

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001038-MR

RICKEY FORJONE

APPELLANT

v. APPEAL FROM CLARK CIRCUIT COURT
HONORABLE WILLIAM T. JENNINGS, JUDGE
ACTION NO. 03-CR-00116

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; HENRY AND TACKETT, JUDGES.

TACKETT, JUDGE: Rickey Forjone appeals from the judgment of the Clark Circuit Court finding him guilty of robbery in the first degree. Forjone argues on appeal that comments made by the prosecutor during closing arguments deprived him of a fair trial. We disagree and affirm.

Forjone was charged with robbery after he entered Scotty's Market in Clark County, Kentucky, and demanded money from the clerks while holding a knife. Both clerks identified

Forjone as the robber and testified at trial that he had a knife; security camera footage showed a white or silvery object in Forjone's hand which could not be conclusively identified as a knife, but a knife was found later in Forjone's pocket when he was arrested. Forjone took the money from the cash drawer and left the premises. After he was arrested, Forjone confessed to robbing the store, but denied that he had used a knife. He stated to police that he needed the money for crack cocaine.

During closing arguments, the prosecutor referred to the appellant as a "crackhead" several times. The prosecutor also referred to him as a "cracked-up armed robber", and stated that "anytime [the victim] sees some criminal like him, she just goes all to pieces. Now the worst part is that she just sees some ordinary citizen with their hands in their pockets or their hood on..." at which point the defense objected, and was overruled. At no other time did the defense object to the arguments of counsel during closing. The jury convicted Forjone and he was sentenced to fifteen years' imprisonment. This appeal followed.

In order for a conviction to be reversed because of allegedly improper comments by the prosecutor in closing arguments, either they must constitute flagrant misconduct or the factors of an alternate three-prong test must be met, which factors include (1) that proof of guilt is not overwhelming, (2)

that defense counsel objected, and (3) the trial judge failed to admonish the jury accordingly. Barnes v. Commonwealth, 91 S.W.3d 564 (Ky. 2002). In this case, the argument fails at the first step. Forjone was caught with the money and knife, and wearing clothing that matched the description given by the victims, he was identified by the victims, and confessed to the offense, even though he denied brandishing the knife. Even if the evidence was not so overwhelming, the defense objected only once, and made a general objection which was overruled. The specific grounds of the objection were not stated, and the other comments, including the multiple references to Appellant as a "crackhead" and a "cracked-up armed robber" passed without objection. Therefore, the Barnes test could only be made on the above-quoted statement about "some criminal like him", which is far from enough to render the verdict unreliable given the overwhelming evidence of guilt, and even taken as a whole with the other comments which passed without objection, certainly does not constitute flagrant misconduct. Therefore, Forjone's argument must fail, and his conviction must be affirmed.

For the foregoing reasons, the judgment of the Clark Circuit Court is affirmed.

ALL CONCUR.

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