

SUPREME COURT OF KENTUCKY

Darryl Parker v. Commonwealth of Kentucky

482 S.W.3d 394 (Ky. 2016) · No. 2014-SC-000228-MR · Decided February 18, 2016

SUMMARY

The Kentucky Supreme Court affirmed Darryl Parker’s convictions and twenty-five-year sentence for two robberies, tampering with physical evidence, and possession of a handgun by a convicted felon. The court held that the trial court did not abuse its discretion by denying Parker’s belated motion for a continuance to investigate DNA evidence. The court also addressed Parker’s claims concerning cross-examination and penalty-phase evidence and denied the requested relief.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Hughes
JURISDICTION	Kentucky
DECIDED	February 18, 2016
DOCKET	2014-SC-000228-MR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Parker appealed as a matter of right from a Jefferson Circuit Court judgment convicting him of four crimes, including two counts of first-degree robbery, tampering with physical evidence, and being a convicted felon in possession of a handgun. The Kentucky Supreme Court reviewed the denial of a continuance, an unpreserved prosecutorial-questioning claim, and an unpreserved sentencing-evidence claim.
STANDARD OF REVIEW	Denial of a continuance is reviewed for abuse of discretion, with reversal requiring identifiable prejudice or manifest injustice. Unpreserved claims were reviewed for palpable error under RCr 10.26 and KRE 103(e).
PRECEDENTIAL VALUE	Binding Kentucky Supreme Court precedent
PARTIES	Darryl Parker v. Commonwealth of Kentucky

TOPICS

criminal procedure

sentencing

evidence

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preservation of error

PRACTICE AREAS

Criminal law

Criminal procedure

Evidence

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QUESTIONS PRESENTED

1. Whether the trial court abused its discretion or violated due process by denying Parker's eve-of-trial motion for a continuance to allow further expert review of the Commonwealth's DNA evidence.
2. Whether the prosecutor's question asking Parker whether an accomplice was mistaken in identifying him as a participant constituted a Moss violation and palpable error requiring reversal.
3. Whether the admission or possible jury exposure to unredacted certified records containing details of prior offenses constituted palpable error requiring a new penalty phase.

HOLDINGS

1. The trial court did not abuse its discretion by denying Parker's belated motion for a continuance because the motion resulted largely from Parker's lack of diligence, was not based on late disclosure by the Commonwealth, and was unsupported by specifically articulable exculpatory potential or identifiable prejudice.
2. Even assuming that asking Parker whether the accomplice was mistaken violated the rule announced in *Moss v. Commonwealth*, the unpreserved questioning did not constitute palpable error because it merely verbalized Parker's own defense theory and did not prejudice him or render the trial manifestly unjust.
3. Parker was not entitled to palpable-error relief or a new penalty phase even assuming that unredacted certified conviction records containing impermissible prior-offense details were provided to the jury, because he failed to show a reasonable possibility that the information affected the twenty-five-year sentence.

KEY QUOTATIONS

"There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process." (at 402)

"the mere verbalization of the defense theory by the prosecutor, although improper, did not rise to the level of palpable error." (at 409)

FACTUAL BACKGROUND

Parker was convicted of participating in the robbery of a Chase Bank and the robbery of a Louisville motel, as well as tampering with evidence and possessing a handgun as a convicted felon. The Commonwealth presented testimony from alleged accomplices, surveillance evidence, stolen cash and property, a handgun, and DNA evidence linking Parker to items associated with the robberies. Parker denied involvement and claimed that the accomplices falsely implicated him. During the penalty phase, the Commonwealth introduced testimony about

five prior felony convictions and sought to introduce certified conviction records that may have contained impermissible details about prior charges and victims.

PROCEDURAL HISTORY

Parker was tried in Jefferson Circuit Court after an earlier trial ended in a mistrial when a juror failed to return after an overnight recess. The circuit court denied Parker's later motion for a continuance, the jury convicted him, and the court imposed concurrent prison terms totaling twenty-five years after enhancing the sentence based on his status as a second-degree persistent felony offender. The Kentucky Supreme Court affirmed the judgment in its entirety.

DISPOSITION

affirmed

CASES CITED

- McDaniel v. Brown, 558 U.S. 120 (2010)
- Ungar v. Sarafite, 376 U.S. 575, 589 (1964)
- Morris v. Slappy, 461 U.S. 1, 11-12 (1983)
- Taylor v. Commonwealth, 545 S.W.2d 76, 77 (Ky. 1976)
- Snodgrass v. Commonwealth, 814 S.W.2d 579, 581 (Ky. 1991)
- Lawson v. Commonwealth, 53 S.W.3d 534 (Ky. 2001)
- Morgan v. Commonwealth, 421 S.W.3d 388 (Ky. 2014)
- Bartley v. Commonwealth, 400 S.W.3d 714, 733-734 (Ky. 2013)
- Hudson v. Commonwealth, 202 S.W.3d 17 (Ky. 2006)
- Gray v. Commonwealth, 203 S.W.3d 679 (Ky. 2006)
- Eldred v. Commonwealth, 906 S.W.2d 694 (Ky. 1994)
- Bush v. Commonwealth, 839 S.W.2d 550 (Ky. 1992)
- Anderson v. Commonwealth, 63 S.W.3d 135 (Ky. 2001)
- Grimes v. Commonwealth, 2006 WL 1045459 (Ky. Apr. 2006)
- Rowe v. Commonwealth, 2007 WL 1532334 (Ky. 2007)
- Williams v. Commonwealth, 644 S.W.2d 335 (Ky. 1982)
- Moss v. Commonwealth, 949 S.W.2d 579, 583 (Ky. 1997)
- St. Clair v. Commonwealth, 451 S.W.3d 597, 638 (Ky. 2014)
- United States v. Gaind, 31 F.3d 73 (2d Cir. 1994)
- Luna v. Commonwealth, 460 S.W.3d 851 (Ky. 2015)
- Newman v. Commonwealth, 366 S.W.3d 435, 442 (Ky. 2012)
- Burns v. Level, 957 S.W.2d 218, 222 (Ky. 1997)
- Martin v. Commonwealth, 409 S.W.3d 340, 348-349 (Ky. 2013)

- Chavies v. Commonwealth, 354 S.W.3d 103 (Ky. 2011)
- Webb v. Commonwealth, 387 S.W.3d 319, 329-330 (Ky. 2012)
- Mullikan v. Commonwealth, 341 S.W.3d 99 (Ky. 2011)
- Robinson v. Commonwealth, 926 S.W.2d 853, 855 (Ky. 1996)

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