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(FILE NO. 2007-SC-0738-D)

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-001014-MR

AMAR L. WALKER

APPELLANT

APPEAL FROM MCCRACKEN CIRCUIT COURT  
v. HONORABLE R. JEFFREY HINES, JUDGE  
ACTION NO. 05-CR-00041

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION AFFIRMING

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BEFORE: KELLER AND NICKELL, JUDGES; KNOPF,<sup>1</sup> SENIOR JUDGE.

NICKELL, JUDGE: On February 11, 2005, a McCracken County grand jury indicted Amar L. Walker (“Walker”) on one count each of assault in the second degree<sup>2</sup> and

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<sup>1</sup> Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

<sup>2</sup> Kentucky Revised Statutes (KRS) 508.020, a Class C felony.

alcohol intoxication in a public place.<sup>3</sup> Following a jury trial in February 2006, the jury found Walker guilty but mentally ill of assault in the second degree and fixed his sentence at ten years' imprisonment. Upon motion by the Commonwealth, the alcohol intoxication charge was dismissed. A final judgment and sentence was entered in the McCracken Circuit Court on May 1, 2006. Walker now appeals his conviction, and we affirm.

Walker was a guest in a friend's home on December 22 and 23, 2004. In the early morning hours of December 24, Walker was seen drinking what appeared to be rubbing alcohol. A short time later, he entered the room where two young women and an infant were sleeping. Both ladies awakened as Walker entered and told him to leave. Instead, Walker lunged toward one of them while brandishing a large kitchen knife. Testimony at trial revealed that the young woman being attacked, Kathelina Jackson ("Jackson"), had a close relationship with Walker, and indicated that the pair may have dated at some point in time. Walker stabbed at Jackson and managed to cut her neck. He also choked and struck her, stuck his thumb into her eye socket, and pulled out a section of her hair as she struggled to get away.

In the midst of the altercation, the remaining residents of the home were awakened and were able to subdue Walker and summon the police. Walker calmed down for a short time and was apologetic for his actions. When the police officers arrived, Walker advised them he was sorry for what he had done and did not intend to hurt anyone. He was placed under arrest for alcohol intoxication and was lodged at the McCracken County Regional Jail.

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<sup>3</sup> KRS 222.202, a violation.

The following day, Officer Don Hodgson of the Paducah Police Department began an investigation into the incident and collected various pieces of evidence from the residence, including the knife that was used in the assault. Based upon the officer's findings, Walker was subsequently charged with assault in the second degree. Detective Nathan Young took a statement from Jackson and interviewed Walker. Before proceeding with the custodial interview, Detective Young explained to Walker his constitutional rights pursuant to the mandate of *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), and had Walker execute a written waiver of those rights. After being posed with one or two simple questions regarding the events of the previous evening, Walker proceeded to give a lengthy and detailed recitation of the events and confessed to the assault. Detective Young then suggested Walker write a letter of apology to Jackson explaining what he had done wrong. The letter was essentially a written confession to the assault.

Walker was seen by a psychiatrist while incarcerated who believed Walker was psychotic and not competent to stand trial at that time. Based upon this evaluation, Walker was transferred to Kentucky Correctional Psychiatric Center (KCPC) for further examination. There he was diagnosed by Dr. Steven J. Simon with paranoid schizophrenia and mild mental retardation. It was noted that Walker exhibited bizarre mannerisms, reported hearing voices and other auditory hallucinations, and had an unkempt appearance. He was administered medications which controlled his symptoms and was deemed competent to stand trial.<sup>4</sup> Both psychiatric specialists testified at trial that they believed Walker was mentally ill at the time of the commission of the assault.

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<sup>4</sup> An agreed order of competency was entered on December 9, 2005, and Walker does not challenge his competency in this appeal.

At the close of evidence, the parties tendered proposed jury instructions. Walker was allowed to present instructions concerning insanity, extreme emotional disturbance, and guilty but mentally ill. The jury found Walker guilty but mentally ill on the assault charge and assessed a penalty of ten years' imprisonment. Sentence was entered accordingly and this appeal followed.

Walker contends on appeal his confession and waiver of rights were involuntary due to severe mental deficiencies. Further, he argues the police employed tactics which further impaired his ability to act in a voluntarily manner. Although counsel initially moved to suppress the confession, the motion was withdrawn on the day of trial and before the trial court had an opportunity to make its ruling. Walker urges review of the issue for palpable error pursuant to Kentucky Rules of Criminal Procedure (RCr) 10.26. We decline to do so.

A review of the record indicates an overwhelming amount of evidence of Walker's guilt as well as his mental state, both at the time of the commission of the offense as well as at the time of trial. We find nothing in the record to indicate a substantial possibility the outcome at trial would have been any different had Walker prevailed on his withdrawn suppression motion. Thus, the alleged error must be held nonprejudicial. *Jackson v. Commonwealth*, 717 S.W.2d 511, 513 (Ky.App. 1986) (citing *Abernathy v. Commonwealth*, 439 S.W.2d 949 (Ky. 1969)). Walker has failed to meet his burden of showing a manifest injustice has resulted from the alleged error as required by RCr 10.26.

Walker next contends the trial court erred by allowing the Commonwealth to mischaracterize evidence in its closing statement to the jury. Counsel for Walker had

commented that Dr. Simon testified that Walker could not appreciate the criminality of his actions at the time of the offense. The Commonwealth's Attorney, in his summation, indicated that Dr. Simon had testified Walker had been impaired as to his understanding of the situation because of his mental condition, but had not testified Walker could not control his actions. Walker immediately objected to the statement and a bench conference was held. The trial court overruled the objection and noted the statement was merely a comment on the evidence.

When evaluating a claim of prosecutorial misconduct, this court looks to the overall fairness of the trial. *Dean v. Commonwealth*, 844 S.W.2d 417 (Ky. 1992). Unless the alleged misconduct is so egregious as to render the entire trial fundamentally unfair, such actions will not support reversal of a conviction. In the case *sub judice* the brief reference to Dr. Simon's testimony can hardly be said to have impacted the fundamental fairness of Walker's entire trial. Counsel is generally given broad latitude when presenting closing arguments. *Slaughter v. Commonwealth*, 744 S.W.2d 407 (Ky. 1987). Furthermore, we are required to look at the argument as a whole, not simply at isolated remarks, when determining whether substantial error occurred, without which there is a substantial possibility the outcome of the trial would have been different. *Pendleton v. Commonwealth*, 685 S.W.2d 549 (Ky. 1985). As previously stated, there was overwhelming evidence presented as to Walker's guilt. Furthermore, the jury clearly considered Dr. Simon's testimony in arriving at its verdict of guilty but mentally ill. Thus, the trial court correctly overruled the objection.

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

ALL CONCUR.

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