

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000628-MR

MICHAEL ALLEN ROLLINS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 01-CR-00707

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** **

BEFORE: BARBER, DYCHE AND TACKETT, JUDGES.

BARBER, JUDGE: Michael Allen Rollins appeals from his conviction in Fayette Circuit Court of operating a motor vehicle on a suspended license for driving under the influence, third offense, in violation of Kentucky Revised Statutes (KRS) 189A.090. Following his conviction, the trial court sentenced Rollins to one year imprisonment. Finding no error, we affirm.

On April 26, 2001, Kentucky State Police Trooper Norm Preston was driving on Paris Pike in Fayette County when he noticed a wrecked automobile parked on the side of the highway. Trooper Preston also observed another vehicle, a Honda, sitting

on the side of the road with Rollins sitting in the driver's seat. Believing this to be a recent accident, Trooper Preston stopped his cruiser to offer assistance. Rollins informed Trooper Preston that another man, Rollins's friend, wrecked the vehicle earlier that morning. Rollins further advised Trooper Preston that he drove to the scene to survey the damage to the vehicle. Upon observation of the scene, Trooper Preston saw several empty beer cans and an empty beer carton in the wrecked automobile. At this point, Trooper Preston decided to investigate this matter.

Trooper Preston asked Rollins where this friend was because the trooper wanted to know why the friend left the scene of this accident. Rollins informed Trooper Preston that his friend may have walked two miles to a BP service station to call the police. At this point, Trooper Preston and Rollins decided to go to the BP station to find Rollins's friend. Trooper Preston followed Rollins, who drove his Honda to the BP station.

Upon arriving at the BP station, Trooper Preston did not find anyone at the station. Rollins then advised Trooper Preston that his friend lived in a nearby duplex and could have walked to that location. The two men, operating their respective vehicles, proceeded to the duplex. Upon arriving at the duplex, Trooper Preston and Rollins did not find Rollins's friend. Trooper Preston requested Rollins to call his friend from Rollins's nearby residence. After failing to reach Rollins's friend by

telephone, Trooper Preston suggested that they return to the accident scene. Trooper Preston transported Rollins back to the scene of the accident and called the Lexington Police Department to further investigate this matter.

Upon returning to the location of the wrecked vehicle, Trooper Preston briefed Lexington Police Officer Joseph Sallee as to Rollins's claim. Officer Sallee ran a records check on Rollins and discovered that Rollins had outstanding warrants for his arrest. Officer Sallee also noticed that Rollins appeared to have red, bloodshot eyes, slurred speech, and was unsteady on his feet. These facts, coupled with Rollins failing several field sobriety tests, led Officer Sallee to arrest Rollins. Rollins was eventually indicted for operating a motor vehicle on a suspended license and for driving under the influence, third offense.

At trial, Trooper Preston and Officer Sallee testified concerning their investigation of these events. Officer Sallee, however, informed the trial court that he ran a records check and found that he [Rollins] had a couple of warrants.@ The Commonwealth's attorney immediately interrupted Officer Sallee after realizing that the trial court had declared this evidence to be inadmissible. After direct examination of Officer Sallee was completed, Rollins objected and moved for a mistrial. The trial court denied this motion. No admonition was requested, nor was one given by the trial court.

Rollins and his fiancée, Jacqueline Meza, both testified that Rollins's friend wrecked the car on a private farm earlier in the morning. Rollins and Meza both asserted, however, that Rollins never operated a motor vehicle that morning. Rather, Rollins testified that he either walked or relied on others for transportation throughout these events. The jury found Rollins guilty. This appeal followed.

On appeal, Rollins argues that the trial court erred in denying his motion for a mistrial because the introduction of outstanding warrants for his arrests made a fair trial impossible. We reject this argument.

A mistrial should be granted only where there exists a manifest necessity for such action, or an urgent or real necessity for this extreme measure. Gosser v. Commonwealth, Ky., 31 S.W.3d 897 (2000). The trial court retains broad discretion in determining when to declare a mistrial. Commonwealth v. Scott, Ky., 12 S.W.3d 682 (2000). Even with broad discretion to grant a motion for a mistrial, the trial court should do so only under urgent circumstances and for very plain and obvious reasons. Id. The standard for reviewing the denial of a mistrial is abuse of discretion. Bray v. Commonwealth, Ky., 68 S.W.3d 375, 383 (2002).

Our review of the record reveals that the improper testimony complained of by Rollins did not mandate a mistrial. Officer Sallee's inadvertent comment concerning the discovery of

outstanding warrants for Rollins's arrest was not argued to the jury, nor was this evidence used to impeach Rollins during his testimony. Accordingly, this inadvertent testimony did not deprive Rollins of a fair trial. See Bills v. Commonwealth, Ky., 851 S.W.2d 466, 472 (1993). Further, Rollins did not request that the jury be admonished to disregard Officer Sallee's statement. As noted by the Kentucky Supreme Court in Graves v. Commonwealth, Ky., 17 S.W.3d 858, 865 (2000), evidentiary errors of this sort are easily cured by an admonition to the jury to disregard the testimony. In light of these facts, coupled with Trooper Preston's testimony that he observed Rollins driving a vehicle on April 26, 2001, we cannot say that Officer Sallee's inadvertent comment so prejudiced Rollins that it resulted in manifest injustice. Thus, we hold that the trial court did not err in denying Rollins's motion for a mistrial.

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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