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Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001891-MR

ROBERT A. BRAMBLETT,
Individually, as Administrator of the
Estate of Casey Bramblett,
And as Guardian for Jacob Bramblett,
ROBERT BRAMBLETT II, and
HUNTER BRAMBLETT — APPELLANTS

APPEAL FROM JESSAMINE CIRCUIT COURT
v. HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 10-CI-00276

PENSKE TRUCK LEASING
COMPANY, L.P. and SAFE
STORAGE, INC. — APPELLEES

AND

NO. 2017-CA-000178-MR

PENSKE TRUCK LEASING
COMPANY, L.P. — CROSS-APPELLANTS

CROSS-APPEAL FROM JESSAMINE CIRCUIT COURT
v. HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 10-CI-00276

ROBERT A. BRAMBLETT,
Individually, as Administrator of the
Estate of Casey Bramblett,
And as Guardian for Jacob Bramblett,
ROBERT BRAMBLETT II, and
HUNTER BRAMBLETT CROSS-APPELLEES

AND

NO. 2017-CA-000489-MR

PENSKE TRUCK LEASING
COMPANY, L.P. APPELLANTS

APPEAL FROM JESSAMINE CIRCUIT COURT
v. HONORABLE C. HUNTER DAUGHERTY, JUDGE
ACTION NO. 10-CI-00276

ROBERT A. BRAMBLETT,
Individually, as Administrator of the
Estate of Casey Bramblett,
And as Guardian for Jacob Bramblett,
ROBERT BRAMBLETT II, and
HUNTER BRAMBLETT APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, L. THOMPSON AND TAYLOR, JUDGES.

COMBS, JUDGE: Robert A. Bramblett, individually, as administrator of the Estate of Casey Bramblett, and as guardian for Jacob Bramblett; Robert Bramblett

II; and Hunter Bramblett appeal from the judgment of the Jessamine Circuit Court entered in favor of Safe Storage, Inc., and Penske Truck Leasing Co., L.P. Penske appeals from a post-judgment order of the circuit court that imposed sanctions for its discovery abuses. After our review, we affirm on all issues.

The facts underlying this appeal are both gruesome and tragic. In anticipation of their upcoming move to Florida, the Brambletts reserved a Penske moving truck and car-carrier trailer to be towed behind. They made plans to pick up the truck and car-carrier trailer from Safe Storage in Nicholasville, Kentucky. Safe Storage is a rental agent for Penske.

On March 9, 2009, at the prescribed pickup time, an agent of Penske delivered the truck and car-carrier trailer to Safe Storage. The trailer was coupled to the moving truck when it was delivered by Penske. Upon arrival, Paul Brooks, the site manager for Safe Storage, conducted a visual inspection of the moving truck and trailer. Brooks did not observe any conspicuous damage to either the truck or the trailer, and he ensured that the trailer had been properly coupled to the moving truck which would tow it. Approximately five minutes later, Casey Bramblett and her brother-in-law, Gary Cornett, arrived at Safe Storage to pick up the moving truck and car-carrier trailer.

Brooks then performed a second visual inspection of Penske's equipment with Bramblett so that she could point out to him any existing damage

to either the moving truck or the trailer. Satisfied with the condition of both the truck and the trailer hitched to it, Bramblett completed the necessary paperwork for the rental. Cornett drove the moving truck, towing the trailer behind, three to four miles to the Brambletts' home. Cornett did not notice any problem with the truck or the trailer. He parked the moving truck and the trailer on a grade, on the street, in front of the Brambletts' house.

Robert Bramblett noticed that the truck and trailer were parked on a grade. Robert chocked the wheels of the trailer with two, ten-pound free weights and uncoupled the trailer from the truck so it could be loaded with the family's belongings.

Two days later, after the moving truck had been loaded, Robert drove the truck down the street and aligned its hitch to the trailer's coupling device. Robert lowered the tongue of the trailer's coupler onto the ball of the truck's hitch but could not get the coupler to seat fully over the ball. He felt that the ball of the hitch was too large for the coupling device. Nevertheless, Robert believed that he might get the coupler to drop into place and fully seat over the hitch if he could rock the trailer back and forth. Robert told his wife, Casey, and their three sons to stay away from the road because he was going to try to "move the trailer a little bit." Casey Bramblett told her son Hunter to remove the weights chocking the trailer's wheels. Without attaching the trailer's safety cables to the moving truck

and disregarding the other instructions for connecting the two, Robert accelerated the truck slightly forward, pressed the brake, then immediately reversed and pressed the brake again. With the coupler still resting upon the hitch, Robert repeated this process. When he reversed the truck a second time, Robert acknowledged that he "hit the brakes kind of hard thinking that it [the coupling device] would engage." Instead, the jolt caused the un-coupled trailer to separate from the ball of the truck hitch. The trailer began to roll toward the family car parked behind it on the street.

When Casey Bramblett saw the trailer begin to roll down the street, she ran to the parked car. Hunter Bramblett grabbed the tongue of the trailer to stop it from rolling, but it pulled him, and he lost his footing. An instant later, Casey was caught between the car and the trailer. She was crushed and killed. Officers of the Nicholasville Police Department responded to the scene and investigated. After the truck and trailer were transported to a tow lot, the officers coupled the trailer to the truck.

In March 2010, the Brambletts filed a wrongful death action against Penske, Safe Storage, and Dethmers Manufacturing Company. Discovery and a rigorous pre-trial practice ensued. Eventually, Penske was awarded summary judgment with respect to the products liability claim asserted against it by the Brambletts. That ruling is not being appealed. Penske resisted many of the

Brambletts' discovery requests by interjecting its objections and ultimately applying for a protective order. There were ongoing, rolling discovery disputes between the parties, and the trial court held several hearings to resolve the issues.

The action finally came on for trial on October 24, 2016. The proceedings lasted eight days. The Brambletts' theory of the case as to Safe Storage was that there was damage to the coupler that pre-existed the accident at their house; that the damage caused it to be more difficult to couple the trailer to the truck; and that Safe Storage should have discovered the damage. The theory of the case as to Penske was that it was negligent in providing the trailer to the Brambletts because it knew that its trailers were defective by design and, as a result, were prone to de-coupling and other coupling issues.

At trial, the Brambletts' engineering expert explained the basis for the plaintiffs' claims. He opined that the combination of the coupler and the pivoting jack attached to the trailer rented by the Brambletts was defective and unreasonably dangerous. He indicated that there were reasonable alternatives to the design of the mechanism. He testified that he had reviewed events that were substantially similar to the Brambletts' experience and that he had concluded that there were a substantial number of Penske trailers that had become disconnected from vehicles towing them. Additionally, he testified that there was scarring on the bolt, hitch ball damage, and cracked welds on this particular trailer. He stated

that the tongue on the trailer was out of square by 0.8 inch and was twisted to the right side 3% higher than the left. He testified that this damage to the coupler made it more difficult to hitch the trailer to the truck. He explained that this damage was a substantial factor in causing the accident.

The jury was instructed on negligence theories against Penske, Safe Storage, and Dethmers Manufacturing Company. It was also instructed with respect to comparative fault and punitive damages. After several hours of deliberation, the jury returned a verdict for the defense on November 7, 2016.

Following a pre-trial hearing on the Brambletts' motion (conducted on September 22, 2016), the trial court ruled that Penske's conduct during the discovery period warranted the imposition of sanctions. The entirety of the court's order entered on February 27, 2017, provides as follows:

> Plaintiff moves this Court for relief under CR[1] 37.02 for Defendant, Penske's, willful concealment of relevant evidence. The motion is granted and the parties are instructed as follows:
>
> 1. Plaintiff's counsel shall submit an order containing the chronology set forth in his motion outlining the full extent of Penske's willful concealment of relative evidence.
>
> 2. Plaintiff's order shall tentatively grant an award of $166,624.83 to Plaintiff consisting of $109,857.00 in attorney's fees and $56,767.83 in

[1] Kentucky Rules of Civil Procedure.

> expenses. Plaintiff shall provide detailed billing records for all fees and costs to defense counsel and the Court within 30 days. Defense counsel has 15 days from receipt to object to those fees and costs. If none are filed within that time, the Order entered pursuant to this order shall be considered final. This portion of the award is granted pursuant to CR 37.02(3).
>
> 3. The CR 37.02 violations in this case go far beyond anything ever seen by this Court. They amount to what certainly appears to be perjury, and even though Penske's counsel argues that the fault lies primarily with one witness, it is difficult for this Court to believe that other management within Penske did not know about and condone the behavior.
>
> This Court indicated that under case law cited by the Plaintiff, and supported by CR 37.02(2)(a)(b) and (c), it has the authority to impose sanctions which could affect the trial of the merits. It has not opted to do so. In lieu of those sanctions, and considering how egregious, and apparently pervasive, Penske's conduct was in this case, and further considering Penske's financial position and its obvious intent to obstruct discovery in order to hinder future claims against it involving the issues raised herein, this Court imposes sanctions under CR 37.02(d) by ordering it to pay Plaintiff an additional $50,000.00.
>
> 4. Plaintiff's counsel shall submit an Order consistent with the above.

The trial court's final judgment was entered in favor of Penske, Safe Storage, and Dethmers on November 15, 2016. Penske, Safe Storage, and Dethmers were awarded their costs pursuant to CR 54.04. The Brambletts filed their notice of appeal on December 13, 2016. Penske filed a cross-appeal on December 21, 2016.

In December 2016, the Brambletts' counsel tendered to the trial court a proposed 38-page order containing findings of fact and conclusions of law supporting the imposition of sanctions against Penske. On January 26, 2017, a hearing was conducted on the Brambletts' exception to Penske's Bill of Cost and Penske's response to the proposed order on sanctions. On February 22, 2017, the court order awarding Penske $16,936.79 in costs was entered. On February 27, 2017, the court entered an order imposing a $50,000.00 penalty against Penske and awarding the Brambletts their expenses -- including attorneys' fees totaling $166,624.83. Penske filed a separate notice of appeal of this order on March 10, 2017, specifically challenging the entry of the February 27, 2017, post-judgment order. The appeals were consolidated for briefing.

On appeal, the Brambletts first contend that the trial court abused its discretion by failing to sanction Penske sufficiently for its misconduct during discovery. They urge this Court to impose harsher sanctions. Next, they contend that the trial court abused its discretion in two of its evidentiary rulings.

In its appeal, Penske contends that its discovery dispute with the Brambletts warranted no sanction whatsoever and that the trial court lacked jurisdiction to make the necessary findings of fact and conclusions of law in an order drafted by counsel and entered after the notice of appeal had been filed. It specifically challenges the propriety of the trial court's decision to delegate to the

Brambletts' counsel the task of preparing the court's findings of fact and conclusions of law.

We shall address Penske's appeal first. We shall then address the issues presented by the Brambletts' appeal in the order in which they were presented.

The provisions of CR 37.02(2) authorize the trial court to impose a variety of sanctions on a party who fails to obey an order to provide or permit discovery. The trial court is also empowered to impose sanctions where a party fails to serve answers or objections to interrogatories under CR 33.

The rule permits the trial court in its discretion to "make such orders in regard to the failure as are just[.]" CR 37.02(2). Among other sanctions, the trial

court is expressly authorized to render: an order striking all or portions of the offender's pleadings; an order of contempt; and an order of default. Instead of any of these orders or in addition to them, CR 37.02(3) provides as follows:

> . . . the court shall require the party failing to obey the order or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Throughout discovery, the Brambletts sought a variety of information regarding Penske's awareness of other incidents of trailer "de-coupling" and its

knowledge of property damage and personal injuries or deaths resulting from "disengagement events." Penske interposed its objection to the production of information related specifically to trailer de-couplings, arguing that the information was irrelevant since Casey Bramblett had not been killed as a result of a de-coupling of the trailer. Penske explained to the court at several hearings that the information that the Brambletts sought could not be found through an electronic search of its data but could only be located through a cumbersome, manual review of voluminous records.

The trial court rejected Penske's objections to the production of the information sought by the Brambletts. And, ultimately dissatisfied with Penske's response to its order for production of the information, the trial court ordered Penske to permit the Brambletts' information technology consultant to direct a search of Penske's electronic information. Through the deposition of one of Penske's roadside assistance department analysts, the Brambletts discovered that Penske maintained a bank of electronic data regarding equipment failures and that information related to prior trailer de-couplings could be amassed by a Penske analyst in as little as twenty minutes.

In August 2016, the Brambletts filed a motion seeking discovery sanctions against Penske. In that motion, the Brambletts described Penske's discovery abuses and asked for sanctions expressly authorized by the provisions of

CR 37.02. Following a hearing, the trial court decided that it would sanction Penske by imposing a fine and awarding the Brambletts' reasonable expenses, including attorney's fees, incurred as a result of Penske's discovery abuses.

A trial court has broad discretion in addressing a violation of its orders regarding discovery. *Turner v. Andrew*, 413 S.W.3d 272 (Ky. 2013). We review the trial court's determination of appropriate sanctions, including fee awards, for an abuse of its discretion. *Rumpel v. Rumpel*, 438 S.W.3d 354 (Ky. 2014). "The test for abuse of discretion is whether the trial court's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." C*ommonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

In its brief to this Court, Penske admits that it "struggled" with compliance with some electronic discovery issues and that "there may have been a lack of diligence." But it contends that there was never an instance of willful defiance of any discovery order and submits that all required, court-ordered discovery was fully produced in 2013, more than three years before the case went to trial.

It is clear from the record that Penske resisted the Brambletts' discovery requests -- at least initially -- because it believed that the requests were too broad in their scope. Additionally, it did not want to turn over to the Brambletts information that it had acquired pertaining to the de-coupling of its

trailers while they were being towed on the highway. It contended that those events were irrelevant to the instant case. However, wide-ranging discovery is permitted under the provisions of CR 26, and "[i]t is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." CR 26.02(1).

A fair and reasonable resistance to discovery is not subject to sanction, but we are persuaded that the trial court did not err in this case by concluding that Penske's actions were neither fair nor reasonable. At a hearing conducted in December 2011 on the Brambletts' motion for sanctions, the trial court observed that Penske's discovery responses to that point appeared to be "more of an effort not to comply" with its order to produce the requested information. As noted above, the trial court eventually concluded that it was necessary to order Penske to permit an outside information technology consultant to direct a search of Penske's electronic information for the requested discovery. The requested discovery was readily and easily retrieved.

Trial courts need not tolerate deliberate and willful discovery abuse. They are afforded great leeway and discretion in entering and enforcing discovery orders. *Southern Financial Life Ins. Co. v. Combs*, 413 S.W.3d 921 (Ky. 2013). The trial court was in the best position to determine if Penske's conduct warranted

the imposition of sanctions. *Morton v. Bank of the Bluegrass & Tr. Co.*, 18 S.W.3d 353 (Ky. App. 1999). We cannot agree that the trial court abused its discretion by concluding that Penske had willfully undermined and frustrated the Brambletts' pretrial discovery efforts. That conclusion is amply supported by the record.

Nor are we persuaded that the order entered on November 7, 2016, was insufficient because it did not include a lengthy narrative and specific findings of fact concerning Penske's discovery abuses. Again, CR 37.02 provides a variety of sanctions for discovery abuse. The harshest sanctions include the exclusion of evidence, the striking of pleadings, and dismissal of the action. Where one of these severe sanctions is imposed, meaningful appellate review may be hampered by the lack of specific findings of fact; we may be unable to determine the precise reason for the imposition of the harshest of the available sanctions. *See Nowicke v. Central Bank & Trust Co.*, 551 S.W.2d 809 (Ky. App.1977); *Greathouse v. American Nat'l Bank & Tr. Co.*, 796 S.W.2d 868 (Ky. App. 1990); *Turner v. Andrew*, 413 S.W.3d 272 (Ky. 2013).

The reasons for the imposition of the monetary sanction against Penske in this case are apparent from the court's order entered on November 7, 2016. Moreover, the fine of $50,000 imposed against Penske, a multi-national

business entity, cannot be considered a penalty so severe that it requires any heightened scrutiny. The court's order is sufficient under the circumstances.

In light of this conclusion, we need not consider whether the trial court lacked jurisdiction to render the subsequent sanctions order entered on February 27, 2017, after the notice of appeal had been filed. In *Garnett v Oliver*, 242 Ky. 25, 45 S.W.2d 815, 816 (1931), the Court observed that an appeal "does not necessarily deprive the lower court of all jurisdiction, so as to prevent absolutely any action, even though such action does not affect the matters involved on the appeal. . . ." Because the post-judgment order was ancillary to the order entered on November 7, 2016, and in no manner modified or changed the judgment of the trial court, it remained within the trial court's jurisdiction to render it. Even though Penske now argues the contrary, we note that this very point was acknowledged and conceded by Penske in its e-mail correspondence to the Brambletts dated November 14, 2016.

> Regarding finality, the order signed November 7, 2016, tentatively resolved the fees/costs [sanctions] issue. As you noted, Plaintiff [the Brambletts] are required to provide detailed billing, and Penske has an opportunity to respond. Under Kentucky law, the trial court retains jurisdiction to address ancillary matters and enforce prior orders. See *Garnett v Oliver*, 242 KY 25, 45 S.W.2d 815, 816 (Ky. 1931). Thus, the trial court would retain jurisdiction to consider any objections Penske may file as to the detailed billing.

Nor do we question the propriety of the trial court's decision to adopt the proposed findings tendered by the Brambletts' counsel. We note that in *Bingham v. Bingham*, 628 S.W.2d 628, 629-30 (Ky. 1982), the Kentucky Supreme Court held that an appellate court will affirm an order supported by substantial evidence in the absence of a showing that "the decision-making process was not under the control of the trial judge" or "that these findings and conclusions were not the product of the deliberations of the trial judge's mind." In this case, the trial court adopted the proposed findings tendered by the Brambletts' counsel. However, it did so **only** after a full hearing was conducted and it had reached the conclusion that specific sanctions were warranted. Under the circumstances of this case, there would be no basis upon which to conclude that the trial court abdicated its responsibility. Its oversight was ongoing and direct.

In its appeal, the Brambletts argue that the trial court abused its discretion by failing: to order a default judgment; to direct a finding that the trailer was unreasonably dangerous; to provide a specific instruction to the jury adverse to Penske; or to impose a more substantial fine. They contend that the sanctions imposed failed to impact Penske and were insufficient in light of the egregious nature of the misconduct. While conceding that it is an unusual request, the Brambletts ask this Court to impose additional sanctions.

We decline the Brambletts' request to impose extra sanctions. To do so would mean substituting our discretion for that which is within the sole purview of the trial court. Where there is no abuse of the trial court's discretion, we may not vacate its decision simply because there are other alternatives that the trial court might have chosen.

Next, the Brambletts contend that the trial court erred by excluding evidence of prior Penske trailer de-coupling events and incidents where customers had difficulty attaching Penske trailers to tow vehicles. They argue that this evidence was relevant to show that Penske had knowledge of a dangerous condition inherent in its trailers.

Our standard for reviewing a trial court's ruling admitting or excluding evidence is limited to determining whether the trial court abused its discretion. *Goodyear Tire & Rubber Co. v. Thompson*, 11 S.W.3d 575 (Ky. 2000). Again, the test for abuse of discretion is whether the trial court's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Id.* at 581 (citing *English*, 993 S.W.2d at 945).

The trial court ruled that Penske could only be held liable for negligence in the leasing of the trailer rather than upon any claim based on strict liability. Under a claim of negligence, the plaintiff must prove the defendant's duty, breach of that duty, and a causal connection between the breach and the

injury suffered by the plaintiff. *Lewis v. B & R Corp.*, 56 S.W.3d 432 (Ky. App. 2001) (citations omitted).

In order to prove that Penske breached its duty, the Brambletts intended to demonstrate at trial that Penske had knowledge of a dangerous condition inherent in its trailers. Thus, they sought to introduce evidence of numerous prior incidents reported to Penske involving either de-couplings or difficulties in attaching its trailer to a towing vehicle.

Before trial, however, Penske filed motions *in limine* to exclude from the evidence any mention of other incidents and references to de-couplings of trailers from its trucks. Penske sought to exclude this evidence on the basis that the prior incidents (involving the de-coupling of secured trailers during transport on roadways) were entirely dissimilar and distinguishable from the undisputed facts of this case. It argued that the trailer rented by the Brambletts had not been coupled to the truck after the truck had been loaded and that Bramblett's decision to rock the hitch into place causing the parked trailer to roll down the incline was unlike any de-coupling incident previously reported to Penske. The trial court considered the memoranda of counsel, heard arguments, and concluded that most of the proof that the Brambletts wanted to present on this issue should be excluded.

In *Montgomery Elevator Co. v. McCullough by McCullough*, 676 S.W.2d 776 (Ky. 1984), the Supreme Court of Kentucky cited the general rule that:

> evidence of the occurrence or nonoccurrence of other accidents or injuries under substantially similar circumstances is admissible when relevant to . . . the existence or causative role of a dangerous condition, or a party's notice of such a condition.

Id. at 783 (quoting *Harris v. Thompson*, 497 S.W.2d 422, 429 (Ky. 1973)). The court observed that the requirement of "substantial similarity" between the prior incidents and the one at issue is a matter of relevance to be decided in the discretion of the trial judge and will not be reversed unless there has been an abuse of discretion. *Id.*

The Brambletts assert that the prior incidents reported to Penske were sufficiently similar to the incident that occurred at their home and that the existence of these prior incidents would have permitted the jury to find that Penske was aware of the trailers' dangerous condition. We are persuaded that the trial court did not abuse its discretion by concluding that the prior de-coupling incidents were not sufficiently similar to the Brambletts' experience and that, therefore, they were irrelevant.

It is true that the data collected by Penske at its customer call center indicated the existence of a variety of customer issues with coupling its trailers to rental trucks. However, the Brambletts' expert could not provide any information regarding the prior incidents beyond terse descriptions devoid of detail sufficient to infer a similarity between them and the Brambletts' experience. Moreover, asking

the jury to consider the specific facts of each prior incident would likely have confused the issues, misled the jury, or caused undue delay. *See* KRE[2] 403. Instead, the trial court elected to allow the Brambletts' expert to testify only that he had reviewed events that were substantially similar and that he had concluded that there were a substantial number of Penske trailers that had become disconnected from towing vehicles. We cannot conclude that the trial court abused its discretion in limiting the proof in this way. The court clearly complied with the spirit of KRE 403.

Finally, the Brambletts argue that the trial court abused its discretion by permitting uniformed police officers to testify that they had **no difficulty** in coupling the Penske trailer to the moving truck following the accident that killed Casey Bramblett. We disagree.

During the Brambletts' case, their expert testified on direct examination that the damage to the trailer's coupling device made it more difficult to connect the trailer to the truck properly. Upon cross-examination by counsel for Safe Storage, the Brambletts' expert testified that he had attempted to couple the

[2] Kentucky Rules of Evidence. That rule provides as follows:
"Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of undue prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence."

trailer to a different hitch and that he had found it difficult to do because of the damage to the trailer's coupling device.

In the defense case, the trial court permitted one officer to testify regarding "the ease" with which the trailer had been coupled to the moving truck and, subsequently, uncoupled during the investigation that followed the accident. The trial court limited the testimony to a specific number of specific questions. The officer was not in uniform. The entirety of his direct testimony is as follows:

> Q. In the course of your investigation, detective, did you attempt to couple the actual car carrier to the actual truck?
>
> A. We did.
>
> Q. And did you have any difficulty in coupling it to the truck?
>
> A. No.
>
> Q. And as part of your investigation did you then uncouple the coupler from the actual truck?
>
> A. Yes.
>
> Q. Did you have any difficulty uncoupling it?
>
> A. No.

In light of the testimony of Brambletts' expert, the officer's testimony was undoubtedly relevant. The officers' ability to couple and un-couple the Brambletts' rented trailer with ease made it less probable that the trailer's coupling

device was damaged to the point that it could not be attached to the rental truck properly. As the officer's testimony was carefully limited, we cannot say that the clear probative value of the evidence was substantially outweighed by the danger of any undue prejudice. *See* KRE 403. Consequently, the trial court did not abuse its discretion by allowing the disputed testimony.

We affirm the judgment of the Jessamine County Circuit Court.

ALL CONCUR.

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