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RENDERED: SEPTEMBER 26, 2019
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2019-SC-000142-MR

AARON DEXTER WRIGHT — APPELLANT

V.

ON APPEAL FROM DAVIESS CIRCUIT COURT
HON. JOSEPH W. CASTLEN, III, JUDGE
NO. 17-CR-00804

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Aaron Dexter Wright appeals from a judgment of the Daviess Circuit Court convicting him of murder and first-degree robbery and sentencing him to 30 years in prison. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

In the light most favorable to the verdict, the facts are as follows: On Sunday, June 18, 2017, 58-year-year old Jeffrey Martin was found by his son unconscious, badly beaten, and in a pool of blood on the floor of Martin's home in Owensboro. He died a few days later from brain injuries caused by as many as 12 blunt force blows to his head. In connection with the assault, items had been stolen from Martin's residence. Those items included Martin's truck, wallet, prescription medicines, cigarettes, and cell phone. The assault had occurred the previous day.

Martin had met Ashley Stinnett, a 25-year-old female, at a gas station about two weeks before the assault. During the intervening days, they had been spending time together, with Martin providing drugs and alcohol to Stinnett. Stinnett was in a relationship with Wright at the time.

On June 19, the police received a call concerning two individuals trespassing through yards and looking in trashcans. The police responded and, after a short chase, apprehended the individuals, Wright and Stinnett. Personal items belonging to Martin were found in their respective backpacks at the time of their arrest, including mail addressed to Martin. Martin's truck was discovered later, and fingerprints of Martin, Stinnett, Wright, and another person were identified from the truck. A pillowcase with what appeared to be blood on it was also found in the truck, as was a glove that matched a glove found in one of the backpacks belonging to Wright and Stinnett. Martin's son testified that he had bought the gloves for his father. A pair of pants with the DNA of an unknown individual identified in the autopsy report as "Individual A" was also found in one of the backpacks.

In August 2017 Wright and Stinnett were indicted for murder and first-degree robbery. Prior to trial Stinnett entered into a plea agreement with the Commonwealth in which she agreed to testify against Wright in return for a reduction in the charges against her to facilitation to murder and first-degree robbery with a corresponding sentence of ten years. Stinnett testified at trial, and the jury was informed of the favorable nature of the plea agreement.

Stinnett, as an eye-witness to the assault, was the Commonwealth's chief witness at trial. She testified that on Saturday, June 17, she was at her apartment with Wright when she received an eviction notice, after which she did an 8-ball (one-eighth of an ounce) of methamphetamine and afterward went with Wright to Martin's residence. When they arrived at Martin's residence, she went inside and Wright stayed outside. Wright thereafter entered the residence because, according to Stinnett, he was upset that she did not want to leave.

Stinnett testified that the assault began when Wright hit Martin twice in the face, knocking him to the ground, after which Wright began kicking and stomping Martin in the face with his foot. Stinnett stated that while this was occurring, she went into Martin's bedroom and stole a suitcase. She stated that when she came back in the room, Martin was lying on the floor in a pool of blood "snoring."

Stinnett testified that she and Wright then "got into an argument because of the situation that was going on." According to Stinnett, Wright then began kicking Martin in the head again. Wright took a sheet off the bed and wiped his hands, put the sheet into Stinnett's backpack, and then stole items off a shelf and placed them into a bag. Wright also took Martin's wallet, a gun, cigarettes, his cell phone, and prescription medicines. They also took Martin's keys and stole his truck.

Stinnett testified that she did not immediately report the assault because she and Wright were "really high" on methamphetamine and she did not have a

phone. After they left Martin's residence, they went to the homes of various friends and acquaintances. Several witnesses testified that they saw one or both of them traveling by truck. Stinnett testified that she and Wright eventually abandoned Martin's truck in a field and burned the sheet they had taken from his residence. Law enforcement officers later discovered the remnants of a burnt suitcase in the same area they had discovered Martin's truck. During the hours after the murder, Stinnett also told two individuals the events that had occurred at Martin's residence.

Wright did not call any witnesses to testify on his behalf at trial, but through cross-examination and argument he established a defense of denial. The jury found Wright guilty of murder and first-degree robbery, and he was sentenced to 30 years in prison.

II. JUROR SEPARATION

Wright contends that reversible error occurred as a result of noisy chatter from spectators during portions of the trial, including at least one instance of an overheard loud comment being made by a spectator concerning the trial evidence. Wright admits that his attorney did not move for a mistrial as a result of the issue, so the argument is not preserved for appeal. He asserts, however, that it be reviewed as palpable error under RCr[1] 10.26.

During a break during the morning of the second day of the trial, a juror approached the trial judge with the complaint that during a portion of the

[1] Kentucky Rules of Criminal Procedure.

police officer's direct testimony, she could not hear some of his testimony due to people talking in the gallery. The trial judge addressed the issue with the bailiff and asked him to make sure nobody sat in the front row behind the jurors.

Later, the trial judge, counsel, and two of the jurors met in chambers, and the jurors reported they could hear "chatter" from the audience. The first juror said he did not hear what the spectators were saying but that the chatter behind him distracted him from concentrating on the trial proceedings. The other juror stated she was likewise distracted by the chatter and that she specifically heard an audience member say, "it's funny there were no fingerprints in the house . . . because she was in and out of there a lot; I thought she was in and out of the house a lot . . . but I don't know."

The trial judge commented, "I noticed that [the noise] yesterday and I should have paid more attention." The trial judge assured the two jurors that it would instruct the spectators not to talk, and he admonished the jurors that "unless they testified to it, it didn't happen."

When the trial reconvened, the trial judge admonished the spectators to be quite and to go into the hall if they wanted to talk because their conduct was "disturbing" and "improper." Later that day, the trial judge gave the following admonition to the jury:

> There has been conversations from the audience that have been partially, or bits and pieces overheard by the jury, which is totally improper, and if you as jurors have heard statements or bits and pieces of conversations from the audience, that is not competent evidence, and you are admonished to disregard it entirely. Put it

> out of your mind. Remember in your oath to try the case according to the evidence that comes from only this witness stand.

Later, the trial judge ordered everyone but the press and courtroom personnel to leave the fourth floor during breaks. The trial judge admonished the audience, "The discussions are too loud, and they can overhear your talking. . . . If I have to address this situation anymore, someone may end up in detention."

Wright's attorney did not move for a mistrial based upon the noise level of the spectators or because of specific comments that any juror may have overheard.

On appeal Wright frames the foregoing events as being in violation of RCr 9.66, which provides as follows: "Whether the jurors in any case shall be sequestered shall be within the discretion of the court, except that in the trial of a felony charge, after the case is submitted for their verdict, they shall be sequestered unless otherwise agreed by the parties with approval of the court."

Wright argues that "in matters where a juror's ability to cogently hear, see, receive and review evidence independently is compromised by interference, whether intentional or not, from a victim's family or other spectator in the gallery, and where the trial court is aware of it and fails to *sua sponte* declare a mistrial, a Defendant's right to a fair trial is violated."

> When a party moves for a mistrial, the trial court must determine whether there is a "manifest necessity" for a new trial. The purpose of this standard is to reserve the extraordinary relief of declaring a mistrial for situations in which an error has been committed that is of such magnitude that the litigant would be denied a fair and impartial jury absent a new trial. "It is universally agreed that a mistrial is an extreme remedy and should

> be resorted to only when there is a fundamental defect in the proceedings which will result in a manifest injustice." In accordance with this standard, appellate courts review a trial court's refusal to grant a mistrial for an abuse of discretion.

Shabazz v. Commonwealth, 153 S.W.3d 806, 810–11 (Ky. 2005) (citations and footnotes omitted). "[A] court may *sua sponte* grant a mistrial, or do so on the Commonwealth's motion for a mistrial, but only if there exists a manifest necessity for doing so." *Meyer v. Commonwealth*, 393 S.W.3d 46, 52 (Ky. App. 2013). "Manifest necessity has been described as an 'urgent or real necessity.' The propriety of granting a mistrial is determined on a case by case basis." *Commonwealth v. Scott*, 12 S.W.3d 682, 684 (Ky. 2000).

We are unpersuaded that the circumstances presented here resulted in a manifest necessity for a mistrial. The principal complaint underlying Wright's argument is that the spectators were too noisy, which resulted in the interference with the jury's concentration. The only specific complaint concerning an overheard comment is that one of the jurors overheard a comment by a spectator about a discrepancy in the fingerprint evidence. The trial court, however, quickly admonished that juror individually not to consider the overheard comment, and it later admonished the entire jury not to consider any overheard comments. "The trial court's admonition put this issue to rest. A jury is presumed to follow an admonition to disregard evidence and the admonition thus cures any error." *Johnson v. Commonwealth*, 105 S.W.3d 430, 441 (Ky. 2003) (citation omitted).

While it is clear that the audience was too noisy during limited portions of the trial, it is also clear that the trial court took appropriate measures to quash the problem and that the problem was thereby effectively abated. And while the noise may have interfered with at least two of the jurors' concentration during a limited portion of the trial, we are unpersuaded that that is sufficient to have created an urgent or real necessity to grant a mistrial such that the trial court should have *sua sponte* summarily ended the proceedings.

We are also unpersuaded that the comment one juror overheard relating to a rather obvious discrepancy in the fingerprint evidence suffices to have created a manifest necessity for the trial court to *sua sponte* have declared a mistrial. A single juror overhearing a spectator say, "it's funny there were no fingerprints in the house . . . I thought she was in and out of the house, but I don't know . . . ," simply does not create a manifest necessity to end the trial. And further, as noted, that juror is presumed to have followed the trial court's two admonitions to disregard the overheard comment.

There being no manifest necessity to declare a mistrial based upon any comment by a spectator in this case, it follows that there was no palpable error in the trial court's failing to *sua sponte* do so. RCr 10.26.

III. SUFFICIENCY OF THE EVIDENCE

Wright contends that he was entitled to a directed verdict on both charges because the Commonwealth failed to prove all elements necessary to convict him of either murder or first-degree robbery.

In reviewing a motion for a directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. *Commonwealth v. Benham* 816 S.W.2d 186, 187 (Ky. 1991). If the evidence is sufficient to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty, a directed verdict should not be given. *Id.* For the purpose of ruling on the motion, the trial court must assume that the evidence for the Commonwealth is true, but reserve to the jury questions as to the credibility and weight to be given to such testimony. *Id.* "On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal." *Id.* (*citing Commonwealth v. Sawhill*, 660 S.W.2d 3 (Ky. 1983)). "[T]here must be evidence of substance, and the trial court is expressly authorized to direct a verdict for the defendant if the prosecution produces no more than a mere scintilla of evidence." *Benham*, 816 S.W.2d at 187-88; *Banks v. Commonwealth*, 313 S.W.3d 567, 570 (Ky. 2010).

As set forth above, Stinnett unequivocally and steadfastly testified that she witnessed Wright enter Martin's home, strike him in the face, knock him down, and repeatedly stomp and kick him in the head. Other evidence established that these kicks to the head caused Martin's death. Stinnett admitted to being a facilitator to the murder and agreed to a ten-year sentence in return for her testimony.

Stinnett further testified that Wright stole multiple items out of Martin's house and, along with her, stole his truck. When Wright was apprehended, he had items belonging to Martin. As explained above, under our standards of review, we are required to accept this evidence as true. *Benham*, 816 S.W.2d at 187.

Wright contends, however, that Stinnett was proven to be lacking in credibility as demonstrated by the many lies she told in connection with this case, including her initial denials that she even knew Martin. Without a doubt, Stinnett's testimony was subject to question and scrutiny due to her previous inconsistent statements, her excessive drug and alcohol use, her involvement in the situation, and her favorable plea agreement entered in exchange for her testimony against Wright. However, all these deficiencies were exposed at trial, and the jury was fully aware of them when it reached its verdict.

"It is undoubtedly well settled in this jurisdiction that the credibility of witnesses is for the jury[.]" *Ross v. Commonwealth*, 531 S.W.3d 471, 476 (Ky. 2017) (quoting *Louisville & N.R. Co. v. Chambers*, 165 Ky. 703, 178 S.W. 1043 (1915)). That is, judgments concerning witness credibility are exclusively within the province of the jury. *McDaniel v. Commonwealth*, 415 S.W.3d 643, 654 (Ky. 2013); *Ross*, 531 S.W.3d at 477.

The exception to this fundamental principle is that "the jury may not ... base its verdict upon a statement as to what occurred or how something happened when it is opposed to the laws of nature or is clearly in conflict with the scientific principles, or base its verdict upon testimony that is so incredible

and improbable and contrary to common observation and experience as to be manifestly without probative value." *Ross,* 531 S.W.3d at 476 (quoting *Coney Island Co. v. Brown*, 290 Ky. 750, 162 S.W.2d 785, 787-88 (1942)).

The facts of this case do not fall within that exception. Notwithstanding the deficiencies and questions raised concerning Stinnett's credibility as a witness in this matter, her testimony concerning the specific events surrounding Martin's death is not "so incredible and improbable and contrary to common observation and experience as to be manifestly without probative value." *See Ross,* 531 S.W. 3d at 476. Therefore, we must defer to the jury's acceptance of Stinnett's testimony in returning its guilty verdicts.

Wright also makes a vague reference to a potential alternative perpetrator based upon an unaccounted for DNA sample found on a pair of pants found in one of the bags confiscated when he and Stinnett were arrested. We are unpersuaded, however, that this undeveloped evidence alone emerged as the decisive factor in the case such as to have entitled Wright to a directed verdict. *Bowling v. Commonwealth*, 357 S.W.3d 462, 469 (Ky. 2010) ("Much like the DNA in the car, however, even if someone else's DNA was found on the jacket, this would not exonerate Appellant, and even with an alternate perpetrator theory, the presence of someone else's DNA would not necessarily be exculpatory[.]").

Wright also argues that the lack of his DNA being located in Martin's residence "conclusively demonstrates that Aaron was not in the Martin home at

the time of the assault." The absence of DNA, however, only proves that Wright did not leave any DNA in the residence; it does not prove he was not there. *See Edwards v. State*, 453 Md. 174, 197-98, 160 A.3d 642, 656 (Md. 2017) (citation omitted) ("DNA test results showing an absence of the defendant's DNA on an assault weapon 'did not contradict or undercut any information presented to the jury at trial[]'").

In summary, Wright was not entitled to a directed verdict on either of the charges.

IV. CUMULATIVE ERROR

Wright also contends that "in this case there are multiple errors that demonstrate a real question of prejudice." The cumulative error doctrine acknowledges that "multiple errors, although harmless individually, may be deemed reversible if their cumulative effect is to render the trial fundamentally unfair." *Brown v. Commonwealth*, 313 S.W.3d 577, 631 (Ky. 2010); *Murphy v. Commonwealth*, 509 S.W.3d 34, 56 (Ky. 2017).

Where there is no prejudicial error in any of the isolated issues, however, there can be no cumulative error. *Epperson v. Commonwealth*, 197 S.W.3d 46, 66 (Ky. 2006). In this case, as explained above, all of Wright's claims are without merit; therefore, there can be no cumulative error that would require reversal. Moreover, "[o]ur review of the entire case reveals that the appellant received a fundamentally fair trial and that there is no cumulative effect or error that would mandate reversal." *See Hunt v. Commonwealth*, 304 S.W.3d 15, 55–56 (Ky. 2009).

V. CONCLUSION

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

All sitting. All concur.

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