

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-000422-MR

LARRY LEE RAMSEY

APPELLANT

v. APPEAL FROM PULASKI CIRCUIT COURT  
HONORABLE DANIEL J. VENTERS, JUDGE  
ACTION NO. 01-CR-00111

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION

### AFFIRMING

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BEFORE: EMBERTON, CHIEF JUDGE; KNOPF AND SCHRODER, JUDGES.

EMBERTON, CHIEF JUDGE. Larry Lee Ramsey was convicted of fleeing or evading police in the first degree and driving on a suspended license. He alleges the trial court erred when it: (1) refused him a fair opportunity to cross-examine the Commonwealth's witness; (2) refused his request for a mistrial after the prosecution questioned him regarding his prior felony convictions; and, (3) permitted his prior convictions to be admitted in the sentencing phase. We affirm.

On the evening of May 10, 2001, Kentucky State Troopers David Cornett and Marcus Hoskins were sitting in their cruiser waiting to serve a warrant on a person other than Ramsey. Trooper Cornett had been in the courthouse earlier that day where he observed the judge suspend Ramsey's license. While waiting in the cruiser, Cornett observed Ramsey driving a vehicle and, believing him to be driving on a suspended license, activated his emergency lights and siren. Ramsey did not pull over but continued to drive until he reached a trailer he shared with his girlfriend, Tammy Sullivan, where he drove into a wooded area and then exited the vehicle. In the vehicle the police found an open case of beer with several cans missing. A foot chase ensued but the police were unable to apprehend Ramsey.

At about midnight the police were called to the Sullivan trailer. When the officers arrived, they observed Ramsey fleeing through the back yard into a wooded area and he again escaped detention.

Early the following morning, the troopers were again called to the trailer and, after briefly searching the woods, decided to await Ramsey's return. Shortly thereafter Ramsey appeared from the woods, was detained, and arrested.

Ramsey took the witness stand in his own defense and during cross-examination the following colloquy took place:

COMMONWEALTH'S ATTORNEY: "And if you are found guilty, there's a chance you'd go away for a little while, correct?"

RAMSEY: "Yeah."

COMMONWEALTH'S ATTORNEY: "So you have a motive to not want to go to jail, to be found guilty, correct?"

RAMSEY: "Yes."

COMMONWEALTH'S ATTORNEY: "And isn't it true that you're a convicted felon as you sit here today?"

Defense counsel objected to the leading nature of the question and argued that the manner in which the Commonwealth presented the questions suggested that Ramsey could not be believed because he was a convicted felon. The trial court refused to grant a mistrial but gave an admonition to the jury that Ramsey's reply could be considered only as to his credibility and for no other purpose.

Both the question asked by the Commonwealth and the admonition given by the trial court were proper. A criminal defendant who takes the stand in his own defense may be asked if he has been previously convicted of a felony, and if his response is yes, the trial court should admonish the jury that the admission may be considered only as to his credibility.

Although the series of questions were asked to impeach Ramsey's credibility, such line of questioning is permissible.<sup>1</sup>

Ramsey next contends that his right to cross-examination was curtailed because he was not permitted to question Trooper Cornett as to why there was no videotape of the chase and arrest and to question Trooper Hoskins as to why there was no fingerprint evidence. On avowal Trooper Cornett testified that it was his responsibility to put a tape into the cruiser's camera and Trooper Hoskins testified that no fingerprints were taken from inside Ramsey's truck. It is Ramsey's contention that such testimony is relevant as to whether he was the driver of the vehicle. We disagree.

Relevant evidence is that which has a tendency to make the existence of any fact that is of consequence to the action more or less probable than it would be without the evidence.<sup>2</sup> The lack of videotape or the taking of fingerprints does not tend to establish that Ramsey was, or was not, the driver. Neither piece of evidence is relevant to the issues involved, and the trial court did not abuse its discretion in excluding the testimony.<sup>3</sup>

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<sup>1</sup> Commonwealth v. Richardson, Ky., 674 S.W.2d 515 (1984).

<sup>2</sup> Kentucky Rules of Evidence (KRE) 402.

<sup>3</sup> Commonwealth v. English, Ky., 993 S.W.2d 941, 945 (1999).

Finally, during the penalty phase of the trial, the Commonwealth introduced into evidence Ramsey's prior convictions. In 1999, Ramsey was indicted for DUI, fourth offense. The Madison Circuit Court found that because there was no signed waiver of the right to trial in the record, Ramsey's prior DUI guilty plea convictions could not be used to enhance the DUI charge to DUI, fourth offense. Ramsey argues that the ruling of the Madison Circuit Court was binding on the Pulaski Circuit Court, and therefore, his prior DUI's were inadmissible.

Commonwealth v. Gadd<sup>4</sup> requires that a challenge to the constitutionality of a prior conviction that the Commonwealth intends to use at trial against the defendant be made prior to trial.<sup>5</sup> Ramsey did not make a pre-trial motion raising the validity of the prior convictions but waited until the sentencing phase to raise his objection. Although he had previously challenged the conviction in an earlier case in an entirely separate circuit jurisdiction, that challenge did not satisfy the procedural requirement of Gadd. Only after the filing of a pre-trial motion in the present case would the court have the ability to obtain the record from the prior proceedings and make a ruling. We hold that any objection to the introduction of the prior convictions was waived.

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<sup>4</sup> Ky., 665 S.W.2d 915 (1984).

<sup>5</sup> Id. at 918.

The judgment is affirmed.

ALL CONCUR.

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