

**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**NOT TO BE PUBLISHED OPINION**

**THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED."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THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE  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UNPUBLISHED KENTUCKY APPELLATE DECISIONS,  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BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED  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.**

Supreme Court of Kentucky  
2012-SC-000649-MR **FINAL**

DATE 11-13-14 211A Grant AD.C

CHRISTOPHER KOTERAS

APPELLANT

V. ON APPEAL FROM JESSAMINE CIRCUIT COURT  
HONORABLE C. HUNTER DAUGHERTY, JUDGE  
NO. 11-CR-00087

COMMONWEALTH OF KENTUCKY

APPELLEE

**MEMORANDUM OPINION OF THE COURT**

**AFFIRMING**

The trial court sentenced Christopher Koteris to twenty years' imprisonment after a jury convicted him at trial of eight counts of first-degree sexual abuse. Koteris now appeals the judgment as a matter of right.<sup>1</sup> He presents a single primary argument: the trial court erroneously allowed the jury to hear highly prejudicial evidence, the cumulative effect of which deprived him of a fair trial. This evidence involves testimony about a domestic violence order obtained by Koteris's ex-wife and testimony of an uncharged incident of sexual contact with the victim. Finding Koteris's arguments unavailing, we affirm the judgment of conviction and sentence.

---

<sup>1</sup> See Ky. Const. § 110(2)(b).

## **I. FACTUAL AND PROCEDURAL BACKGROUND.**

Jennifer Koteris found a note written by her eldest daughter, Amanda,<sup>2</sup> then eleven years old, informing her that Koteris had touched Amanda's "private spots." The note stated that the touching started several years earlier when Amanda was age seven and asked Jennifer to inform Amanda's counselor, Ms. Janet. Jennifer reported the alleged abuse to authorities. Koteris's indictment and prosecution followed.

Leading up to Jennifer's discovery of the note, Koteris's relationship with both Jennifer and their children had been confrontational. Diagnosed as bipolar, Koteris was subject to severe mood swings and bouts of anger. Eventually, the Koterises' tumultuous relationship became strained to the point that the couple separated; and Jennifer sought and received an Emergency Order of Protection (EPO) against Koteris. Soon thereafter, the couple divorced.

Koteris got an apartment in Lexington, and the children made weekend visits there. The apartment had two bedrooms—one with a queen-sized bed and the other with a twin-sized bed. Amanda testified that on a particular visit in Lexington, her sister wanted to sleep alone in the twin bed rather than the sisters sleeping together in the queen-sized bed as was customary. So Amanda slept with Koteris in the queen-sized bed. Similar to the encounters alleged in the indictment, Amanda testified she woke up to Koteris touching her inappropriately. The impact of this occurrence was clear and immediate. On

---

<sup>2</sup> To protect the identity of the victim, we use "Amanda" as an alias.

Amanda's next scheduled visit to Koter's apartment, she refused to get out of Jennifer's car. Koter grabbed Amanda by the wrist and attempted to pull her from the vehicle. As a result, Amanda suffered a sprained wrist.

The wrist incident prompted a suspension and modification of Koter's exercise of his visitation rights with his daughters. Initially following the incident, Koter's visits were supervised at a counselor's office. This eventually transitioned to visitation only in public places. But at no point following this incident did Amanda visit with Koter.

Amanda testified that when she overheard her mother considering permitting Amanda's younger sister to resume weekend overnight visits with Koter, she was impelled to report the abuse to her. By this time, Amanda's younger sister was reaching the age when Amanda was first subjected to abuse by Koter, so Amanda said she feared Koter would start abusing the sister, as well.

Koter was indicted by the Jessamine County Grand Jury on twenty-four counts of first-degree sexual abuse, but the Commonwealth later amended the indictment to proceed on only eight counts. The remaining sixteen counts were later dismissed. Each count was differentiated by specific facts relative to the particular occurrence.<sup>3</sup> The eight occurrences presented at trial follow the

---

<sup>3</sup> In addition to avoiding a detailed discussion of Amanda's allegations because of their obvious intimate nature, we also refrain from such a discussion because Koter makes no complaint about the Commonwealth's distinction of each particular count.

general pattern of Amanda waking to find Koterias sitting on the edge of her bed with his hand underneath her panties and fondling her genitals.

The jury convicted Koterias of all eight counts and recommended a sentence of five years' imprisonment on each count, to run consecutively, for a total of forty years' imprisonment. But because of the consecutive-sentence cap outlined in Kentucky Revised Statutes (KRS) 532.110(c) and 532.080(6)(b), at final sentencing, the trial court sentenced Koterias to twenty years' imprisonment. In addition, Koterias was sentenced to a five-year period of conditional discharge upon release from incarceration or parole and to lifetime sex-offender registration. This appeal followed.

## **II. ANALYSIS.**

Koterias asserts two trial-court errors involving the admission of evidence. Our standard of review for such matters is whether the trial court abused its discretion, *i.e.*, acted arbitrarily, unreasonably, or contrary to sound legal principles.<sup>4</sup>

Each of Koterias's allegations of error involves the admission of prior-bad-acts evidence under Kentucky Rules of Evidence 404(b), which prohibits using "[e]vidence of other crimes, wrongs, or acts . . . to prove the character of a person in order to show action in conformity therewith." Generally speaking, KRE 404(b) operates as a rule of exclusion, running contrary to our general rule of inclusion in evidentiary matters. The inadmissibility of a defendant's

---

<sup>4</sup> See *Goodyear Tire & Rubber Co. v. Thompson*, 11 S.W.3d 575, 577, 581 (Ky. 2000).

prior bad acts stems from the “fundamental demands of justice and fair play.”<sup>5</sup> Promoting these principles, trial courts “must apply [KRE 404(b)] cautiously, with an eye towards eliminating evidence which is relevant only as proof of an accused’s propensity to commit a certain type of crime.”<sup>6</sup>

That being said, prior-bad-acts evidence is properly admissible in limited circumstances. Detection of these limited circumstances depends on a determination that the offered evidence is “relevant for some purpose other than to prove the criminal disposition of the accused, probative as to the actual commission of the prior bad act, and not overly prejudicial under KRE 403.”<sup>7</sup> KRE 404(b)(1)-(2) offer a list of permissible reasons for allowing prior-bad-acts evidence, “such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident” or if the evidence is so “inextricably intertwined with other evidence essential to the case that separation of the two [] could not be accomplished without serious adverse effect on the offering party.” As we have often said, however, these reasons are illustrative rather than exhaustive.<sup>8</sup> With this legal background in mind, we turn to Koteris’s arguments.

---

<sup>5</sup> *Clark v. Commonwealth*, 223 S.W.3d 90, 96 (Ky. 2007).

<sup>6</sup> *Bell v. Commonwealth*, 875 S.W.2d 882, 889 (Ky. 1994).

<sup>7</sup> *Kerr v. Commonwealth*, 400 S.W.3d 250, 260 (Ky. 2013) (internal quotation marks omitted).

<sup>8</sup> *Clark*, 223 S.W.3d at 96.

**A. The Admission of Testimony Regarding the Facts of Jennifer's EPO Against Koteris was not Error.**

While this allegation of error does technically involve prior-bad-acts evidence, the standard KRE 404(b) analysis is somewhat inapplicable because of the way in which the evidence was presented at trial. We lay out the sequence of events leading to the admission at trial because the events tend to show that defense counsel essentially agreed to allow admission of the evidence. Regardless, Koteris's argument that only one inference can be drawn from the evidence is, at best, tenuous.

As mentioned previously, following a particularly contentious episode and a week of arguing, Jennifer sought and obtained an EPO against Koteris. In the EPO application, Jennifer complained that she was "scared to death" that Koteris "will hurt [her]." Jennifer also said she locked herself in her room as Koteris pounded on the door demanding the keys to her car. Additionally, Jennifer said Koteris "did something to [her] sexually that [she] didn't want" and she "told him to get help [because she] could not live like this anymore." This statement forms the basis for Koteris's argument here.

Koteris willingly agreed to the admission of the EPO into evidence at trial, but he argued any statement related to Jennifer's allegations of unwanted sexual activity was too prejudicial to be admitted at trial in light of the charges Koteris faced. The Commonwealth wanted to introduce Jennifer's EPO statements, including the unwanted-sexual-activity aspect, to rebut Koteris's potential claim in defense that Jennifer was so upset with him that she induced Amanda to fabricate the abuse allegations. The trial court agreed with

Koteras. And Koteras's defense never materialized into anything more than simply arguing Amanda fabricated the allegations.

On direct examination, Koteras denied any physical altercations with Jennifer during their marriage, acknowledging only yelling and screaming matches. On cross-examination, the Commonwealth inquired further into Koteras's relationship with Jennifer. The Commonwealth brought up Jennifer's EPO and said Koteras was actually physically and verbally aggressive toward Jennifer on that date. Koteras cut the Commonwealth off mid-sentence and denied any physical aggression, yet again. The Commonwealth repeatedly asked Koteras about physical abuse and Koteras consistently denied it. The date mentioned in the EPO for the unwanted sexual advances, May 30, was specifically referenced as the Commonwealth asked, "What about the night of the 30th?" Again, Koteras denied any physical abuse.

The Commonwealth then approached the bench for a conference to discuss the possible admission of Jennifer's sexual allegations made in the EPO application. During the discussion, the trial court suggested the Commonwealth could simply mention Koteras did something "physically" that Jennifer did not want without ever mentioning any alleged sexual aspect. Notably, defense counsel *agreed* to this approach, seconding the trial court's suggestion of simply using the more non-suggestive "physical" descriptor. The Commonwealth then asked the trial court if it could mention Koteras did something to Jennifer, physically, that she did not want—parroting the language used by Jennifer in the EPO—and the trial court agreed as long as



there was no mention of a sexual nature. Defense counsel did not object to this final request by the Commonwealth.

Following the bench conference, the Commonwealth proceeded to ask Koteris if something happened between Jennifer and him that Jennifer did not like. Koteris clarified the date of the incident, but agreed that it occurred. The Commonwealth then said, "Something happened that she didn't want, right?" Koteris responded with, "Correct."

Initially, Koteris's allegation of error fails because this evidence was in no way offered simply to show Koteris had a propensity for sexual deviancy. Koteris's citation to *Bentley v. Commonwealth*<sup>9</sup> is misguided. *Bentley*, an unpublished decision, involved the improper admission, in the context of child sex abuse, of details from a domestic violence petition pertaining to Bentley's proclivity for rough anal sex. We found the admission of such evidence "troubling"<sup>10</sup> because the allegations of sex abuse involved anal sex, and there was simply no reason for the admission of such provocative evidence except to encourage a conviction by propensity. Nothing approaching that level of prejudice occurred here.

Rather, Koteris denied any physical altercation ever occurring with Jennifer, which by the terms of Jennifer's domestic violence petition is inaccurate. Koteris's proclivity for outbursts and aggressive behavior was an underlying thread running throughout the trial. The Commonwealth's

---

<sup>9</sup> 2008 WL 2167890, No. 2006-SC-000376 (Ky. 2008).

<sup>10</sup> *Id.* at \*6.

questioning regarding the physical nature of a particular altercation does not raise the same suspicions as we acknowledged in *Bentley*. Furthermore, Koteras's counsel agreed to the approach taken by the Commonwealth, both at pretrial conference and during Koteras's testimony.<sup>11</sup>

Finally, Koteras's argument fails because his assertion is meritless that the *only* possible inference a jury could have drawn from the highlighted testimony is that Koteras was a sexual aggressor who attempted to do something sexually to Jennifer. It is within the province of the jury to draw all reasonable inferences from the evidence presented.<sup>12</sup> "A reasonable inference is one in accordance with reason or sound thinking and within the bounds of common sense without regard to extremes or excess. It is a process of reasoning by which a proposition is deduced as a logical consequence from other facts already proven."<sup>13</sup> Here, there is no reason to think that merely because Koteras was on trial for crimes of sexual abuse of his daughter that the jury *must* have inferred that the physical altercation between Koteras and Jennifer involved unwanted sexual advances.

It is at least equally likely that a wife would barricade herself in her room as protection from violence as it is unwanted sexual advances. Either way, the reasoning for the barricade remains the same: escaping the husband. And

---

<sup>11</sup> Of course, it is a well-settled rule that appellate review is not allowed for issues agreed to at trial. We do not base our decision on this for this case, but we highlight the fact that Koteras's counsel agreed to the approach as an indication of the lack of prejudice.

<sup>12</sup> See 75A AM.JUR.2D TRIAL § 631.

<sup>13</sup> *Martin v. Commonwealth*, 13 S.W.3d 232, 235 (Ky. 1999).

Koteras's attempt to focus on the "did something she didn't want" language from the Commonwealth's examination of Koteras as evidence of a sexual attack equally fails. Again, it is equally reasonable for a jury to infer that Koteras's violent outburst toward Jennifer as being something Jennifer would not want. To be blunt, it is illogical to presume that a jury could *only* infer something sexual because Koteras was on trial for sex abuse. Moreover, according to Koteras's testimony, the physical altercation occurred a week before Jennifer locked herself in her room. The jury could certainly infer something other than a propensity for sexual abuse from this testimony.

Even if we were to assume for the sake of argument that the trial court was erroneous in allowing the Commonwealth to inquire about the EPO, we are unable to find unduly prejudicial impact. Koteras not only agreed to the admission of the EPO but also agreed to the line of questioning undertaken by the Commonwealth regarding the physicality outlined in the EPO. Even when viewed as prior-bad-acts evidence, the EPO was admissible because the Commonwealth is entitled to offer a "full presentation of the case," including "the setting of the case and its environment . . . to complete the story of the crime on trial[.]"<sup>14</sup> We find no error with the Commonwealth's presentation of evidence pertaining to Jennifer's EPO against Koteras.

---

<sup>14</sup> *Norton v. Commonwealth*, 890 S.W.2d 632, 638 (Ky.App. 1994) (internal quotation marks omitted).

**B. The Trial Court did not Abuse its Discretion by Allowing Testimony Regarding the Uncharged Lexington Incident.**

Koteras argues the trial court erred by allowing Amanda's testimony describing the uncharged incident of sexual touching that occurred in his apartment in Lexington to be admitted into evidence because that incident was not charged in the indictment. In Koteras's estimation, allowing this extraneous allegation of abuse into the trial did nothing more than inflame the jury and prejudice him. The Commonwealth responds by arguing the evidence was "inextricably intertwined"<sup>15</sup> with proving the timing of Amanda's reporting of abuse. We agree with the Commonwealth.

Koteras's primary defense strategy at trial was to attack Amanda's credibility and discredit the plausibility of her explanation for delaying her reporting of the abuse. Koteras's theory was that Amanda failed to report the abuse because the abuse never happened; instead, she fabricated the allegations to avoid visitations with Koteras and to avoid going on a trip to Florida with him during her approaching spring break. Amanda apparently had a sleepover scheduled during spring break and did not want to miss that activity with her friends. Koteras's proof pointed out that Amanda was afraid of him and did not want to visit him because of his explosive tendencies stemming from his bipolar disorder. Koteras emphasized repeatedly that Amanda was continuously surrounded by adults to whom she could have disclosed her father's abuse of her, but she failed to do so.

---

<sup>15</sup> KRE 404(b)(2).

Amanda's stated motives for delayed reporting differed substantially from those ascribed to her by Koteris. Amanda explained that she did not report the abuse until she had reason to fear for the safety of her younger sister. Notably, her younger sister had continued to visit Koteris even after Amanda refused to return following the Lexington incident in question. But these visits by the younger sister were not overnight and were not private. So somewhat misleading is Koteris's attempt to discredit Amanda's account by arguing she could not have been concerned for her younger sister's safety because she said nothing as her younger sister continued to visit Koteris. At the point when it appeared Amanda's younger sister might resume overnight visits with Koteris, Amanda wrote the note to Jennifer and placed it where Jennifer would find it. In sum, the abuse in Lexington is the starting point for explaining why Amanda refused to go on visits with Koteris, why Koteris's visitation was changed, why Amanda may have chosen not to report despite her sister's continuing to visit Koteris, and why Amanda finally *did* decide to report the abuse months later.

The Lexington incident is arguably "inextricably intertwined" with the Commonwealth's attempt to provide the jury with an answer for Amanda's delayed reporting. KRE 404(b) is "intended to be flexible enough to permit the prosecution to present a complete, unfragmented, unartificial picture of the crime committed by the defendant, including necessary context, background and perspective."<sup>16</sup> Here, the evidence of the Lexington incident is relevant and

---

<sup>16</sup> *Norton*, 632 S.W.2d at 638 (quoting ROBERT G. LAWSON, THE KENTUCKY EVIDENCE LAW HANDBOOK § 2.25 (3d ed. 1993)); see also *Ware v. Commonwealth*, 537 S.W.2d 174, 179 (Ky. 1976) ("In short, evidence that provides necessary

difficult for the Commonwealth to separate out while still providing the jury with the full picture leading up to Amanda's disclosure.

Perhaps the admission of this evidence prejudiced Koteris to a degree. The key determination, however, is whether the admission of this evidence *unduly* prejudiced Koteris.<sup>17</sup> That is, was the prejudice to Koteris unnecessary and unreasonable?<sup>18</sup> Given the voluminous amount of this Court's analogous case law, the simple answer is no. It has long been accepted in our jurisprudence that evidence of prior sexual assault regarding the same victim is admissible, whether it be to prove intent, motive, absence of mistake, plan, or course of conduct.<sup>19</sup> We are simply unable to find the uncharged Lexington incident unduly prejudicial. The trial court did not abuse its discretion in allowing its admission because the Lexington incident was offered for "some other purpose."<sup>20</sup>

### III. CONCLUSION.

For the foregoing reasons, we affirm the judgment of the trial court.

All sitting. All concur.

---

perspective is competent. That it may incidentally involve other criminal acts does not perforce render it inadmissible.").

<sup>17</sup> See KRE 403.

<sup>18</sup> See *Romans v. Commonwealth*, 547 S.W.2d 128, 131 (Ky. 1977).

<sup>19</sup> See, e.g., *Noel v. Commonwealth*, 76 S.W.3d 923, 931 (Ky. 2002); *Price v. Commonwealth*, 31 S.W.3d 885, 888 (Ky. 2000); *Roberson v. Commonwealth*, 913 S.W.2d 310, 316 (Ky. 1994) ("The fact that the victim and the date of the crimes were the same, the crimes were related in nature, and the crimes were part of a continuing course of conduct, raises reasonable inferences bearing on motive, opportunity, intent and common plan or scheme."); *Keeton v. Commonwealth*, 459 S.W.2d 612, 613 (Ky. 1970)

<sup>20</sup> KRE 404(b)(1).

COUNSEL FOR APPELLANT:

Russell James Baldani  
Baldani, Rowland & Richardson

COUNSEL FOR APPELLEE:

Jack Conway  
Attorney General of Kentucky

James Coleman Shackelford  
Assistant Attorney General