

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001360-MR

FAYETTE MILTON VANDERFORD

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
INDICTMENT NO. 03-CR-00007-1

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE, AND TAYLOR, JUDGES.

DYCHE, JUDGE: Fayette Milton Vanderford appeals his conviction for robbery in the first degree.

On appeal, Vanderford argues that the Fayette Circuit Court erred when it denied his pretrial motion for a competency evaluation. Appellant argues that the trial court was alerted to the fact that Vanderford was excessively religious and this religiosity rendered Vanderford incapable of assisting in his own defense and rendered him incapable of making decisions in his best interest. Appellant argues that the trial court erred

when it denied Vanderford's sixth and final motion for mistrial based on cumulative error. Finding that the trial court did not err, this Court affirms Vanderford's conviction.

FACTS

On November 17, 2002, sometime before 1:30 a.m., Fayette Milton Vanderford and Lisa Johnson arrived at a Shell Station located at Todds Road and Man O'War Boulevard in Lexington, Kentucky. Vanderford entered the store carrying a crowbar. He jumped over the counter into the small office area where Tiffany Boulder, the night clerk, was. Boulder fled, but Vanderford pursued her, caught her, and demanded the money from the cash register. Video footage from the station's security cameras showed Vanderford jumping across the counter toward Boulder with the crowbar in his hand. It also showed Vanderford taking money from Boulder. Vanderford took \$109.00 in cash and approximately \$131.00 in cigarettes. Then he and Johnson fled the scene in a vehicle Johnson was driving.

On January 6, 2003, a Fayette County grand jury indicted Vanderford on one count of robbery in the first degree, KRS 515.020. The grand jury also indicted Johnson as well. Vanderford pled not guilty, and the trial court appointed an attorney with Fayette County Legal Aid to represent Vanderford. Johnson, however, pled guilty to facilitation to robbery in the

second degree and, in exchange for the amended charge, agreed to testify against Vanderford.

Shortly before trial, counsel became concerned over Vanderford's strong religious beliefs because, according to counsel, Vanderford was not assisting in trial preparation. According to counsel, every time he broached the subject, Vanderford would tell him that God would "deliver" him. Counsel advised Vanderford that the evidence was overwhelming, and he asked Vanderford for his input regarding a defense. However, Vanderford merely told counsel that God would show counsel the way when the time came.

As the trial date approached, the Commonwealth made a plea offer of ten years but Vanderford refused it. Later, the Commonwealth had difficulties locating Boulder, who was subpoenaed to testify against Vanderford. Due to this, the Commonwealth offered to amend the charge to robbery in the second degree with a sentence recommendation of five years. Defense counsel conveyed this new offer to Vanderford. However, Vanderford rejected it and told counsel that he believed that God would not allow him to be sentenced to more than one year.

After counsel conveyed Vanderford's rejection to the Commonwealth, the prosecutor withdrew the five-year offer. However, a few days later, Vanderford told counsel that he wanted to take the five years. Counsel told this to the

prosecutor. The prosecutor rejected this but made a new offer to amend the charge to robbery in the second degree with a sentence recommendation of seven years. Counsel conveyed this new offer to Vanderford, but he rejected it as well.

At this point, counsel made an oral motion for Vanderford to be evaluated for competency. Counsel stated his belief that Vanderford's religious faith was excessive to the point of fanaticism and it rendered Vanderford irrational. At a hearing, counsel argued that Vanderford was unable to consider what was in his best interest due to his overpowering religious zeal. As proof of this, counsel argued that Vanderford had repeatedly told counsel that God would "deliver" him despite the evidence. Counsel argued that Vanderford's rejection of both the five-year offer and the seven-year offer clearly demonstrated that he lacked competency.

The trial court questioned Vanderford at length whether he understood the nature and the consequences of the proceedings against him. He told the trial court that he understood that he had been charged with robbery in the first degree, a felony. He told the trial court that he understood that if he proceeded to trial that he could be convicted; that he could be sentenced up to twenty years; and that he would not be eligible for parole until he had served eighty-five percent of his sentence. He told the trial court that he understood the

evidence against him was very strong and that he had limited options regarding a defense.

Moreover, Vanderford told the trial court that he never threatened Boulder verbally or physically and never brandished the crowbar in such a way to have threatened her; thus, he felt that he was not guilty of robbery in the first degree. Vanderford continued to insist that God would deliver him. When the trial court asked him how God would do this, he told the court that he did not know. Nevertheless, he told the Court that he had faith in God and felt that God would not let him serve more than a year. Despite this, he readily acknowledged that it may be God's will that he serve twenty years.

Near the end of the hearing, Vanderford repeatedly asked the prosecutor for leniency and asked her not only to recommend a five-year sentence but also asked her to recommend probation. Vanderford reasoned that since his co-defendant, Johnson, received probation, he ought to as well.

After listening to Vanderford, the trial court found no reasonable basis to question Vanderford's competency, thus, denied the defense motion. Subsequently, Vanderford proceeded to trial. The jury convicted Vanderford of robbery in the first degree and sentenced him to eighteen years. Counsel then filed an appeal on Vanderford's behalf.

FIRST ARGUMENT: INCOMPETENCY

Counsel argues on Vanderford's behalf that the trial court erred when it denied his motion to have Vanderford evaluated for competency. Counsel insists that Vanderford's religious beliefs were so fanatical that he was rendered incompetent; thus, appellant could not consider what was in his best interest, i.e., accepting the Commonwealth's five-year offer. On appeal, counsel repeatedly argues that the evidence against Vanderford was overwhelming yet, despite this, Vanderford refused to consider any of the plea offers since he believed that God would "deliver" him.

Appellant cites KRS 504.100; Drope v. Missouri, 420 U.S. 162 (1975); Pate v. Robinson, 383 U.S. 375, (1966); Thompson v. Commonwealth, Ky., 56 S.W.3d 406 (2001); and Mills v. Commonwealth, Ky., 996 S.W.2d 473 (1999); and he avers when a trial court possesses sufficient information, or where reasonable grounds exist, to cast doubt on a criminal defendant's competency to stand trial, that trial court must appoint a physician to evaluate said defendant. Furthermore, due process requires a trial court to hold an evidentiary hearing to determine competency.

Counsel argues that he called to the trial court's attention Vanderford's belief that God would protect him despite the evidence. According to counsel, Vanderford's belief clearly

demonstrated that he was incompetent since it rendered him incapable of rationally participating in his own defense. Counsel insists that Vanderford had behaved irrationally since he ignored the overwhelming evidence against him; persisted in his belief that God would protect him; and rejected the Commonwealth's generous plea offers. He feels, at the very least, this created reasonable grounds for the trial court to question Vanderford's competency.

In Mills v. Commonwealth, supra at 486, the Supreme Court of Kentucky stated that when a trial court fails to hold an evidentiary hearing regarding the question of competency, the standard of review is whether a reasonable judge in the same situation as the trial court would experience doubt regarding the defendant's competency to stand trial.

KRS 504.060(4) states:

"Incompetency to stand trial" means, as a result of mental condition, lack of capacity to appreciate the nature and consequences of the proceedings against one or to participate rationally in one's own defense[.]

The Fayette Circuit Court held a hearing and thoroughly questioned Vanderford regarding whether he understood the nature and consequences of the proceedings against him. As the record of this hearing shows, Vanderford clearly demonstrated that he understood both the nature and the consequences of the

proceedings against him. In addition, given the overwhelming nature of the evidence, there was little he could contribute to his defense, as the trial court noted. This Court concludes that a reasonable judge in the same situation as the Fayette Circuit Court found itself would not have experienced doubt regarding Vanderford's competency to stand trial; thus, this Court finds that the trial court did not err.

SECOND ARGUMENT: CUMULATIVE ERROR

Appellant also argues that the trial court erred when it denied his sixth motion for mistrial based on cumulative error. During voir dire, according to appellant, the Commonwealth told the jurors that Vanderford had a motive to lie. Counsel objected to this comment. The trial court sustained the objection and admonished the jurors to disregard the remark. Counsel moved for a mistrial but the trial court denied his motion.

Subsequently, during the Commonwealth's opening statement, the prosecutor told the jury that Vanderford had a motive to lie. Counsel objected and the trial court sustained the objection. It admonished the jury once again to disregard the Commonwealth's remarks. The defense made another motion for mistrial but was denied.

Prior to the trial, counsel made a motion to preclude Vanderford's ex-girlfriend from testifying that during a police

interview she had identified Vanderford from a still photograph that had been derived from video footage taken by the store's security camera. The trial court initially denied this motion. When the ex-girlfriend was on the stand, the prosecutor asked her if the police had previously asked her if she knew the person in the still photograph that they had shown to her. She said yes. Then the Commonwealth produced a large photograph and approached the witness. Before the Commonwealth could ask her to identify the person in the photograph, the trial court held a bench conference, reversed its prior ruling, and decided that the Commonwealth could not ask the ex-girlfriend to identify the person in the photograph. Defense counsel promptly made a third motion for mistrial and argued that, when the prosecutor questioned the ex-girlfriend regarding the photograph and then when the prosecutor approached her with a photograph, the jury would deduce that the ex-girlfriend had told the police that Vanderford was the person in the photograph. Counsel insisted that this prejudiced Vanderford. However, the trial court disagreed with counsel's argument and denied the motion for mistrial.

Later, while Detective Sarantonio was on the stand, the Commonwealth showed the detective a still photograph taken from one of the store's security cameras that showed an individual jumping over the counter. The detective identified

the person in the photograph as Vanderford. The defense objected and argued that this identification was inadmissible opinion evidence and made another motion for mistrial. The trial court sustained the objection but denied the motion. The trial court admonished the jury to disregard the detective's testimony.

During the Commonwealth's opening statement, the prosecutor told the jury that, when Vanderford gave his statement to the police, he denied being the person in the still photograph from the store's security camera and denied being guilty. Sometime later, during the course of the trial, the trial court suppressed most of Vanderford's statement to the police. This prompted defense counsel to move for a mistrial based on the Commonwealth's reference in its opening to Vanderford's statement. The trial court denied the motion. Later, counsel made a sixth motion for mistrial and argued that the errors discussed above constituted cumulative error. The trial court denied this motion for mistrial as well.

Appellant argues the above errors constituted cumulative error. He argues this cumulative error was so prejudicial that the trial court's admonitions could not have possibly cured the prejudice. He insists that only a mistrial could have cured it.

The Supreme Court of Kentucky stated:

In order to grant a mistrial, there must appear in the record a manifest necessity for such action. Turpin v. Commonwealth, Ky., 780 S.W.2d 619 (1989). For the purpose of appellate review, the trial judge is always recognized as the person best situated to properly evaluate the circumstances as to when a mistrial is required. Kirkland v. Commonwealth, Ky., 53 S.W.3d 71, 76 (2001).

Furthermore, this Court stated, "A trial court has discretion in deciding whether to declare a mistrial, and its decision should not be disturbed absent an abuse of discretion." Clay v. Commonwealth, Ky. App., 867 S.W.2d 200, 204 (1993)(citation omitted).

According to the record, the trial court admonished the jury regarding each of Vanderford's successful objections. When a trial court has admonished a jury, it is generally presumed that the jury followed the court's admonition; furthermore, it is presumed that the admonition cured the prejudice that brought about the admonition in the first place. Neeley v. Commonwealth, Ky., 591 S.W.2d 366 (1979); Carpenter v. Commonwealth, Ky., 256 S.W.2d 509 (1953).

Appellant did not present any evidence that the jury failed to follow the trial court's admonitions. Nor does there appear from the record any manifest necessity that would have justified a mistrial, given the overwhelming nature of the evidence against Vanderford. In addition, this Court does not

believe there was a substantial possibility that the result would have been different absent the errors. Abernathy v. Commonwealth, Ky., 439 S.W.2d 949, 952 (1969) overruled in part on other grounds, Blake v. Commonwealth Ky., 646 S.W.2d 718 (1983). Thus, this Court finds that the Fayette Circuit Court did not err when it refused to declare a mistrial.

Finding no error on the part of the Fayette Circuit Court, this Court affirms Vanderford's conviction.

ALL CONCUR.

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