

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000456-MR

ZAYER ADAMS

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE EDWIN M. WHITE, JUDGE
ACTION NO. 01-CR-00123

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, GUIDUGLI AND McANULTY, JUDGES.

BUCKINGHAM, JUDGE: Zayer Adams appeals from a judgment of the Christian Circuit Court wherein he was convicted of first-degree fleeing or evading police, various misdemeanor offenses and violations, and being a first-degree persistent felony offender (PFO I). His sole ground of appeal is his contention that the trial court erred in the jury instructions. We affirm.

On January 27, 2001, Adams was driving his car at a high rate of speed through the streets of Hopkinsville. A

police officer gave chase, and Adams finally stopped when he crashed into the home of Billy and Debbie McGee. The McGees were in their home at the time, and Billy McGee was injured to the extent he had to go to the hospital to receive treatment.

The police officer who had pursued Adams had lost sight of him. However, he received a dispatch which informed him of the location of the Adams car. When the officer approached the car, there was no one inside. However, Adams was soon located.

At the trial of the case, Adams admitted that the car was his and that he was the driver. His defense was that there was a robber in the car with him who had a gun pointed at Adams' head. Adams stated that the robber ordered him not to stop.

In addition to finding Adams guilty of various misdemeanor offenses and violations, the jury also found him guilty of first-degree fleeing or evading police, a felony. It fixed his sentence at three years in prison but enhanced it to twelve years based on a finding that Adams was guilty of PFO I. This appeal followed.

Adams argues on appeal that the trial court erred by failing to instruct the jury on the lesser-included offense of second-degree fleeing or evading police. First-degree fleeing

or evading police is a Class D felony,¹ and second-degree fleeing or evading police is a Class A misdemeanor.² Adams contends that under applicable Kentucky case law, he was entitled to an instruction on the lesser-included offense.

Regardless of whether or not Adams was entitled to an instruction on the lesser-included offense, any error in this regard was not preserved for our review due to the failure to comply with RCr³ 9.54(2). That rule provides:

No party may assign as error the giving or the failure to give an instruction unless the party's position has been fairly and adequately presented to the trial judge by an offered instruction or by motion, or unless the party makes objection before the court instructs the jury, stating specifically the matter to which the party objects and the ground or grounds of the objection.

RCr 9.54(2).

Adams maintains that his trial counsel tendered a proposed jury instruction relating to the lesser-included offense of second-degree fleeing or evading police and that his trial counsel also argued for such an instruction at the close of the evidence when the court discussed the instructions with counsel in chambers. We have reviewed the record and Adams

¹ Kentucky Revised Statutes (KRS) 520.095(2).

² KRS 520.100(3).

³ Kentucky Rules of Criminal Procedure.

correctly states that his trial counsel tendered a proposed instruction for the lesser-included offense. However, in reviewing the videotape of the court's discussion of the proposed instructions with counsel, we fail to see where counsel stated any specific objection to the instructions as given. In fact, Adams' trial counsel specifically stated that she had no objections to the instructions.⁴

In Grooms v. Commonwealth, Ky., 756 S.W.2d 131 (1988), the Kentucky Supreme Court held:

[T]he mere tendering of an instruction does not satisfy the requirement of a proper request under our rules of procedure. To preserve any error relating to the failure to give an instruction, there must be an objection in the record stating specifically the matter to which the party objects and the ground therefore. RCr 9.54(2). In many cases, as in this one, counsel [may] submit a draft of tendered instructions, any one of which may be overlooked by the trial court. The failure to instruct upon a matter which would have been surely instructed upon if the oversight had been called to the attention of the court by counsel is not error.

Id. at 139-40. See also Davis v. Commonwealth, Ky., 967 S.W.2d 574, 580-81 (1998); Commonwealth v. Collins, Ky., 821 S.W.2d 488, 492 (1991) and Evans v. Commonwealth, Ky., 702 S.W.2d 424

⁴ Adams refers in his brief to a specific portion of the tape where he claims an objection was raised. We have reviewed that portion of the tape and find no reference to any objection to the instructions.

(1986). Because of the failure of Adams to properly preserve any alleged error in connection with the giving of a lesser-included offense instruction, we reject his argument on appeal.

The judgment of the Christian Circuit Court is affirmed.

ALL CONCUR.

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