

Commonwealth of Kentucky
Court of Appeals

NO. 2025-CA-0235-MR

EDDIE JONES

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE PATRICIA M. SUMME, JUDGE
ACTION NO. 23-CR-00453-001

COMMONWEALTH OF KENTUCKY

APPELLEE

AND

NO. 2025-CA-0868-MR

EDDIE JONES

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE MARY K. MOLLOY, JUDGE
ACTION NO. 23-CR-00452

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: ACREE, EASTON, AND KAREM, JUDGES.

EASTON, JUDGE: In these consolidated appeals, Eddie Jones (Jones) appeals from two convictions resulting from separate jury trials in the Kenton Circuit Court. In the first appeal, Jones claims the circuit court erred by allowing the jury to hear evidence of his prior arrest, which event would later serve as the basis for the other conviction after a second jury trial. Jones also claims he became incompetent during the pendency of the first trial. In the second appeal, Jones argues the circuit court abused its discretion by sentencing him to the maximum penalty of incarceration after the jury was unable to unanimously decide on a sentence. After a thorough review of the record and the applicable law, we affirm the circuit court in both cases.

FACTUAL AND PROCEDURAL BACKGROUND

In the early morning hours of February 1, 2023, Jones was pulled over after an officer with the Covington Police Department witnessed him run a red light. Officers Ryan Jones (Officer Jones) and Jacob Gier (Officer Gier) were on duty in an unmarked police vehicle, and they were patrolling the area due to reports of cars being stolen in that area. Upon the initiation of the traffic stop, the officers smelled marijuana from Jones's vehicle. The officers also saw a small

amount of marijuana in the vehicle, as well as a single bullet in the vehicle's center console. The officers had Jones exit the vehicle, and they initiated a search.

The officers located a plastic bag of eleven pills in Jones's pocket, along with a small amount of marijuana and a large amount of cash. The pills appeared to be oxycodone. Inside the glovebox, the officers located a loaded magazine for a pistol. The pistol was found in the trunk. The officers also found a small black digital scale with white residue on it in the center console. There were two cell phones in the car, one of which kept ringing throughout the officers' encounter with Jones.

After being read his *Miranda*¹ rights, Jones spoke with the officers. He claimed the money (\$5,626) belonged to his "brother," Jamel Kelly (Kelly).² Jones told the officers that Kelly owed someone a debt, and Jones was delivering the money for Kelly to Cincinnati. Upon further questioning, Jones was unable to tell the officers where he was delivering the money or to whom the money was owed. Jones then explained he was delivering the pills to his grandmother. He further told the officers the phone that kept ringing belonged to Kelly, while his own phone was off because he had failed to pay the bill. When asked about the

¹ Pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966).

² Upon further questioning, it was revealed that Kelly and Jones have no biological relation but are close friends.

gun in the trunk, Jones stated “that’s not supposed to be in there.” He told the officers he regularly allows other people to drive his car. The officers confirmed the car was properly registered to Jones in Ohio. The officers arrested Jones and charged him with trafficking in a controlled substance. He posted bond and was released later that day.

Less than three weeks later, on February 19, 2023, Jones was again pulled over by a Covington police officer. On this occasion, Officer Douglas Ullrich (Officer Ullrich) was unable to see the license plate on Jones’s vehicle because the light was out. Officer Ullrich was also unable to see inside Jones’s vehicle because the tint on the windows was very dark. Because he was unable to see a license plate, Officer Ullrich suspected the vehicle may have been stolen, so he initiated a traffic stop.

Once Officer Ullrich was behind Jones’s vehicle, he did see the vehicle’s license plate, yet he continued with the traffic stop to inform the driver the light was out, as well as to discuss the excessive tint on the windows. Officer Ullrich noticed that Jones took longer than normal to stop, and he did not pull over to the side of the road; he merely stopped in the road.

Officer Ullrich immediately noticed a strong odor of marijuana when Jones rolled down the window of the vehicle. Officer Ullrich also immediately noticed that the passenger in the vehicle, soon identified as Kelly, had a broken

digital scale in his lap that had white powder on it. Because of this, Officer Ullrich had both Jones and Kelly get out of the vehicle. Both were detained in handcuffs, because Kelly was struggling to follow directions and Jones was not keeping his hands where he was told to; Officer Ullrich believed one or both of them might attempt to flee.

Officer Ullrich then performed an initial search of both Jones and Kelly. Jones had approximately \$395 in cash. Kelly had approximately \$700 in cash. In the vehicle, Officer Ullrich found a stack of Keno lottery tickets. He reported this because these tickets are made with thicker cardstock, are easily obtainable, and they are often associated with processing drugs for sale and for use of the drugs. Officer Ullrich also located an empty gun holster from the driver's side door.

A more thorough search of Jones and Kelly revealed that both men had bags of suspected drugs hidden on them, including items hidden between buttocks. Kelly had a substantial amount of suspected cocaine. Jones had a folded lottery ticket with suspected crack cocaine on it, as well as a large bag that contained several smaller bags of suspected cocaine and fentanyl. Based on this, Officer Ullrich charged both Kelly and Jones with trafficking in cocaine and fentanyl.

Jones was indicted for both cases on April 30, 2023. For the first arrest, Jones was indicted for one count of Trafficking in a Controlled Substance, First Degree – Fentanyl (Kenton Co. Action No. 23-CR-00452). For the second arrest, he was indicted for Count I: Complicity to Trafficking in a Controlled Substance, First Degree – Fentanyl, and Count II: Complicity to Trafficking in a Controlled Substance, First Degree – Four Grams or More of Cocaine (Kenton Co. Action No. 23-CR-00453-001). The cases were apparently assigned randomly to different divisions of the Kenton Circuit Court. Case 23-CR-00453-001 was heard in Division 4, while case 23-CR-00452 was heard in Division 3.

In May 2023, Jones filed *pro se* documents in both cases containing arguments suggesting “sovereign citizen” ideology. In these documents, he demanded dismissal of the charges and challenged the authority and jurisdiction of the circuit court. Jones made similar statements to the circuit court during what was scheduled to be his arraignment in Division 4. Due to Jones’s refusal to identify himself to the circuit court, the Division 4 judge had him taken into custody and continued his arraignment to the following day. Because both cases were proceeding in different divisions simultaneously, we will mostly outline the pre-trial process of Jones’s case in Division 4.

The Department of Public Advocacy (DPA) was appointed to Jones for his arraignment. But Jones hired private counsel prior to his next court

appearance. In July 2023, Jones's counsel asked the circuit court for Jones to be evaluated for competency and criminal responsibility, which the circuit court granted. In October 2023, Jones's attorney moved to withdraw. Jones then advised the circuit court he wished to represent himself. The circuit court advised it would set a *Faretta*³ hearing pending the outcome of the competency evaluation.

In November 2023, the circuit court held a *Faretta* hearing. The court determined Jones was not capable of representing himself and appointed DPA as hybrid counsel. The circuit court further advised that an initial competency report from August 2023 indicated Jones was not competent at that time to stand trial. The report requested that Jones receive treatment to bring him to competency.

In June 2024, a second competency report was filed. A competency hearing was held in July 2024. Dr. Susan Brittain-Seitz from the Kentucky Correctional Psychiatric Center (KCPC) testified. She was aware of the August 2023 report. She disagreed with the conclusions from that report. She concluded that Jones was capable of understanding the nature and consequences of the proceedings against him and could rationally participate in his defense. Dr. Brittain-Seitz believed Jones was using a "sovereign citizen" legal strategy for his case. She believed Jones had some narcissistic traits. Jones showed antisocial personality traits as well, but he did not have any diagnosable mental illness. Jones

³ Pursuant to *Faretta v. California*, 422 U.S. 806 (1975).

went to therapy and met with a social worker while at KCPC but was not given any psychiatric treatment with medication. After this hearing, both circuit court judges⁴ entered orders finding Jones competent to stand trial.

Jones again expressed that he wanted to represent himself, so the circuit court scheduled a second *Faretta* hearing. After that hearing, the circuit court determined it could not find that Jones knowingly, willingly, and voluntarily waived his right to counsel. The circuit court ruled that DPA would continue to represent Jones as his primary counsel.

Prior to the first trial, which would be in case 23-CR-00453-001, the Commonwealth filed a notice of its intent to introduce evidence of Jones's arrest in case 23-CR-00452. The Commonwealth argued that Jones's previous arrest showed evidence of intent, which is an exception under KRE⁵ 404(b). The circuit court determined that much of the evidence from Jones's first arrest would be admissible, although any reference to the gun (seized during the first arrest) would be excluded. The circuit court determined the facts of the arrests were substantially similar to warrant admission under KRE 404(b).

⁴ We note that the circuit judges considered judicial economy and proceeded jointly in conducting the competency hearing.

⁵ Kentucky Rules of Evidence.

The trial in case 23-CR-00453-001 began in November 2024. The Commonwealth called Officer Jones as its first witness. Prior to this testimony, the circuit court gave an admonition to the jury:

You may use this evidence only to help you decide whether the similarities between the other act and the one for which he is charged here show knowledge, intent, absence of mistake, or absence of accident. You may not use this evidence to infer or to determine that the actions of the defendant are in conformity with his character. Remember that the mere fact the defendant was involved in a similar act is not evidence that he committed such acts in this case.^[6]

Officer Jones then testified to the events that occurred on February 1, 2023, which led to Jones's first arrest. The jury was shown portions of Officer Jones's body cam footage from that arrest. This would include reference by Jones to his prior connection with Kelly. A forensic scientist from the Kentucky State Police (KSP) testified that the pills seized from Jones on February 1 contained both oxycodone and fentanyl.

Officer Ullrich then testified to the events of February 19, 2023, which led to Jones's second arrest. A KSP forensic chemist testified that one of the bags collected from Jones on February 19, which weighed 3.008 grams, contained fentanyl. A second bag from Jones, which was 1.640 grams, was not

⁶ Trial, November 13, 2024, Video Record (VR) at 1:14:00.

tested.⁷ Additionally, two bags from Kelly were tested; the first, which weighed 11.549 grams, contained cocaine. A second bag, weighing 6.297 grams, contained fentanyl. The third bag located on Kelly was not tested.

The Commonwealth then rested its case. The defense made the appropriate motion for directed verdict, which was denied. On the second day of trial, while jury instructions were being discussed, Jones asked the court “did you fill out the 3400 form?” He then stated he was filing a whistleblower form. Jones then attempted to speak directly with the prosecutor. After the circuit court advised Jones that the prosecutor is not allowed to speak with him because he is represented, Jones understood and complied. Defense counsel asked to approach the bench.

Defense counsel stated to the circuit court that Jones had been making some odd requests, and she indicated she was concerned about his competency. The circuit court stated it would refer back to the competency evaluation. The court believed Jones’s statements were consistent with his earlier behavior, which was known to the evaluator at the time of the evaluation, and the report deemed him competent to stand trial. The circuit court saw no reason to revisit competency.

⁷ Due to issues of limited facilities and people to conduct drug testing, police agencies are often limited in what they may submit for testing.

The defense did not present any evidence, and the case was given to the jury after closing arguments. After approximately two hours, the jury returned with guilty verdicts on both counts. After the sentencing phase, the jury recommended a sentence of six years for Count I and five years for Count II, to be run concurrently. Jones was sentenced accordingly in January 2025, without the benefit of a Pre-Sentence Investigation (PSI) report, because Jones would not cooperate with filling out the paperwork. Defense counsel stated Jones waived his right to a PSI.⁸ Jones filed his Notice of Appeal on this case on February 24, 2025.

Subsequently, a superseding indictment was issued for case 23-CR-00452, in which the indictment was amended to Trafficking in a Controlled Substance in the First Degree – Fentanyl, with a Firearm. The circuit court conducted the trial in this case in May 2025.

Officer Jones was the Commonwealth's first witness, who again testified to the events of February 1, 2023. He told the jury about "pressed pills," which is when different substances are put together in a machine to press them together to look like a legitimate prescription medication, like oxycodone. He stated it is common to find pills "on the street" with markings to make them look like prescriptions, and it is common to find fentanyl pressed to look like opiate

⁸ A PSI is generally mandatory. Even if Jones refused to cooperate, Probation and Parole is to provide a report. Jones does not raise the absence of a PSI as an issue in these appeals.

painkillers. The particular pills located on Jones appeared to be oxycodone.

Officer Jones also testified about the pistol found in the trunk, the magazine found in the glovebox, and the round found in the center console.

The same forensic scientist who testified in Jones's previous trial again testified that the pills found on Jones contained both oxycodone and fentanyl. An evidence technician from the Covington Police Department also testified as to her efforts to obtain any fingerprints from the gun, magazine, or rounds, but she was unable to do so.

After deliberations, the jury found Jones guilty of Possession of Controlled Substance in the First Degree – Fentanyl, rather than the charged offense of Trafficking. During the sentencing phase, the firearm enhancement was explained to the jury, and they were informed that before a penalty was recommended, they would need to determine if Jones was guilty of possession of a controlled substance with a firearm.

After deliberation, the jury returned a verdict of Not Guilty regarding the firearm enhancement. The jury also informed the court that they were unable to come to a unanimous decision as to a sentence. The circuit court discharged the jury, and the Commonwealth and defense asked the court to set a sentencing hearing and determine a sentence.

A sentencing hearing was held in June 2025. The defense again waived a PSI. After both the Commonwealth and the defense made arguments, and Jones was given an opportunity to speak (which he declined), the circuit court sentenced Jones to three years, the maximum sentence allowed. Jones then timely filed his Notice of Appeal for his second appeal.

ANALYSIS

No. 2025-CA-0235-MR

Jones first challenges his conviction in case 23-CR-00453-001. He argues the circuit court erred in allowing the jury to hear evidence of his prior arrest in case 23-CR-00452, and he also claims he became incompetent during the pendency of the trial. Jones alleges these errors entitle him to a new trial.

“We review a trial court’s decision to admit evidence under KRE 404(b) for abuse of discretion.” *Hernandez v. Commonwealth*, 671 S.W.3d 217, 227 (Ky. 2023). An abuse of discretion occurs when a trial court’s ruling is “arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

KRE 404(b) states:

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.

KRE 404(b) is meant to be “exclusionary in nature” and “[f]or that reason, any exceptions to the general rule that evidence of prior bad acts is inadmissible should be closely watched and strictly enforced because of the dangerous quality and prejudicial consequences of this kind of evidence.” *Clark v. Commonwealth*, 223 S.W.3d 90, 96 (Ky. 2007) (internal quotation marks omitted). But evidence of prior crimes or bad acts is admissible if offered for the reasons identified in KRE 404(b)(1). To determine whether prior bad acts evidence is admissible, a three-prong test was identified in *Bell v. Commonwealth*, 875 S.W.2d 882, 889-91 (Ky. 1994), in which the proposed evidence is evaluated for (1) relevance, (2) probativeness, and (3) prejudicial effect.

The first inquiry is relevance, that is, “is the other crimes evidence relevant for some purpose other than to prove the criminal disposition of the accused?” *Id.* at 889. As clearly stated in the rule, evidence of prior bad acts is admissible to show proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. In this instance, the

Commonwealth wanted to introduce evidence of Jones’s prior arrest for trafficking in fentanyl. The Commonwealth argued that his prior arrest showed intent. It was also relevant to show knowledge (his familiarity with Kelly and his activities) and absence of mistake. The circuit court determined the facts of the two cases were substantially similar enough to warrant the admission of Jones’s prior arrest.

Evidence of other crimes may be admissible to show a common scheme or plan. KRE 404(b)(1). As a prerequisite to the admissibility of prior bad acts evidence, the rule requires that the proponent of the evidence demonstrate a factual commonality between the prior bad act and the charged conduct “that is simultaneously similar and so peculiar or distinct that there is a reasonable probability that the two crimes were committed by the same individual.”

Jones v. Commonwealth, 567 S.W.3d 922, 927 (Ky. App. 2019) (citing *Clark*, 223 S.W.3d at 97). In the circumstances presented by these cases, we should not limit consideration of KRE 404(b) cases to those which address common scheme or plan or even “signature” crimes, often applied in the context of sexual offenses, which present particular concerns about danger of unfair prejudicial effect. There are other proper uses to be applied under the rule.

We examine the facts of the two arrests. The first arrest occurred on February 1, 2023. Jones’s second arrest occurred only 18 days later. In both cases, Jones was found to have substances containing fentanyl on his person, as well as a substantial amount of cash. He was in the same vehicle. A digital scale was found

in the vehicle on both occasions. And in both cases, his co-defendant, Jamel Kelly, was a factor. While Kelly was not present during Jones's first arrest, Jones informed officers that he was delivering cash to someone in Cincinnati to whom Kelly owed a debt. Kelly was with Jones in the car for the February 19 arrest, and Kelly also had illicit substances on him, including fentanyl.

At trial, Jones's defense counsel argued that it was not Jones who was trafficking, but Kelly. Thus, Jones's intent was front and center in this case. We find the Kentucky Supreme Court's analysis in *Walker v. Commonwealth* to be particularly relevant:

We believe this attack on the sufficiency of the evidence placed the issue of intent to sell into dispute. As revealed in closing argument, Walker's defense basically was that he was merely present at the scene and could not be convicted based on a theory of guilt by association. The question of whether a "mere presence" defense creates a material issue as to the defendant's mental state is addressed in *United States v. Thomas*, 58 F.3d 1318 (8th Cir. 1995). After noting that the issue was one of first impression within the circuit, the *Thomas* Court answered the question in the affirmative:

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

Because [the] "mere presence" defense raises the [] issues of intent and knowledge, admission of . . .

prior bad act evidence [is] not relevant solely to a propensity inference, and [is] therefore proper under Rule 404(b).

Walker v. Commonwealth, 52 S.W.3d 533, 536 (Ky. 2001).

Jones was convicted of complicity in trafficking – with Kelly. His intent was the main issue the Commonwealth needed to prove, and it was therefore extremely probative in this case. Furthermore, the circuit court gave an appropriate admonishment to the jury prior to them hearing the testimony of Officer Jones. We determine the danger of undue prejudice did not substantially outweigh probative value of the admitted evidence. The circuit court did not abuse its discretion in admitting evidence of Jones’s prior arrest.

Next, Jones argues he became incompetent during the pendency of the trial. “‘Incompetency to stand trial’ means, as a result of mental condition, lack of capacity to appreciate the nature and consequences of the proceedings against one or to participate rationally in one’s own defense[.]” KRS⁹ 504.060(5). “If upon arraignment, or during any stage of the proceedings, the court has reasonable grounds to believe the defendant is incompetent to stand trial, the court shall order the defendant to be examined and his or her mental condition reported, as provided in KRS 504.080.” KRS 504.100(1). “It is within the trial court’s discretion to determine whether there are ‘reasonable grounds’ to believe a defendant may be

⁹ Kentucky Revised Statutes.

incompetent to stand trial.” *Bishop v. Caudill*, 118 S.W.3d 159, 161 (Ky. 2003).

“However, once facts known to the trial court are sufficient to place a defendant’s competency at issue, an evaluation and evidentiary hearing are mandatory.” *Gray v. Commonwealth*, 233 S.W.3d 715, 718 (Ky. 2007).

In this instance, Jones previously had a competency evaluation performed several months prior to trial. The KCPC evaluator determined that Jones did not suffer from any diagnosable mental illness that would render him unable to understand the proceedings against him or rationally participate in his defense. The evaluator testified that Jones was able to discuss the *pro se* motions he had filed, the plea bargain he had been offered, the maximum sentence he faced, and how long it would be until he would be eligible for parole. The evaluator believed Jones was using “sovereign citizen” arguments as a legal strategy.

The comments Jones made to the circuit court on the second day of trial were similar to the arguments he had made previously, prior to being evaluated and treated at KCPC. They do not indicate any new or different type of irrational thinking. It is also noteworthy that while Jones underwent therapy while at KCPC, he was not administered any psychiatric medication: There is no concern that Jones may have been rendered incompetent by failure to take necessary medication. The circuit court determined Jones’s statements were

consistent with his previous behavior, and the court had previously found him to be competent.

It is noteworthy that when the circuit court directed Jones about his communication with the prosecutor, Jones understood and complied, indicating his ability to understand the proceedings and to behave accordingly. It should also be noted that Jones did not try this same tactic with the other judge in the second trial. The circuit court did not abuse its discretion in rejecting Jones's request for an additional competency evaluation. No error occurred.

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In Jones's second appeal, he alleges the circuit court abused its discretion by sentencing him to the maximum penalty. Sentencing decisions are reviewed for abuse of discretion. *Howard v. Commonwealth*, 496 S.W.3d 471, 475 (Ky. 2016). "Kentucky statutory law affords trial courts immense discretion in setting criminal penalties." *Id.*

Jones was convicted of First-Degree Possession of a Controlled Substance, in violation of KRS 218A.1415, which is a class D felony subject to incarceration for one to three years. Because Jones was convicted of a separate offense while on bond for that case, his sentences must run consecutively. He argues that because he was already sentenced to serve six years for his other case,

the circuit court's sentence of the maximum in this case is unduly harsh and an abuse of discretion. We disagree.

Jones offers little argument for how the circuit court abused its discretion. He references that the statute gives a presumption of probation for a first and second offense. It is not clear if Jones is actually arguing about a denial of probation. Because Jones was already serving a six-year sentence for his other conviction, probation of the second sentence presents issues due to his unavailability. There are also concerns about whether the law would even permit beginning a period of probation after service of the sentence presently being served. *See Commonwealth v. Moreland*, 681 S.W.3d 102 (Ky. 2023). Basically, Jones just argues the minimum sentence was the appropriate sentence instead of the maximum of three years.

“Kentucky law does require trial courts to consider certain factors. For example, the trial court must consider the contents of the written Pre-Sentencing [sic] Investigation (PSI) Report, and it must also consider the effect of a sentence on a defendant's potential future criminal behavior.” *Howard*, 496 S.W.3d at 475. No abuse of discretion occurs when the circuit court “observed the proper sentencing procedures.” *Id.* at 476. It is undisputed that Jones refused to participate in the completion of a PSI. Jones should not be heard complaining about the circuit court failing to take certain factors into consideration when he

refused to cooperate with the completion of the PSI. Jones did not call any witnesses on his behalf during the sentencing hearing, and he declined to make a statement.

It is also undisputed that the circuit court sentenced Jones within the allowed penalty range under the statute. The circuit court gave its reasoning for the sentence; Jones's two arrests for trafficking occurred only weeks apart. And his second offense was committed while on bond for his first arrest. The circuit court is required to consider a potential sentence's effect on reducing future criminal behavior. While the court acknowledged the jury was unable to reach a decision as to sentencing, it believed a three-year sentence was appropriate under the circumstances. We decline to disturb the circuit court's ruling, as it was not an abuse of its wide discretion in these circumstances.

CONCLUSION

The circuit court did not abuse its discretion in its admission of evidence, its refusal to order a second competency evaluation, or in its sentencing decision. We AFFIRM the judgments of the Kenton Circuit Court as to both appeals.

ALL CONCUR.

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