

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-000005-MR

CHRISTIAN LAMONT POWERS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE GARY D. PAYNE, JUDGE  
ACTION NO. 02-CR-00801

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BARBER, SCHRODER, AND VANMETER, JUDGES.

BARBER, JUDGE: Appellant, Christian Lamont Powers (Powers),  
appeals his conviction of forgery, a class D felony, and of  
being a persistent felony offender in the second degree.

Finding no error, we affirm the judgment of the Fayette Circuit  
Court.

Powers was indicted for having "falsely made or  
completed a payroll check belonging to Janet Daum." Powers' co-  
defendant, a convicted felon, testified that she had been with

him, and that they were both under the influence of drugs when they went to the liquor store and attempted to cash a check that did not belong to them. She testified that she did not know Powers prior to the incident, but was just catching a ride with him. She testified that she just signed the name on the check that he told her to sign. The check was a stolen paycheck made out to Janet Daum. The co-defendant testified that there were already two names on the check when she signed it, those names being "Janet Daum" and "Christian Powers." The clerk at the store testified that the co-defendant informed him that her name was Janet Daum when he asked, and that the co-defendant signed "Janet Daum" on the check. The clerk also testified that the co-defendant asked Powers what her name was before she signed the check. Powers testified that he was merely giving his co-defendant a ride to the store as she asked, and that he signed the back of the check as a guarantor at her request.

Powers made a motion for directed verdict. He argued before the trial court that he had signed his correct name to the check, and thus had not forged anything. He asserts that the conviction was improper for that reason. KRS 516.030 provides that a person is guilty of forgery in the second degree when he falsely makes, completes or alters a written instrument. Powers claims that he did not alter, make or complete the check in any illegal fashion. The Commonwealth claims, based on the

testimony of the co-defendant, that the name "Janet Daum" was already on the check when the co-defendant first saw it, and that therefore Powers must have forged that name on the check. It is uncontroverted that both the co-defendant and Powers signed the check after reaching the store, at the request of the clerk. It is also uncontroverted that there were already two signatures on the check when the parties reached the store.

On a motion for directed verdict, the court must draw all fair and reasonable inferences from the evidence in favor of the nonmoving party. Edmonds v. Commonwealth, Ky., 906 S.W.2d 343 (1995). This court can reverse the denial of directed verdict only where based upon the evidence as a whole it would be clearly unreasonable for a jury to find guilt. Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991). The fact that there was testimony that two signatures were on the check at the time the co-defendant first saw it, and that the co-defendant had to ask Powers what name to put on the check gave rise to a jury issue. Powers has failed to show that the denial of the motion for directed verdict constitutes reversible error.

During her testimony, the co-defendant admitted that she is a convicted felon, and stated that she always pleads guilty to whatever she is charged with. She did not give specifics about her earlier offenses. She did not specify what the earlier offenses were. Powers claims error because the

trial court denied his motion to introduce pending out-of-state forgery charges against his co-defendant. Powers asserts that such evidence was proper to show common plan or scheme under KRE 404(b). The Commonwealth argues that this evidence was irrelevant to the case before the court, because the co-defendant was merely acting at the direction of Powers. The court has broad discretion regarding matters of relevancy. Matthews v. Commonwealth, Ky. App., 887 S.W.2d 567 (1994). This Court cannot reverse the trial court's determination absent a showing of an abuse of discretion. English v. Commonwealth, Ky., 993 S.W.2d 941 (1999). We find that there was no showing of an abuse of discretion in this matter, and therefore affirm the trial court's ruling.

Lastly, Powers claims that a police witness improperly bolstered the testimony of the co-defendant during cross-examination. The officer testified that at the scene the co-defendant gave an opposite explanation of what had occurred to that given by Powers. Powers had testified that the co-defendant had the check and the car, and had picked him up. His co-defendant claimed that Powers had the check and car, and had picked her up. This statement by the officer was non-responsive. Introduction of prior consistent statements by a witness may constitute reversible error. Smith v. Commonwealth, Ky., 920 S.W.2d 514, 517 (1996). The testimony had no probative

value, but served only to bolster the testimony given at trial by the co-defendant. Belt v. Commonwealth, Ky. App., 2 S.W.3d 790, 792 (1999). Such prior consistent statements are only admissible where the statement was made before the witness had any motive to fabricate. Slaven v. Commonwealth, Ky., 962 S.W.2d 845, 858 (1997). In the present case, both statements were made after the witness had motive to fabricate.

This Court notes, however, that this error is unpreserved for review. As a general rule, the trial court must be given the opportunity to rule on a matter before it is raised as an error on appeal. Hunter v. Commonwealth, Ky., 560 S.W.2d 808 (1977). An unpreserved error may only be raised on appeal where it is a palpable error resulting in manifest injustice to the defendant. Young v. Commonwealth, Ky., 25 S.W.3d 66, 74 (2000). The defendant must show that there was a substantial possibility that the results of the trial would have been different had the error not occurred. Castle v. Commonwealth, Ky. App., 44 S.W.3d 790, 794 (2000).

The record shows that a member of the jury had raised the issue of contradictions in the co-defendant's testimony earlier in the trial. The co-defendant was given the opportunity to respond directly to the juror who had asked why her testimony was contradictory. Powers asserts that the questioning by the juror shows that the jury may have doubted

the witness' veracity. He claims that this shows that there was a substantial possibility that the results would have been different in the absence of the bolstering testimony. While we agree that the officer's non-responsive answer was improper, this testimony was not palpable error such that the conviction should be reversed. For that reason, we affirm the conviction.

ALL CONCUR.

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