

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-0001767-MR

JERMAINE A. CHATMAN

APPELLANT

v. APPEAL FROM SIMPSON CIRCUIT COURT
HONORABLE WILLIAM R. HARRIS, JUDGE
ACTION NO. 05-CR-00004

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER¹ AND DIXON, JUDGES; PAISLEY,² SENIOR JUDGE.

BARBER, JUDGE: Appellant Jermaine Chatman appeals the Simpson Circuit Court's revocation of his probation. We affirm the circuit court's judgment.

Chatman was convicted of trafficking in a controlled substance. He was released on parole. As conditions of his parole, Chatman was required to meet regularly with Derrick

¹ Judge David A. Barber completed this opinion prior to the expiration of his term of office on December 31, 2006. Release of the opinion was delayed by administrative handling.

² Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Huggins, his parole officer, and to regularly take drug tests. On May 26, Huggins notified his supervisor that Chatman had a "dirty" drug test, and had therefore violated the conditions of his parole. Huggins determined that he would hold Chatman on a parole violation detainer when he came for his monthly meeting. Huggins requested that a police officer come to the office to take custody of Chatman.

During the meeting with Chatman, the officer remained out of sight in an anteroom. Huggins notified Chatman that he had violated parole and would be going back to jail. The officer joined Chatman and Huggins as they left the office. Chatman was not restrained in any fashion. Huggins and Officer Mayfield testified that the officer asked Chatman whether he would cause them any trouble. Chatman responded "no". Officer Mayfield walked in front of Chatman as they left the building, and Huggins walked behind him. Once they were on the street, Chatman ran away. He was caught several blocks away by a different police officer. Chatman was charged with second degree escape and being a persistent felony offender in the second degree.

On appeal, Chatman argues that there was insufficient evidence to support a conviction for second degree escape. Chatman argues that he "felt free to leave" once the men exited the probation and parole office. Chatman denies that he was

ever told that he was in custody or under arrest. Chatman argues that he did not believe he was in custody, as required by KRS 520.010(2), and therefore cannot be found to have escaped. The uncontroverted evidence that Chatman ran away immediately after leaving the facility, and that he did not stop while being chased, indicates that he believed he was escaping from something. Both Officer Mayfield and Huggins chased him for a considerable distance as he fled.

A person is guilty of second degree escape "when he escapes form a detention facility or, being charged with or convicted of a felony, he escapes from custody." KRS 520.030(1). Custody is defined as "restraint by a public servant pursuant to a lawful arrest, detention, or an order of court for law enforcement purposes, but does not include supervision of probation or parole or constraint incidental to release on bail." KRS 520.010(2). Chatman was clearly in custody at the time he ran away, and his evading this custody provided grounds for a charge of escape.

Chatman contends that prosecutorial misconduct occurred during sentencing, and the error requires reversal of his sentence. The prosecutor told the jury that they were probably feeling bad about sentencing Chatman to an extended term, but that "he's not interested in your help." Chatman's objection to this statement was overruled. Chatman also

objected to the prosecutor's statement that "if it didn't bother him, then it shouldn't bother you" referring to Chatman facing a long sentence. That objection was also overruled.

Chatman contends that there was no evidence in the record showing how he felt about committing another felony, or his feelings about any "help" the jury might offer him. The law provides that a defendant's mental state may be inferred by the fact-finder. See Marshall v. Commonwealth, 60 S.W.3d 513, 518 (Ky. 2001) and Mills v. Commonwealth, 996 S.W.2d 473, 490 (Ky. 1999). The jury may presume a defendant's intent from his actions. See: Commonwealth v. Suttles, 80 S.W.3d 424, 426 (Ky. 2002). The statements by the prosecutor do not warrant reversal of the conviction or sentence below.

During the sentencing phase of the case, the prosecutor informed the jury that Chatman had committed six felony offenses over the preceding nine years. Defense counsel made objection to those statements. The objections were overruled. The record reflects that Chatman was sentenced for five previous felony offenses, four of which occurred on the same day. Those four felonies were the conviction he was on parole for at the time of the alleged escape. The other felony discussed by the prosecutor was the escape conviction the jury had just rendered. The discussion regarding the number of

felony offenses was held in the presence of the jury, making it clear which previous convictions were being referred to.

Chatman asserts that the prosecutor failed to meet the high standard imposed on him by the law, requiring him to represent the evidence in its true light. Edwards v. Commonwealth, 182 S.W.2d 948, 952 (Ky. 1944). He argues that the prosecutor made statements not justified by the facts, thereby creating reversible error. Kitchen v. Commonwealth, 165 S.W.2d 547, 553 (Ky. 1942). The statements were made during arguments by the prosecutor, a time when some leeway is permitted. Butcher v. Commonwealth, 96 S.W.3d, 12 (Ky. 2002). We believe that the statements did not rise to the level of reversible error.

Reversal of a sentence or conviction based on prosecutorial misconduct requires a showing that the misconduct was flagrant or if each of the following three conditions was satisfied: (1) proof of defendant's guilt is not overwhelming; (2) defense counsel objected; and (3) the trial court failed to cure the error with a sufficient admonishment to the jury.

Matheney v. Commonwealth, 191 S.W.3d 599, 606 (Ky. 2006).

While we do not necessarily condone the prosecutor's statements, we do not feel they were flagrant and deceptive such that a reversal of the sentence or conviction should be granted. For the foregoing reasons, the judgment is affirmed.

ALL CONCUR.

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