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RENDERED: DECEMBER 20, 2012
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2011-SC-000478-MR

SHERMAN D. PERRY — APPELLANT

V.

ON APPEAL FROM MARTIN CIRCUIT COURT
HONORABLE JOHN DAVID PRESTON, JUDGE
NO. 11-CR-00002

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant, Sherman Douglas Perry, appeals as a matter of right, Ky. Const. § 110 (2)(b), from a judgment of the Martin Circuit Court convicting him of second-degree manslaughter, first-degree assault, and operating a motor vehicle under the influence of alcohol/drugs, and sentencing him to a total of thirty years' imprisonment. The charges resulted from an automobile accident in which Appellant, while driving under the influence of prescription drugs, crossed over the center line and collided with an approaching vehicle occupied by the two victims.

As grounds for relief Appellant raises the following claims of error: (1) the trial court erred by failing to grant his motion for a change in venue; (2) the trial court erred by failing to grant a directed verdict on the first-degree assault charge; (3) the trial court erred by failing to suppress the Commonwealth's accident reconstruction evidence or, alternatively, by failing to give a missing

evidence instruction as a sanction for the accidental destruction of Appellant's vehicle prior to trial; and (4) the trial court erred by permitting a state police trooper to give opinion testimony that the residue in Appellant's nostrils and on his tongue immediately following the accident was an indication that Appellant had consumed intoxicating drugs shortly before the accident. For the reasons stated below, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant was driving his pickup truck on Ky. Highway 2032 in Martin County. Fred Marcum was driving in the opposite direction toward Appellant. As the vehicles approached each other, Appellant's truck drifted into the wrong lane and struck Marcum's vehicle head-on. Marcum was killed and his passenger, Robin Crum, suffered a broken ankle and other injuries, including the loss of two teeth.

Because her ankle was broken in three different places, Crum underwent surgery. A metal plate and numerous screws were used to repair the ankle. Consequently, Crum was unable to put any weight at all on her ankle for almost three months. Her mobility was thereby severely hindered. She testified that the ankle injury caused significant pain, and that she would in the future undergo another operation to remove the plates and screws. After that, she expected to make a full recovery.

Following the accident Kentucky State Police detective T. Russell administered field intoxication tests to Appellant and concluded that he was

intoxicated. Russell also observed a residue in Appellant's nostrils and on his tongue, which lead Russell to believe that Appellant had crushed and snorted pills, a common practice among drug abusers used to enhance the intoxicating effect of a drug. Later medical testing disclosed that Appellant did have several prescription drugs in his system, including hydrocodone (Lorcet), alprazolam (Xanax), and carisprodal (Soma). All of these drugs were legally prescribed, and Appellant had been taking them for over ten years as a result of injuries he had suffered working as a coal miner. While individually each of the drugs tested within therapeutic levels, evidence was presented that when taken together, the drugs could act in combination so as to make it unsafe for someone to drive. At the hospital following the accident, Appellant admitted that he had also smoked marijuana earlier that day.

Appellant was indicted for wanton murder, first-degree assault, and driving under the influence. The Commonwealth's theory of the case was that Appellant had crushed, snorted, and chewed his prescription pain pills for the purpose of obtaining an enhanced level of intoxication, and that he smoked marijuana, and then he drove his vehicle. At trial, Appellant's defense was that he was not intoxicated at the time of the crash, that he had not abused his medications, and that the wreck was just an unfortunate accident.

The jury acquitted Appellant on the murder charge but found him guilty of the lesser-included offense of second-degree manslaughter. The jury also found Appellant guilty of the first-degree assault of Robin Crum, and of driving under the influence of intoxicating substances. The jury recommended a

sentence of ten years on the manslaughter charge and twenty years on the assault charge, to be served consecutively, for a total sentence of thirty years to serve. The trial court entered final judgment consistent with the jury's verdict and sentencing recommendation. This appeal followed.

II. CHANGE OF VENUE

Appellant contends that the trial court erred by denying his motion for a change of venue after fifty-seven of the eighty-five potential jurors convened for the jury pool, or sixty-seven percent, were excused for cause. He argues that this level of juror disqualification indicates that he could not receive a fair trial in Martin County, and that the trial court should have granted his motion for a change in venue.

Appellant had also filed a pre-trial motion for a change in venue. At the hearing on that motion, two long-time county residents testified that they did not believe that Appellant could receive a fair trial in Martin County. He mentioned, however, no specific pre-trial publicity or press coverage which would have reflected an inability to obtain a fair trial there. The trial court denied his motion.

At trial, of the jurors examined during *voir dire*, fifty-seven were excused for cause because they had knowledge of the case or had knowledge of the parties or witnesses. Appellant notes that of the remaining twenty-eight, eighteen still had *some* awareness of the case or knew a witness, although not with such familiarity as to require them to be excused for cause. He also

points out that not long before his trial, Martin County had experienced a very similar, high-profile, impaired-driving case that still inflamed the county, and that four of the potential jurors in this case had served as jurors on that case.

At the conclusion of *voir dire* Appellant renewed his motion for a change of venue. In response, the following discussion occurred:

> **Trial Court:** Well, if I had known what I know now what I knew then I certainly could have venued the case out of here.
>
> But we're here and we apparently have a jury and, of course, I have excused everybody who could have any kind of possible claim whatsoever to be the least bit prejudiced against the New York Yankees or the Cincinnati Reds or whatever.
>
> **Prosecutor:** So, just for clarification, the reason the court would have moved it would have been for convenience, not because of what we learned during voir dire. I just want to make sure we're clear on the record.
>
> **Trial Court:** No, no, I'm saying we had a hard time getting a jury here.
>
> **Prosecutor:** Yes, we have.
>
> **Trial Court:** If I had known, I mean I just did not predict or think we would have that much difficulty getting this jury. And if I had had any inkling that we would have had as much difficulty with this jury or with the other case I certainly would have venued both cases. And I'm saying something on the record and this may cause it to be reversed; I'm just telling you the way it is. I'm beginning to think that if you have any significant case in this county, you've got to venue it out because we just have too many connections . . . .
>
> **Prosecutor:** Then may I suggest that if the court really feels that this jury panel . . . .
>
> **Trial Court:** No, no, I think this jury is going to be a fair jury.
>
> **Prosecutor:** Okay.
>
> **Trial Court:** That's just the way I'm looking at it. When you have to strike fifty-seven people for cause, that's half the pool, that's just too

much, it's just too much. Of course, on the other hand, we had a terrible time getting a jury on that Johnson County, what's her name?

Prosecutor: Donna Wheeler?

Trial Court: Wheeler case. We dismissed thirty-seven and that's too high for me in Johnson County to have that many.

Maybe I'm talking too much but I just think it's kind of a problem here in this county. I don't think it's the same in Lawrence County because it's so diverse. This county is so interconnected and close [unintelligible] everybody to everybody else that it's just, I think it's just something we're going to have to deal with, it's just going to be hard.

Anyway I'm going to deny the motion. We've gotten this far with it and I do think we have a fair jury pool from which you all can draw and I think we've gotten nearly everybody who knows anything about anything.

Prosecutor: I tend to concur and I think that's why it's a fair jury.

Thus, despite the trial judge's obvious post-*voir dire* concerns, he was also firmly convinced that a fair jury had been selected. For that reason, he denied Appellant's renewed motion for a change of venue.

KRS 452.210 provides as follows:

When a criminal or penal action is pending in any Circuit Court, the judge thereof shall, upon the application of the defendant or of the state, order the trial to be held in some adjacent county to which there is no valid objection, if it appears that the defendant or the state cannot have a fair trial in the county where the prosecution is pending. If the judge is satisfied that a fair trial cannot be had in an adjacent county, he may order the trial to be had in the most convenient county in which a fair trial can be had.

In addition to KRS 452.210, the Due Process Clause of the 14th Amendment of the United States Constitution requires that a change of venue be granted when it appears that the defendant cannot have a fair trial in the county wherein the prosecution is pending. *Brewster v. Commonwealth*, 568 S.W.2d 232, 235 (Ky. 1978); *see McCleskey v. Kemp*, 481 U.S. 279, 310 n.30

(1987) (citing *Irvin v. Dowd*, 366 U.S. 717 (1961) ("Widespread bias in the community can make a change of venue constitutionally required."). To obtain a change of venue, "[p]rejudice must be shown unless it may be clearly implied in a given case from the totality of the circumstances." *Brewster*, 568 S.W.2d at 235. In the usual case, the party moving for a change of venue must show that "(1) there has been prejudicial news coverage, (2) [the coverage] occurred prior to trial, and (3) the effect of such news coverage is reasonably likely to prevent a fair trial." *Brewster*, 568 S.W.2d at 235 (citing *Sheppard v. Maxwell*, 384 U.S. 333 (1966)). However, "the mere fact that jurors may have heard, talked, or read about a case is not sufficient to sustain a motion for change of venue, absent a showing that there is a reasonable likelihood that the accounts or descriptions of the investigation and judicial proceedings have prejudiced the defendant." *Brewster*, 568 S.W.2d at 235.

In evaluating whether a change of venue is required, "wide discretion is, and should be, vested in the trial court . . . because the judge is present in the county and presumed to know the situation." *Stopher v. Commonwealth*, 57 S.W.3d 787, 795 (Ky. 2001). As such, we review the trial court's decision for an abuse of discretion.

Since KRE 452.210 does not condition a change of venue upon prejudicial news or media coverage, the *Brewster* test should not be viewed as

a requirement in all change of venue circumstances.[1] Here, Appellant's claim of widespread bias in Martin County is not based upon pervasive prejudicial news coverage, therefore the three-part test we identified in *Brewster* has limited applicability. We recognize that widespread bias might arise and yet remain totally outside the interest of local news outlets, especially in small counties with few of the traditional public news sources such as local newspapers and radio stations. Similar evidence could be collected from non-traditional forms of public expression, such as social media and community internet forums. Appellant relied on none of those sources.

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[1] For example, suppose it is apparent through some other means that rumors about a defendant's despicable reputation generates such a loathing toward him that all residents of the county are biased against him, yet no local media deigns to publish such scurrilous and unfounded slander. Under these circumstances, it may fairly be said that a change of venue should be granted pursuant to KRE 452.210, though obviously this scenario would fail the *Brewster* test. Accordingly, we take this occasion to clarify that a Defendant does not bear the burden of passing the *Brewster* test in each and every case; rather, he bears the burden of satisfying the requirements of KRE 452.210. Ky. Const. § 11 ("[T]he General Assembly may provide by a general law for a change of venue in such prosecutions for both the defendant and the Commonwealth, the change to be made to the most convenient county in which a fair trial can be obtained."); *Heck v. Commonwealth*, 174 S.W. 19, 20 (Ky. 1915) ("The right to a change of venue is only bestowed by the statute, and the Legislature has authority to provide for the extent and manner of its exercise."); *Allen v. Commonwealth*, 182 S.W. 176 (Ky. 1916) (Defendant in the murder of the son of a highly respected judge entitled to change of venue due to the infamy of crime, the influence of the judge's family in the county, and the outrage of the public, without reference to pretrial media coverage); *Williams v. Commonwealth*, 154 S.W.2d 563 (Ky. 1941) (the prominence of a circuit court judge and his active efforts and those of his friends, including the sheriff, deputies, and court clerks, to bring about the convictions of persons indicted for false swearing in testifying against such judge on a contest of his re-election because of alleged bribery of voters entitles the defendant to a change of venue and the error is not cured by summoning a jury from another county); *Bradley v. Commonwealth*, 265 S.W. 291 (Ky. 1924) (in a homicide case, the court abuses its discretion in denying a change of venue on the ground that public sentiment is so crystallized against the defendant as to create a universal bias and prejudice); *Browder v. Commonwealth*, 123 S.W. 328 (1909) (A homicide defendant is entitled to a change of venue, based upon known facts which include the lynching of four of his friends, despite the uncontradicted testimony of Commonwealth witnesses that defendant could undoubtedly get a fair trial in the county.).

Rather than follow the *Brewster* test in justification of his entitlement to a change in venue, Appellant relies exclusively on the trial court's post-*voir dire* statements and upon the sampling of opinions expressed by the jurors during *voir dire*, which he compares to selected statistics gleaned from *Jacobs v. Commonwealth*, 870 S.W.2d 412 (Ky. 1994). *Jacobs* is the well-known Knott County case involving the brutal kidnapping, murder, and sexual assault of an Alice Lloyd College student by former death-row inmate, Clawvern Jacobs. Appellant notes that in *Jacobs*, of the 153 or more jurors that were individually examined on *voir dire*, 112 were excused because they had preconceived opinions about Jacobs' guilt, could not presume him innocent, or admitted to knowledge of his prior manslaughter conviction. Of 38 jurors who were accepted by the court, 19 had an initial opinion that Jacobs was guilty. Appellant extrapolates from *Jacobs* and concludes that his case has similar statistics.[2]

However, in *Jacobs*, the evidence of widespread bias was not limited to an analysis of individual juror's personal disqualifications. There was substantial evidence presented, consistent with the requirements of *Brewster*, of wide-spread pretrial publicity in the media, coupled with public opinion surveys documenting the adverse impact of the publicity.[3] In contrast with *Jacobs*, many of the jurors in Appellant's case were excused, not because of

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[2] Appellant notes that 67% of the juror venire in his case was excused for cause; the percentage in *Jacobs* was 74%.

[3] The public animosity in *Jacobs* was such that public events were held to raise money for the prosecution.

exposure to pervasive pretrial publicity, but because specific individuals on the jury panel knew the defendant, the victims, or potential witnesses. Given these substantial factual differences, we are persuaded that *Jacobs* is distinguishable from this case.

Obviously, the trial judge's post-*voir dire* comments certainly point in two different directions. The trial judge indicated that had he known before trial of the difficulty they would have in selecting a jury, he would have granted the pre-trial motion for a change of venue. That comment certainly supports Appellant's contention that the trial court misjudged the breadth of public knowledge about the case. However, the trial court also concluded, "I do think we have a fair jury pool from which you all can draw and I think we've gotten [off the panel] nearly everybody who knows anything about anything."

In the final analysis, whether Appellant had a fair trial turns upon the jurors who served on his case, not the ones who were excused. The fact that a great many of the potential jurors individually knew someone or something connected to the case does not indicate a general climate in the county of bias against Appellant that was so widespread that it might have contaminated the attitudes of even those jurors without specific disqualification. The trial judge was clearly satisfied that a fair petit jury had been empanelled. We are persuaded that he did not abuse his discretion by denying either Appellant's original motion or his post-*voir dire* renewed motion for a change of venue.

III. SUFFICIENCY OF EVIDENCE OF FIRST-DEGREE ASSAULT CHARGE

Appellant next contends that the trial court erred by denying his motion for a directed verdict on the charge of first-degree assault against Robin Crum. He argues that the injury she sustained does not satisfy the "serious physical injury" element of first-degree assault. In considering a motion for a directed verdict, the trial court is required to draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. If the evidence is sufficient to induce a reasonable juror to believe beyond reasonable doubt that defendant is guilty, directed verdict should not be given. On appeal, we reverse only if, under the evidence as a whole, the finding of guilt was clearly unreasonable. *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991).

To be guilty of first-degree assault, a defendant must have caused "serious physical injury" to another person.[4] KRS 500.080(15) defines "serious physical injury" as a "physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ[.]"

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[4] KRS 508.010 defines first-degree assault as follows:

(1) A person is guilty of assault in the first degree when:

(a) He intentionally causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or

(b) Under circumstances manifesting extreme indifference to the value of human life he wantonly engages in conduct which creates a grave risk of death to another and thereby causes serious physical injury to another person.

Accordingly, under either prong of the statute, the defendant must have caused a "serious physical injury" to the victim.

Crum testified that her ankle was broken in three places. For three months following the crash she could not put any weight on her ankle. When she did begin walking, she could only put some of her weight on her ankle. She had "sharp pains" with "every" step she took. In the seven months following the crash, she had three different casts on her ankle and she would endure an additional surgery about two months following the trial. We believe that the level of injury described by Crum is sufficient to take the question to the jury about whether the injury incurred was a "serious physical injury."[5] For three months following the crash she was essentially crippled, unable to bear any weight at all on her ankle. She suffered a great deal of pain from her injuries. Her condition plainly satisfies the statutory requirement of "prolonged impairment of health" or "prolonged loss or impairment of the function of a bodily organ." *Clift v. Commonwealth*, 105 S.W.3d 467 (Ky. App. 2003) (Four weeks' impairment of an 11-month-old child's ability to use his arm was either the "prolonged impairment of health" or the "prolonged loss or impairment of the function of a bodily organ," and thus met the statutory definition of a "serious bodily injury.").

IV. DESTRUCTION OF VICTIM'S VEHICLE AND SPOILATION OF EVIDENCE INSTRUCTION

Following the crash, Appellant's pickup truck was secured by police. When the criminal prosecution commenced in the district court, an order was

[5] Instructions were also given which would have allowed the jury to find Appellant guilty of fourth-degree assault in the event the jury determined that the injury was merely a "physical injury" rather than a "serious physical injury."

entered to preserve both of the vehicles involved in the collision. The Commonwealth, the police, and the parties storing the vehicles knew about the order. Nevertheless, several months after the collision and just a month before the trial, the garage owner where Appellant's crashed truck was stored allowed it to be crushed. Appellant contends that as a result of the destruction of his truck, the trial court should have either (1) suppressed the testimony of the Commonwealth's accident reconstructionist or (2) granted Appellant's request for a missing evidence instruction. He claims that the destruction of the truck prevented him from having his own accident reconstructionist investigate the crash, thus hampering his ability to rebut the Commonwealth's expert.

The trial court denied Appellant's motion, and permitted the Commonwealth to introduce evidence and testimony from its accident reconstructionist. The trial court also declined to give a missing evidence instruction. Appellant argues on appeal that the trial court's rulings violated his right to due process because he was deprived of vital evidence.

In *Illinois v. Fisher*, the United States Supreme Court summarized its fundamental holdings concerning a defendant's due process right to have exculpatory evidence in the hands of the State disclosed or preserved as follows:

> We have held [in *Brady v. Maryland*, 373 U.S. 83 (1963)] that when the State suppresses or fails to disclose material exculpatory evidence, the good or bad faith of the prosecution is irrelevant: a due process violation occurs whenever such evidence is withheld . . . . [B]y contrast, we recognized [in *Arizona v. Youngblood*, 488 U.S. 51 (1988)] that the Due Process Clause 'requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which

> might have exonerated the defendant.' . . . We concluded that the failure to preserve this 'potentially useful evidence' does not violate due process *'unless a criminal defendant can show bad faith on the part of the police.'*

540 U.S. 544, 547–48 (2004) (citations omitted; emphasis in the original).

In failure-to-preserve cases, the defendant must also be able to show both that the missing evidence "possess[ed] an exculpatory value that was apparent before the evidence was destroyed" and that he was "unable to obtain comparable evidence by other reasonably available means." *California v. Trombetta*, 467 U.S. 479, 489 (1984). Thus, to make out a due process violation where evidence has been destroyed, the defendant must show (1) that the State acted in bad faith in failing to preserve the evidence; (2) that the exculpatory potential of the evidence was apparent before its destruction; and (3) that the evidence was, to some extent, irreplaceable.

The first two elements are interrelated. It must appear that the state deliberately sought to suppress material, potentially exculpatory evidence. Such was the case in *Sanborn v. Commonwealth*, where we held that the prosecutor's deliberate erasing of witness interview tapes so as to keep those statements away from the defense violated the Due Process Clause as well as the discovery rules and entitled the defendant to an instruction "permitting the jury to draw a favorable inference for the defendant from the destruction of the evidence." 754 S.W.2d 534, 540 (Ky. 1988), overruled on other grounds by *Hudson v. Commonwealth*, 202 S.W.3d 17, 22 (Ky. 2006).

Here, there was no showing of bad faith in losing the evidence. The truck was obviously destroyed as a result of the negligence of the garage owner

charged with its keeping. Further, any exculpatory value of the defense being able to access and inspect the actual truck, as opposed to using pictures of the truck to argue the same point, for example, is purely speculative. Although Appellant's trial counsel said he was going to view the truck and do an independent investigation of the collision, as of a month prior to trial, he had not availed himself of the opportunity. He makes no specific claim as to how his examination of the truck would have yielded exculpatory evidence. Therefore, the trial court did not abuse its discretion by denying Appellant's motion to suppress the evidence of the Commonwealth's accident reconstructionist.

Moreover, the trial court properly exercised its discretion in denying a missing evidence instruction. Evidence lost because of "mere negligence" is one of the circumstances in which a missing evidence instruction should *not* be given because mere negligence negates bad faith, which is an element of the instruction. *University Medical Center, Inc. v. Beglin*, 375 S.W.3d 783, 791 (Ky. 2011). Similarly, the missing evidence instruction will not be warranted under other ordinary circumstances, such as loss of evidence as a result of fire, weather, natural disaster, other calamities, or destruction in the normal course of file maintenance, particularly in accordance with industry or regulatory standards. Lawson, *The Kentucky Evidence Law Handbook* § 2.65[3] (4th ed. 2003) ("An inference based on destruction (or loss) may not be drawn if the destroyer acted inadvertently (mere negligence) or if there is an adequate explanation for the destruction (or loss)."); *Millenkamp v. Davisco Foods Intern.*,

Inc., 562 F.3d 971 (9th Cir. 2009) (no missing evidence inference is proper when evidence was destroyed long before litigation was anticipated).

Here, the destruction of the truck was obviously as a result of an unfortunate misunderstanding, and therefore, pursuant to the foregoing rules, Appellant was not entitled to a missing evidence instruction.

V. OPINION EVIDENCE OF APPELLANT'S USE OF DRUGS PRIOR TO COLLISION

Shortly after the collision, Kentucky State Police detective T. Russell examined Appellant and observed a bluish-green residue in Appellant's nostrils and on his tongue. Pictures were taken of the residue and introduced at trial. Appellant contends that the trial court erred by permitting Russell to testify about the bluish-green residue he observed in Appellant's nostrils and on his tongue immediately following the accident.

At trial, as Russell began to give his opinion regarding the significance of the residue, Appellant objected. At the bench, the trial court overruled the objection and made the observation that "every officer in Eastern Kentucky is aware of all that [i.e., that residue in the nostrils results from snorting pills]." The following exchange then took place between the prosecutor and Russell:

> **Prosecutor:** Based on your training and experience, what does the residue up the nose and on the tongue indicate to you?
>
> **Russell:** It indicates an abuse of the drug, of certain types of drugs. When it's inhaled through the nose it's called insufflation.
>
> Basically a drug is crushed up or is already in the powder form and inhaled through the nose to, it defeats the time-release of the pill or

capsule and it enters your bloodstream quicker causing a greater amount of intoxication.

Also, if it's on the tongue it means that the pill was probably chewed up, once again defeating the time-release purpose.

Detective Russell based his knowledge of the significance of blue-green residue in the nostrils and on the tongue on his training and his nine years of service with the Kentucky State Police. His observation of the residue on Appellant reinforced his other observations indicating that Appellant was intoxicated. Another state trooper later testified that pill residue is usually of the color observed by Russell, and a technician from Appellant's pharmacy testified that Lorcet pills are green or blue.

The decision regarding the admissibility of expert testimony rests initially in the sound discretion of the trial court. *Commonwealth v. Craig*, 783 S.W.2d 387, 388 (Ky. 1990), *overruled on other grounds by Dyer v. Commonwealth*, 816 S.W.2d 647 (Ky. 1991). We review the trial court's decision under the abuse of discretion standard. *Evans v. Commonwealth*, 116 S.W.3d 503, 509 (Ky. App. 2003). In order to testify as an expert, a witness must be qualified as one based upon his knowledge, practice, skill, experience, long observation, training or education in a given area or subject. KRE 702; *Mondie v. Commonwealth*, 158 S.W.3d 203, 212 (Ky. 2005). "[T]here is no precise rule as to the mode in which such skill or experience must be acquired." *Craig*, 783 S.W.2d at 388. Whether this knowledge is scientific, technical or specialized, it must be of the type that the average juror would not be expected to have acquired. *Dixon v. Commonwealth*, 149 S.W.3d 426, 430 (Ky. 2004).

Appellant does not contend that Russell expressed an opinion purporting to identify the substance forming the residue, or that he opined on how the substance might have affected Appellant. He complains only that the detective testified that such residue was indicative of drug abuse by inhaling and chewing a substance to more quickly experience its intoxicating effects. As such, we do not conclude that Russell testified beyond the scope of his basic training and experience as a police officer.

In *Allgeier v. Commonwealth*, we noted that a police officer's opinion based on training and experience "can be distinguished from the more extensive and complex knowledge required for testimony by traditional experts, such as accident reconstructionists and forensic pathologists." 915 S.W.2d 745, 747 (Ky. 1996). Thus, it is well established that police officers may be qualified to testify as expert witnesses on some matters, based upon training and experience in the field. *See Sargent v. Commonwealth*, 813 S.W.2d 801 (Ky. 1991); *Kroth v. Commonwealth*, 737 S.W.2d 680 (Ky. 1987); and *Dixon*, 149 S.W.3d 426. Russell's opinion is clearly within the parameters of his training and experience, and as such, we conclude that the trial court did not err in admitting his opinion testimony.

VI. CONCLUSION

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

Minton, C.J., Abramson, Cunningham, Noble, Scott and Venters, JJ., concur. Schroder, J., not sitting.

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