

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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD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 OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.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

2017-SC-000477-MR

JOHN WILLIAM SMITH

APPELLANT

V. ON APPEAL FROM MONROE CIRCUIT COURT
HONORABLE DAVID L. WILLIAMS, JUDGE
NO. 12-CR-00041-001

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Under KRE¹ 404(b), evidence of crimes, wrongs or acts is inadmissible to prove the character of a person in order to show action in conformity therewith but may be admissible if offered for another purpose or if so inextricably intertwined with other evidence essential to the case that separation cannot be accomplished without severe adverse effect on the offering party. In this case, the primary issue we must resolve is whether the Monroe Circuit Court abused its discretion in granting the Commonwealth's KRE 404(b) motion to permit admission of certain evidence concerning John William Smith's actions on the day Brenda Howard was brutally murdered, and for which murder Smith was

¹ Kentucky Rules of Evidence.

convicted. We hold that the trial court did not abuse its discretion, and therefore affirm Smith's conviction and sentence.

I. Factual and Procedural Background.

On April 20, 2012, the victim was found dead in her home in the Ebenezer community, Monroe County. Her injuries included a massive head wound and multiple stab wounds. Around the time of the murder, a witness, whose son was the Monroe County Sheriff, noticed a burgundy-colored Chevrolet or Saturn with a cracked windshield or driver's side window parked on the side of the road near the victim's residence. He reported this to his son, who then relayed the information to the investigating detectives. Detective Brooks, the lead investigator, recognized this distinctive car as belonging to Chasity Hagan, a former confidential informant. In addition, the victim's daughter received an anonymous call stating Melinda Webb had committed the crime.

After an unproductive interview with Webb, the investigation turned to Hagan, who denied any involvement in the murder during an interview at the Tompkinsville Police Department. Upon returning Hagan to her home, law enforcement was informed that another person staying at the home, John Smith, had run out the back into the woods. Police chased Smith, detained him, but he also denied any involvement in the murder. An investigation focusing on Smith and Hagan ensued, and eventually Hagan confessed to being at the scene of the murder but stated that Smith was the one who killed Howard, and that he had a stab wound in his stomach from Howard stabbing

him with a cane sword discovered at the scene. Investigators searched Hagan's car, found pill bottles with Howard's name on them, a pair of men's and women's jeans, and a bloody axe handle. Other evidence was found inside the Hagan home.

During the months that followed, Hagan gave at least six different accounts of what occurred on the day of the murder. Prior to trial, Hagan entered into a plea agreement with the Commonwealth in exchange for her testimony against Smith at trial. Hagan testified that she and Smith needed money to buy drugs. They first attempted to get a title loan in Tennessee to purchase the drugs, but that plan failed. Once back in Kentucky, they devised a plan to steal drugs from homes along Ebenezer Road in Monroe County. Hagan gave Smith the axe handle and dropped him off near the first home, which he was unable to enter. Smith continued walking down the road toward Howard's trailer and Hagan parked her vehicle on the side of the road, where the father of the county sheriff later observed it. Smith was familiar with Howard's trailer, as Hagan had purchased drugs there before while Smith waited in the car. After parking, Hagan ran toward the trailer and, from the doorway, she observed Howard slumped over. Smith was angry with Hagan for entering the trailer and hit her in the leg with the axe handle. Hagan also testified that she saw Howard, though injured, stab Smith in the stomach with the cane sword. Smith then beat Howard with the axe handle, stabbed her multiple times with a kitchen knife, and stole her purse. Smith and Hagan

then drove away from the trailer, changed clothes, rummaged through Howard's purse to find pills, and Smith clipped and cleaned his fingernails.

A jury convicted Smith of murder, first-degree robbery, first-degree burglary, and tampering with physical evidence. The trial court imposed a combined forty-five-year sentence. This appeal followed.

II. Standard of Review.

Both issues Smith raises concern the trial court's evidentiary rulings. "The standard of review of an evidentiary ruling is abuse of discretion. The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Cox v. Commonwealth*, 553 S.W.3d 808, 814 (Ky. 2018) (citations omitted).

III. Analysis.

Smith raises two issues on appeal: (1) the trial court abused its discretion in allowing evidence to be presented under KRE 404(b); and (2) the trial court effectively denied Smith his right to present a defense.

A. KRE 404(b).

Prior to trial, the Commonwealth gave notice of its intent to introduce seven instances of "other bad acts" by Smith: (1) prior to entering into Howard's trailer, Smith had tried to gain access to another residence where he knew there might be methamphetamine; (2-4) Smith threatened Hagan during and after commission of the crime; (5) evidence that Smith did not bite his fingernails because he did not want to consume chemicals he used to manufacture methamphetamine; (6) Howard's stolen purse contained a

prescription Xanax bottle and Smith had Xanax in his bloodstream, according to the toxicology report; and (7) Smith disposed of his gloves and clothes after the murder. The trial court held a hearing in October 2016 and excluded only the evidence related to why Smith would not normally keep his fingernails short.

KRE 404(b) states:

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible:

- (1) If offered for some other purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident; or
- (2) If so inextricably intertwined with other evidence essential to the case that separation of the two (2) could not be accomplished without serious adverse effect on the offering party.

“To determine the admissibility of prior bad act evidence, we have adopted the three-prong test described in *Bell v. Commonwealth*, 875 S.W.2d 882, 889–891 (Ky. 1994), which evaluates the proposed evidence in terms of: (1) relevance, (2) probativeness, and (3) its prejudicial effect.” *Huddleston v. Commonwealth*, 542 S.W.3d 237, 243 (Ky. 2018). With respect to the description of Smith’s choice of trailers to burglarize that night, that evidence went to show motive under KRE 404(b)(1): undoubtedly, Smith and Hagan sought to acquire drugs on the night in question. Smith was unable to gain access to the first residence where he knew he might find drugs, so he moved on to Howard’s residence. Discovering drugs in Smith’s system matching the

drugs belonging to the victim is further evidence of Smith's motive as it corroborates Smith's and Hagan's quest for drugs on the night of the murder. Smith's choice of residence and the drugs found in his system after the murder are no doubt relevant to the commission of the crime as part of an attempt by Smith and Hagan to acquire drugs, and the probative value outweighs the prejudicial effect as both pieces of evidence place Smith both at or near the scene of the crime. Thus, the trial court did not abuse its discretion in allowing these acts into evidence.

The remainder of the evidence found admissible by the trial court, likewise falls under KRE 404(b)(2). For evidence to fall under this exception it must be "so inextricably intertwined" with the rest of the evidence "essential to the case." KRE 404(b)(2). In *Adkins v. Commonwealth*, 96 S.W.3d 779, 793 (Ky. 2003), this Court held that "KRE 404(b)(2) allows the Commonwealth to present a complete, unfragmented picture of the crime and investigation." *Id.* (citing Robert G. Lawson, *Kentucky Evidence Law Handbook* § 2.25 at 96 (3d ed. 1993)). To complete this unfragmented picture, the Commonwealth's chief witness, Hagan, was properly allowed to testify as to what occurred at the scene of the crime, including threats Smith made towards her during the crime, that he hit her with the murder weapon when she walked into the trailer, and that he bashed her head into the windshield of her car when she would not drive him away from the scene. Hagan also testified about Smith's threats towards her and her family during the 24 hours following the murder, which assisted with completing the picture of the crime and investigation.

Furthermore, Hagan's testimony that Smith disposed of his clothes and gloves directly after the murder is the exact type of evidence that is "essential to the case" and allows for an "unfragmented picture of the crime and investigation."

This evidence was relevant and probative, without which the Commonwealth would not have been able to provide a complete picture of the crime and investigation. Moreover, it appears that Smith's main argument against admitting the "bad act" evidence is that the testimony came from his co-defendant Hagan, who had told differing versions of what occurred the night of the murder before testifying at trial. But evidence that Smith threatened Hagan and her family during and after the murder only adds to the probative value of the evidence, as it explains why she did not originally implicate Smith. While Smith urges that Hagan did not tell the truth, "[a]ssessing the credibility of a witness and the weight given to her testimony rests 'within the unique province of the jury [or finder-of-fact].'" *Ross v. Commonwealth*, 531 S.W.3d 471, 477 (Ky. 2017) (quoting *McDaniel v. Commonwealth*, 415 S.W.3d 643, 654 (Ky. 2013)). Therefore, the trial court did not abuse its discretion in allowing testimony of the foregoing evidence.

B. Right to Present a Defense.

Smith next argues that the trial court denied his right to present a defense by interjecting itself into trial, and by ruling against him on several evidentiary issues. Smith claims the trial court erroneously held to be inadmissible: (1) testimony from Hagan's handler about the work Hagan had done when she was a confidential informant, (2) testimony

from a nurse who had treated Hagan on whether Hagan's bruise on her leg was old or new, (3) testimony from a witness that Hagan, at times prior to the day of the murder, had banged on his door demanding drugs, (4) detailed testimony about a phone call regarding an alternative perpetrator, Webb, and (5) testimony that Mark Wallace had received a laptop from the victim which the victim received from Webb, possibly in a trade for drugs several days before the murder. Additionally, Smith argues that the trial court prevented him from presenting a defense when the trial court interjected from the bench when questions were being asked to a witness who testified to seeing Hagan, Webb, and another person near the area of the victim's home earlier in the day on the day of the murder.

Our review of the record reveals that Smith was able to present ample evidence challenging Hagan's credibility and evidence of his alternative perpetrator theory. First, Smith was able to elicit testimony regarding Hagan's work as a confidential informant and that being an informant required deception. In fact, Hagan herself testified that she had been an informant. Second, the nurse whom Smith wanted to testify to the age of Hagan's injury had not treated Hagan for that specific injury. Third, that Hagan demanded drugs from someone prior to the day of the murder had no bearing on what happened the day of the murder, and Hagan readily admitted she and Smith were looking for drugs prior to the murder. Additionally, Smith was able to present testimony regarding Hagan's and Webb's connection on the day of

the murder, and that Webb's name had come up in a phone call shortly after the murder. Lastly, the weak evidence that a laptop may have been linked to Webb acquiring drugs from the victim was properly excluded by the trial court. "When exclusion of evidence does not significantly undermine fundamental elements of the defendant's defense, a trial court has the discretion to exclude evidence to ensure the fairness of a trial;" an appellate court will not overturn in the absence of a showing of abuse of such discretion. *Newcomb v. Commonwealth*, 410 S.W.3d 63, 85 (Ky. 2013).

Further, with respect to Smith's argument that the trial court should not have interjected itself into the trial without first objection from the Commonwealth, we note:

A trial judge should never assume the role of prosecuting attorney and lend the weight of his great influence to the side of the Government.... In our system of administering justice the functions of the trial judge and the prosecuting attorney are separate and distinct; they must not be confused. The trial judge has a duty to conduct the trial carefully, patiently, and impartially. He must be above even the appearance of being partial to the prosecution.

Terry v. Commonwealth, 153 S.W.3d 794, 803 (Ky. 2005) (citation omitted), *superseded by statute on other grounds as stated in Gaither v. Commonwealth*, 521 S.W.3d 199 (Ky. 2017). However, *Terry* involved a trial court asking a witness 103 questions during trial.² In the present case, Smith points to the

² Further, other cases that delve into this area of law in the Commonwealth deal with the trial court interjecting and asking a multitude of questions to a witness on the stand, not merely stopping questioning to ask defense counsel the relevance of material at issue or objecting to what clearly was inadmissible evidence, as is the circumstance in the present case. See *Couch v. Commonwealth*, 256 S.W.3d 7, 12-13 (Ky. 2008) (trial court did not commit palpable error when he called and questioned a witness in a bench trial); *Davidson v. Commonwealth*, 394 S.W.2d 911, 912 (Ky. 1965)

three times the trial court interjected without objection from the Commonwealth: two of which resulted in a bench conference and one in which the trial court stopped a line of questioning without a bench conference. While the trial court may have overstepped its bounds, its actions did not deny Smith the right to put on a defense. To show that the fundamental elements of Smith's defense were not undermined we need only look to Smith's closing argument, wherein he discussed, on multiple occasions, every piece of the above evidence, except for the laptop, that he now claims he was prevented from getting into evidence. Thus, we hold that the actions of the trial court did not deny Smith the right to present a defense, and thus did not result in reversible error.

IV. Conclusion.

This Court finds no reversible error in the issues brought before us. As a result, we affirm the judgment of the trial court.

All sitting. All concur.

(trial courts are sometimes allowed to ask questions of a witness, “[b]ut, in asking such questions in the presence of the jury while the issues still hang in the balance, [the court] should not allow [its] personal opinions to ‘leak into the crucible.’”) (citation omitted). Additionally, in a case which closely mirrors our present facts, the Supreme Court of Appeals of West Virginia held that a “judge in a criminal case has a right to control the orderly process of a trial and may intervene into the trial process for such purpose, so long as such intervention does not operate to prejudice the defendant’s case,” and that the trial court interjecting two separate times to cut off the questioning of witnesses was not prejudicial to the defendant. *State v. Jenkins*, 346 S.E.2d 802, 807-08 (W. Va. 1986).

COUNSEL FOR APPELLANT:

Steven Jared Buck
Assistant Public Advocate
Department of Public Advocacy

COUNSEL FOR APPELLEE:

Andy Beshear
Attorney General of Kentucky

William Robert Long, Jr.
Assistant Attorney General