

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001058-MR

OCTAVIO ESCOBEDO-RAMIREZ

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
INDICTMENT NO. 03-CR-01188

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: MINTON AND TACKETT, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

HUDDLESTON, SENIOR JUDGE: On the night of August 23, 2003, in Lexington, Kentucky, Octavio Escobedo-Ramirez broke into the home of Martha Rankin. Rankin heard the noise caused by the break-in and, being afraid, fled to the home of her neighbor, Jerry Russell. After Rankin told Russell about the situation, Russell asked his girlfriend to call the police. He then retrieved a hammer and went to Rankin's home to investigate.

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Within a short time, Officer Scott Anderson of the Transylvania University Police Department arrived at Rankin's house. After speaking with Russell, Officer Anderson went around the back of the house to investigate. He saw a Hispanic man inside of Rankin's home. The officer ordered the individual, who turned out to be Escobedo-Ramirez, to exit the house. Officer Anderson then took Escobedo-Ramirez into custody. A short time later, Officer Chris Jones of the Lexington Police Department arrived and took custody of Escobedo-Ramirez. While investigating inside Rankin's home, Officer Jones discovered a hammer and paint chips on the floor which appeared to match the paint on Rankin's door. Since Escobedo-Ramirez did not speak English, Officer Miguel Rodriguez of the Lexington Police Department, who spoke Spanish, was dispatched to question him. During questioning, Escobedo-Ramirez confessed to Officer Rodriguez that he broke into Rankin's house in order to steal money.

On September 29, 2003, Escobedo-Ramirez was charged in an indictment with burglary in the second degree and possession of burglar's tools. Escobedo-Ramirez's case proceeded to a jury trial on March 8, 2004. During voir dire, the Commonwealth told the jurors that the victim, Rankin, was elderly and frail. Escobedo-Ramirez objected, and the trial court admonished the Commonwealth. Despite being admonished, the Commonwealth again mentioned the fact that Rankin was elderly and frail during its

opening statement. Escobedo-Ramirez immediately moved for a mistrial arguing such comments were irrelevant and prejudicial. The trial court agreed that the comments were irrelevant and unfair to Escobedo-Ramirez, but the court noted that, as soon as the jurors saw Rankin, they would become aware that she was frail and elderly. Thus, the trial court denied Escobedo-Ramirez's motion for a mistrial and admonished the jury not to consider the Commonwealth's comments regarding Rankin.

During the Commonwealth's case-in-chief, Officer Anderson, Officer Jones, Officer Rodriguez, Rankin and Russell testified to the above facts. However, the Commonwealth never asked any of its witness to perform an in-court identification of Escobedo-Ramirez. After the Commonwealth closed its case, Escobedo-Ramirez moved for a directed verdict based on the lack of an in-court identification. The Commonwealth moved the trial court to allow it to reopen its case in order for Officer Rodriguez to perform an in-court identification of Escobedo-Ramirez. Over Escobedo-Ramirez's objection, the trial court allowed the Commonwealth to reopen its case. Officer Rodriguez took the stand again and identified as Escobedo-Ramirez as the individual he questioned regarding the break-in at Rankin's house.

The jury found Escobedo-Ramirez guilty of both charges; however, instead of proceeding to the penalty phase,

Escobedo-Ramirez accepted the Commonwealth's offer of seven years' imprisonment, a sentence the trial court imposed.

On appeal, Escobedo-Ramirez argues that the trial court should have granted his motion for a directed verdict because it was unfair to allow the Commonwealth to reopen its case-in-chief in order for Officer Rodriguez to perform an in-court identification of Escobedo-Ramirez. Escobedo-Ramirez insists that this violated his due process rights. However, he cites no case law to support this proposition. Instead, he relies on inapplicable basketball analogies and an ill-considered and sarcastic remark regarding the Pope's ethnicity.

According to the Supreme Court of Kentucky, a trial court has broad discretion to allow either the prosecution or the defense to reopen their cases to present additional evidence if there is a good reason, which furthers the interest of justice.² And in the present case, there is simply no indication that the trial court abused its broad discretion when it allowed the Commonwealth to reopen its case-in-chief.

Escobedo-Ramirez also argues that the trial court erred when it denied his motion for a mistrial. He insists that there was a manifest necessity for a mistrial because the Commonwealth repeatedly emphasized that Rankin was elderly and frail. According to Escobedo-Ramirez, this caused him to forego

² Marshall v. Commonwealth, 625 S.W.2d 581, 583 (Ky. 1981). See also Ky. R. Crim. Proc. (RCr) 9.42(e).

jury sentencing out of fear that the jury would "kill" him during the penalty phase of his trial.

A trial court should only grant a mistrial when there is a manifest necessity for such extraordinary relief.³ In other words, a mistrial is only appropriate when there is an error so great that it will deny the defendant a fair and impartial jury.⁴ Moreover, we will not disturb a trial court's decision regarding mistrial unless it has abused its discretion.⁵

While we agree with the trial court that the Commonwealth's emphasis on Rankin's age and frail condition was inappropriate, we also agree that as soon as Rankin took the stand to testify, the jury became aware of Rankin's age and physical condition. Moreover, there is no evidence that the Commonwealth's actions, even though inappropriate, deprived Escobedo-Ramirez of a fair and impartial jury. Thus, the trial court did not abuse its discretion when it denied Escobedo-Ramirez's motion for a mistrial.

Inasmuch as the trial court neither abused its discretion when it permitted the Commonwealth to reopen its case nor when it denied Escobedo-Ramirez's motion for a mistrial, we affirm the judgment.

ALL CONCUR.

³ Shabazz v. Commonwealth, 153 S.W.3d 806, 810 (Ky. 2005).

⁴ Id. at 811.

⁵ Id.

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