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(FILE NO. 2007-SC-0845-D)**

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001982-MR

BILLY JOE LITTLETON — APPELLANT

v.

APPEAL FROM MASON CIRCUIT COURT
HONORABLE JOHN W. MCNEILL III, JUDGE
ACTION NO. 06-CR-00009

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
VACATING AND REMANDING

** ** ** ** **

BEFORE: THOMPSON, JUDGE; BUCKINGHAM AND HENRY, SENIOR JUDGES.[1]

BUCKINGHAM, SENIOR JUDGE: Billy Joe Littleton appeals from a judgment of the Mason Circuit Court wherein he was convicted of several criminal offenses and sentenced to 15 years in prison. We vacate and remand.

[1] Senior Judges David C. Buckingham and Michael L. Henry sitting as special judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute (KRS) 21.580.

Between 4:30 p.m. on December 15, 2005, and 8:30 a.m. on the following morning, the residence of Mark Henderson was burglarized. Only a pistol and ammunition were stolen. Henderson reported the burglary and theft to law enforcement authorities, and he related that he suspected the burglar to be his wife, Cassidy Henderson, from whom he was separated. In fact, Henderson testified at Littleton's trial that he had caught his wife breaking into the residence approximately one week after the burglary and theft of the pistol.

On December 30, approximately two weeks after the theft, police were involved in an incident involving Littleton, the appellant herein, at a local tire store. When an officer attempted to serve papers on Littleton, Littleton barricaded himself in a bathroom. When the door opened, Littleton had a pistol, which had been concealed in his pocket, pointed at his head. Littleton threatened to kill himself; but after a standoff of several hours, he surrendered.

The pistol that was in Littleton's possession was taken from Henderson's residence in the burglary. In fact, less than one month prior to the burglary, Littleton, who was a friend of Henderson's, had been at Henderson's residence and told him that he wanted to buy the pistol. Henderson testified at trial that he did not sell Littleton the weapon, but Littleton testified that he did.

After Littleton was arrested at the tire store, he was questioned by Detective Ken Fuller of the Maysville Police Department. After Fuller determined through N.C.I.C. records that Henderson was the owner of the pistol, he asked Littleton why he

took the weapon. Littleton responded that he had wanted to kill himself and that Henderson was the only person he knew who had a pistol.[2]

A Mason Circuit Court grand jury indicted Littleton on charges of first-degree burglary, receiving stolen property (the pistol), stalking (relating to an incident involving his wife, Brooke Littleton), carrying a concealed deadly weapon, and disorderly conduct (relating to the incident at the tire store). Because the stalking charge was unrelated to the other charges, the court ordered it severed from them for purposes of trial. The jury at Littleton's trial found him guilty of the remaining charges, and the court sentenced him to 15 years in prison pursuant to the verdict. This appeal by Littleton followed.

Littleton's defense at trial was that Henderson had sold him the pistol. He testified that he bought the pistol because he was thinking about killing himself. On cross-examination, the prosecutor questioned Littleton about his reason for buying the pistol. The prosecutor asked Littleton if the real reason he bought the gun was not to kill himself but to kill his wife. Littleton's counsel made a timely objection, which the court overruled.[3] Littleton then responded that he did not buy the weapon to kill his wife. In rebuttal, the prosecutor called Littleton's wife's mother, Maria Pollock, who testified that Littleton had told her earlier on the day of the tire store incident that he was going to kill her daughter.

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[2] When Littleton testified at trial, he explained this statement by stating that he wasn't saying he had stolen the gun and didn't know at the time he was being questioned that he was suspected of stealing it.

[3] In the bench hearing on the objection, the prosecutor argued to the trial court that the evidence "directly contradicts what his [Littleton's] defense is."

Littleton's first argument in this appeal is that the court erred by allowing the Commonwealth to impeach his testimony on a collateral matter. He asserts that his motive or reason for obtaining the weapon was irrelevant to his defense of whether he had bought it or had stolen it. We agree.

"The law in Kentucky has consistently prohibited impeachment on collateral facts." *Matheney v. Commonwealth*, 191 S.W.3d 599, 607 (Ky. 2006). "Moreover, it is a general rule that a witness cannot be cross-examined about a matter which is collateral and irrelevant to the issue." *Shirley v. Commonwealth*, 378 S.W.2d 816, 818 (Ky. 1964). A collateral fact is one that could not have been introduced into evidence for a purpose independently of self-contradiction. *Commonwealth v. Jackson*, 281 S.W.2d 891, 893-94 (Ky. 1955), *overruled on other grounds by Jett v. Commonwealth*, 436 S.W.2d 788, 792 (Ky. 1969). "It would be a rare occurrence, we think, when the prejudicial effect of evidence of 'other bad acts' would not substantially outweigh the impeachment value of such evidence." *Purcell v. Commonwealth*, 149 S.W.3d 382, 398 (Ky. 2004).

Evidence that Littleton may have told his wife's mother that he was going to kill her daughter is collateral to whether or not he broke into Henderson's residence and stole Henderson's pistol. Such evidence could not have been introduced into evidence for any purpose independently of self-contradiction.

Furthermore, the evidence was not admissible to prove motive. Littleton admitted that he had the pistol in his possession and that he had a motive for obtaining it (he was thinking of shooting himself). The fact that the Commonwealth had evidence

that Littleton wanted the pistol for another reason and may have had a different motive for obtaining it was a matter collateral to whether or not he stole it.

Finally, although Littleton did not raise the argument in his brief, this is not one of the "rare occurrences" where the prejudicial impact of introducing the evidence of other "bad acts" for impeachment purposes did not outweigh its probative value. *See Purcell, supra. See also Metcalf v. Commonwealth*, 158 S.W.3d 740, 746 (Ky. 2005). In short, we conclude that the prosecutor needlessly injected this irrelevant and highly prejudicial matter into the trial and that Littleton was unduly prejudiced thereby.

Littleton's second argument on appeal is that the trial court erred by denying his motion for a directed verdict due to the insufficiency of the evidence. He asserts that the Commonwealth introduced no witness or other evidence that he burglarized the Henderson residence or stole the pistol. Further, he notes that he introduced evidence from three witnesses who testified that he had a pistol that appeared similar to Henderson's pistol prior to the time of the alleged burglary.

"In ruling on a directed verdict motion, the trial court must draw all reasonable inferences from the evidence in favor of the Commonwealth and assume that the Commonwealth's evidence is true, leaving questions of weight and credibility to the jury." *Slaughter v. Commonwealth*, 45 S.W.3d 873, 875 (Ky.App. 2000). Here, the Commonwealth introduced evidence that Henderson's pistol was stolen in a burglary, that Littleton had been in Henderson's residence asking about the pistol prior to the burglary, that Littleton had the pistol in his possession approximately two weeks after the burglary, and that Littleton told Detective Fuller that he had obtained the pistol because he was

thinking about using it to kill himself. Such evidence was sufficient to overcome Littleton's directed verdict motion.

Nevertheless, because we conclude that the trial court erred to Littleton's prejudice by allowing the Commonwealth to impeach him on a collateral matter, we vacate and remand for a new trial.

ALL CONCUR.

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