

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002552-MR

ROBERT M. PINKSTON

APPELLANT

ON REMAND FROM SUPREME COURT OF KENTUCKY
APPEAL NO. 2003-SC-0426

v. APPEAL FROM MARSHALL CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 00-CR-00169

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING IN PART AND REVERSING IN PART

** ** * * *

BEFORE: DYCHE, JOHNSON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE. This was originally an appeal from a judgment convicting appellant of first-degree fleeing or evading police, second offense driving under the influence ("DUI"), and first-degree wanton endangerment. Appellant argued that convicting him of all three offenses constituted double jeopardy under Section 13 (the "Double Jeopardy Clause") of the Kentucky Constitution and KRS 505.020. Our previous opinion in this

case, rendered on May 2, 2003, reversed the first-degree wanton endangerment and second offense DUI convictions on double jeopardy grounds. On February 11, 2004, the Kentucky Supreme Court entered an order granting discretionary review. In that order, our decision was vacated and the case was remanded to us "for further consideration in light of Bell v. Commonwealth, Ky., [122] S.W.3d [490] (2003)(final January 22, 2004.)" From our reading of Bell, we see that the first-degree wanton endangerment conviction should not have been reversed and thus order that said conviction be reinstated. However, those portions of our previous decision affirming the first-degree evading or fleeing a police officer conviction and reversing the second offense DUI conviction shall stand.

Accordingly, the judgment of the Marshall Circuit Court is affirmed as to the first-degree wanton endangerment and first-degree evading or fleeing a police officer convictions and reversed as to the second offense DUI conviction.

DYCHE, JUDGE, CONCURS.

JOHNSON, JUDGE, CONCURS IN RESULT ONLY.

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