

**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**NOT TO BE PUBLISHED OPINION**

**THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD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 OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.**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: DECEMBER 15, 2016  
NOT TO BE PUBLISHED

# Supreme Court of Kentucky

2015-SC-000414-MR

PARICO DOMINIC COFFEY

APPELLANT

V. ON APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE THOMAS L. CLARK, JUDGE  
NO. 14-CR-00433

COMMONWEALTH OF KENTUCKY

APPELLEE

## MEMORANDUM OPINION OF THE COURT

### AFFIRMING

After a jury trial, Parico Coffey was convicted of kidnaping, first-degree rape, first-degree sodomy, and first-degree robbery. The trial court sentenced Coffey to forty-six years in prison.

Coffey appeals the resulting judgment as a matter of right.<sup>1</sup> He contends the trial court erred by (1) denying his directed verdict motion for all counts based on insufficient evidence and (2) not applying the kidnaping exemption under KRS 509.050. Coffey's first alleged error is preserved while his second is not. As to both claims, we find no error and affirm the trial court's judgment.

---

<sup>1</sup> Ky. Const. § 110(2)(b).

## **I. FACTUAL AND PROCEDURAL HISTORY.**

The facts in this case vary wildly between Coffey's version and that of his victim, T.B.. According to Coffey, he contacted T.B. after leaving a Lexington strip club to pick him up. She arrived at the designated gas station, and they drove to a neighborhood to engage in consensual sex in exchange for money. Coffey told T.B. that he would wear a condom but did not. He contends that it was during this consensual sex that she realized he was not wearing a condom and became angry. When she demanded that he pay her he refused, claiming that he never climaxed and therefore would not pay. Coffey claims that T.B. then withdrew a gun from under the front seat and demanded that Coffey pay. The two fought over the gun, and T.B. ended up outside the vehicle. Coffey then drove T.B.'s vehicle back to the strip club, retrieving his car, and leaving her car running in the club parking lot.

T.B. claims that she arrived at the gas station that evening needing to use the restroom and to go to the ATM. When T.B. returned to her car she claimed that Coffey forced himself into the vehicle by use of a gun. T.B. claims Coffey then told her to drive to a neighborhood where he forced her to have sex. It was during the sex that Coffey left the gun unattended and T.B. was able to gain possession. After a struggle for the gun, T.B. ended up outside of the car with Coffey giving chase. A negotiation period began, with T.B. offering to return the gun if she could have her car back. At one point both entered the vehicle again to negotiate. After giving up on the fruitfulness of the negotiating

process, T.B. dashed for a neighbor's home, wearing only her socks. From the neighbor's home she alerted the authorities.

## II. ANALYSIS.

### A. Coffey was not Entitled to a Directed Verdict.

Coffey first asserts that he was entitled to a directed verdict on all counts based on a lack of evidence. The Commonwealth argues this issue is not preserved. We disagree. As Coffey points out, his motion for directed verdict was made on three separate occasions. The first motion for a directed verdict was made after the Commonwealth concluded its evidence. At this time, Coffey gave a sufficient explanation of what his argument was for the directed verdict. Coffey then renewed his motion for directed verdict at the close of his case and once again at the close of all of the evidence. His renewed directed verdict motions were based on the same grounds argued in the initial directed verdict motion at the close of the Commonwealth's case. These actions are sufficient to preserve the record for appellate review.<sup>2</sup>

When deciding a directed verdict motion, the trial court must take as true all evidence favoring the Commonwealth (non-moving party) and determine whether that evidence is sufficient to induce a reasonable jury to believe beyond a reasonable doubt that the defendant is guilty.<sup>3</sup> In *Commonwealth v. Benham* we said that "On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly

---

<sup>2</sup> See *Hill v. Commonwealth*, 125 S.W.3d 221, 230 (Ky. 2004).

<sup>3</sup> *Pollini v. Commonwealth*, 172 S.W.3d 418, 429 (citing *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991)).

unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal.”<sup>4</sup> In applying this standard, we reject Coffey’s argument that he was improperly denied a directed verdict.

We recognize that the evidence produced by the Commonwealth was far from conclusive. Coffey argues that his explanation aligns with the evidence produced by the Commonwealth as much as T.B.’s version of events does. The only DNA recovered on the gun was T.B.’s, nobody could testify to the robbery allegation other than T.B., and T.B. was the only one to testify about Coffey forcing himself into her vehicle.

While Coffey’s argument is persuasive, proving error in denying a directed verdict under appellate review is a high bar to meet.<sup>5</sup> The Commonwealth here was able to establish sufficient evidence from which a “reasonable jury”<sup>6</sup> could find guilt.

First, we have the competing story of T.B. and Coffey. This case largely turns on the credibility of T.B. and Coffey in the eyes of the jury.<sup>7</sup> At trial, a jury makes a determination as to the credibility of each witness, which influences their determination of the case. Furthermore, Sandra Sanders, the owner of the home to which T.B. fled, testified to the state T.B. was in when she came to her house for help. Sanders’s testimony helped draw a picture of someone who had been sexually assaulted. According to Sanders, T.B. was

---

<sup>4</sup> *Benham*, 816 S.W.2d at 187.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See *Ratliff v. Commonwealth*, 194 S.W.3d 258, 269 (Ky. 2006).

visibly upset, shaking, and failed to make eye contact. Furthermore, T.B. told Sanders she had been raped and her car had been stolen. T.B.'s emotional state was still fragile when the responding officer arrived. Additionally, Coffey fled to Detroit following the incident, further allowing a reasonable juror to find guilt.<sup>8</sup>

While the evidence presented was far from ideal, we cannot say that it would be unreasonable for a jury to find guilt. So we find that the trial court did not abuse its discretion in denying Coffey's directed verdict motions.

**B. Coffey was not Entitled to the Kidnapping Exemption under KRS 509.050.**

Coffey argues that he was entitled to the kidnapping exemption under KRS 509.050. This error is unpreserved, and we find there was no palpable error in giving a jury instruction for kidnapping.

Coffey admits this alleged error is unpreserved for appellate review, so he requests review under Kentucky Rule of Criminal Procedure (RCr) 10.26.<sup>9</sup> Under RCr 10.26, one must show "palpable error."<sup>10</sup> Palpable error requires a showing that the alleged error affected the "substantial rights" of a defendant and that relief may be granted "upon a determination that manifest injustice has resulted from the error."<sup>11</sup> And to find a manifest injustice, this Court must conclude that the error so seriously affected the fairness, integrity, or public

---

<sup>8</sup> *Rodriguez v. Commonwealth*, 107 S.W.3d 215, 218 (Ky. 2003) (quoting *Hord v. Commonwealth*, 13 S.W.2d 244, 246 (Ky. 1928)).

<sup>9</sup> Kentucky Rules of Criminal Procedure 10.26.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

reputation of the proceeding as to be “shocking or jurisprudentially intolerable.”<sup>12</sup>

Coffey’s argument is unpersuasive. KRS 509.050 provides in part that, an individual will not be charged with kidnapping while in the act of committing another underlying offense, “unless the interference exceeds that which is ordinarily incident to commission of the offense which is the objective of his criminal purpose.”<sup>13</sup> Coffey argues that the restraint element required for a charge of kidnapping flows naturally from the rape, robbery, and sodomy charges, entitling him to an exemption.

We acknowledge that in some circumstances rape will entail the restriction of a person’s liberty of movement, as it did here, but the restraint in Coffey’s case is not the type of restraint that belongs in KRS 509.050. In determining whether the kidnapping exemption should apply we have developed a three-pronged test.<sup>14</sup>

“First, the underlying criminal purpose must be the commission of a crime defined outside of KRS 409. Second, the interference with the victim’s liberty must have occurred immediately with or incidental to the commission of the underlying intended crime. Third, the interference with the victim’s liberty must not exceed that which is ordinarily incident to the commission of the underlying crime. All three prongs must be satisfied in order for the exemption to apply.”<sup>15</sup>

---

<sup>12</sup> *Martin v. Commonwealth*, 207 S.W.3d 1, 4 (Ky. 2006).

<sup>13</sup> KRS 509.050.

<sup>14</sup> *See Wood v. Commonwealth*, 178 S.W.3d 500, 515 (citing *Griffin v. Commonwealth*, 576 S.W.2d 514 (Ky.1978)).

<sup>15</sup> *Id.*

Because one must satisfy all three prongs of the test, and Coffey fails to satisfy the third prong, we hold he was not entitled to the kidnapping exemption and make no judgment as to the first two prongs. While Coffey cites cases that clearly fall outside of the kidnapping exemption, these cases are not applicable to the facts before us.<sup>16</sup> The Commonwealth leads us to cases that are more convincing in our analysis. One factual example that falls outside the exemption is *Simpson v. Commonwealth*, where a victim was driven approximately 1.7 miles, held for approximately half an hour, and raped.<sup>17</sup> In *Griffin v. Commonwealth*, this Court held the kidnapping exemption did not apply when the defendant took the victim by car approximately one-half block to a home where the defendant committed sodomy on the victim.<sup>18</sup> Lastly, the Commonwealth directs us to *Duncan v. Commonwealth*.<sup>19</sup> In *Duncan* we held that when the defendant, “forced SM [the victim] to walk for five to ten minutes through several blocks to the area behind the school was neither brief in time nor short in distance, for the purposes of the exemption statute, and exceeded what was merely incidental to the alleged sexual offenses.”<sup>20</sup>

Our facts are similar in nature to the cases above. In the facts before us, Coffey forced T.B. to drive approximately half a mile to the location where the sexual assault took place. Furthermore, T.B. was held for approximately an

---

<sup>16</sup> See *Murphy v. Commonwealth*, 50 S.W.3d 173 (Ky. 2001); *Brown v. Commonwealth*, 892 S.W.2d 289 (Ky. 1995); *Griffin v. Commonwealth*, 576 S.W.2d 514 (Ky. 1978).

<sup>17</sup> *Hatfield v. Commonwealth*, 250 S.W.3d 590, 599 (Ky. 2008).

<sup>18</sup> *Griffin*, 576 S.W.2d at 515 (Ky. 1978).

<sup>19</sup> *Duncan v. Commonwealth*, 322 S.W.3d 81 (Ky. 2010).

<sup>20</sup> *Id.* at 95.



hour before she was able to free herself from the sexual assault. These critical facts lead us to conclude that Coffey falls outside the KRS 509.050 exemption. Given the facts before us, and being guided by case law, we find no palpable error in the giving of a jury instruction for kidnapping.

### **III. CONCLUSION.**

For the foregoing reasons, we affirm the trial court's judgment.

All sitting. All concur.

#### **COUNSEL FOR APPELLANT:**

Linda Roberts Horsman  
Department of Public Advocacy

#### **COUNSEL FOR APPELLEE:**

Andy Beshear  
Attorney General of Kentucky

James Daryl Havey  
Assistant Attorney General