

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
NO. 08-CA-002348-MR

RONALD EDWARDS
APPELLANT

V APPEAL FROM MEADE CIRCUIT COURT
CASE NO. 07-CI-00082

JORDAN GRUOVER
APPELLEE

BRIEF FOR APPELLANT
RONALD EDWARDS

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CERTIFICATION

This is to certify that a copy of the foregoing was mailed this ____ day of June, 2009, to Hon. Judge Bruce Butler, Meade Circuit Court Judge, Courthouse 208 Main Street, Brandenburg, Kentucky 40143-0989; Hon. Steven R. Crebessa, P.O. Box 277, Brandenburg, Kentucky 40108; Hon. Morris Dees, Jr., Southern Poverty Law Center, 400 Washington Avenue Montgomery, Alabama 36104; Hon. William F. McMurray, 5932 Timber Ridge Dr., Suite 101, Prospect, Kentucky 40059; Mr. Jarred Hensley, 4005 Trevor Avenue, Cincinnati, Ohio 45211.

I further certify that record on Appeal has been returned to the Clerk of the Meade Circuit Court.

KYLE A. BURDEN

INTRODUCTION

This is a case wherein the Appellant was the defendant in a civil trial and was found liable to the Appellee/Plaintiff for an assault which occurred without Appellant having directly or indirectly being involved. The Jury awarded the Appellee a verdict of \$1,501,686.71 compensatory damages. The jury attributed twenty-percent (20%) of the fault to Appellant, Ronald Edwards. The jury further awarded the Appellee \$1,000,000.00 in punitive damages solely attributable to Appellant, Ronald Edwards.

STATEMENT CONCERNING ORAL ARGUMENT

The Appellant respectfully requests that oral arguments be heard on the matter.

STANDARD OF REVIEW

The Appellant asserts that there were palpable errors committed during the trial.

The trial judge's findings of fact will only be overturned if clearly erroneous. Finally, the Appellate Court must conduct a de novo review of the trial court's application of the law to those facts to determine whether its decision is correct as a matter of law. Drake v. Commonwealth, 222 S.W. 3d 254, 256 (Ky. App. 2007).

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STATEMENT OF THE FACTS

An assault occurred in July of 2006, wherein Jordan Gruuver sustained physical injuries. Jordan Gruuver sued the individual assailants for their direct assault against him. Jordan Gruuver additionally sued Ronald Edwards because he was the leader of an organization that the four assailants were also members of. All the defendants in the civil action had no prior knowledge of the existence of Jordan Gruuver prior to the incident at the Meade County Fair where the assault took place. Three of the four assailants resolved their cases prior to trial, leaving only Jarred Hensley.

Jarred Hensley, an assailant, and Ronald Edwards, leader of the organization, went to trial on November 12, 2008. Mr. Edwards and Mr. Hensley represented themselves Pro Se due to their inability to retain an attorney. During the Plaintiff's case in chief, the Plaintiff called Mr. Kale Kelley as a witness whose testimony consisted of his recounting a conversation in 1998, wherein he alleged that Mr. Edwards discussed an assassination plot on the life of Hon. Morris Dees, the very same attorney for the Plaintiff. A verdict was returned awarding the Plaintiff/Appellee \$1,501,686.71 in compensatory damages, of which Mr. Edwards was 20% liable. The jury also returned a \$1,000,000.00 punitive damages award with Mr. Edwards being 100% liable. It is from this judgment (See Attached Exhibit One) that the Appellant, Ronald Edwards appeals.

ARGUMENTS

I. PREFACE

KRE 103(E) and RCr 10.26 are identical in language, intent and purpose, namely to correct a serious and detrimental wrong that occurred during a judicial proceeding. The Appellant cites numerous cases addressing the applicability of RCr 10.26 as this rule has been more commonly addressed by the Appellate Courts of Kentucky. Appellant does not contend that RCr 10.26 has applicability to this case other than the Appellate Court's interpretation and application of the intent and purpose which RCr 10.26 and KRE 103(e) are identical in that regard.

Under RCr 10.26, an unpreserved error may be reviewed on appeal if the error is "palpable" and "affects the substantial rights of a party." Even then, relief is appropriate only "upon a determination that manifest injustice has resulted from the error." *Id.* An error is "palpable," only if it is clear or plain under current law Brewer v. Commonwealth, 206 S.W. 3d 343 (Ky. 2006). Generally, a palpable error "affects the substantial rights of a party" only if "it is more likely than ordinary error to have affected the judgment." Ernst v. Commonwealth, 160 S.W. 3d 3, 744, 762 (Ky. 2005). We note that an unpreserved error that is both palpable and prejudicial, still does not justify relief unless the reviewing court further determines that it has resulted in a manifest injustice; in other words, unless the error so seriously affected the fairness, integrity, or public reputation of the proceeding as to be "shocking or jurisprudentially intolerable." Martin v. Commonwealth, 207 S.W. 3d 1,

4 (Ky. 2006).

The testimony of Mr. Watkins, Mr. Hensley, Mr. Cowles, and Mr. Roberts all established they were at the fair of their own accord and were not there for the purposes of recruitment for the IKA and that Mr. Edwards had no knowledge that they were even at the fair. Despite the absence of any evidence to implicate Mr. Edwards, the jury returned a verdict, not based on fact, but rather on their disdain and disgust with Mr. Edwards and his organization. The jury's verdict apportioned 20% liability for the compensatory damages but yet still assessed a \$1,000,000.00 punitive damage award against Mr. Edwards exclusively. The jury's verdict is a clear reflection of their animosity towards Mr. Edwards based upon the inadmissible and inflammatory testimony, thus the verdict is manifestly unjust.

RCr 10.26 provides that an alleged error improperly preserved for appellate review may be revisited upon a demonstration that it resulted in manifest injustice. See Butcher v. Commonwealth, 96 S.W.3d 3, 11 (Ky. 2002), *cert.denied*, 540 U.S. 864, 124 S.Ct. 174, 157 L.Ed.2d 116 (2003). A palpable error is one which affects the substantial rights of a party, and relief will only be granted if the reviewing court concludes that a substantial possibility exists that the result would have been different absent the error. See Butcher, *supra* at 11, citing Partin v. Commonwealth, 918 S.W.2d 219, 224 (Ky. 1996).

The palpable error asserted by the Appellant was the introduction of Mr. Kale Kelley's testimony, along with the testimony from witnesses about their own criminal

records and past bad acts. The Appellant's failure to object and seek a mistrial based upon Mr. Kelley's testimony being heard by the jury did not cleanse the trial court of its responsibility to ensure a fair trial and to enforce the Kentucky Rules of Evidence. The trial court, during the course of Mr. Kelley's testimony, went so far as to address the Appellee's counsel's leading questions and instructed him to cease with the leading questions but did absolutely nothing to halt the inadmissible, inflammatory, prejudicial and irrelevant testimony of Mr. Kelley.

II. BY PERMITTING THE TESTIMONY OF KALE KELLEY TO BE HEARD BY THE JURY THE TRIAL COURT COMMITTED PALPABLE ERROR IN LIGHT OF KALE KELLEY'S TESTIMONY CONCERNING AN ALLEGED PRIOR BAD ACT FROM 10 YEARS AGO WHICH RESULTED IN MR. EDWARDS NOT RECEIVING A FAIR TRIAL.

As recently as May 22, 2009, the Kentucky Court of Appeals held in an unpublished Opinion Angella Prater v. Commonwealth of Kentucky, No. 2008-CA-00387, (See Attached Exhibit Two) evidence not relevant for a purpose other than the contradiction of the in-court testimony introduced for the improper purpose of raising inferences prejudicial to the defendant was collateral to the issues in trial which resulted in Prater's case being vacated and remanded for a new trial due to prejudicial error in connection with this issue. Furthermore, the Court specifically identified and stated that this type of error was reviewable under the palpable error standard. The same scenario played itself out in this case. The Plaintiff introduced inadmissible, irrelevant and highly prejudicial KRE 404 testimony without having given proper notice which resulted in extreme and substantial

prejudice to the defendant.

Rule 404 reads as follows:

(a) Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) Character of accused. Evidence of a pertinent trait of character or of general moral character offered by an accused, or by the prosecution to rebut the same;

(2) Character of victim generally. Evidence of a pertinent trait of character of the victim of the crime offered by an accused, other than in a prosecution for criminal sexual conduct, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) Character of witnesses. Evidence of the character of witnesses, as provided in KRE 607, KRE 608, and KRE 609.

(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible:

(1) If offered for some other purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident; or

(2) If so inextricably intertwined with other evidence essential to the case that

separation of the two (2) could not be accomplished without serious adverse effect on the offering party.

(c) Notice requirement. In a criminal case, if the prosecution intends to introduce evidence pursuant to subdivision (b) of this rule as a part of its case in chief, it shall give reasonable pretrial notice to the defendant of its intention to offer such evidence. Upon failure of the prosecution to give such notice the court may exclude the evidence offered under subdivision (b) or for good cause shown may excuse the failure to give such notice and grant the defendant a continuance or such other remedy as is necessary to avoid unfair prejudice caused by such failure.

KRE 404 applies to both civil and criminal cases. Tamme v. Commonwealth 973 S.W. 2d 13 (Ky. 1998). The Appellant was denied a fair trial through the introduction of highly inflammatory, irrelevant and extremely prejudicial testimony. The testimony of Mr. Kelley begins on November 13, 2008, 9:25:47. The testimony of Kale Kelley consisted of Mr. Kelley “testifying” about an alleged 1998 conversation with Mr. Edwards regarding an assassination plot against Hon. Morris Dees, the very same counsel for the plaintiff. The irrelevant testimony was the ultimate example for what constitutes prejudicial testimony. The testimony of Kelley did not touch or concern the events that unfolded at the Meade County Fair and was only offered to inflame the passions and prejudice the jury, which it did as seen by their verdict despite the lack of any evidence that Mr. Edwards was involved

directly or indirectly with Mr. Gruuver's assault.

The sole purpose for which the testimony of Kale Kelley was introduced was to inflame the jury against Mr. Edwards. The testimony was not remotely relevant. "Relevant evidence" means evidence having any tendency the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." KRE 401.

This trial was nothing more than an attempt to bring down an organization that espouses ideologies that conflict with the acceptable norm. The evidence presented was nothing more than Mr. Edwards role as the IKA's (International Klans of America) leader and that these individuals were members. The jury's verdict against Mr. Edwards was not based upon evidence of any negligent, reckless or intentional acts perpetrated by Ronald Edwards which directly or indirectly resulted in the assault of Jordan Gruuver. Jordan Gruuver's assault was perpetrated by four grown men who are capable of acting of their own free will and who were at a fair of their own free will and who were there without any knowledge or instructions from Ronald Edwards and who were not there for the furtherance of the IKA or Mr. Edwards.

The sole purpose of the introduction of this testimony was to shock and awe the jury and to produce a result favorable to the Appellee, which it did. Mr. Edwards attempted to call Hon. Morris Dees to inquire about his knowledge of the alleged assassination plot. Mr. Edwards cited that he was surprised and unprepared for the nature

of Kale Kelley's testimony. The trial court denied his request to call Hon. Morris Dees to further inquire about this alleged plot (Trial Video Judge's Chambers November 14, 2008, 11:53:43 - 11:54:01).

III. THE CUMULATIVE VIOLATIONS OF KRE 404 CULMINATED IN AN UNFAIR TRIAL WHEREIN THE JURY WAS SO OUTRAGED THAT THEY ABANDONED THEIR DUTY TO DECIDE THE CASE ON THE FACTS.

Mr. Kelley's inadmissible testimony was not the only exclusive KRE 404 violation. Throughout the trial Appellee's/Plaintiff's counsel queried other persons about their criminal records. Plaintiff's counsel did not inquire, pursuant to KRE 609, whether or not they were convicted of a felony but rather asked the witnesses about their criminal record (Matthew Roberts November 13, 2008, 11:27:36 – 11:28:12, Joshua Edward Cowles November 13, 2008, 10:15:50 – 10:16:20, Jarred Hensley November 13, 2008, 1:54:05 - 1:55:00, and Kale Kelley's testimony in its entirety).

The Appellants/Defendants were provided no notice as to the Appellee's/Plaintiff's intent to introduce any testimony of past criminal acts or alleged bad acts pursuant to KRE 404(C)'s requirement that notice be given (See Attached Exhibit Three, Plaintiff's signed Responses to Interrogatories, Interrogatory number 1). The Defendants received no notice from the Plaintiff that Mr. Kale Kelley's testimony concerned an alleged prior bad act from approximately 10 years ago (See Attached Exhibit Three, Plaintiff's signed Responses to Interrogatories, Interrogatory number 1, Kale Kelley Knowledge of Ron Edwards and the

IKA but no knowledge of Nordic Fest nor Joshua Cowles nor his involvement with the IKA). The Defendants received no notice of the Plaintiff's intent to introduce prior criminal records of the witnesses Joshua Cowles and Matthew Roberts and the defendant, Jarred Hensley. Pursuant to KRE 403, the cumulative prejudicial affect far outweighs the probative value of the testimony of these individuals discussing past criminal acts, which were irrelevant, immaterial to the case before the trial court. The jury was presented with a litany of witnesses who had previous criminal records which served to paint Mr. Edwards in such a way that the jury disregarded the facts and decided the case on their dislike of Mr. Edwards and his beliefs.

The introduction of the witnesses' criminal records was not in conformity with the Kentucky Rules of Evidence. The Plaintiff did not establish a cognizable nexus between their past criminal acts and the current case. The defendants were prejudiced by the testimony to such a degree that the jury disregarded the true facts and returned a verdict based upon inflamed passions, which is not what our judicial system tolerates.

Even if KRE 404 (C) notice requirement had been complied with the prejudicial affect far outstrips any probative value, of which there was none, and the testimony could not have been introduced as it was a collateral matter which was and is irrelevant to the events that occurred at the Meade County Fair. This is especially so with Kale Kelley's testimony concerning this alleged assassination plot of Hon. Morris Dees from 10 years ago.

IV. THE TRIAL COURT'S DENIAL OF THE APPELLANT'S MOTION FOR A DIRECTED VERDICT WAS CLEARLY ERRONEOUS.

On a motion for directed verdict, the trial judge must draw all fair and reasonable inferences from the evidence in favor of the party opposing the motion. When engaging in appellate review of a ruling on a motion for directed verdict, the reviewing court must ascribe to the evidence all reasonable inferences and deductions which support the claim of the prevailing party. Meyers v. Chapman Printing Co., Inc., 840 S.W.2d 814 (Ky. 1992). Once the issue is squarely presented to the trial judge, who heard and considered the evidence, a reviewing court cannot substitute its judgment for that of the trial judge unless the trial judge is clearly erroneous. Bierman v. Klapheke, 967 S.W.2d 16, 18 (Ky. 1998).

Mr. Edwards made a motion for a directed verdict premised upon the lack of any evidence that he was directly or indirectly involved with the actions engaged in by the assailants (Trial Video Judge's Chambers November 14, 2008, 11:54:43 - 12:01:22). The trial record is replete with testimony from the assailants that Mr. Edwards had no knowledge of any sort that these individuals were attending the fair. But, more to the point, there was no testimony from any of the assailants that they were there at the specific instruction of Mr. Edwards for the purpose of recruiting. In fact, the testimony from all four assailants was the opposite, they were not at the fair for recruiting purposes. Joshua Cowles testified that they were going to the fair to have fun and that they were not

recruiting (Cowles testimony November 13, 2008 TR 10:34:44 – 10:40:19). Matthew Roberts testified that he knew for a fact that Edwards did not know they were going and that he did not need approval from Edwards for recruitment and that he can do his own thing (Roberts testimony November 13, 2008, Trial Video 11:42:53 – 11:55:36). Andrew Watkins testified that he did not go there to recruit but just went to have fun (Watkins testimony November 13, 2008, Trial Video 1:37:53 - 1:38:12). Jarred Hensley testified that they were not at the fair for recruiting and that they were there to have fun and watch the tractor pull (Hensley testimony November 13, 2008, Trial Video 2:11:26 – 2:11:44).

Mr. Edwards had no knowledge that these individuals went to the fair. The perfectly clear testimony from the witnesses was simply that they were there to have fun, and that they were not there for recruiting. Lastly, no one testified in any way, shape or form that Mr. Edwards encouraged, solicited, directed, supervised or instructed anyone to attend the fair for recruiting and to assault anyone or more specifically assault Mr. Gruuver while at the fair. Without evidence to establish any link between what occurred at the fair and Mr. Edwards, the trial court, by law, should have granted the directed verdict.

The trial court had no evidence to consider in a light most favorable to the non-moving party. The testimony of the four assailants who actually perpetrated the assault did not testify that Mr. Edwards instructed or told anyone to go to the Meade County Fair, and, in fact, everyone testified that Mr. Edwards had no knowledge that they were even going there. The actions of the assailants cannot be traced back up to Ronald Edwards simply

because he is the leader of an organization. The four persons who were there testified that they were not there for recruitment purposes, but rather to have a good time. Their mere presence at the Meade County Fair cannot be attributed as recruiting for the IKA when in fact they all testified that they were not at the fair to recruit for the IKA. No testimony was tendered by any of the assailants that they were acting on the specific instructions of Ronald Edwards to 1. attend the fair, 2. to recruit, 3. to assault a person or more specifically to assault Mr. Jordan Gruuver.

The trial court's denial was clearly erroneous as the Plaintiff had not established by any evidence that Mr. Edwards should or could be held liable for Jordan Gruuver's injuries much less being hit with a \$1,000,000.00 punitive damages award. The directed verdict should have been granted as to Mr. Edwards.

CONCLUSION

Mr. Edwards did not receive a fair and just trial because of the testimony of Kale Kelley which was so prejudicial and inflammatory that no reasonable jury could ever be expected to "forget" the content and nature of Mr. Kelley's testimony. Despite the content of Kelley's inflammatory and prejudicial testimony there is the procedural aspect which obligated and necessitated that the Plaintiff provide notice of intent to introduce this KRE 404 testimony of an alleged prior bad act.

Mr. Edwards also was denied a fair trial by the cumulative affect of the jury hearing the inadmissible, irrelevant and highly prejudicial criminal records of the witnesses called by the Plaintiff. The witnesses who were queried about their criminal past further compounded and exacerbated the unjustness of the trial against Mr. Edwards. The testimony of the witnesses was not admissible under any of the exceptions recognized by the rules governing evidence and its admissibility. The affect of these criminal records tended to create the mistaken aura that Mr. Edwards is or was somehow in violation of the law because he associated with these persons.

Because of the serious and egregious deprivation of Mr. Edwards' right to receive a fair trial the Judgment entered against the Appellant must be vacated. Furthermore, in light of the absence of evidence sufficient to even have a second trial, the Appellant requests that this Court reverse the trial Court's denial of a directed verdict and grant the Appellant's motion for a directed verdict.