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Commonwealth of Kentucky

Court of Appeals

NO. 2023-CA-1126-MR

RONDELL JONES — APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 19-CR-01347-002

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: EASTON, L. JONES, AND TAYLOR, JUDGES.

JONES, L., JUDGE: Following a jury trial, Rondell Jones (Appellant) was found guilty of several offenses: (1) Complicity to Trafficking in a Controlled Substance in the First Degree, Two or More Grams of Methamphetamine; (2) Complicity to Trafficking in a Controlled Substance in the First Degree, Fentanyl; (3) Complicity to Trafficking in a Controlled Substance in the First Degree, Less than Four Grams of Cocaine; (4) Complicity to Tampering with Physical Evidence; (5) Theft of Identity; and (6) Persistent Felony Offender (PFO) in the First Degree. For those

offenses, the jury recommended a combined total sentence of 14 years in the penitentiary. Following a final sentencing hearing, the trial court entered judgment in accordance with the jury's recommendation. From that judgment, Appellant filed a timely appeal.

On September 29, 2025, this Court held this appeal in abeyance pending disposition of *Cornett v. Commonwealth*, 739 S.W.3d 488 (Ky. 2026). *Cornett* has been decided and is now final, allowing this Court to fully consider Appellant's arguments. Having done so, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

On the night of July 28, 2019, Officer Ryan Jones pulled over a vehicle missing a license-plate light in Covington, Kentucky. The driver was Kristina Blades, and her passenger was Appellant.[1] Officer Jones saw Appellant lean over to Blades, which to him was indicative of Appellant giving something to Blades.

Approaching the vehicle after it had been stopped, Officer Jones asked both occupants for identification. Blades gave Officer Jones her driver's license, but Appellant claimed he did not have his license with him. Instead, Appellant claimed his name was Deion Shade, with no middle name and gave a

[1] Because Officer Jones and Appellant share the same last name, for the sake of clarity, we will refer to Appellant exclusively by that title throughout this Opinion.

birthdate of November 14, 1979. Appellant also claimed that his identification was "out of Ohio."[2] Officer Jones warned Appellant that giving a false name could lead to his arrest. Blades told Officer Jones she and Appellant were picking up a female friend but could not give him the friend's name.

Officer Jones returned to his patrol vehicle and asked for a K9 officer to come to the scene. While waiting for the K9 officer to arrive, Officer Jones ran record checks on Appellant and Blades. Officer Jones initially was unable to find a person based on the identifiers Appellant provided. Eventually dispatch confirmed there was a Deon Lamour Shade with the same birthdate given by Appellant. When Officer Jones confronted Appellant with the discrepancy on the spelling of his first name, Appellant told Officer Jones that his name often gets misspelled.

When the K9 officer, Officer Mike Lunardi, arrived, Appellant and Blades were removed from the car and seated on the curb. Officer Lunardi noticed Blades had a "weird gait," and called for a female officer to search Blades. Nothing was found on Blades at that time. A small amount of THC wax or oil was located in a Taco Bell bag in the vehicle. Officer Jones prepared citations for Blades (for failure to have the license plate illuminated) and "Deon Shade" (for possession of marijuana).

[2] Video Record (VR): 9:39:40-41, July 26, 2024.

Officer Jones issued Blades her citation and allowed her to return to her car. After Blades got up from the curb, Officer Jones noticed a large, packaged ball that appeared to contain various substances where she had been sitting. The ball contained various individually packaged bags of drugs, including methamphetamine, cocaine, and fentanyl. Officer Jones confirmed from a review of his body worn camera (body cam) that the ball had not been on the curb before Blades sat down.

After finding the ball, Officer Jones sat Blades in his patrol car, to confront her about the drugs. Officer Jones suspected Appellant had given the ball of drugs to Blades at the time of the traffic stop. Officer Jones questioned Blades in a whisper because Appellant was nearby, and he did not want Appellant to overhear. Blades initially denied knowledge of the drugs but eventually admitted Appellant gave her the ball to hide after their vehicle was stopped.

Blades also allowed Officer Jones to search her cell phone which contained Appellant's phone number and several drug-related messages between Appellant and Blades. Through the phone number, Appellant was identified as Rondell Jones and a warrant for his arrest was discovered. Appellant refused to confirm he was Rondell Jones; however, he was arrested under his true name for trafficking in a controlled substance, theft of identity, and possession of marijuana. Police also seized cell phones belonging to Blades and Appellant.

On October 3, 2019, Appellant and Blades were indicted as co-defendants on three counts of Trafficking in a Controlled Substance in the First Degree (methamphetamine, heroin, and cocaine) under complicity theories as well as one count of Tampering with Physical Evidence under a complicity theory. Trial Record (TR.) at 16-17. On January 30, 2020, a superseding indictment added one count of Theft of Identity and one count of First Degree PFO to Appellant's charges and one count of Second Degree PFO for Blades.

On March 6, 2020, the Commonwealth (Appellee) gave notice that it intended to introduce evidence of other acts committed by Blades and Jones under KRE[3] 404(b). TR. at 47-48. Specifically, Appellee gave notice it intended to introduce text messages from the phones belonging to Appellant and Blades to show intent to traffic in controlled substances. TR. at 47-48. Following a hearing, the trial court entered an order on December 10, 2020, allowing Appellee to introduce the text messages between Appellant and Blades to show evidence of their intent to traffic controlled substances, subject to "Blades identif[ying] the texts and the meaning of the transactions referred to in the texts[.]" TR. at 77.[4]

[3] Kentucky Rules of Evidence.

[4] Several hearings regarding the Commonwealth's KRE 404(b) Notice took place over the course of 2020. By the time of the hearing on October 23, 2020, it appears an offer on a plea of guilty had been extended to Blades. Appellant failed to appear at that hearing.

Though it is unclear from the written record, apparently a bench warrant was issued for Appellant for failure to appear on a related indictment for Bail Jumping issued on October 10, 2020. *See* VR 10/12/2020 at 5:17:22 – 5:17:22. In any event, Appellant was arrested again on January 26, 2023. TR. at 85-86. By that point, Blades had pleaded guilty in her case. The plea agreement reduced the three trafficking charges to three charges of facilitation to trafficking (misdemeanors) with one count Complicity to Tampering with Physical Evidence. The PFO charge was dismissed. In exchange, Blades received a recommended sentence of five years in the penitentiary, probated for five years. Furthermore, the plea agreement provided that Blades "shall testify truthfully at any court proceedings against the co-Defendant, Rondell Jones."[5]

Appellant's case went to trial on July 25, 2023.[6] Blades testified that she met Appellant a few months prior to the traffic stop while she was employed at an adult establishment known as the Playpen. Blades testified that her relationship

[5] The plea agreement was entered at trial as Commonwealth's Exhibit 2.

[6] Prior to trial, Appellee filed a motion to amend the indictment to change the date of the offenses and to enhance the trafficking counts to second offenses. While no written order was entered granting that motion, Appellant stated he had no objection at a June 12, 2023 hearing on that issue.

On that same date, Appellant asked the trial court to revisit its KRE 404(b) order of December 10, 2020, regarding text messages extracted from the cell phones of Appellant and Blades. In particular, the trial court was asked to review text messages between Appellant and an unknown person shortly before the traffic stop. The trial court "overruled" any objection by Appellant, though never entered any subsequent order to that effect.

with Appellant was initially just as a customer at the Playpen but soon she began getting drugs from him. Blades testified that Appellant would occasionally bring drugs to the Playpen and, she would perform sexual favors, introduce him to new customers, or provide transportation in exchange for drugs.

Blades was shown selected text messages between her and Appellant which occurred in the days leading up to the traffic stop. Blades did not know Appellant's true name prior to the traffic stop and, his contact information was saved in her phone under the name "Dread." The text messages were in slang. Blades interpreted those text messages for the jury. Those text messages contained requests for drugs from Blades for herself and others as well as Appellant requesting transportation in exchange for drugs.[7]

Regarding the night of the traffic stop, Blades testified she had picked up Appellant and they were going to try to meet up with her friend in Newport, Kentucky. They were circling the block around 8th Street and Madison in Covington, Kentucky when Officer Jones stopped the car, and Blades testified that Appellant gave her the ball of drugs and told her to hide it. Blades testified that she put the drugs in her pants.

Susan Vanlandingham, a forensic scientist with the Kentucky State Police Laboratory, testified about testing of the smaller knotted bags or "baggies"

[7] The text messages are described more in detail in Part III.C, *infra*.

that were contained within the larger ball of drugs. Those findings were summarized in Commonwealth's Exhibit 4.[8]

Special Agent Jeff McKinley of the Drug Enforcement Administration testified as an expert witness in narcotics investigations. He examined police reports, the lab report regarding the seized drugs,[9] and text messages that had been introduced at trial. From the lab report, Agent McKinley testified that, based on his training and experience, the seized drugs were indicative of trafficking rather than personal use because (1) the combined quantity of drugs contained approximately 25 grams of fentanyl which would far exceed expected personal use; (2) drugs with opposite effects, i.e. stimulants and depressants, were packaged together, and (3) four sets of drugs were collected in one package, thus allowing the possessor to distribute different drugs to different users. Agent McKinley also testified that based on his training and experience, he was familiar with the slang or coded language for narcotics and drug sales, though such terms were an "evolving

[8] As noted in Commonwealth's Exhibit 4, four baggies were tested. Item 2.1 was "[g]rey solid material weighing approximately 14.96 gram(s)" and "[f]ound to contain fentanyl . . . and gabapentin[.]" Item 2.2. was "[g]rey solid matter weighing approximately 10.501 gram(s)" and "[f]ound to contain tramadol, . . . fentanyl, . . . and gabapentin[.]" Item 3 was a "[w]hite crystalline material weighing approximately 3.999 gram(s)" and "[f]ound to contain methamphetamine[.]" Item 4 was "[m]ulticolored powder/solid material weighing approximately 0.489 gram(s) . . . in two plastic bags" and "[f]ound to contain cocaine . . . and methamphetamine."

[9] Agent McKinley testified prior to Susan Vanlandingham. Exhibit 4 was published to the jury during his testimony on condition that it be later admitted.

knowledge base," and dealers and customers could have their own coded language between themselves. Agent McKinley then testified about the meaning of certain slang terms in the text messages between Appellant and Blades and Appellant and an unknown person on the night of the traffic stop. Agent McKinley's testimony regarding the terms in the text messages will be further developed in this opinion.

Appellant's defense at trial was that he had nothing to do with the drugs and Blades lied to implicate him at the suggestion of Officer Jones. He did not testify, nor did he offer any witnesses on his behalf, relying on cross-examination of the Commonwealth's witnesses and Officer Jones's body cam. The jury rejected his argument and found Appellant guilty of three counts of complicity to traffic, and one count each of Complicity Tampering with Physical Evidence and Theft of Identity. The jury also found each of the trafficking charges were second offenses and found Appellant was a PFO in the First Degree. The jury recommended a fourteen-year combined sentence in the penitentiary. On August 22, 2023, the trial court sentenced Appellant in accordance with the jury's recommendation and entered a Judgment and Sentence on Verdict of the Jury to that effect on September 12, 2023. TR. at 223-26.

Appellant makes five arguments on appeal: (1) the trial court should have granted his motion for directed verdict on Theft of Identity; (2) the trial court gave erroneous jury instructions on each of the trafficking charges; (3) the trial

court erred in admitting evidence of other drug activity in violation of KRE 404(b); (4) Agent McKinley's testimony interpreting slang in Appellant's text messages was improper; and (5) the trial court improperly limited Appellant's closing argument.

II. STANDARD OF REVIEW

In reviewing a trial court's denial of a directed verdict, we examine "if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt[.]" *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991). "[T]he standard of review is . . . whether, viewing the evidence in the light most favorable to the Commonwealth, any rational juror could have found all the elements of the crime." *Quisenberry v. Commonwealth*, 336 S.W.3d 19, 35 (Ky. 2011).

Regarding whether the jury was properly instructed, "[o]ur standard of review on this issue is *de novo*." *Purdue v. Commonwealth*, 411 S.W.3d 786, 795 (Ky. App. 2013).

Regarding preserved objections to evidentiary rulings, our review is for abuse of discretion. *Anderson v. Commonwealth*, 231 S.W.3d 117, 119 (Ky. 2007). Likewise, a trial court's decisions on the parameters of closing arguments are reviewed for abuse of discretion. *Burdette v. Commonwealth*, 664 S.W.3d 605, 631 (Ky. 2023) (citations omitted). In reviewing for abuse of discretion, we examine if "the trial judge's decision was arbitrary, unreasonable, unfair, or

unsupported by sound legal principals." *Anderson*, 231 S.W.3d at 119 (internal quotation marks and citations omitted).

Unpreserved allegations of error regarding improper admission of evidence are reviewed for palpable error. RCr[10] 10.26; KRE 103(e); *Webb v. Commonwealth*, 387 S.W.3d 319, 329 (Ky. 2012). Under palpable error analysis, "the error must be so easily perceptible and obvious that a 'manifest injustice' would result if appropriate relief is not granted." *Gaines v. Commonwealth*, 283 S.W.3d 243, 245 (Ky. App. 2008) (citations omitted). "[W]hat a palpable error analysis boils down to is whether the reviewing court believes there is a substantial possibility that the result in the case would have been different without the error." *Brewer v. Commonwealth*, 206 S.W.3d 343, 349 (Ky. 2006) (internal quotation marks and citations omitted).

III. ANALYSIS

A. Directed Verdict as to Theft of Identity

Appellant first argues no reasonable juror could have found him guilty of Theft of Identity because he gave police the name of a fictitious person. We disagree.

Theft of Identity is defined under KRS[11] 514.160:

[10] Kentucky Rules of Criminal Procedure.

[11] Kentucky Revised Statutes.

> (1) A person is guilty of the theft of the identity of another when he or she knowingly possesses or uses any current or former identifying information of the other persons' family member or ancestor of the other person, such as that person or family member's or ancestor's name, address, telephone number, electronic mail address, Social Security number, driver's license number, birth date, personal identification number or code, and any other information which could be used to identify the person, including unique biometric data, with the intent to represent that he or she is the other person for the purposes of:
>
> . . .
>
> (d) Avoiding detection; . . . .

Under KRS 501.020(2), "knowingly" is defined as "[a] person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of that nature or that the circumstance exists." When a statute requires a "knowingly" mental state, "nothing short of actual knowledge will suffice to sustain a conviction." *Love v. Commonwealth*, 55 S.W.3d 816, 825 (Ky. 2001). However, "though actual knowledge is required, proof of actual knowledge can be by circumstantial evidence." *Id.* In other words, under KRS 514.160, Appellee must prove Appellant knew he was using the "identifying information" of Deon Lamour Shade to avoid detection, but Appellee may do so with circumstantial evidence.

Appellant acknowledges he gave police the correct birthdate of Deon Lamour Shade but argues "[w]hile the date of birth [Appellant] gave and that of

Deon Lamour Shade were the same, the date of birth was no consequence since the police could not match the name to a person with that alone." Appellant's Brief at 9. Moreover, in his Reply Brief, Appellant argues for a categorical rule to that effect; arguing, "[w]hen a defendant gives [an] officer an identifier that matches another person but a name that does not, a reasonable juror should not believe the defendant intends to steal the identity of another person." Appellant's Reply Brief at 1.

Such a categorical rule must be rejected outright because it does not comport with the plain language of the statute. While a person's name is an acceptable identifier under KRS 514.160(1), it is not a *required* identifier. The listed identifiers (which are not the exclusive identifiers as signified by the statute's use of "such as") are joined by the conjunction "or." Furthermore, "when operative terms are connected by the conjunction 'or' the ordinary use of 'or' is almost always disjunctive, that is, the words it connects are to be given separate meanings." *Biddle v. Public Serv. Comm'n of Kentucky*, 643 S.W. 3d 83, 92 (Ky. App. 2021) (internal quotation marks and citations omitted). Thus, simple use of another's social security number, an email address, or even a birth date *alone* is sufficient to find a defendant guilty of Theft of Identity, assuming the jury believes the defendant knowingly used that identifier with the intent to represent he is that other person for a purpose prohibited under the statute.

Nor do we believe a juror should be required to believe that a defendant is using the name of a fictitious person simply because the defendant commits some minor error in the spelling of that name or claims there is no middle name. To so conclude may lead defendants seeking to avoid conviction to simply make some minor change to the name he or she is using, thus defeating the purpose of the statute.

There was sufficient circumstantial evidence for the jury to find that Appellant knowingly used Deon Lamour Shade's identity to avoid detection by the police. A "[c]onviction can be premised on circumstantial evidence of such nature that, based on the whole case, it would not be clearly unreasonable for a jury to find guilt beyond a reasonable doubt." *Graves v. Commonwealth*, 17 S.W.3d 858, 862 (Ky. 2000) (citing *Howard v. Commonwealth*, 787 S.W.2d 264 (Ky. App. 1989)). Appellant provided the actual birthday of Deon Lamour Shade, claimed that that his identification was "out of Ohio" (the real Shade's driver's license was in fact issued by Ohio) and when confronted by an alternate spelling of the first name, claimed the spelling "Deion" was a mistake in Ohio court records and that he was indeed the Deon Shade officers had identified. Such circumstantial evidence is more than sufficient to sustain Appellant's conviction for Theft of Identity by using Deon Lamour Shade's identity to avoid detection.

B. Jury Instructions

Appellant next argues the trial court provided erroneous instructions to the jury regarding Complicity to Trafficking in a Controlled Substance in the First Degree, specifically because those instructions did not specify that Appellant and Blades knew the specific substances they were dealing.

The jury found Appellant guilty of Complicity to First Degree Trafficking in a Controlled Substance under Instructions No. 6, 9, and 12. Instruction No. 6 provided:

> If you do not find the defendant guilty of First-Degree Trafficking in a Controlled Substance under Instruction No. 5, you will find the Defendant, Rondell Jones guilty of Complicity to First-Degree Trafficking in a Controlled Substance, two or more grams of methamphetamine, under this Instruction and under Count I of the Indictment if, and only if, you believe from the evidence beyond a reasonable doubt all of the following:
>
> A. That in Kenton County on or about July 28, 2019, and before the finding of the indictment herein, Kristina Blades had in her possession a quantity of two grams of methamphetamine;
>
> AND,
>
> B. That both defendant and Kristia Blades knew the substance possessed by her was a controlled substance;
>
> AND,
>
> C. That Kristina Blades had the methamphetamine in her possession with the intent to sell or distribute it to another person;

AND,

D. That defendant aided Kristina Blades in the planning or commission of the offense of First-Degree Trafficking in a Controlled Substance;

AND,

E. That defendant did so with the intention of promoting or facilitating the commission of the offense of First-Degree Trafficking in a Controlled Substance.

TR. at 172. Instructions 9 and 12 were nearly identical, only changing the drug possessed to fentanyl and cocaine, respectively. TR. at 172-178. Essentially, Appellee pursued a "possession with intent" theory of trafficking which will be discussed more in detail below.

Appellant objected to those instructions, as well as similar instructions on First-Degree Trafficking in a Controlled Substance,[12] arguing that Appellant

[12] Instruction No. 5 provided as follows:

You will find the Defendant, Rondell Jones, guilty of First-Degree Trafficking in a Controlled Substance, two or more grams of methamphetamine, under this Instruction and under Count I of the Indictment if, and only if, you believe from the evidence and beyond a reasonable doubt all of the following:

A. That in Kenton County on or about July 28, 2019, and before the finding of the indictment herein, he had in his possession a quantity of two grams or more of methamphetamine;

AND,

B. That he knew the substance possessed by him was a controlled substance;

AND,

could only be convicted under a "possession with intent" theory if he (and Blades under the complicity instructions) knew not only that he possessed a controlled substance, but that he knowingly possessed a *specific* controlled substance. In other words, under Appellant's reading of the trafficking statute, Instruction No. 6(B) was erroneous because it should require that he and Blades knew the substance possessed was in fact methamphetamine, not merely that the substance was a controlled substance. The trial court disagreed, stating that the jury only needed to find Appellant and Blades knowingly possessed a controlled substance.

KRS 218A.1412(1) provides:

> (1) A person is guilty of trafficking in a controlled substance in the first degree when he or she knowingly and unlawfully traffics in:
>
> (a) Four (4) grams or more of cocaine;
>
> (b) Two (2) grams or more of methamphetamine;
>
> (c) Ten (10) or more dosage units of a controlled substance that is classified in Schedules I or II and is a narcotic drug, or a controlled substance analogue;
>
> (d) Any quantity of heroin, fentanyl, carfentanil, or fentanyl derivatives; lysergic acid diethylamide; phencyclidine; gamma hydroxybutyric acid

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C. That he had the methamphetamine in his possession with the intent to sell or distribute it to another person.

TR. at 171. Instructions No. 8 and 11 were likewise identical, only changing the drug methamphetamine to fentanyl and cocaine respectively. TR. at 172-177.

> (GHB), including its salts, isomers, salts of isomers, and analogues; or flunitrazepam, including its salts, isomers, and salts of isomers; or
>
> (e) Any quantity of a controlled substance specified in paragraph (a), (b), or (c) of this subsection in an amount less than the amounts specified in those paragraphs.

KRS 218A.010(56) defines "traffic" as "to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance[.]"

We held this case in abeyance pending ruling in *Cornett* as the Kentucky Supreme Court was considering a similar issue: whether the statutes that criminalize knowing possession of a controlled substance require the defendant know the exact substance possessed. Even though *Cornett* dealt with possession rather than trafficking, the issue being decided would be dispositive in the present case as to instructions regarding trafficking under a "possession with intent" theory. As *Cornett* has been decided and is final, we apply its reasoning to the present case.

In *Cornett*, the defendant was arrested for driving under the influence. 739 S.W.3d at 490. Following his arrest, officers searched the vehicle and found various drugs and drug paraphernalia, including a cigarette pack with a strip that the officers believed was Suboxone. *Id.* at 491. Further testing found that the strip was not suboxone, but LSD. *Id.* As the Kentucky Supreme Court noted, "[t]his

distinction was legally significant, as possession of Suboxone is a Class A misdemeanor, while possession of LSD is a Class D felony." *Id.* (citations and footnotes omitted). At trial, Cornett testified he believed the strip was, in fact, Suboxone. *Id.* Nevertheless, the jury convicted Cornett of first-degree possession of a controlled substance for the LSD. *Id.*

Before the Court of Appeals, "Cornett argued that the circuit court erred by denying his motion for directed verdict for the charge of possessing LSD." *Id.* (citing *Cornett v. Commonwealth*, No. 2023-CA-0680-MR, 2024 WL 4469176 (Ky. App. Oct. 11, 2024)). Cornett's argument on appeal was that "the first-degree possession of a controlled substance statute, KRS 218A.1415, required the Commonwealth to demonstrate that he 'knowingly and unlawfully' possessed LSD specifically, and that it could not satisfy that burden by merely proving that he knowingly and unlawfully possessed a controlled substance." 739 S.W.3d at 491-92 (citation omitted).

As the Kentucky Supreme Court noted, the Court of Appeals examined the language of KRS 218A.1415 – KRS.218A.1417, the Uniform Controlled Substances Act, and case law from other jurisdictions that have addressed the issue, and concluded "'[a]lthough the Commonwealth must still prove the defendant was in possession of a specific controlled substance, it is not

required to prove the defendant had knowledge of the specific nature, character or chemical makeup of that controlled substance." *Id.* at 492 (citations omitted).

The Kentucky Supreme Court affirmed the Court of Appeals holding:

> With regard to [the statutes that criminalize possession of a controlled substance], we conclude that the conduct described by the statutes at issue is the knowing *possession* of a controlled substance, and that the knowledge requirement does not apply to the *identity* of that controlled substance. While the Commonwealth must prove that a given defendant knew he was in possession of a controlled substance, it need not prove that he knew its exact identity. The knowledge requirement is meant to shield an individual who is truly unaware that a controlled substance is in his possession. For example, a law-abiding parent whose recalcitrant minor or adult child places an unlawfully obtained controlled substance in the parent's home or vehicle without the parent's knowledge, or a postal worker who possesses a package for delivery without knowledge that it contains a controlled substance. It is not meant to serve as a defense to defendants who are in knowing possession of a controlled substance, but are ignorant, mistaken, or willing to perjure themselves regarding its precise identity.

Id. at 495.

We find the Kentucky Supreme Court's logic applies equally to the trafficking statute under a "possession with intent theory." Reading KRS 218A.1412(1) and KRS 218A.010(56) together, the conduct at issue in the trafficking statute (at least in a "possession with intent" theory) is the knowing possession of a controlled substance with the intent to manufacture, distribute, dispense or sell that controlled substance. As in *Cornett*, we conclude that

"knowing possession" does not require knowledge of the specific composition of that substance. Similar to the reasoning in *Cornett*, we believe that in a "possession with intent" case, the knowledge requirement is drafted to shield someone who truly does not know he possesses a controlled substance, and not to protect one who is looking to traffic a controlled substance while mistaken about its identity; or one who is willing to lie (either to customers, to law enforcement, or in court) regarding the precise identity of the substance.

We believe this reasoning also applies in a "complicity to traffic" case. One who knows he is helping another traffic a controlled substance should not escape criminal liability because he was mistaken as to the identity of the substance or prepared to lie about the identity of that substance.

Applying the foregoing to the present case, while Appellee had to prove Appellant (and Blades) knew the substances possessed for each count were controlled substances, Appellee was not required to prove that either knew the exact content of the individual baggies for those counts. Thus, the jury was properly instructed.

C. Text Messages Regarding Drug Activity

Prior to trial, Appellee informed Appellant it intended to introduce text messages extracted from phones belonging to Appellant and Blades dated

from July 16, 2019, up to July 29, 2019,[13] to show Appellant's intent to traffic in controlled substances. At trial, Appellee limited that time frame even further and only introduced certain text messages between Appellant and Blades from July 23, 2019, and July 28, 2019,[14] and texts between Appellant and an unknown person on July 28, 2019.[15] These text messages contained numerous slang references requiring testimony from Blades and Agent McKinley to explain.

The text messages in Appellee's Exhibit 1 start on July 23, 2019, with Blades requesting Appellant come to the Playpen. Appellant responded, "Gotta tell me how much im not coming over there to spend more then I make they want i just lost a whole morning and missed money."[16] According to Blades, this meant Appellant would only come to the Playpen if he could earn enough money from selling drugs.

Texts on July 24, 2019, show Appellant requesting Blades drive him around in exchange for drugs. Texts on July 25, 2019, show Appellant requested Blades "try something" for him. Blades testified that meant Appellant wanted her to "test" some drugs to determine their strength. The July 25, 2019 texts also show

[13] While the date range was not indicated in its KRE 404(b) Notice of March 6, 2020, during a July 22. 2020 hearing, Appellee indicated it was looking at that 13-day timeframe.

[14] Commonwealth's Exhibit 1 (Exhibit 1).

[15] Commonwealth's Exhibit 5 (Exhibit 5).

[16] Text messages quoted will be repeated verbatim without correction.

that Blades told Appellant she needed a new "point"[17] but Appellant responded that he did not have any.

Texts on July 26, 2019, show Appellant told Blades he was on "the money hunt," and Blades told Appellant to come to her to make money. Blades testified that text exchange meant she would act as an intermediary at the Playpen, so Appellant could sell drugs to other dancers. Texts on July 27, 2019, indicate Blades was requesting "some of that good[,]"[18] with Appellant offering to sell fentanyl for $75.00 per gram.

Texts on the afternoon of July 28, 2019, between Blades and Appellant show Blades was trying to obtain "beans and snow"[19] as well as "jezzy"[20] for herself and other dancers at the Playpen. Apparently, Appellant did not show up to the Playpen that afternoon, but later texted Blades to see if she and the other dancers still needed drugs. Blades declined but offered to drive Appellant around. Blades apparently picked Appellant up at approximately 10:53 p.m.

[17] According to Blades, a "point" is a syringe.

[18] According to Blades, "good" meant fentanyl.

[19] According to Blades, "beans and snow" meant pills and cocaine.

[20] According to Blades, "jezzy" was another term for cocaine.

The texts in Appellee's Exhibit 5 between Appellant and the unknown party range from 11:03 p.m. to 11:33 p.m. on July 28, 2019. Aside from one text stating "I need a 20 and I wanted to no if you would do me a test for my friend" at 11:05 p.m., the remainder of these texts regard meeting up first at the Taco Bell in Covington but later arranging to meet at the intersection of Pike Street and Madison Avenue. In those texts, Appellant stated he would see if his "driver" knew where that was.[21]

On appeal, Appellant claims these texts only showed generalized drug activity and thus were not admissible under KRE 404(b), having nothing to do with possessing drugs with intent to traffic the night of the arrest. We disagree.

KRE 404(b) provides as follows:

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

[21] Because of Blade's testimony that she was driving on Madison Avenue to find a third party Appellant was looking for, the texts in Exhibit 5 could arguably be direct evidence of the offense charged, *i.e.*, trafficking on the night of the stop rather than evidence of other acts and thus are not subject to KRE 404(b).

"The purpose of KRE 404(b) is to prohibit unfair inferences against a defendant by excluding evidence of other crimes, wrongs, or acts . . . to prove the character of a person in order to show action in conformity therewith." *Conrad v. Commonwealth*, 534 S.W.3d 779, 781 (Ky. 2017) (internal quotation marks and citations omitted). KRE 404(b) is "exclusionary in nature since '[i]t is a well-known fundamental rule that evidence that a defendant on trial had committed other offenses is never admissible unless it comes within certain exceptions, which are well-defined in the rule [KRE 404(b)] itself." *Clark v. Commonwealth*, 223 S.W.3d 90, 96 (Ky. 2007) (quoting *Commonwealth v. Buford*, 197 S.W.3d 66, 70 (Ky. 2006)).

Our Supreme Court has set forth a three-part analysis to determine if such "other crimes, wrongs or acts" are admissible:

> In determining whether to admit evidence of other crimes, wrongs, or acts under KRE 404(b), a trial court must consider the three factors of relevance, probativeness . . . as set forth in *Bell v. Commonwealth*, 875 S.W.2d 882 (Ky. 1994). That is, the trial court must consider [(1)] whether the proffered evidence is relevant for some purpose other than to prove the defendant's criminal disposition, [(2)] whether evidence of the other crime, wrong, or act is sufficiently probative of its commission by the defendant, and [(3)] whether the potential prejudice from admission of the proffered evidence substantially outweighs its probative value. *Bell*, 875 S.W.2d at 889-991.

Hernandez v. Commonwealth, 671 S.W.3d 217, 227 (Ky. 2023).

1. Relevance

Appellant argues the text messages do not satisfy the relevance prong of the *Bell* analysis as "[t]he charges were about whether [Appellant], alone or with Blades, trafficked on July 28 by possessing different drugs with the intent to traffic." Appellant's Brief at 28. Appellant further argues that "the texts between Blades and 'Dread'[22] represent vague discussions that Blades had to interpret. They never related specifically what happened when Blades was stopped and had the drugs on her." Appellant's Brief at 28-29.

Appellant is correct that the trafficking charges concerned whether Appellant (or Blades) possessed different drugs with the intent to traffic. However, Appellant's defense at trial is what made the text messages relevant. Appellant's main defense at trial, and on appeal, is aptly summed up in his brief: "[Appellant's] defense was he had nothing to do with the drugs – they were [Blades's]." Appellant's Brief at 30. In other words, Appellant claims he was merely present when the drugs were found.

As explained in *Walker v. Commonwealth*:

> [W]hen a defendant raises the issue of mental state, whether by a "mere presence" defense that specifically challenges the mental element of the government's case or by means of a general denial that forces the government to

[22] Again, Blades had saved Appellant's contact information in her phone under the name "Dread."

> prove every element of its case, prior bad act evidence is admissible because mental state is a material issue.

52 S.W.3d 533, 536 (Ky. 2001) (quoting *United States v. Thomas*, 58 F.3d 1318, 1322 (8th Cir. 1995)). A defendant's "'mere presence' defense that [attacks] both the possession and intent to sell elements of [a] trafficking charge certainly [places] the issue of intent to sell in dispute." *Walker*, 52 S.W.3d at 536.

In asserting that defense, Appellant attacked both the possession and intent elements of the trafficking charges and squarely placed those issues in dispute. Evidence of prior sales or transactions unquestionably satisfies the relevancy prong of *Bell*. *See Walker*, 52 S.W.3d at 536 (examining cases under FRE[23] 404(b) and finding "[t]he number of cases holding that prior sale evidence is relevant under the Federal Rules of Evidence to show intent to sell is legion").

Moreover, "[e]vidence of collateral criminal conduct is admissible for purposes of rebutting a material contention of the defendant." *Brown v. Commonwealth*, 983 S.W.2d 513, 516 (Ky. 1999) (internal quotation marks and citations omitted). Appellant did more than just claim he had neither knowledge nor possession of the drugs; he claimed Blades lied about his involvement to save herself, and that Officer Jones fed Blades the lines to implicate Appellant. Thus, the text messages are admissible as to Appellant's possession and control over the

[23] Federal Rule of Evidence.

drugs, his knowledge of the specific drugs found, his relationship with Blades, and why he and Blades were in downtown Covington at the time of the traffic stop. Thus, the first prong of *Bell* is satisfied.

2. Probativeness

The second prong of the *Bell* analysis examines whether "[u]nder all the circumstances, the jury could reasonably infer that the prior [crimes, wrongs or acts] occurred and that [the defendant] had committed such acts." *Parker v. Commonwealth*, 952 S.W.2d 209, 214 (Ky. 1997) (citations omitted). In the present case, Appellant does not dispute that the text messages attributed to him were sent or that he received the messages. Thus, the second prong of *Bell* was satisfied.

3. Prejudice

Under the final prong of the *Bell* analysis, "[a]lthough relevant and probative, the evidence can still be excluded if its probative value is substantially outweighed by its prejudicial effect." *Davis v. Commonwealth*, 147 S.W.3d 709, 725 (Ky. 2004); KRE 403. "The 'probative value' or 'probative worth' of evidence is a measure of how much the evidence tends to make the fact it is introduced to prove more or less probable." *Hall v. Commonwealth*, 468 S.W.3d 814, 823 (Ky. 2015). "Probativeness" is not measured in a vacuum but instead on

a sliding scale, depending on the other evidence available to prove that point. *Id*. at 824-25.

Regarding prejudice, we note that in this type of analysis, "[v]irtually all evidence is prejudicial or it isn't material. The prejudice must be 'unfair.'" *Ford Motor Co. v. Fulkerson*, 812 S.W.2d 119, 127 (Ky. 1991) (quoting *Dollar v. Long Mfg., N.C., Inc*., 561 F.2d 613, 618 (5th Cir. 1977)). "Evidence is unfairly prejudicial 'if it will induce the jury to decide the case on an improper basis, commonly an emotional one, rather than on the evidence presented.'" *Brown v. Commonwealth*, 313 S.W.3d 577, 619 (Ky. 2010) (quoting *United States v. Thomas*, 321 F.3d 627, 630 (7th Cir. 2003)).

The probative value of the prior acts in the text messages was high, especially in light of Appellant's "mere presence" defense. Given his claim that Blades, and Blades alone, knew of and possessed the drugs, the text messages show Appellant had access to the drugs he was charged with trafficking, that his relationship with Blades was more than just a passenger in her car, and that Appellant had set out that night with the intent to traffic drugs.

While there may be some risk of prejudice to Appellant, we cannot say that the risk of unfair prejudice *substantially* outweighed the probative value. The text messages were limited to only several days prior to the traffic stop. Most of the text messages were between Blades and Appellant. The texts with the

unknown person were limited to those from night of the traffic stop and concern Appellant's presence in downtown Covington near the time of the traffic stop. We also note that no limiting instruction was given to direct the jury to only consider the prior acts evidence in the text messages for a limited purpose, but none was requested.[24]

The prior acts evidence in the text messages was relevant to possession, intent, and knowledge; was probative of those elements; and any prejudice did not substantially outweigh the probative value of the text. Thus, the trial court did not err in allowing the introduction of those text messages.

D. Expert Testimony

Appellant next alleges that Agent McKinley's testimony regarding common illegal drug terminology was irrelevant and cumulative, essentially serving only to bolster Blade's testimony. Appellant argues that "[i]n effect, [Agent] McKinley was allowed to tell the jury in his expertise Blades was telling the truth that [Appellant] was a drug trafficker." Appellant's Brief at 37.

[24] Had an instruction been requested it should have been given, because "[e]ven where evidence of a prior crime has some relevance, the trial judge must use some discretion in deciding to what extent the prior bad act may be utilized without prejudice." *Brown*, 983 S.W.2d at 516. *But see Quisenberry*, 336 S.W.3d at 30 ("Trial counsel knows best whether a limiting instruction will be beneficial, given what the jury has heard or will hear in the course of the trial. . . . If a limiting instruction is advisable, trial counsel is now well-informed of the requirement to ask for one.").

Appellant acknowledges that this issue is unpreserved and asks for palpable error review.[25]

Agent McKinley testified that based on his training and experience, he was familiar with coded language and slang for narcotics and drug sales. Agent McKinley also noted dealers and customers could have their own unique coded language between themselves. With that knowledge, Agent McKinley provided his interpretation of the language in Exhibits 1 and 5.

In examining Exhibit 1, Agent McKinley noted that Blades's request for "good" on July 27, 2019, was coded language for some type of drug. Noting that gram is a unit of measurement common in the narcotics trade, Agent McKinley opined that Appellant's response "But I do got grams of that for 75" was an offer to sell drugs.

Furthermore, in examining Exhibit 1, Agent McKinley noted that Blades's request for "beans n snow" was also likely a request for drugs and that "snow" was common drug slang for cocaine, and "beans" was common drug slang for pills. Appellant's responding text saying he was "not trying to come wit much" meant that Appellant was trying to be careful, not wanting to travel with a large quantity of drugs.

[25] Appellant does not appear to challenge Agent McKinley's conclusions that the way the drugs were mixed and packaged was indicative of trafficking.

Agent McKinley testified that "testing" was common in the fentanyl and heroin trade, as traffickers would want someone to check the quality of drugs. Finally, as to Exhibit 5, Agent McKinley noted that the texts between Appellant and the unknown person indicated the two were trying to meet up to accomplish a narcotics transaction.

Appellant correctly notes that "under existing precedent, [Agent McKinley] could offer his opinion as to whether the drugs found [with] Blades were possessed with the intent to traffic." Appellant's Brief at 35. *See Sargent v. Commonwealth*, 813 S.W.2d 801, 802 (Ky. 1991) (police officers who are knowledgeable about narcotics trade allowed to offer expert opinion that based on amounts and packaging, narcotics were possessed for sale rather than for personal use). Experts in narcotics trafficking are further allowed to offer opinions regarding the meaning of drug slang. *Howard*, 787 S.W.2d at 265. Appellant acknowledges this but argues that Agent McKinley's testimony about the text messages in Exhibit 1 essentially "repeated what Blades had already said." Appellant's Brief at 37. Regarding Exhibit 5, Appellant argues that Agent McKinley "had no more specialized knowledge of the texts from July 28 between [Appellant] and an unidentified person than anyone else." Appellant's Brief at 37. Thus, Appellant contends that "[Agent] McKinley's testimony was a needless presentation of cumulative evidence and was unduly prejudicial." Appellant's

Brief at 36. Moreover, Appellant argues that repeating the language in the texts in Exhibit 1 was "bolstering," and that in testifying regarding those texts, "[Agent] McKinley was allowed to tell the jury in his expertise that Blades was telling the truth that [Appellant] was a drug trafficker." Appellant's Brief at 37.

Agent McKinley's testimony regarding the text messages between Appellant and Blades might be duplicative, however, as

> not all evidence that is duplicative is therefore cumulative, and evidence should not be excluded on this ground merely because it overlaps with other evidence. Multiple witnesses bring multiple viewpoints and testimony from multiple sources about the same event is likely to differ in ways that are helpful to the factfinder.

Doneghy v. Commonwealth, 410 S.W.3d 95, 109 (Ky. 2013) (internal quotation marks and citations omitted). Even if testimony is cumulative, under KRE 403 such testimony may only be excluded if it is needlessly cumulative.

On review, we conclude that Agent McKinley's testimony regarding the text messages was highly probative and not needlessly cumulative. Agent McKinley provided an interpretation of the texts based on his knowledge and experience as opposed to Blades, who was a party to those messages. Thus, we do not believe the testimony was cumulative. Further, as explained, *supra*, Appellant's "mere presence" defense placed his intent as to trafficking into question. An expert providing testimony as to common drug and trafficking slang would be of help to the jury in determining Appellant's mens rea thus making

Agent McKinley's expert opinions highly probative. Finally, we are reviewing only for palpable error and "some overlap, alone, does not render the evidence cumulative and certainly does not approach palpable error." *Id.* at 109.

We are further hard-pressed to accept Appellant's argument that Agent McKinley's testimony regarding the texts in Exhibit 1 was improper bolstering of Blade's credibility. "'Bolstering' occurs when a person speaks directly of the 'character for truthfulness' of a witness." *Koteras v. Commonwealth*, 589 S.W.3d 534, 548 (Ky. App. 2018) (quoting *Harp v. Commonwealth*, 266 S.W.3d 813, 824 (Ky. 2008)). Agent McKinley never commented on whether the texts in Exhibit 1 were truthful statements, nor did he offer his opinion on the truthfulness of Blades's testimony; he only offered his opinion as to the meaning of various slang terms based upon his experience with narcotics trafficking investigations. Moreover, Agent McKinley's opinions were rendered from an outsider's perspective; he never spoke to Blades, nor was he part of the traffic stop or any further investigation in this case.

Again, this argument is unpreserved, and we are reviewing only for palpable error. Assuming only for the sake of argument that Agent McKinley's opinions were indirect bolstering, "indirectly vouching for the credibility of another witness is simply not the stuff from which palpable errors are made." *Harp*, 266 S.W.3d at 824.

Finally, we reject outright Appellant's assertion that Agent McKinley's testimony regarding the texts in Exhibit 5 was bolstering. Blades was not a party to those text messages, nor did she testify regarding those text messages. Thus, any alleged error attributable to McKinley's opinions being cumulative to Blades's testimony or bolstering Blades's credibility are inapposite. This leaves only an argument that Agent McKinley "had no more specialized knowledge of the texts . . . than anyone else." Appellant's Brief at 37. On the contrary, those messages contained slang used in the drug trade not readily understood by the average juror. Expert testimony is permissible to help the jury understand that language. *See Howard*, 787 S.W.2d at 265. Thus, Agent McKinley's testimony was not error, let alone palpable error.

E. Limitations on Closing Arguments

Appellant's final argument is that the trial court prevented him from fully presenting his defense due to "restrictions placed on [Appellant] after [the trial court] sustained the [Appellee's' motions to limit counsel's closing argument about [Blades' plea agreement]." We agree the trial court improperly limited Appellant's argument regarding the consequences to Blades should she not comply with her plea agreement, but we believe that error was harmless.

During closing arguments, Appellant's counsel discussed Blades's plea agreement and the following exchange occurred:

(To the jury)

DC:[26]This is the offer that [Blades] signed. This is the contract she entered into with the Commonwealth. "The Defendant shall testify truthfully at any court proceeding against the co-defendant Rondell Jones." That is listed under the "Commonwealth's Recommendation on a Plea of Guilty," which in parenthesis is the plea agreement. That means that if she does not keep up her end of the bargain, they don't have to keep their . . .

CA:[27] Objection. Approach?

Court: Approach

(At bench conference)

CA: If they are going to say it's a contract, all it says is that she has to testify truthfully. [Counsel] can't say anything about "keep up her end of the bargain."

Court: That's what it says.

DC: Her end of the bargain would be her truthful testimony.

CA: Yeah, but she can't . . .

DC: That's what I'm arguing.

CA: You're changing, saying if she doesn't keep up her end of the bargain, she'll go to jail, but that's not in [the plea agreement]. All it says is that she has to testify truthfully. It doesn't say "or what."

[26] Defense Counsel.

[27] Commonwealth's Attorney.

Court: Sustained.

(To the jury)

DC: This says she has to testify truthfully. Which means if she came in here and she said something the Commonwealth thought was untruthful…

CA: Objection.

Court: Sustained.

DC: Judge, can we approach?

Court: You may.

(At bench conference)

DC: That's what he's saying. If she came in here and she said something that was untruthful, they could revoke her probation. That's how this works. I'm allowed to argue that.

CA: I've never seen someone's probation . . . .

Court: I . . . I don't . . .

DC: But you could rescind her offer. That's how this works. It wouldn't be in the offer.

Court: First of all, you're saying what he can or cannot do, or would choose or choose not to do. So that's a speculation. You can't make that.

DC: But it's an inference I'm allowed to draw based on what this exhibit says.

Court: I don't know you can draw that inference because they're not aware of it. So now, you're outside of

(inaudible) testified to before them. And you can't start putting things that aren't facts in evidence and start arguing the process that was not testified to before them. So, what were you going to say?

DC: So I . . . If that is your ruling, then I should be able to argue to them that if she did not testify truthfully that this agreement would be void. And I can say that.

Court: I think you can say that.

CA: You can say those words, yes.

(To the jury)

DC: Pursuant to this contract that she entered into . . . If she did not testify truthfully, this agreement with the Commonwealth would be void. Her agreement of probation.

VR: 7/26/2023 at 11:42:05 – 11:44:52

"Opening and closing statements are not evidence and wide latitude is allowed in both. Counsel may draw reasonable inferences from the evidence and propound their explanations of the evidence and why the evidence supports their particular theory of the case." *Wheeler v. Commonwealth*, 121 S.W.3d 173, 180-81 (Ky. 2003) (citations omitted). Such latitude is not boundless, and counsel "may not argue facts that are not in evidence or reasonably inferable from the evidence." *Garrett v. Commonwealth*, 48 S.W.3d 6, 16 (Ky. 2001) (citations omitted).

In arguing that there was no error, Appellee argues:

> Counsel's argument that Blades had to testify as the Commonwealth wanted was not based upon proof in evidence, nor was it part of the plea agreement. The agreement called for Blades to testify truthfully, and counsel was permitted to argue that fact. Further, there was no evidence that Blades's probation would be revoked or that the offer would be rescinded if she did not testify how the Commonwealth wanted. That was merely speculation, and counsel cannot invite the jury to speculate about some cause in evidence.

Appellee's Brief at 29.

However, Appellee is incorrect as Blades testified that her plea deal and continued freedom were at risk if she did not testify for the Commonwealth. Thus, there was evidence in the record to support Appellant's closing argument. At the end of Blades's cross-examination, the following exchange happened:

> DC: And part of your [plea] offer was that you had to testify against [Appellant]?
>
> Blades: Yes.
>
> DC: Okay . . . um . . . So that means if you don't, [the Commonwealth] would take away your probation and they would try to send you to prison, is that right?
>
> Blades: I . . . I guess, yes.

VR: 7/25/2023 at 1:55:47 – 1:56:00

Moreover, we agree with Appellant that it is fair to argue that there would be consequences to a cooperating witness who failed to fulfill her obligation to testify under a plea agreement. A defendant who reneges on her end of a plea

bargain forfeits the benefits of that bargain. *O'Neil v. Commonwealth*, 114 S.W.3d 860, 864 (Ky. 2003). A party is entitled to use evidence of a cooperating witness's guilty plea to impeach the witness's credibility. *See Meece v. Commonwealth*, 348 S.W.3d 627, 689-90 (Ky. 2011). Logically, the impeachment value is derived from the benefit received under the plea agreement *and* the consequences should the cooperating witness not follow through on her end. We find it difficult to believe that a prosecutor would not seek some sort of punitive action if Blades failed to fulfill her obligation to testify under the plea agreement. Thus, even absent Blades's testimony set out *supra*, the trial court erred in forbidding Appellant's argument that Appellee could or would take some punitive action against Blades if she did not follow through with her agreement to testify.

However, we believe the error was harmless. An error is harmless "if the reviewing court can say with fair assurance that the judgment was not substantially swayed by the error." *Winstead v. Commonwealth*, 283 S.W.3d 678, 689 (Ky. 2009) (citing *Kotteakos v. United States*, 328 U.S. 750, 765 (1946)). As *Winstead* further explains:

> [t]he inquiry is not simply "whether there was enough [evidence] to support the result, apart from the phase affected by the error. It is rather, even so, whether the error itself had substantial influence. If so, or if one is left in grave doubt, the conviction cannot stand.

Id. at 689 (citation omitted).

Appellant was allowed to argue that if Blades did not testify as required by her plea agreement, the plea agreement would have been void. While such argument may not have had the exact impact as an argument that the Commonwealth could or would take active measures against Blades if she failed to fulfill her obligations under the plea agreement, Appellant was still able to undermine her credibility by arguing that there would be consequences to Blades for failure to do so and thus an incentive to testify in a light favorable to Appellee. Appellant was not deprived of any opportunity to present his defense or argue that Blades's testimony was less credible because of the plea agreement.

IV. CONCLUSION

Appellant's motion for directed verdict as to Theft of Identity was properly denied as sufficient evidence was presented such that a reasonable juror could believe he was trying to use Deon Lamour Shade's identity to escape detection despite the slight differences in the name Appellant gave to the police. Following the reasoning in *Cornett v. Commonwealth*, *supra*, the trial court correctly instructed the jury that Appellant only needed to knowingly possess a controlled substance rather than knowingly possess a specific substance. The text messages in Exhibit 1 and Exhibit 5 was properly introduced for non-character purposes under KRE 404(b). Agent McKinley's testimony regarding the meaning of slang terms in Exhibit 1 and Exhibit 5 was not error, let alone palpable error.

Finally, while the trial court erred in limiting Appellant's argument regarding Blades's plea agreement, such error was harmless.

Therefore, based on the foregoing, we affirm Appellant's convictions and affirm the Judgment and Sentence on Verdict of the Jury entered by the Kenton Circuit Court on September 12, 2023.

We view any remaining contentions of error as moot, unpersuasive, unpreserved, or without merit.

ALL CONCUR.

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