IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: AUGUST 23, 2012
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2011-SC-000039-MR

LEAMON WESNER — APPELLANT

V.

ON APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE PAMELA GOODWINE, JUDGE
NO. 09-CR-00119

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant Leamon Wesner appeals from a judgment of the Fayette Circuit Court convicting him of wanton murder and sentencing him to 20 years' imprisonment. Concluding that no reversible error occurred, we affirm.

I. BACKGROUND

For several months preceding the events at issue in this case, Appellant had been living in an apartment complex in Lexington, Kentucky, with Jacqueline (Jackie) Nolan and her two-year-old daughter Jessica Nolan. Appellant was dating Jackie and was separated from his wife. On the morning of November 25, 2008, Jackie was off work but took the 8:50 a.m. bus to a church offering free bus passes to those in need who were working or attending school. Her usual babysitter was unavailable, so she left Jessica with Appellant.

After Jackie left, Appellant walked to the apartment complex office to pay the rent. According to Cathy Gibson, the property manager, Appellant came in, slapped down the rent, and said he was leaving and not paying rent again. Gibson also testified that Appellant once told her he hated Jessica Nolan.

Appellant's estranged wife Jessica Wesner testified that she arrived at the apartment around 9:45 a.m. to pick up money from Appellant for expenses related to Appellant and Wesner's children. Wesner testified that Appellant was pacing the sidewalk and quickly handed her the money.

The church office was closed, and Jackie took the next available bus home. When she returned to the apartment, she saw Appellant standing by a coffee table and Jessica lying on the couch. Appellant asked Jackie if Jessica was prone to seizures. Jackie found Jessica gasping for breath with her eyes half closed and told Appellant to call 911.

The recorded 911 call was played for the jury at trial. On the tape, Appellant claimed that Jessica had soiled herself, so he gave her a bath. Appellant also claimed that Jessica hit her head in the bathtub, blacking out a few minutes later. EMTs were dispatched at 10:36 a.m. and arrived at 10:39 a.m. Appellant again told EMTs that Jessica fell in the bathtub. He stated that he found her unresponsive, dressed her, and called 911.

Dr. Dawn Turner was the treating physician at University of Kentucky Children's Hospital. Dr. Turner testified that Jessica's heart was not beating when she arrived. Her body was cold and she appeared pale. She had bruising on her head. According to Dr. Turner, Jessica had multiple areas of blunt

impact trauma, likely caused by an acceleration/deceleration injury with impact. Dr. Turner opined that Jessica was beaten, shaken, and hit, suffering "multiple attacks" consistent with "abusive head trauma with child physical abuse."

After doctors resuscitated Jessica, bruises began to appear in areas in addition to the head. Jessica had no brain activity, and her pupils were fixed and dilated. A CT scan revealed subdural hematomas and subarachnoid bleeding. An ophthalmic exam showed extensive retinal hemorrhages in both eyes and a detached retina on one side. After a blood flow study confirmed that blood was no longer flowing to the brain, Jessica was declared dead at 11:59 p.m. that evening.

Earlier in the day, at approximately 1:00 p.m., Detective Al Johnson of the Lexington-Fayette County Division of Police took Appellant from the hospital to be interviewed. Detective Johnson recorded Appellant's statements during the car ride to the police station. Once at the police station, Appellant's interview was video recorded. Both recordings were played for the jury at trial.

Initially, Appellant claimed that Jessica had soiled herself and then fallen in the bathtub. Appellant also claimed that he had injured Jessica while attempting to perform a kick flip on his skateboard in the apartment. Appellant claimed that the skateboard had hit Jessica in the head and that he had fallen on Jessica while performing the trick. As the interview progressed, Appellant admitted to also slapping Jessica when she threw her cereal. Appellant stated, "I hit her too hard," and, "I don't know my own power." At

one point, Appellant said that Jessica blacked out when he smacked her. He admitted to being frustrated and stressed at the time he hit Jessica.

Following his interview with police, Appellant was charged with the murder of Jessica Nolan. He was tried in Fayette Circuit Court in September 2010 in a trial lasting four days.

In addition to the testimony of Dr. Turner, the Commonwealth presented expert medical testimony from Dr. Cristin Rolf, a state medical examiner, and Dr. Emily Craig, a forensic anthropologist employed by the office of the state medical examiner. Dr. Rolf opined that Jessica had an "extremely injured brain," which suffered from subarachnoid bleeding and bilateral subdural hematomas. In Dr. Rolf's opinion, this was caused by shearing or pulling on the blood vessels resulting from "forceful acceleration and sudden deceleration of the head."

Dr. Rolf also noted a series of unusual bruises on Jessica's back, buttocks, the inside of her thighs, and the side of her face. Dr. Rolf opined that the multiple blunt impacts were too numerous to be consistent with the explanations offered by Appellant. Dr. Rolf concluded, "the cause of death of Jessica Nolan was anoxic encephalopathy due to brain injury with subdural hemorrhage . . . due to blunt impacts of head, trunk, and extremities with skull fracture."

Dr. Craig, the state forensic anthropologist, evaluated Jessica's bones, including her skull. Dr. Craig testified that Jessica's parietal lobe had a defect, which she described as a "linear fracture" and a "very distinct divot where

something impacted that skull." This resulted in a fracture on the inner side of Jessica's skull. Dr. Craig opined that something impacted the skull or the skull impacted something, excluding a smooth, flat surface.

Dr. Craig also testified that there was tearing of the muscles attached to Jessica's spinal cord, which resulted in hemorrhaging. Dr. Craig opined that this was caused by "violent side-to-side" movement while the thighs remained fixed. Dr. Craig opined that, while any one injury could have been accidental, the pattern and severity led her to the conclusion that Jessica's injuries could not have been accidental.

Dr. Peter Stephens, a forensic pathologist, testified for the defense. Dr. Stephens opined that Jessica's death was due to an impact to the right side of the back of the head, and that the manner of her death was accidental or undetermined. In Dr. Stephens' opinion, Jessica's spinal injuries would require more weight than shaking would cause. He concluded that an impact with a skateboard was a very real possibility as an explanation for the impact to Jessica's head. Dr. Stephens also concluded that Appellant's explanation that he gave to Detective Johnson was the correct explanation for what happened.

Appellant testified in his own defense. He testified that Jessica soiled herself and he gave her a bath. Appellant stated that, when he was out of the room, Jessica fell on the floor and hurt her lip. He admitted to giving her a "love tap" when she spilled her cereal, but stated that he did not hit her as hard as what he had described to Detective Johnson. Appellant testified that,

while attempting to perform a kick flip on his skateboard, and while on the phone, he fell and landed on Jessica. According to Appellant, Jessica blacked out about half an hour later.

The jury, after being instructed on all degrees of homicide, found Appellant guilty of wanton murder. The jury recommended, and the trial court imposed, a sentence of 20 years' imprisonment. Appellant therefore appeals to this Court as a matter of right. Ky. Const. § 110(2)(b).

II. NO ERROR IN DENIAL OF A MISTRIAL AFTER TWO JURORS BECAME ILL

Appellant first argues that the trial court erred in failing to declare a mistrial after two jurors became ill during the course of the trial. The trial court seated a 14-member jury panel that included two alternates. Shortly after the trial began, one juror approached the bench and informed the court that he recognized Jackie Nolan from the bus and that he had spoken to Jackie and Jessica on prior occasions. The trial court excused the juror.

At 12:25 p.m. on the final day of trial, during the defense's re-direct of Dr. Stephens, a juror ran out of the room with an upset stomach. The juror indicated, however, that she wanted to continue. Later, during direct examination of Appellant, the same juror again ran out of the courtroom to throw up. The juror again stated that she wished to continue. Approximately thirty minutes later, again during direct examination of Appellant, the same juror ran out of the room. The juror stated on the record that she had a virus and had been sick since approximately noon. The trial court denied several defense motions for a mistrial, but excused the juror, leaving no alternates.

Later, during the Commonwealth's closing argument, another juror ran out of the courtroom. The bailiff explained that the juror said she was feeling sick and that her stomach was upset. The trial court denied a motion for a mistrial. Approximately ten minutes later, the same juror left the courtroom, and the bailiff reported that she was again sick. After having a fan brought into the courtroom, the trial continued with a fan blowing on the juror. At one point during the penalty phase, defense counsel asked that the record reflect that the juror was reclined in one chair, with her feet propped on another chair and a towel on her head. The Commonwealth noted that the juror appeared alert and had walked in and out with the jury at each break. The trial court denied multiple defense motions for a mistrial based on an inattentive juror.

Although the jurors' actions in this case were not "misconduct," the situation is nevertheless analogous to cases of juror misconduct, e.g., sleeping or inattentive jurors. The test of whether a mistrial is warranted for juror misconduct "is whether the misconduct has prejudiced the defendant to the extent that he has not received a fair trial." *Talbott v. Commonwealth*, 968 S.W.2d 76, 86 (Ky. 1998) (citing *Byrd v. Commonwealth*, 825 S.W.2d 272, 275 (Ky. 1992)). In addition, "[a] mistrial is an extreme remedy and should be resorted to only when there appears in the record a manifest necessity for such an action or an urgent or real necessity." *Graves v. Commonwealth*, 285 S.W.3d 734, 737 (Ky. 2009) (citing *Bray v. Commonwealth*, 177 S.W.3d 741, 752 (Ky. 2005)).

The first sick juror was excused from jury service prior to deliberations. Therefore, with regard to the verdict, Appellant was not prejudiced by this juror's illness.

While the second juror was obviously not feeling well, nothing in the record indicates that the juror was not paying attention or that she could not participate meaningfully in deliberations. While the juror was reclined with a towel on her head, the record also indicates that the juror moved frequently and entered and exited the courtroom with the other jurors. *See Young v. Commonwealth*, 50 S.W.3d 148, 164-65 (Ky. 2001) (citing *Shrout v. Commonwealth*, 11 S.W.2d 726, 727 (Ky. 1928)) (mistrial was not warranted when juror who suffered from sickle cell anemia closed her eyes during closing arguments). The fact that a juror was not feeling well, without more, did not constitute a manifest necessity requiring a mistrial.

While jurors running out of the courtroom were undoubtedly distracting, trials are always subject to a number of delays and disruptions, usually resulting from objections and bench conferences. Each time a juror left the courtroom, the proceedings stopped until the juror returned. In addition, Appellant's argument that the jury members were distracted, because they were worried about getting sick themselves, is pure speculation. Nothing that occurred was so prejudicial to Appellant so as to deny him a fair trial. The trial court did not err in denying a mistrial.

III. NO ERROR IN FORENSIC ANTHROPOLOGIST DR. EMILY CRAIG TESTIFYING AS AN EXPERT WITNESS AND OFFERING CONCLUSIONS

Appellant argues that the trial court erred in permitting Dr. Emily Craig, a forensic anthropologist employed by the office of the Kentucky Medical Examiner, to testify as an expert and to give her opinion that the cause of Jessica Nolan's death was not accidental. We review a trial court's evidentiary rulings for an abuse of discretion. *Brewer v. Commonwealth*, 206 S.W.3d 313, 320 (Ky. 2006).

An expert witness must be qualified "by knowledge, skill, experience, training, or education" to render an opinion on the subject matter at issue. KRE 702; *see also Stringer v. Commonwealth*, 956 S.W.2d 883, 891 (Ky. 1997). Appellant argues that Dr. Craig lacked the requisite qualifications to offer expert testimony on anatomy and the nature of musculoskeletal injuries, or to offer an opinion that Jessica Nolan's death was not accidental. While Appellant's argument could conceivably have merit regarding an expert trained *only* in forensic anthropology, we conclude that Dr. Craig's unique training and experience qualified her to offer the expert testimony at issue in this case.

Dr. Craig testified as to her qualifications at trial and at a *Daubert* hearing[1] held prior to trial. She obtained a bachelor of arts degree in independent study, combining art and medical sciences (including anatomy). She then earned a master's degree in medical illustration from the Medical College of Georgia. Her training in medical illustration was almost exclusively

[1] *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

focused on anatomy, and she took medical school courses in anatomy alongside medical students.

She then worked as a medical illustrator for 15 years, illustrating hundreds of textbooks and making three-dimensional models of anatomy. Dr. Craig testified that her work as a medical illustrator included illustration of musculoskeletal anatomy. She taught courses in anatomy and specialized in musculoskeletal anatomy, which she described as "bones, muscles, and the biomechanics between the two."

Dr. Craig then returned to school and earned a Ph.D. in forensic physical anthropology from the University of Tennessee. She testified that this included training in musculoskeletal anatomy. Dr. Craig explained that forensic anthropology is the study of the skeletal system in a legal context; it includes the study of muscles as they relate to bones, and not just the study of bones themselves. While obtaining her doctorate, she continued with freelance medical illustration and taught college-level anatomy courses.

Dr. Craig has conducted trauma analysis and victim identification on those killed at the Branch Davidian compound in Waco, Texas; the Murrah Federal Building in Oklahoma City; and the World Trade Center on September 11, 2001. She teaches Kentucky coroners about musculoskeletal anatomy and lectures at the University of Louisville School of Medicine. She is the author of a number of publications, not only on issues of forensic anthropology, but also on anatomy.

In summary, Dr. Craig has a great deal of training, education, and experience in musculoskeletal anatomy. Her education and professional experience have been focused on anatomy in addition to forensic anthropology. The trial court did not abuse its discretion in determining that Dr. Craig was qualified to render an opinion on the cause and nature of Jessica Nolan's musculoskeletal injuries.

IV. NO ERROR IN ADMISSION OF, OR COMMENT ON, RECORDED POLICE INTERVIEW

Appellant next argues that the trial court erred in admitting his video recorded interview, wherein Detective Al Johnson repeatedly states or implies that Appellant is not being truthful. Appellant also argues that Detective Johnson was erroneously permitted to testify as to inconsistencies in Appellant's explanation of how Jessica was injured.

The Commonwealth played Appellant's hour-long recorded interview with Detective Johnson during direct examination of the detective. During the interview, Appellant first claimed that Jessica fell in the tub and that he later hit her with his skateboard. As the interview progressed, Appellant claimed that he had fallen on Jessica while performing a skateboard trick. Eventually, Appellant admitted that he hit Jessica "too hard," and that she blacked out shortly after. He periodically returned to his claims that Jessica was injured while he was performing a skateboard trick.

In response to Appellant's various assertions, Detective Johnson repeatedly stated that he did not believe Jessica's injuries were caused by a skateboard. He told Appellant, "I need you to be truthful," "I just want you to

be truthful with me," and made other, similar statements. As Appellant began to admit that he had hit Jessica, Detective Johnson stated, "You have almost told me the complete truth," and asked, regarding the earlier skateboard story, "Why did you lie to me?"

In *Lanham v. Commonwealth*, this Court upheld the admission of a similar, unredacted recording of a police interrogation, in which the officer accused the defendant of lying. 171 S.W.3d 14 (Ky. 2005). The recording was admissible "not as an expression of the interrogator's actual opinion about the defendant's credibility, but as a verbal act providing context for the suspect's responses." *Walker v. Commonwealth*, 349 S.W.3d 307, 311 (Ky. 2011) (citing *Lanham*, 171 S.W.3d at 19). We explained:

> By making such comments, the officer is not trying to convince anyone—not the defendant (who knows whether he or she is telling the truth), other officers, a prosecutor, or the jury—that the defendant was lying. Rather, such comments are part of an interrogation technique aimed at showing the defendant that the officer recognizes the holes and contradictions in the defendant's story, thus urging him or her to tell the truth.
>
> . . . .
>
> We agree that such recorded statements by the police during an interrogation are a legitimate, even ordinary, interrogation technique, especially when a suspect's story shifts and changes. We also agree that retaining such comments in the version of the interrogation recording played for the jury is necessary to provide a context for the answers given by the suspect.

Lanham, 171 S.W.3d at 27.

Detective Johnson's statements in this case fall squarely under *Lanham* – they were necessary to provide context to Appellant's shifting story during the hour-long interview. While *Lanham* provides that the trial court should admonish the jury that a police officer's comments "are offered solely to provide context to the defendant's relevant responses," Appellant did not request any such admonition, and a failure to request the admonition waives the error. *Id.* at 28 (quoting *State v. Demery*, 30 P.3d 1278, 1283 (Wash. 2001)).

Additionally, Appellant objects to Detective Johnson's trial testimony, in which he testified that he had trouble keeping track of the different versions of Appellant's story and that Appellant's story continued to change throughout the hour-long interview. This testimony was in the context of explaining and elaborating on his interview with Appellant; it was not an independent comment on Appellant's credibility. The testimony was meant to provide context and explanation for the interview the jury had just watched. Under these circumstances, Detective Johnson's testimony falls under *Lanham*, and there was no error in its admission. *See Walker*, 349 S.W.3d at 311; *Lanham*, 171 S.W.3d at 27.

V. ERROR IN THE USE OF APPELLANT'S MUG SHOT IN THE COMMONWEALTH'S OPENING STATEMENT WAS HARMLESS

Appellant argues that the trial court erred when it allowed the Commonwealth, over defense objection, to use Appellant's mug shot in its opening statement PowerPoint presentation. While the actual mug shot is not in the record, and the Commonwealth's PowerPoint presentation is not visible

on the video record, the Commonwealth stated on the record (with no response from defense counsel) that the picture did not contain any identifying characteristics that would indicate it was a mug shot. Appellant argues that the mug shot was both irrelevant and unduly prejudicial. *See* KRE 401; KRE 402; KRE 403.

In *Redd v. Commonwealth*, the Court of Appeals established a three-prong test for determining the admissibility of mug shots at trial:

> (1) the prosecution must have a demonstrable need to introduce the photographs; (2) the photos themselves, if shown to the jury, must not imply that the defendant had a criminal record; and (3) the manner of their introduction at trial must be such that it does not draw particular attention to the source or implications of the photographs.

591 S.W.2d 704, 708 (Ky. App. 1979). *See also Williams v. Commonwealth*, 810 S.W.2d 511, 513 (Ky. 1991).

The mug shot at issue in this case fails the first prong – there was no demonstrable need for the Commonwealth to use Appellant's mug shot in its PowerPoint presentation. Identity was not a contested issue, and Appellant was present in court and was identified by witnesses. Therefore, the trial court erred in permitting the mug shot to be used.

However, we conclude that the error was harmless. First, we note that the mug shot passes the second and third prongs of the *Redd* test. It was a mug shot from Appellant's arrest for the crime at issue in this case; therefore, it did not imply that Appellant had a prior criminal record. In addition, according to the Commonwealth's undisputed statement, there was no

indication that the photograph was a mug shot. Therefore, no particular attention was drawn to the source or implications of the photograph.

In addition, Appellant's objection was based solely on the fact that the photograph in question was a mug shot. There was no indication that Appellant's expression, the clothes Appellant was wearing, or anything else about the photograph were unduly prejudicial. It is not even clear from the record that the jury was aware that the photograph was a mug shot. We can therefore "say with fair assurance that the judgment was not substantially swayed" by the error, making the error harmless. *Winstead v. Commonwealth*, 283 S.W.3d 678, 689 (Ky. 2009) (citing *Kotteakos v. United States*, 328 U.S. 750 (1946)).

VI. NO PROSECUTORIAL MISCONDUCT REQUIRING REVERSAL

Appellant makes a number of claims of prosecutorial misconduct.

> [P]rosecutorial misconduct can assume many forms, including improper questioning and improper closing argument. If the misconduct is objected to, we will reverse on that ground if proof of the defendant's guilt was not such as to render the misconduct harmless, and if the trial court failed to cure the misconduct with a sufficient admonition to the jury. 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) (internal citations omitted).

During the Commonwealth's cross-examination of Dr. Stephens, he stated that the only way to tell if something is a bruise at autopsy is to make a cut. At this, the prosecutor stated, "I didn't show those photos to the jury, but

since you brought it up, I'm afraid we're going to have to show those nasty pictures." The prosecutor then grabbed a stack of photos. Defense counsel objected and, following a bench conference, the prosecutor stated to Dr. Stephens, "Doctor, I apologize for using the word 'nasty' and I apologize to the jury, too. This is a scientific picture. And what does it show?" This apology by the prosecutor, in the hearing of the jury, was equivalent to an admonition and cured any error.

During closing argument, the prosecutor stated that "at 10:39 a.m. she [Jessica Nolan] was dead." Appellant argues that this was a misstatement of the evidence. However, the prosecutor later specifically stated that Jessica "was declared dead by midnight." In addition, the prosecutor's statement was a reasonable inference. Medical experts testified that Jessica was cold and unresponsive by the time she arrived at the hospital. The delay in declaring Jessica dead was the result of medical examinations and a brain flow study to confirm that no blood was flowing to the brain. "This Court has repeatedly held that a prosecutor is permitted wide latitude during closing arguments and is entitled to draw reasonable inferences from the evidence." *Driver v. Commonwealth*, 361 S.W.3d 877, 889 (Ky. 2012) (quoting *Graham v. Commonwealth*, 319 S.W.3d 331, 341 (Ky. 2010)). There was no prosecutorial misconduct.

As part of the Commonwealth's closing argument, the prosecutor stated, with respect to Dr. Craig, "She was an expert. I mean were you all impressed? I'm impressed." Defense counsel objected, and the trial court instructed the

jury to disregard the prosecutor's comment. The admonition cured the error. *Duncan*, 322 S.W.3d at 87.

At the end of Appellant's testimony, the jury asked if it was possible for Appellant to perform a kick flip in the courtroom, but the court informed the jury that it was denying permission for Appellant to do so because of safety concerns. During the Commonwealth's closing argument, the prosecutor stated, "[T]here's only one person who can show us how that kick flip happened. He didn't volunteer it on direct. He didn't show you a videotape." Appellant objected, and the trial court admonished the jury to disregard the statement. The admonition therefore cured the error. Further, the jury was aware that it was the trial court that had prevented Appellant from performing the kick flip when the jury requested it, thus minimizing any possible prejudice from the prosecutor's statement.

Finally, Appellant objects to a number of nonverbal acts by the prosecutor, such as pacing the courtroom following an objection, sighing, and allegedly throwing her hands in the air. These objections are unpreserved, and we therefore reverse only if the misconduct was "flagrant and was such as to render the trial fundamentally unfair." *Duncan*, 322 S.W.3d at 87.

> Trials are conducted by humans, who often show indignation, anger or sadness. This does not mean that real emotion is misconduct. The criteria by which to judge statements and actions during closing argument is whether or not the act is inflammatory, substantially prejudiced the defense, or violated the Appellant's constitutional rights.

Major v. Commonwealth, 177 S.W.3d 700, 711 (Ky. 2005) (citing *Byrd v. Commonwealth*, 825 S.W.2d 272 (Ky. 1992)). The prosecutor's actions occurred near the conclusion of a lengthy, contentious trial. We also fail to see how these nonverbal acts resulted in any prejudice to Appellant. The prosecutor's actions were isolated, and were not so flagrant or inflammatory as to render Appellant's trial fundamentally unfair. There was no misconduct requiring reversal.

VII. NO CUMULATIVE ERROR

Finally, Appellant argues that cumulative error rendered his trial fundamentally unfair. We have opined that denying a mistrial was not error; nor was there error in allowing the testimony of Dr. Craig. This Court also opined that there was no error in the admission of the recorded police interviews. Of what little error did occur, most was cured by timely admonitions. "[A] defendant is entitled to a fundamentally fair trial, not a perfect one." *Baker v. Commonwealth*, 320 S.W.3d 699, 706 (Ky. App. 2010) (citing *Chumbler v. Commonwealth*, 905 S.W.2d 488, 504 (Ky. 1995)). Appellant received a fundamentally fair trial, and it was not rendered unfair by cumulative error.

For the foregoing reasons, the judgment of the Fayette Circuit Court is hereby affirmed.

All sitting. All concur.

COUNSEL FOR APPELLANT:

Roy Alyette Durham II
Assistant Public Advocate
Department of Public Advocacy
100 Fair Oaks Lane
Suite 302
Frankfort, KY 40601

COUNSEL FOR APPELLEE:

Jack Conway
Attorney General

James Coleman Shackelford
Assistant Attorney General
Office of Criminal Appeals
1024 Capital Center Drive
Suite 200
Frankfort, KY 40601-8204