provide a hearsay exception that would allow the complete statement to be admitted into evidence. Roach did not offer any further explanation. The trial judge did, however, indicate that once a portion of the statement was introduced, Roach was free to introduce any other portion of the statement that in fairness ought to be considered contemporaneously with the portion previously admitted.

The rule of completeness contained within KRE 106 is discretionary. Schrimsher v. Commonwealth, 190 S.W.3d 318 (Ky. 2006). The core question is whether the "meaning of the included portion is altered by the excluded portion". Commonwealth v. Collins, 933 S.W.2d 811 (Ky. 1996). Roach had the opportunity to present a fair representation of the portions admitted into evidence. The trial judge did not abuse any discretion in denying Roach the ability to introduce the entire statement. There was no error.

Roach received a fundamentally fair trial and was not deprived of any federal or state rights that require reversal. The judgment of conviction and sentence are affirmed.

All concur. McAnulty, J., concurs only in result.



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