

Supreme Court of Kentucky

2025-SC-0487-MR

JOSEPH GORDON YOUNG

APPELLANT

V. ON APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JENNIFER WILCOX, JUDGE
NOS. 23-CR-001227 & 25-CR-001259

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION OF THE COURT BY JUSTICE NICKELL

AFFIRMING

Joseph Gordon Young was convicted of arson in the first degree, three counts of wanton endangerment in the first degree, and being a persistent felony offender in the first degree (PFO I) following a jury trial in the Jefferson Circuit Court. He received a total sentence of thirty-two years' imprisonment and now appeals to this Court as a matter of right.¹ Following a careful review, we affirm.

FACTS AND PROCEDURAL HISTORY

Tracie Wallace lived with her elderly grandmother, Kathy, and her autistic minor sister, R.F.,² on Taylor Boulevard in Louisville, Kentucky. Young

¹ KY. CONST. § 110(2)(b).

² We use initials to protect the privacy of the minor victim. See Kentucky Rules of Appellate Procedure (RAP) 13(B).

approached Tracie and Kathy in mid-2023, offering to help with odd jobs in exchange for food and money. Shortly thereafter, Young's ex-wife kicked him out of her home, so Tracie offered to let him stay in the family's basement. During his stay, Young mowed the yard, did woodwork on the deck, put a pool together, and cleaned the garage.

About a week after he moved in, on May 16, 2023, Young awoke early and left the house through the rear door. He walked to a nearby Thorntons gas station where surveillance cameras captured his arrival at 5:38 a.m. Young purchased a coffee, a pack of cigarettes, and a snack. After exiting the store, Young walked to the gas pumps and began searching the trash cans. He salvaged a small container from one of the cans and placed it next to a gas pump. He then went back inside the store, paid for one dollar's worth of gasoline, then retrieved the container and filled it with gas at 5:51 a.m. Young left Thorntons at 6:00 a.m. and began walking in the direction of Taylor Boulevard.

A doorbell camera attached to the front of Tracie's home recorded Young arriving back at the residence at 6:19 a.m. and entering the enclosed front porch carrying the small container in his hand. Approximately four minutes later, the camera captured Young exiting the porch and placing his backpack on the front sidewalk. Three minutes thereafter, Young is seen by the camera leaning out the porch door, adjusting the adjacent window from the outside, and observing traffic passing by the house. At 6:29 a.m., Young was recorded bursting out the door as a large orange glow is seen behind him and sparks

swirling around him. Young quickly ran away from the house, grabbing his backpack as he passed.

While these events were unfolding, Tracie was playing a video game in her upstairs bedroom. She heard a loud bang and felt the house shake. When she looked outside, she noticed smoke and proceeded downstairs to investigate. After determining there was an active fire on the front porch, she rushed to get her grandmother and sister out of the home. Tracie looked for Young but could not find him. The home's security system triggered a call to emergency services, and the Louisville Fire Department (LFD) was dispatched to the scene. Ultimately, four fire engines and two fire trucks responded to battle the blaze. The home suffered significant damage from the fire and smoke. The enclosed front porch was nearly destroyed; vinyl siding was melted away; aluminum wall panels were melted and warped; several windows were broken out; and the living room and two downstairs bedrooms had smoke and soot stains. Once the fire had been suppressed, and because the cause could not be readily ascertained, the on-scene incident commander called the LFD Metro Arson Unit to investigate. LFD Captain Jason Sanders and LFD Sergeant Jeffrey McNulty responded to begin the arson investigation. At some point while the firefighters and arson investigators were on the scene, Young returned to the house.

Captain Sanders interviewed Tracie, canvassed the neighborhood, and collected video surveillance footage. He then interviewed Young, and the interaction was captured by Captain Sanders' body-worn camera. Young

initially stated he had left the house between 2:30 and 3:00 a.m., but when confronted with contradictory video evidence, he agreed it might have been later than he thought. He stated he had been on the porch that morning to “check things out” but didn’t see or smell anything out of the ordinary. He denied smoking on the porch or having any involvement in starting the fire. Young left the scene shortly thereafter.

Due to inconsistencies in his statements, investigators located and brought Young to their office for a formal interview. At first, Young indicated the door to the front porch was cracked open when he returned, but he did not see anyone on the porch when he looked. He denied intentionally or accidentally starting the fire. As the interview progressed, Young’s story shifted. He stated that he saw a spark on the front porch and that a neighbor who had been threatening him previously was standing there pointing a gun at him, so he ran away as the fire started behind him. Young claimed his cellphone would “tell the story” and prove his claims. Sergeant McNulty obtained consent to retrieve and look through the phone. A subsequent search of Young’s phone revealed no information related to the fire or any additional suspect. At the conclusion of the interview, Young was arrested and subsequently charged with arson in the first degree and three counts of wanton endangerment in the first degree. Prior to trial, he was separately indicted for being a PFO I. Following a multi-day jury trial, Young was convicted on all counts, with the jury recommending a sentence of twenty-two years for arson and ten years on each of the wanton endangerment charges, with all to run

consecutively for a total sentence of fifty-two years. At final sentencing, the trial court ordered the sentences for the wanton endangerment counts to run concurrently with one another but consecutively to the arson charge for a total sentence of thirty-two years' imprisonment. This appeal followed.

ANALYSIS

Young raises four allegations of error in seeking reversal. First, he asserts his convictions for arson in the first degree and wanton endangerment in the first degree violate the prohibition against double jeopardy. Second, he contends the trial court committed reversible error in failing to address his pretrial request for new counsel. Next, Young alleges the trial court erred in permitting the Commonwealth's arson experts to testify to their beliefs that the fire was intentionally started. Finally, he argues it was error to permit the Commonwealth and Tracie to inform the jury that R.F. had severe autism. We shall address each allegation in turn.

I. No Double Jeopardy Violation Occurred.

For his first contention of error, and raising what appears to be a matter of first impression, Young argues the acts and dangers underlying his convictions for wanton endangerment in the first degree were already contemplated in the conviction for arson in the first degree, and therefore his convictions of all charges violated the prohibition against double jeopardy. He asserts the exact same facts of his singular act of setting the house on fire could prove the commission of both offenses, and therefore the double jeopardy clause mandates that he could be convicted of only one of the crimes. Young

concedes this argument is unpreserved for appellate review and requests palpable error review under RCr³ 10.26. In reviewing for palpable error, this Court will only reverse the judgment if “the error is so manifest, fundamental and unambiguous that it threatens the integrity of the judicial process.” *Johnson v. Commonwealth*, 676 S.W.3d 405, 417 (Ky. 2023) (quoting *Martin v. Commonwealth*, 207 S.W.3d 1, 5 (Ky. 2006)). “It should be so egregious that it jumps off the page . . . and cries out for relief.” *Id.* (quoting *Chavies v. Commonwealth*, 374 S.W.3d 313, 323 (Ky. 2012)). However, “we have long held that double jeopardy questions may be reviewed on appeal, even if they were not presented to the trial court.” *Mullikan v. Commonwealth*, 341 S.W.3d 99, 102 (Ky. 2011) (citations and internal quotation marks omitted).

The Fifth Amendment to the United States Constitution provides that no person shall “be subject for the same offence to be twice put in jeopardy of life or limb.” A virtually identical provision appears in § 13 of the Kentucky Constitution. This Court has long acknowledged that the protections afforded under these two provisions are parallel and that decisions of the United States Supreme Court are relevant to a double jeopardy analysis under both constitutions. *Cooley v. Commonwealth*, 821 S.W.2d 90, 93 (Ky. 1991). “Double jeopardy does not occur when a person is charged with two crimes arising from the same course of conduct, as long as each statute ‘requires proof of an additional fact which the other does not.’” *Commonwealth v. Burge*, 947

³ Kentucky Rules of Criminal Procedure.

S.W.2d 805, 809 (Ky. 1996) (quoting *Blockburger v. United States*, 284 U.S. 299, 304 (1932)). This foundational rule is also codified in KRS⁴ 505.020. At bottom, when called upon to determine whether a single course of conduct may establish more than one offense, courts must determine whether the conduct violates two distinct statutes and, if so, whether each statute requires proof of an element that the other does not. *Id.* at 811. Nevertheless, Young urges this Court to adopt a different test and look to the legislative intent relative to the harm underlying each offense rather than the statutory elements of the crimes to determine whether a double jeopardy violation occurred. We decline to do so. The plain text of the Fifth Amendment and § 13 prohibit multiple prosecutions for the “same offence,” and an offense, for double jeopardy purposes, is to be “measured by its statutory elements.” *Currier v. Virginia*, 585 U.S. 493, 507 (2018).

KRS 513.020, the first-degree arson statute, states in pertinent part:

- (1) A person is guilty of arson in the first degree when, with intent to destroy or damage a building, he starts a fire or causes an explosion, and;
 - (a) The building is inhabited or occupied or the person has reason to believe the building may be inhabited or occupied[.]

Wanton endangerment in the first degree is proscribed in KRS 508.060.

That statute provides, in pertinent part:

- (1) A person is guilty of wanton endangerment in the first degree when, under circumstances manifesting extreme indifference to the value of human life, he or she wantonly engages in conduct which creates a

⁴ Kentucky Revised Statutes.

substantial danger of death or serious physical injury to another person.

Even a cursory reading of these two statutes reveals the elements of the two crimes are quite different. Starting a fire or causing an explosion with the intent to damage or destroy a building is required to convict of arson in the first degree but is not necessary to convict of wanton endangerment in the first degree. Engaging in conduct manifesting an extreme indifference to the value of human life is mandatory for a conviction of wanton endangerment in the first degree, but such conduct is irrelevant to an offense of arson in the first degree, as the building does not actually have to be inhabited or occupied at the time the fire is set, so long as the defendant had a reasonable belief a person was present. In addition, arson in the first degree is a crime against property while wanton endangerment in the first degree is in the nature of a crime against a person. Although there may be an overlap of proof covering the two offenses in this case, that does not, in and of itself, constitute a double jeopardy violation. *See Clark v. Commonwealth*, 267 S.W.3d 668, 677 (Ky. 2008).

The proof adduced at trial was sufficient to prove that Young's conduct in intentionally setting ablaze the front porch of a home he knew was occupied by three people plainly violated both KRS 513.020 and KRS 508.060. And each of those two statutes requires proving elements of a crime that the other does not. It cannot be said that either crime is "included within" the other, as they simply do not have the same elements. *Burge*, 947 S.W.2d at 811. Young intended to start a fire to destroy or damage the home while simultaneously

acting wantonly and with utter indifference to the value of the lives of the three women lying in their beds inside the house. Contrary to Young's averments, it is not logical to assume the General Assembly intended for wanton endangerment in the first degree to be subsumed within arson in the first degree. The crimes here are distinct offenses directed at different harms with dissimilar elements. They are separate offenses subject to multiple punishments, even when a single discrete act forms the factual basis for both crimes. Thus, we conclude Young's convictions under both statutes did not constitute a double jeopardy violation.

II. The Trial Court Adequately Addressed Young's Request for New Counsel.

Young next asserts the trial court erred in failing to address his pretrial request for substitute counsel. We disagree.

At a pretrial conference some nine months before trial began, Young informed the trial court he wanted a new attorney because he did not "feel like [he was] being represented properly" by his court-appointed counsel. The trial court took up the matter and asked for counsel's position. Defense counsel acknowledged Young was not completely happy with his performance to that point and there were issues surrounding potential defenses at trial. However, after discussing the case "at length" with him, because of concerns which had arisen during recent conversations with Young, counsel moved the trial court for a competency evaluation as he believed Young might not possess the "ability to work with his attorney" and participate meaningfully in his own defense.

The trial court then informed Young that it had no control over which attorney the Department of Public Advocacy assigned to a particular case. It told Young his current counsel had been before the court before and always did a good job representing his clients. Further, the trial court gave Young the option of hiring his own attorney or remaining with the counsel selected by the public defender's office as having the skill level appropriate to handle the issues presented. After additional discussions, the trial court indicated appointed counsel would remain on the case and granted the motion for a competency evaluation. Young did not again raise any issues or concerns with his counsel, but he now contends the trial court reversibly erred by not inquiring further into his concerns about his perceived deficiencies in counsel's performance or granting his request for new counsel.

Under the Sixth Amendment to the United States Constitution, criminal defendants have a right to be represented by counsel. *See Samuels v. Commonwealth*, 512 S.W.3d 709, 712 (Ky. 2017) (citing *Gideon v. Wainwright*, 372 U.S. 335, 345 (1962)). In Kentucky, indigent defendants are provided court-appointed representation primarily through the Department of Public Advocacy. *Pillersdorf v. Dep't of Pub. Advoc.*, 890 S.W.2d 616, 619 (Ky. 1994). However, "a defendant who is represented by a public defender or appointed counsel does not have a constitutional right to be represented by any particular attorney, and is not entitled to the dismissal of his counsel and the appointment of substitute counsel except for adequate reasons or a clear abuse by counsel." *Henderson v. Commonwealth*, 636 S.W.2d 648, 651 (Ky. 1982)

(citations omitted). A defendant is not entitled to force the government to provide him with the attorney of his choosing. *Luis v. United States*, 578 U.S. 5, 12 (2016). Rather, he must show that good cause exists for a replacement in order to obtain a new court-appointed attorney. *Dunn v. Commonwealth*, 573 S.W.2d 651, 654 (Ky. 1978). “Whether good cause exists for substitute counsel to be appointed is within the sound discretion of the trial court.” *Deno v. Commonwealth*, 177 S.W.3d 753, 759 (Ky. 2005) (citing *Pillersdorf*, 890 S.W.2d at 622).

Our review of the record reveals no adequate reason or abuse by counsel sufficient to warrant removal and replacement that was presented to the trial court. Indeed, Young presents nothing more than his own subjective beliefs that counsel was not providing proper representation and hypotheticals of what he “may have felt” when expressing his dissatisfaction to the trial court. But “mere dissatisfaction with appointed counsel’s performance” is an improper basis for the relief sought. *Stinnett v. Commonwealth*, 364 S.W.3d 70, 81 (Ky. 2011). Young alleged no conflict of interest, no complete breakdown of communications, nor that counsel was prejudicing his legitimate interests, any of which could be adequate and sufficient cause for removing counsel from the case. *Baker v. Commonwealth*, 574 S.W.2d 325, 327 (Ky. App. 1978). He did not do so and cannot now be heard to complain.

His contention that the trial court should have done more to determine whether he had legitimate concerns with counsel’s performance is also unavailing. Indeed, the trial court was not required to make a “searching

inquiry” into his complaint as its only determination under the circumstances was whether counsel had “the ability and the preparedness to effectively assist” Young in his defense. *Padgett v. Commonwealth*, 312 S.W.3d 336, 343 (Ky. 2010). The trial court adequately undertook this task and concluded it was inappropriate to remove counsel at that time. Over the nine months that followed, Young never again expressed any dissatisfaction or concerns with counsel’s performance, although he showed little difficulty in speaking up during his multiple appearances to raise issues and ask questions of the trial court and prosecutor. To now imply that he was reserving some complaint about counsel throughout those numerous hearings and discussions with the trial court is disingenuous at best. There was no abuse of the trial court’s discretion.

III. No Error in the Testimony of the Commonwealth’s Arson Experts.

Prior to trial, the Commonwealth disclosed that it anticipated Captain Sanders and Sergeant McNulty to give expert testimony as arson investigators. The disclosure indicated Sergeant McNulty would testify to his opinion that the fire had been set intentionally. During trial and before Captain Sanders took the witness stand, Young preemptively objected to him or Sergeant McNulty testifying consistently with their written reports opining the fire was started intentionally, asserting only the jury could make that determination. He further requested that the written report be redacted to remove reference to the findings of intentional conduct. The trial court overruled the motions. On cross-examination, and in response to counsel’s assertion to the contrary,

Captain Sanders indicated the video recordings and other evidence from the scene led him to believe the fire had been started intentionally. Likewise, on direct examination, Sergeant McNulty opined that the fire was incendiary and intentional, having been caused by using an open flame to ignite available combustibles assisted by an ignitable liquid. He further testified he had ruled out any accidental ignition sources based on his examination of the scene and all available evidence.

Young now argues this testimony constituted inadmissible expert opinion testimony which invaded the province of the jury on the ultimate issue. He further asserts Captain Sanders and Sergeant McNulty were not qualified to testify that he set the fire intentionally. We disagree.

Trial courts act as gatekeepers of expert testimony, *Miller v. Eldridge*, 146 S.W.3d 909, 913 (Ky. 2004), and must scrutinize such testimony to ensure it is admissible and scientifically reliable. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 592-93 (1993). “To fulfill this role, the trial court must undertake a two-part analysis wherein it must first assess whether the methodology or reasoning underpinning the proposed expert testimony has valid scientific reliability. Second, the trial court must determine whether the expert’s testimony will assist the trier of fact to understand a fact in issue.” *Renot v. Secura Supreme Ins. Co.*, 671 S.W.3d 282, 287-88 (Ky. 2023) (citing *Daubert*, 509 U.S. at 592-93). See also KRE⁵ 702. We review a trial court’s decision to

⁵ Kentucky Rules of Evidence.

admit expert testimony for abuse of discretion. *Hollingsworth v. Commonwealth*, 718 S.W.3d 738, 746 (Ky. 2025). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). “An abuse of discretion exists only when we are ‘firmly convinced that a mistake has been made.’” *Rossi v. CSX Transp., Inc.*, 357 S.W.3d 510, 515 (Ky. App. 2010) (quoting *Overstreet v. Overstreet*, 144 S.W.3d 834, 838 (Ky. App. 2003)).

Here, Young does not challenge the expert qualifications of Captain Sanders or Sergeant McNulty as arson investigators. Nor does he raise any issue relative to the reliability of their principles and methods or that they failed to appropriately apply those principles and methods to the facts of his case. Instead, he contests only their ability to opine that he intentionally started the fire, which he contends is the ultimate issue in the case to be put to the jury for a decision. However, Kentucky has conclusively abandoned the “ultimate issue rule” relative to expert testimony. *Stringer v. Commonwealth*, 956 S.W.2d 883, 891 (Ky. 1997). Additionally, a review of the testimony reveals neither investigator testified as Young suggests.

“In a criminal case, the ultimate fact in issue is whether the defendant is guilty or not guilty.” *Id.* Had either Captain Sanders or Sergeant McNulty testified he believed Young was guilty of the crimes charged, such testimony would have constituted improper opinion testimony.

However, an opinion that a result is consistent with a factual scenario is not an opinion that the scenario occurred.

The real question should not be whether the expert has rendered an opinion as to the ultimate issue, but whether the opinion “will assist the trier of fact to understand the evidence or to determine a fact in issue.” KRE 702. Generally, expert opinion testimony is admitted when the issue upon which the evidence is offered is one of science and skill, *Greer’s Adm’r v. Harrell’s Adm’r*, 306 Ky. 209, 206 S.W.2d 943 (1947), and when the subject matter is outside the common knowledge of jurors. *O’Connor & Raque Co. v. Bill*, Ky., 474 S.W.2d 344 (1971). Presumably, jurors do not need assistance in the form of an expert’s opinion that the defendant is guilty or not guilty. However, they usually do need the assistance of [an] expert in determining the cause of a physical condition in order to understand the evidence and determine the ultimate fact in issue. KRE 401; KRE 702.

Id. at 889-90. Here, both Captain Sanders and Sergeant McNulty provided the jury with opinions which concerned a subject peculiarly within the knowledge of a trained arson investigator relating to the cause and manner of the origin of the fire. Their opinions were scientific in nature and were outside the common knowledge of a layperson. Thus, the testimony served to “assist the trier of fact to understand the evidence or to determine a fact in issue” and was admissible. KRE 702. We discern no abuse of discretion by the trial court in so concluding.

IV. Testimony Regarding R.F.’s Autism Was Not Improper.

Finally, Young contends the trial court erroneously overruled his pretrial motion in limine to exclude testimony that R.F. was autistic and compounded the error by allowing testimony and commentary from Tracie and the Commonwealth that R.F. was severely autistic and required assistance with basic activities of daily living. He asserts this evidence was not relevant and

any potential probative value it held was outweighed by the danger of undue prejudice, confusing the issues, or misleading the jury. His assertions are without merit.

“[A] certain amount of background evidence regarding the victim is relevant to understanding the nature of the crime.” *Busnell v. Commonwealth*, 882 S.W.2d 111, 113 (Ky. 1994). During the guilt phase of a trial, the Commonwealth is permitted to introduce evidence that is intended to identify a victim as a living person rather than a simple statistic. *McQueen v. Commonwealth*, 669 S.W.2d 519, 523 (Ky. 1984). This type of evidence may include, among other things, “the victim’s age, job, interests, and level of education.” *Brown v. Commonwealth*, 297 S.W.3d 557, 561 (Ky. 2009). Victim background evidence is not deemed unduly prejudicial “as long as the victim is not glorified or enlarged.” *Bowling v. Commonwealth*, 942 S.W.2d 293, 302 (Ky. 1997). On the contrary, “introduction of victim impact evidence during the guilt phase is reversible error.” *Tackett v. Commonwealth*, 445 S.W.3d 20, 33 (Ky. 2014). The difference between victim impact and victim background evidence is that the former is “generally intended to arouse sympathy for the families of the victims, which, although relevant to the issue of penalty, is largely irrelevant to the issue of guilt or innocence.” *Bennett v. Commonwealth*, 978 S.W.2d 322, 325 (Ky. 1998).

Here, when discussing R.F.’s autism, the Commonwealth and Tracie spoke evenly and without excess emotion. The statements were brief and targeted toward R.F.’s mental condition and the physical assistance she

required on a daily basis to accomplish basic tasks. They were intended to humanize R.F. rather than to villainize Young. Further, because Young was aware of R.F.'s mental and physical limitations, the testimony was relevant to the jury's ability to determine that Young's action in starting the fire constituted "circumstances manifesting extreme indifference to the value of human life" which is an essential element of wanton endangerment in the first degree. KRS 508.060.

As with all relevant evidence, "[t]his evidence . . . was prejudicial . . . but it was not unfairly prejudicial." *Meece v. Commonwealth*, 348 S.W.3d 627, 667 (Ky. 2011). The danger of undue prejudice did not substantially outweigh the probative value of the testimony. KRE 403. Neither the Commonwealth nor Tracie unduly emphasized R.F.'s autism, nor did any of the statements improperly glorify or enlarge her status as a victim or attempt to garner the jurors' sympathies. *Brown*, 297 S.W.3d at 560-61. Further, nothing in Tracie's testimony or the Commonwealth's statements in opening and closing arguments was "overly emotional, condemnatory, accusative, or demanding vindication." *Foley v. Commonwealth*, 953 S.W.2d 924, 937 (Ky. 1997). As such, we conclude there was no misuse of victim background evidence during the guilt phase of Young's trial, and no error by the trial court in permitting its admission.

CONCLUSION

For the foregoing reasons, the judgment and sentence of the Jefferson Circuit Court are affirmed.

All sitting. Lambert, C.J.; Bisig, Conley, Goodwine, and Keller, JJ.,
concur. Thompson, J., concurring in result only.

COUNSEL FOR APPELLANT:

Steven J. Buck
Kathleen Kallaher Schmidt
Assistant Public Advocate

COUNSEL FOR APPELLEE:

Russell M. Coleman
Attorney General of Kentucky

Ryan D. Mosley
Assistant Solicitor General