

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-000428-MR

MARK PRICE

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT  
HONORABLE LEONARD L. KOPOWSKI, JUDGE  
ACTION NO. 01-CR-00095

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

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

EMBERTON, CHIEF JUDGE. Mark Price was convicted of theft by unlawful taking over \$300 and persistent felony offender, first degree and sentenced to seventeen years' imprisonment. He appeals, alleging that an insurance document was erroneously admitted under the business record exception to the hearsay rule and that there was insufficient evidence to support his conviction. We affirm.

On January 22, 2001, Michael Roberts was performing construction work outside the Mansion Hill Tavern in Newport, Kentucky. He owned a 1992 Chevrolet Silverado pickup truck which he had parked leaving the keys inside. After an employee of the tavern arrived, Roberts stepped inside to get warm. Price entered the bar, used the restroom, and exited. Shortly thereafter, the employee told Roberts that someone had entered his truck. After Roberts looked out the window and saw someone sitting in his truck, he walked outside and approached the passenger side of the truck. He saw Price sitting in the driver's seat. Price then backed up the truck and hit an older light blue Cadillac. He sped off and the Cadillac, driven by a woman, followed. Roberts notified police of the theft.

On January 23, 2001, Cincinnati Police Officer David Ivey received a tip regarding a stolen vehicle and went to 2585 Eastern Avenue, Apartment B, and knocked on the door. Loretta Fisher answered, and after obtaining consent, the officer went to the garage area where he found Roberts' truck.

Detective Flowers of the Newport Police Department and Roberts went to the Cincinnati address where the truck was found and observed a light blue Cadillac with a Kentucky license plate registered in Kenton County. Based on the registration information, Detective Flowers obtained a copy of Price's

driver's license photograph. Upon Roberts being able to pick Price from a photo lineup, Price was arrested.

At Price's trial the Commonwealth introduced, through Debbie Lynn, Deputy Clerk of the Kenton County Clerk's office, that a proof of insurance document is a document regularly kept and maintained by the clerk's office and is required to be presented when a person registers a vehicle in Kentucky. Price's proof of insurance for a 1988 Cadillac, license number 217-BEB, listed Price's address as 2585 Eastern Avenue, Cincinnati, Ohio, and the insurance company was Buyers Choice Insurance. She further testified that Price, the owner of the vehicle, supplied her office with this information.

Price objected to the introduction of the proof of insurance on the basis that Buyers Choice Insurance, not the Kenton County Clerk's office, prepared the document. Therefore, Price contends it is hearsay and does not fall within the business records exception. The business records exception to the hearsay rule provides:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness: Records of regularly conducted activity. A memorandum, report, record or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that

business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

Price's contention that the insurance document had to be prepared by the Kenton County Clerk's office to be admissible ignores the fact that the "record" was prepared by the clerk's office. The law is clear that each document contained in the record does not have to be prepared by the clerk's office. As stated in Air Land Forwarders, Inc. v. United States,<sup>1</sup> applying Federal Rule of Evidence 803(6), a rule identical to KRE 803(6), the court found:

. . . Rule 803(6) does not require that the document actually be prepared by the business entity proffering the document. Rather, the cases stress two factors, indicating reliability, that would allow an incorporated document to be admitted based upon the foundation testimony of a witness with first-hand knowledge of the record keeping procedures of the incorporating business, even though the business did not actually prepare the document. The first factor is that the incorporating business rely upon the accuracy of the document incorporated and the second is that there are other circumstances indicating the trustworthiness of the document.

Proof of insurance is required to register a vehicle and the county clerks in this Commonwealth rely upon its

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<sup>1</sup> 172 F.3d 1338, 1343 (Fed. Cir. 1999).

accuracy. Moreover, Price supplied the proof of insurance that included his address supporting the credibility of the information it contained. We find no error.

Finally, after a review of the evidence, we conclude that there was more than sufficient evidence to convict Price. Roberts was able to identify Price as the man who took his truck and the stolen truck was found at an address designated on the proof of insurance as Price's. Additionally, the light blue Cadillac seen by Roberts at the scene of the theft was found at the same address. The trial court properly denied Price's motion for a directed verdict.<sup>2</sup>

The judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Dennis Stutsman  
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BRIEF FOR APPELLEE:

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<sup>2</sup> Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991).