

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-002602-MR

RODRIX BROOKS

APPELLANT

v. APPEAL FROM BARREN CIRCUIT COURT  
HONORABLE PHILIP R. PATTON, JUDGE  
ACTION NO. 02-CR-00142

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

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BEFORE: JOHNSON, KNOPF, AND McANULTY, JUDGES.

McANULTY, JUDGE. Rodrix Brooks (hereinafter appellant) was convicted in the Barren Circuit Court of three counts of trafficking in a controlled substance in the first degree. He was sentenced to five years on each count, for a total sentence of fifteen years' imprisonment. Appellant alleges two instances of error by the prosecutor, as well as prejudice from the cumulative effect of the errors, require reversal of his conviction. We disagree, and affirm.

Appellant was indicted for three counts of trafficking in a controlled substance in the first degree, alleged to have occurred through controlled buys with a confidential informant. Appellant was tried by a jury. The confidential informant testified at trial that he knew appellant, and that he had purchased cocaine from him in three controlled drug buys. Two of the buys were tape recorded by the informant and the tapes played at trial. A police detective testified that he set up the drug buys with appellant, complying with the standard procedures. He said he followed the informant to appellant's apartment, and retrieved crack cocaine from the informant following each transaction.

Appellant first claims that he should have been granted a mistrial due to improper questioning during voir dire. During voir dire, the Commonwealth Attorney asked the prospective jurors, "How many would have trouble sending this man to prison, by sending a message to this man and to members of the community about drugs?" Appellant's attorney objected and asked for a mistrial on grounds that the query prejudiced appellant. The trial court denied the motion for mistrial, but admonished the panel: "All of you recognize drugs are a problem and the legislature says they are illegal. Will you decide solely on the evidence and instructions and not to send a message to the community that drugs are bad?" The court resumed

voir dire. Following the admonition, defense counsel renewed the motion for a mistrial in chambers.

On appeal, appellant claims that he was denied his right under the Sixth Amendment to a fair and unbiased jury. The Kentucky Supreme Court has said that the prosecutor may not urge the jury to make an example of the defendant or to send a message with their verdict. Ice v. Commonwealth, Ky., 667 S.W.2d 671, 676 (1984). Questions of jurors in criminal cases are not competent when their evident purpose is to have jurors indicate in advance or commit themselves to certain ideas and views upon final submission of the case to them. Ward v. Commonwealth, Ky., 695 S.W.2d 404 (1985).

Thus, the prosecutor's question went beyond proper voir dire. Nevertheless, a trial judge should grant a mistrial only when there has been shown a manifest necessity for such an action or an urgent or real necessity. Gould v. Charlton Co., Ky., 929 S.W.2d 734, 738 (1996). Each situation must be analyzed according to the unique facts presented. Id. 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. Id. The decision whether to grant a mistrial is for the trial judge, and will not be disturbed absent an abuse of discretion. Id. at 741.

Appellant argues that this statement was unfairly prejudicial and was not made any less so by the fact that it was made at the beginning of the trial. In fact, appellant argues that asking the question at the beginning of the trial was more detrimental because of the attention given to the proceedings by jurors. Appellant, however, does not identify any prejudice due to the comment. The Commonwealth, on the other hand, asserts that there was no prejudice because there is no indication the result would have been different absent the prosecutor's objectionable question. The Commonwealth cites the curative effect of the admonition. The Commonwealth points to the strong evidence against appellant in this case. Moreover, the Commonwealth notes appellant received less than the maximum sentence allowable for these convictions, having been given five years on each count rather than the maximum ten-year sentence.

We agree with the Commonwealth that appellant has not shown a manifest necessity for a mistrial. The objection was sustained and a curative admonition was given. The delivery of an appropriate admonition is presumed to cure error. Neeley v. Commonwealth, Ky., 591 S.W.2d 366 (1979). An admonition is assumed to control the jury and remove the prejudice which brought about the objection. Clay v. Commonwealth, Ky., 867 S.W.2d 200, 204 (1993). It is presumed that a jury will follow an admonition of the court unless there is both an overwhelming

probability that the jury will be unable to follow the court's admonition and the error is likely to be devastating to the defendant. Alexander v. Commonwealth, Ky., 862 S.W.2d 856, 859 (1993), overruled on other grounds by Stringer v. Commonwealth, Ky., 956 S.W.2d 883 (1997), citing Greer v. Miller, 483 U.S. 756, 766, n. 8, 107 S. Ct. 3102, 3109, n. 8, 97 L.Ed.2d 618 (1987). We conclude that the curative admonition in this case was sufficient to remove the prejudice. We properly may presume that the jury followed it. No prejudice or manifest injustice has been shown. Therefore, we affirm the trial court's denial of a mistrial.

Second, appellant argues that the prosecutor committed prejudicial error by asking the informant on redirect examination whether appellant or any member of his family threatened him. Appellant immediately objected, and the objection was sustained. Appellant argues this question created a manifest injustice by raising a question in the jurors' minds about evidence of other crimes concerning threats to the Commonwealth's informant. However, since the objection to the question was sustained, we find no error for review on appeal. Appellant did not ask for an admonition from the court that the jury disregard the question. Further, he did not move for a mistrial. The failure to ask for further relief indicates that satisfactory relief was granted when the objection was

sustained. Derossett v. Commonwealth, Ky., 867 S.W.2d 195, 197 (1993). Appellant additionally has not shown prejudice in this case. Thus, we conclude there is no error for our review. Davis v. Commonwealth, Ky., 967 S.W.2d 574, 580 (1998).

Finally, appellant argues that the cumulative effect of the above errors was grounds for reversal of his conviction. We do not agree that cumulative error was established, as appellant obtained the relief he requested as to both of the asserted errors of the prosecutor in this case.

For the foregoing reasons, we affirm the order of the Barren Circuit Court.

ALL CONCUR.

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