

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-000562-MR

DERRIC GRIGGS

APPELLANT

v. APPEAL FROM ROWAN CIRCUIT COURT  
HONORABLE WILLIAM B. MAINS, JUDGE  
ACTION NO. 99-CR-00086

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DYCHE, JOHNSON AND PAISLEY, JUDGES.

JOHNSON, JUDGE: Derric Griggs has appealed from the final judgment and sentence entered by the Rowan Circuit Court on March 15, 2002, which convicted him of impersonating a public servant.<sup>1</sup> Having concluded that Griggs received a fundamentally fair trial, and that any error on the part of the trial court was harmless, we affirm.

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<sup>1</sup> Kentucky Revised Statutes (KRS) 519.050.

Griggs was formerly employed as a youth program worker at the Jefferson County Youth Center<sup>2</sup> in Louisville, Kentucky. Griggs was terminated in September of 1999, amidst allegations of sexual impropriety concerning his relationship with T.J., a female inmate.<sup>3</sup> Griggs vehemently denied the allegations and he subsequently hired an attorney to represent him in the matter. On October 11, 1999, Griggs's attorney, Gerry Ellis, held a press conference in Louisville,<sup>4</sup> at which time she produced a letter from T.J., which purportedly exonerated Griggs of any wrongdoing.<sup>5</sup>

Prior to the press conference, Cheryl Caudill, a superintendent at the Morehead Center, discovered that an individual identifying himself as an investigator with the Jefferson County Crimes Against Children Unit had visited T.J. at the Morehead Center on September 22, 1999. According to the visitor identification log, the investigator listed his name as Randy Barnett and he signed in at 5:00 p.m. However, when

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<sup>2</sup> The center is a juvenile detention facility.

<sup>3</sup> T.J. was 17-years old at the time.

<sup>4</sup> There is some discrepancy in the record concerning the date on which the press conference was held. After a thorough review of the record, we are convinced that the press conference took place on October 11, 1999.

<sup>5</sup> The letter was sent to Ellis's law office in Louisville. The return address was listed as 495 Forest Hill Dr, Morehead, Kentucky 40351. That address corresponds with the Morehead Youth Development Center, a facility used to house females between the ages of 13-18 that have been adjudicated of a public offense. The letter was postmarked September 23, 1999. T.J. was transferred to the Morehead Center in July of 1999.

Caudill called the Crimes Against Children Unit and asked to speak with Randy Barnett, she was informed that he was not employed by the Crimes Against Children Unit. Shortly thereafter, one of the residents, J.B., informed Caudill that Griggs had recently visited T.J. at the Morehead Center. Caudill confronted T.J. with this information and directed her to turn over any items in her possession concerning Griggs, at which time T.J. provided Caudill with a letter which she initially claimed was given to her by Randy Barnett, on behalf of Griggs. T.J. later admitted to Caudill that Griggs delivered the letter in person on September 22, 1999.

On October 11, 1999, Caudill received a phone call from Donald Stites, the facilities director at the Jefferson County Center, concerning the press conference held by Ellis. Stites wanted to know if T.J. had sent any letters to Ellis from the Morehead Center. Upon checking the mail log, Caudill discovered that T.J. had not mailed a letter to Ellis. Shortly thereafter, Caudill filed a report with the Internal Affairs Unit of the Kentucky State Police Department. An ensuing investigation led the authorities to conclude that Griggs had infiltrated the Morehead Center on September 22, 1999, in order to gain access to T.J.

On December 17, 1999, Griggs was indicted by a Rowan County grand jury for impersonating a peace officer.<sup>6</sup> In particular, the indictment alleged that on September 22, 1999, Griggs "pretended to be an officer with the Jefferson County Crimes Against Children Unit, with the intent to induce another to submit to [his] pretended official authority[.]" Griggs waived formal arraignment and entered a plea of not guilty, after which his case proceeded to trial.

Griggs's first trial resulted in a mistrial due to a hung jury. Prior to the beginning of his second trial, Griggs's attorney, Ellis, filed a motion to withdraw from the case due to a potential conflict of interest with her client.<sup>7</sup> The trial court granted the motion to withdraw and ordered Griggs to obtain new counsel. Shortly thereafter, Sadiqua Moore entered an appearance on Griggs's behalf. The case was subsequently set for a jury trial on February 11, 2002.<sup>8</sup>

T.J. testified on behalf of the Commonwealth at trial. T.J. explained that she came to know Griggs when she was an

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<sup>6</sup> KRS 519.055.

<sup>7</sup> Specifically, Ellis stated that "certain information and matters [had] come up that potentially put [her] in direct conflict with [Griggs's] interest, [namely] the possibility of being called as a witness for the Commonwealth and/or [Griggs]."

<sup>8</sup> The Commonwealth issued several subpoenas for witnesses to testify on its behalf at trial. In particular, the Commonwealth issued subpoenas for Ellis, and Teddy Gordon, an attorney who shared office space with Ellis. Griggs subsequently filed a motion to quash the subpoenas issued for Ellis and Gordon, which was denied on February 4, 2002.

inmate at the Jefferson County Center. T.J. further explained that she was transferred to the Morehead Center in July of 1999. T.J. testified that someone from the Crimes Against Children Unit interviewed her at the Morehead Center, and that the individual identified himself as "Randy [ ] something[.]" When asked if she knew the individual as Randy, T.J. responded that she did not. When asked if she knew the identity of the individual, T.J. attempted to exercise her Fifth Amendment right against self-incrimination. At this point, the trial court instructed the jury to exit the courtroom, after which the following colloquy took place at the bench:

The Court: Now, [T.J.], you have previously testified in this matter, back in December of 2000, and at that time, you were under oath, and you testified, and you have been subpoenaed and call[ed] to testify as a witness today. I do not know of any criminal proceedings pending against you, or the like. You are asking -- being asked to recall the events of sometime in September of 1999, and at this time, I am going to direct you to answer the questions that are asked of counsel -- both counsel, when they ask questions, to the best of your ability, and -- because I know of no reason that you can take the Fifth Amendment. I don't know of any self-incrimination here under the circumstances, so it's going to be my order that you testify, or you suffer the penalties of being in contempt of this Court. Do you understand me?

Mr. Goodwin:<sup>9</sup> Judge, could I briefly make a statement here?

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<sup>9</sup> Michael Goodwin assisted Moore with Griggs's defense.

The Court: Very briefly -- there's not much to say.

Mr. Goodwin: Well, I think there is, because she does have grounds for incrimination, which is, if she gives any inconsistent testimony from her last testimony that is clearly indictable and she can be charged with perjury.

The Court: And she can also be cross examined with regard to that, but at that point in time, I am going to direct her to testify to the best of her ability, and I am not going to allow her to take the Fifth, period -- okay? The matter is settled. Bring the jury back in. If you do not testify, ma'am, then I will find you in contempt of Court, and deal with you accordingly.

. . .

[T.J.]: Can they bring charges against me though, if -- for me allowing someone who's not supposed to be come [sic] to the institution to come?

The Court: That is not anything that I think that you are subject to any criminal charges for. And if that is what your concern is, then that is not a basis for taking the Fifth, clearly.

. . .

Mr. Goodwin: Your Honor, is there a public defender or someone that could be appointed to represent her, that she could just speak to briefly, to see if there is some grounds.

The Court: No -- Let's move on. I want to get this trial over with today.

T.J. subsequently testified that Griggs, not Randy Barnett, visited her at the Morehead Center on September 22, 1999. T.J.

testified that she did in fact write the letter addressed to Ellis, however, she explained that she did not mail the letter. T.J. stated that she gave the letter to Griggs. The Commonwealth's Attorney then proceeded to have T.J. read the letter out loud while on the witness stand.<sup>10</sup> T.J. further testified that Griggs brought her a letter on September 22, 1999, in which he made suggestions concerning the content of the letter he wanted her to write to Ellis. Both letters were admitted into evidence.

On cross-examination, T.J. stated that she initially told Caudill that Griggs had not been to see her at the Morehead Center. T.J. further stated that she did not tell Caudill or the police that Griggs had visited her until she was informed that she would be charged with perjury and that she would not get out on probation<sup>11</sup> unless she identified Griggs as the man who visited her on September 22, 1999.<sup>12</sup>

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<sup>10</sup> In sum, the letter suggested that T.J. and Griggs had never engaged in any kind of sexual relationship.

<sup>11</sup> T.J. pled guilty to armed robbery on July 21, 2000. T.J.'s case was pending trial when the events concerning Griggs transpired. T.J. ended up receiving five years' probation on the armed robbery charge. Her probation was revoked sometime thereafter and she is currently imprisoned at the Kentucky Correctional Institute for Women in Pewee Valley.

<sup>12</sup> In sum, the following colloquy took place between T.J. and defense counsel during cross-examination:

Ms. Moore: So you didn't tell them anything, until they started threatening you?

T.J.: Yes.

Caudill also testified on behalf of the Commonwealth. Caudill testified that T.J. told her that Griggs had visited her on September 22, 1999. Caudill also noted that a female inmate had informed her that Griggs had visited T.J. at the Morehead Center. Caudill further testified that the mail log indicated that T.J. had not sent a letter to Ellis from the Morehead Center. Caudill explained that all mail leaving the facility is screened and initialed by a member of her staff. When presented with a photocopy of the envelope that contained the letter Ellis received at her office in Louisville, Caudill noted that T.J. could not have sent the letter from the Morehead Center because her name was not listed on the face of the envelope. Caudill further noted that during the time frame in which Griggs was alleged to have visited T.J., she was restricted from receiving any visitors other than immediate family members. On cross-

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Ms. Moore: And you didn't tell them anything until they said you weren't going to get out on probation?

T.J.: Yes.

. . .

Ms. Moore: I mean, they are looking at not probating your case -- so, you might have had to do . . .

T.J.: Ten years.

Ms. Moore: And so, you testified?

T.J.: Yes.

Ms. Moore: And they told you that -- they threatened you before?

T.J.: Uh-huh.

examination, Caudill testified that T.J. initially told her that Randy Barnett from the Jefferson County Crimes Against Children Unit had visited her on September 22, 1999.

Lewis Rose, a treatment coordinator at the Morehead Center, also testified on behalf of the Commonwealth. Rose testified that he was the administrative officer on duty on September 22, 1999. Rose stated that at approximately 5:00 p.m., on September 22, 1999, an individual entered the Morehead Center and identified himself as an investigator with the Crimes Against Children Unit. Rose testified that the individual informed him that he needed to obtain a statement from T.J. concerning an ongoing investigation. Rose stated the he directed the individual to sign his name on the visitor identification log, after which he escorted him to a nearby office where he was provided with an opportunity to interview T.J. Rose explained that after talking with T.J., the individual left her alone in the office for several minutes. Rose testified that the individual informed him that he asked T.J. to provide a written statement. Rose stated that after T.J. finished writing, the individual took the statement, placed it in his briefcase, and left the building.<sup>13</sup> Rose testified that the individual identified himself as Randy Barnett and that he signed his name as Randy Barnett on the visitor

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<sup>13</sup> Rose acknowledged that he did not actually see the individual leave the building.

identification log. Rose identified Griggs as the individual that visited T.J. on the evening of September 22, 1999.

Randy Barnett and J.B. also testified at Griggs's trial. Barnett testified that he is currently employed as a juvenile services officer and that he has never been employed by the Crimes Against Children Unit. Barnett further stated that he did not visit T.J. at the Morehead Center on September 22, 1999. J.B. testified that she was an inmate at the Morehead Center in September of 1999 and that she remembers seeing Griggs at the Morehead Center sometime in September of 1999. J.B. stated that she knew Griggs from the Jefferson County Center.

As previously mentioned, the Commonwealth also subpoenaed Ellis, Griggs's former attorney, to testify on its behalf. During direct-examination, the Commonwealth asked Ellis to identify a pair of tickets to Comedy Caravan, a club in Louisville. Ellis identified the tickets and explained that she received the tickets in an envelope from Teddy Gordon, an attorney with whom she shared office space.<sup>14</sup> Ellis further testified that she was unable to use the tickets and that she offered them to Griggs. Ellis explained that she left the tickets at her office for Griggs to pick up.<sup>15</sup> The Commonwealth

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<sup>14</sup> Ellis actually testified that she "practice[s] law" with Gordon, however, the record indicates that Ellis merely shared office space with him.

<sup>15</sup> The date listed on the tickets was September 22, 1999, and under the heading "Group" the name A.J. Preschool was listed.

then proceeded to question Ellis concerning her preparation for Griggs's first trial, at which time defense counsel objected, arguing that any information concerning Ellis's preparation for Griggs's first trial was protected by the attorney-client privilege and the work product doctrine. The trial court overruled the objection and allowed the Commonwealth to continue this line of questioning. Ellis subsequently testified that Griggs had brought to her office in preparation for his first trial what he claimed were the tickets she had offered him to the Comedy Caravan that he claimed he had received from Gordon.

The Commonwealth also subpoenaed Gordon to testify on its behalf.<sup>16</sup> Gordon testified on direct examination that he shares office space with Ellis and that he is her landlord. Gordon was also asked to identify the tickets. Gordon explained that he testified on Griggs's behalf at his first trial and that he recognized the tickets from the first trial. Gordon further explained that he previously testified that Griggs came to his office between 4:30 p.m. and 5:00 p.m. on September 22, 1999, at which time he provided him with the tickets. Gordon stated that he presumed that he gave Griggs the tickets on September 22, 1999, because that was the date listed on the tickets. Gordon further stated that he received the tickets from his wife, who

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<sup>16</sup> Shortly before Gordon took the witness stand, Griggs objected to any testimony elicited from Gordon that was protected by the attorney-client privilege or the work product doctrine.

is a teacher at A.J. Preschool. Gordon testified that he has since learned that the A.J. Preschool event was held on October 4, 1999, and not September 22, 1999. Gordon further testified that he now believes that he gave the tickets to Griggs on October 4, 1999, as opposed to September 22, 1999. Gordon explained that he is positive that he gave the tickets away on the date the event was scheduled. Gordon testified that after Griggs's first trial, he asked Griggs to provide some handwriting samples.<sup>17</sup> Gordon stated that Griggs came to his office and voluntarily provided him with several handwriting samples. The Commonwealth asked Gordon to identify a report prepared by Paul Kramer, a handwriting expert hired by Gordon, along with a sheet containing the handwriting samples provided by Griggs. Gordon identified the handwriting samples as the ones that Griggs had provided at his office. In closing, Gordon testified that he has never represented Griggs.

Thomas Sobel, the owner of Comedy Caravan, also testified on behalf of the Commonwealth. Sobel explained that his club sold several tickets as a fund-raising event for A.J. Preschool in 1999. When asked to identify the tickets that Griggs had presented to Ellis in preparation of his first trial, Sobel opined that the tickets were fraudulent. In particular,

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<sup>17</sup> When asked why he was interested in obtaining handwriting samples from Griggs, Gordon indicated that he was concerned about his reputation as a result of the testimony that he had given at Griggs's first trial.

Sobel explained that the tickets were printed on the wrong paper stock and that the A.J. Preschool event was held on October 4, 1999, not September 22, 1999. Sobel explained that Kentucky Fried Chicken was the only group at his club on September 22, 1999. Sobel further explained that the type face and spacing on the tickets were different than the tickets he distributes. Sobel also stated that all advance purchase tickets are collected at the door and that a patron would not be able to leave the club with an advance purchase ticket. In closing, the Commonwealth moved to have two tickets provided by Sobel admitted into evidence; one from the September 22, 1999, event that listed Kentucky Fried Chicken under the heading "Group", and one from the October 4, 1999, event that listed A.J. Preschool. The tickets were admitted into evidence without objection.

Paul Kramer also testified on behalf of the Commonwealth. After qualifying Kramer as an expert, the Commonwealth presented him with the visitor identification log from the Morehead Center for September 22, 1999, the Comedy Caravan tickets, and the handwriting samples attached to his report. Kramer testified that Gordon had provided him with copies of these documents in January of 2001, and that he was familiar with their contents. The Commonwealth then asked Kramer if he had formed any conclusions or opinions concerning

the various handwriting exemplars. Griggs's attorney objected to this line of questioning, arguing that Kramer's proposed testimony amounted to speculation. The trial court overruled the objection and Kramer testified that, in his opinion, the handwriting samples that Griggs provided at Gordon's office were "very deliberately written," and that he "could feel the indentations very strongly at the bottom of the paper." Kramer explained that writing hard is normally "an attempt to disguise," on the part of the writer. In response to a question posed by Griggs's attorney on cross-examination, Kramer stated that at one point he informed Gordon that "it was very obvious that [ ] Mr. Griggs continued to disguise his normal writing habits," and that this led him to believe that "[Griggs was] either guilty, or . . . nervous about giving his specimen handwriting."

After the Commonwealth rested its case, Griggs moved for a directed verdict of acquittal. Griggs contended that the Commonwealth had failed to introduce any evidence suggesting that he had impersonated an officer with the authority to make arrest, as required by KRS 519.055.<sup>18</sup> The trial court denied Griggs's motion for a directed verdict of acquittal.

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<sup>18</sup> KRS 519.055 provides, in relevant part, as follows:

(1) A person is guilty of impersonating a peace officer if he pretends to be a peace officer, or to represent a law enforcement agency or act with the

Elaine Armstrong and Lamar Jenkins testified on behalf of Griggs. Armstrong stated that she spoke with Griggs at about 5:00 p.m., on September 22, 1999, at Royal Arms Apartments in Louisville, where he resides. Armstrong explained that she is the property manager at Royal Arms. On cross-examination, however, Armstrong conceded that she was not sure if she spoke with Griggs on September 22, 1999. Jenkins testified that he also spoke with Griggs at his apartment complex at about 5:00 p.m., on September 22, 1999.<sup>19</sup> Griggs did not testify.<sup>20</sup> After resting his case, Griggs again moved for a directed verdict of acquittal, which was denied. The trial court did, however,

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authority or approval of law enforcement agency, with intent to induce another to submit to the pretended official authority or otherwise to act in reliance upon the pretense to his prejudice.

. . .

(3) As used in this section, the phrase "peace officer" means a peace officer as defined in KRS 446.010.

Pursuant to KRS 446.010(24), peace officer "includes sheriffs, constables, coroners, jailers, metropolitan and urban-county government correctional officers, marshals, policemen, and other persons with similar authority to make arrests[.]"

<sup>19</sup> Jenkins and Griggs are fraternity brothers.

<sup>20</sup> Several other witnesses also testified at Griggs's trial, however, we have limited our summary of the testimony to the issues relevant to the arguments raised by Griggs on appeal.

agree to instruct the jury on the lesser offense of impersonating a public servant.<sup>21</sup>

The jury found Griggs guilty of impersonating a public servant and recommended a jail sentence of 12 months and a \$500.00 fine.<sup>22</sup> On March 15, 2002, the trial court sentenced Griggs to 12 months in the county jail, which was probated for two years. At the insistence of Griggs's attorney, the trial court stayed the order of probation pursuant to RCr<sup>23</sup> 12.76(4).<sup>24</sup> The trial court, however, required Griggs to post a \$1,000.00 bond.<sup>25</sup> As a condition of the bond, the trial court stated that

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<sup>21</sup> Impersonating a public servant is a Class A misdemeanor, whereas impersonating a peace officer is a Class D felony. KRS 519.050(1) provides, in relevant part, as follows:

A person is guilty of impersonating a public servant, other than a peace officer, if he pretends to be a public servant, other than a peace officer, or to represent a public agency, other than a law enforcement agency, or act with the authority or approval of a public agency, other than a law enforcement agency, with intent to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

<sup>22</sup> The jury recommended that Griggs's entire sentence be probated.

<sup>23</sup> Kentucky Rules of Criminal Procedure.

<sup>24</sup> RCr 12.76(4) provides that "[a]n order placing the defendant on probation shall be stayed if an appeal is taken." Griggs's attorney informed the court at the sentencing hearing that an appeal would be filed.

<sup>25</sup> Griggs had previously posted a \$1,000.00 bond as a condition of his release following the indictment and arrest warrant that was issued on December 17, 1999. The trial court stated that Griggs was required to remain on the \$1,000.00 bond that he previously posted.

Griggs was required to "call into probation and parole, once a month, to check in[,]"<sup>26</sup> pending the outcome of his appeal.

Griggs makes the following claims on appeal: (1) the trial court abused its discretion by compelling T.J. to bear witness against him, thereby depriving him of his constitutional right to a fair trial, as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution, and Sections 2 and 11 of the Kentucky Constitution; (2) the testimony provided by the Commonwealth's handwriting expert, Kramer, was "scientifically unreliable" and therefore inadmissible; (3) his due process rights were violated when the trial court permitted Kramer to testify that he was guilty; (4) the trial court abused its discretion by permitting his former attorneys to testify against him; (5) the trial court erred by failing to grant his motion for a directed verdict as to the charge of impersonating a peace officer; (6) "the trial court subverted RCr 12.76(4) by staying probation while simultaneously imposing the conditions of probation as a condition of bail on appeal"; and (7) his conviction should be reversed as a result of "cumulative error."

T.J.'s testimony did not render Griggs's trial fundamentally unfair. First and foremost, T.J.'s sole concern about testifying was that she might be subject to future

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<sup>26</sup> The trial court also stated that Griggs was required to abstain from committing any other offenses.

prosecution for allowing Griggs to enter the Morehead Center.

As the former Court of Appeals stated in Young v. Knight:<sup>27</sup>

[T]he danger of self-incrimination to be apprehended must be real and substantial . . . for the law does not permit a witness arbitrarily to hide behind an imaginary or unappreciable danger or risk. Otherwise, it would be within the power of a witness by a colorable pretense of self-incrimination, or by a subterfuge, to avoid giving culpable information concerning other persons [citation omitted].

We conclude that T.J.'s fear of future prosecution concerning her testimony at Griggs's second trial was so "remote as to have rendered the danger imaginary or unappreciable,"<sup>28</sup> especially in light of the fact that she testified on behalf of the Commonwealth at Griggs's first trial.<sup>29</sup> Moreover, we are not presented with a situation in which a government witnesses has refused, on grounds of self-incrimination, to answer questions

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<sup>27</sup> Ky., 329 S.W.2d 195, 201 (1959).

<sup>28</sup> Commonwealth v. Gettys, Ky.App., 610 S.W.2d 899, 901 (1980).

<sup>29</sup> Griggs argues that T.J. had a "real and appreciable apprehension" of future prosecution for perjury if she changed her testimony from her first trial and failed to identify Griggs as the person who visited her on September 22, 1999. This argument is flawed, however, as T.J. never claimed that she was afraid of giving perjured testimony at Griggs's trial. Granted, Griggs's attorney suggested as much at trial, however, the privilege against self-incrimination embodied in the Fifth Amendment is a personal one. "It is axiomatic that a defendant may not claim another's privilege against self-incrimination." United States v. Passman, 465 F.Supp 736, 742-43 (W.D.La. 1979). See also United States v. Robinson-Munoz, 961 F.2d 300, 303 (1st Cir. 1992); United States v. Agajanian, 852 F.2d 56, 58 (2nd Cir. 1988); and United States v. Fredericks, 586 F.2d 470, 480-81 (5th Cir. 1978). That is to say, Griggs lacks standing to raise this argument on appeal. Cf., United States v. Merkt, 764 F.2d 266, 274-75 (5th Cir. 1985). "A defendant may assert [his] own fifth amendment right to a fair trial as a valid objection to the introduction of statements extracted from a non-defendant by coercion or other inquisitional tactics" [citations omitted].

posed by the defense on cross-examination.<sup>30</sup> Quite the contrary, T.J. was subject to cross-examination and her motivation for testifying was clearly called into question by defense counsel. Thus, we cannot conclude that Griggs's right to confront the witnesses presented against him was violated. Simply put, Griggs has failed to establish that T.J.'s testimony deprived him of his right to a fair trial.

Griggs next argues that the testimony provided by the Commonwealth's handwriting expert, Kramer, was "scientifically unreliable" and therefore inadmissible. We reject this argument. "[H]andwriting analysis [has] long been recognized by the courts as [a] sound method[ ] for making reliable identifications."<sup>31</sup> Kramer testified that he was employed as an "examiner of questioned documents," and that he had approximately 35 years of experience in this field. Kramer further testified that he has performed over 400 examinations. Consequently, we cannot conclude that the trial court abused its discretion by permitting Kramer to testify on direct examination that, in his opinion, the handwriting samples provided to him were "very deliberately written," and that writing hard is normally "an attempt to disguise" on the part of writer.

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<sup>30</sup> Cf., Combs v. Commonwealth, Ky., 74 S.W.3d 738, 742-44 (2002).

<sup>31</sup> United States v. Crisp, 324 F.3d 261, 266 (4th Cir. 2003).

Griggs further argues that the trial court erred by permitting Kramer to testify that he was guilty. This argument lacks merit as the testimony of which Griggs complains came in the form of a responsive answer to a question posed by the defense during cross-examination.<sup>32</sup> "One who asks questions which call for an answer has waived any objection to the answer if it is responsive."<sup>33</sup> Regardless, Griggs never objected to any of the responses elicited from Kramer on cross-examination. Thus, he has failed to preserve this issue for appellate review.<sup>34</sup>

Griggs further argues that the trial court abused its discretion by permitting his former attorneys to testify against him. Griggs maintains that the testimony elicited from Ellis and Gordon at trial violated the attorney-client privilege. We disagree. "The attorney-client privilege [ ] is not a broad rule of law which interposes a blanket ban on the testimony of

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<sup>32</sup> As previously discussed, Kramer testified on cross-examination that at one point he informed Gordon that "it was very obvious that [ ] Mr. Griggs continued to disguise his normal writing habits," and that this led him to believe that "[Griggs was] either guilty, or . . . nervous about giving his specimen handwriting."

<sup>33</sup> Hodge v. Commonwealth, Ky., 17 S.W.3d 824, 845 (2000) (quoting Mills v. Commonwealth, Ky., 996 S.W.2d 473, 485 (1999)). See also Robert G. Lawson, The Kentucky Evidence Law Handbook § 1.10, at 3 (3d ed. 1993 & Supp. 2002).

<sup>34</sup> RCr 9.22. See also Burdell v. Commonwealth, Ky., 990 S.W.2d 628, 634 (1999). Griggs does not contend that the admission of Kramer's testimony amounted to palpable error.

an attorney."<sup>35</sup> The privilege "'protects only those disclosures necessary to obtain legal advice which might not have been made absent the privilege[.]'"<sup>36</sup> Moreover, the privilege is waived if the holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter or communication.<sup>37</sup>

As previously discussed, Ellis identified a pair of Comedy Caravan tickets at trial and she testified that Griggs presented her with the tickets in preparation for his first trial and that he informed her that he had received the tickets from Gordon. We reject Griggs's contention that this communication was privileged. According to the record, Griggs testified at his first trial that he provided Ellis with the tickets and that he obtained them from Gordon. As Professor Lawson notes in his treatise on Kentucky Evidence Law, "[a] client who discloses confidential communications to persons outside the lawyer-client relationship (or authorizes counsel to do the same) loses the protection of the privilege" [footnote

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<sup>35</sup> United States v. Pipkins, 528 F.2d 559, 562 (5th Cir. 1976). See also United States v. Weger, 709 F.2d 1151, 1154 (7th Cir. 1983).

<sup>36</sup> Lexington Public Library v. Clark, Ky., 90 S.W.3d 53, 60 (2002) (quoting Fisher v. United States, 425 U.S. 391, 403, 96 S.Ct. 1569, 48 L.Ed.2d 39, 1577 (1976)).

<sup>37</sup> See In re Kidder Peabody Securities Litigation, 168 F.R.D. 459, 468 (S.D.N.Y. 1996).

omitted].<sup>38</sup> As for Gordon's testimony, Griggs has failed to demonstrate that an attorney-client relationship existed between himself and Gordon.<sup>39</sup>

Griggs next argues that the trial court erred by failing to grant his motion for a directed verdict of acquittal as to the charge of impersonating a peace officer. While we are inclined to agree with Griggs that the trial court erroneously instructed the jury that he could be found guilty of impersonating a peace officer,<sup>40</sup> we need not resolve that question as Griggs has failed to establish that a substantial possibility exists that the result would have been any different had the instruction not been given.<sup>41</sup> The evidence presented at trial was more than sufficient to induce a reasonable juror to believe beyond a reasonable doubt that Griggs was guilty of the

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<sup>38</sup> Lawson, supra § 5.10 at 248. See also Clark, supra at 61.

<sup>39</sup> Griggs contends that he believed Gordon was Ellis's "representative." While this belief certainly seems plausible, Griggs has failed to point to any evidence in the record supporting his contention. In fact, the record indicates that Gordon merely shared office space with Ellis and that he was her landlord. Moreover, Gordon testified that he has never represented Griggs. Without more, we simply cannot conclude that an attorney-client relationship existed between Griggs and Gordon.

<sup>40</sup> Pursuant to KRS 446.010(24), peace officer "includes sheriffs, constables, coroners, jailers, metropolitan and urban-county government correctional officers, marshals, policemen, and other persons with similar authority to make arrests[.]" Albeit inartfully drafted, KRS 446.010(24) seems to imply that unless an individual falls into one of the enumerated categories, he must possess the authority to make arrests before he will be considered a "peace officer" under the statute. The Commonwealth failed to introduce any evidence at trial indicating that an investigator with the Crimes Against Children Unit has the authority to make arrests.

<sup>41</sup> See Rogers v. Commonwealth, Ky., 60 S.W.3d 555, 559 (2001). See also RCr 9.24.

lesser offense of impersonating a public servant. "An instruction, even though unauthorized, upon the highest degree of an offense is not a cause for reversal of a judgment where the conviction is for a lesser offense on which the evidence warranted an instruction."<sup>42</sup> Although Griggs contends the jury's verdict was a product of compromise, he points to nothing in the record sufficient to justify such a conclusion. Consequently, we conclude that the instruction on impersonating a peace officer, even if erroneously given, amounted to no more than harmless error. To hold otherwise would be to reach a conclusion based on nothing more than judicial speculation.

Griggs further contends that the trial court "subverted RCr 12.76(4) by staying probation while simultaneously imposing the conditions of probation as a condition of bail on appeal." This argument is utterly devoid of merit. Pursuant to RCr 4.54(1), "[u]pon the conviction of a defendant, bail may be increased, decreased, revoked, or modified by the trial court . . . and control over bail shall remain with the trial court throughout any appeal." Simply put, the trial court was well within its discretion to order Griggs

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<sup>42</sup> Hensley v. Commonwealth, Ky., 474 S.W.2d 888, 889 (1971). See also Mason v. Commonwealth, Ky., 463 S.W.2d 930, 932 (1971); and Wills v. Commonwealth, Ky., 502 S.W.2d 60, 62 (1973). See generally, Milton Roberts, J.D., Annotation, Modern Status of Law Regarding Cure of Error, in Instruction as to One Offense, by Conviction of Higher or Lesser Offense, 15 A.L.R.4th 118, part III, §§ 21-36, pp 164-200 (1982).

to post bond and to impose certain conditions in that bond pending his appeal to this Court.

Finally, Griggs asserts that his conviction should be reversed as a result of "cumulative error." Our review of the entire case reveals that Griggs received a fundamentally fair trial, and that there is no cumulative effect of error that would mandate reversal.<sup>43</sup>

Based on the foregoing, the judgment of conviction and sentence entered by the Rowan Circuit Court on March 15, 2002, is affirmed.

PAISLEY, JUDGE, CONCURS.

DYCHE, JUDGE, CONCURS IN RESULT ONLY.

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<sup>43</sup> See, e.g., Sholler v. Commonwealth, Ky., 969 S.W.2d 706, 712 (1998).