

RENDERED: JUNE 23, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-002520-MR

JOSEPH REED WYSSBROD

APPELLANT

v. APPEAL FROM TRIMBLE CIRCUIT COURT
HONORABLE PAUL W. ROSENBLUM, JUDGE
ACTION NO. 03-CR-00038

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR AND VANMETER, JUDGES; EMBERTON, SENIOR JUDGE.¹

TAYLOR, JUDGE: Joseph Reed Wyssbrod brings this appeal from a November 8, 2004, judgment upon a jury verdict finding him guilty of stalking in the first degree and sentencing him to one year in prison. We affirm.

On December 5, 2003, appellant was indicted by the Trimble County Grand Jury upon theft by unlawful taking over three hundred dollars, theft by unlawful taking under three

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

hundred dollars, terroristic threatening, two counts of second-degree burglary, and first-degree stalking. These offenses were allegedly committed against appellant's ex-wife, Kathy Gene Hardesty. The trial court dismissed the theft by unlawful taking under three hundred dollars charge, and a jury trial was held on August 23 and 24, 2004, upon the other charges. At the conclusion of the trial, the trial court directed a verdict in favor of appellant on the counts of theft by unlawful taking over three hundred dollars, terroristic threatening and second-degree burglary. The offenses of second-degree burglary and first-degree stalking were submitted to the jury. The jury ultimately found appellant not guilty of second-degree burglary but guilty of first-degree stalking and recommended a prison sentence of one year. On November 8, 2004, the court entered judgment in accordance with the jury's verdict of guilty and sentenced appellant to one year imprisonment. This appeal follows.

Appellant contends the trial court committed reversible error by allowing into evidence certain testimony by Hardesty, his ex-wife. Specifically, appellant alleges that Hardesty was allowed to testify concerning "prior crimes, wrongs, and acts of the Appellant, both before and after the domestic violence order was issued and before and during the periods described in the indictment." Appellant argues this

testimony was inadmissible under Ky. R. Evid. 404(b) and was otherwise prejudicial to appellant. However, in his brief, appellant fails to specify to this Court what particular prior crimes, wrongs, and acts were erroneously admitted into evidence. Instead, appellant simply speaks in general terms of "evidence of other crimes, wrongs, or acts of the Appellant." Without knowing the particular crimes, wrongs, or acts that appellant complains, we are simply unable to review this allegation of error to determine what, if any, prejudice may have resulted to appellant. See Young v. Newsome, 462 S.W.2d 908 (Ky. 1971).

Appellant next contends the evidence was insufficient to sustain a conviction upon the crime of first-degree stalking. It is well-established that appellant must specify in his brief how each issue was preserved for our review. Ky. R. Civ. P. 76.12(4)(c)(v). In his brief, appellant stated that "[t]his issue is preserved for appellate review as trial counsel made a motion for directed verdict at the close of the Commonwealth's case which was denied . . . and was renewed, and overruled, at the close of the entire case" Appellant's Brief at 9.

In Graves v. Commonwealth, 17 S.W.3d 858, 866 (Ky. 2000), the Supreme Court of Kentucky held that "[w]hen there are multiple counts, the proper procedure for challenging the sufficiency of evidence on one particular count is to object to

the giving of an instruction on that count." When a defendant is indicted upon multiple counts, a motion for directed verdict will not preserve a claim that the evidence is insufficient to sustain the Commonwealth's burden of proof on one or more of the indicted offenses. Kimbrough v. Commonwealth, 550 S.W.2d 525 (Ky. 1977). In this case, appellant failed to object to the stalking instruction. Accordingly, we conclude that appellant's allegation that the evidence was insufficient to sustain his conviction upon first-degree stalking was not properly preserved for our review.

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

ALL CONCUR.

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