

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-001370-MR

CORNELIUS CHARLES BROWN

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE GARY D. PAYNE, JUDGE  
INDICTMENT NO. 02-CR-00058

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION

### AFFIRMING

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BEFORE: EMBERTON, CHIEF JUDGE; DYCHE AND TACKETT, JUDGES.

DYCHE, JUDGE. Cornelius Charles Brown appeals from a judgment of the Fayette Circuit Court, entered May 22, 2002, which convicted him of possession of a handgun by a convicted felon, carrying a concealed deadly weapon, and being a second-degree persistent felony offender. We affirm.

On December 7, 2001, in response to numerous complaints from citizens about drug trafficking, detectives from the Lexington Police Department approached three to four

individuals in the 400 block of Kenton Street. Additional officers from the Lexington Police Department also arrived to intercept anyone attempting to leave the area.

After arriving at the scene, Detective Edward Hart observed Brown reach into his pocket, turn around, and begin to walk away. As Detective Hart continued to monitor Brown, Detective Hart saw Brown drop an object into a nearby grassy area. Believing that Brown dropped a handgun, Detective Hart told Detective Byron Smoot to stop Brown. Detective Hart walked to the grassy area and found a black 9-millimeter handgun, while Detective Smoot detained Brown. At this point, Brown became very belligerent and denied any knowledge of the handgun. Brown admitted, however, that he was a convicted felon.

On January 22, 2002, the Fayette County Grand Jury indicted Brown for possession of a handgun by a convicted felon, carrying a concealed deadly weapon, and being a persistent felony offender in the second degree. A jury convicted Brown and recommended a total sentence of seventeen years' imprisonment during his April 11, 2002, trial. The trial court, on May 22, 2002, sentenced Brown according to the jury's recommendations. This appeal followed.

Brown's sole assertion of error is based upon an exchange between the prosecutor and a potential juror during the Commonwealth's voir dire. During voir dire, the prosecutor

identified the witnesses for the Commonwealth and asked whether any of the prospective jurors knew any of those witnesses. At this point, Juror #463 stated that he knew Detective Hart. The following then occurred between the prosecutor and the prospective juror:<sup>1</sup>

Commonwealth: How do you know Eddie?

Juror #463: From church.

Commonwealth: Do you think that the fact that you know [Detective] Eddie Hart will influence your decision today?

Juror #463: He's a friend.

Commonwealth: He's a friend? Okay. Would you give his testimony any more or less weight than you would maybe someone else who would testify?

Juror #463: I mean, I believe him. You know, he's a friend of mine. I don't think I'm going to lie.<sup>2</sup>

After this exchange, Brown moved for a mistrial.

Brown argued that Juror #463 had contaminated the entire jury pool by informing them that Detective Hart was a member of his church and, as such, was trustworthy. The trial court denied

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<sup>1</sup> In their briefs, Brown and the Commonwealth heavily dispute the exact language Juror #463 used in responding to the Commonwealth's voir dire questions. We have carefully reviewed the videotape of the trial several times to decipher the exact language used by the prosecutor and Juror #463.

<sup>2</sup> Brown claims that Juror #463 answered either, "He wouldn't lie. . . I would believe him," or "I'm not gonna lie, I would believe him." From our careful review of the videotape, we find no support for either of Brown's interpretations concerning this juror's statements.

Brown's motion for a mistrial, but struck Juror #463 for cause because of his relationship with Detective Hart.

On appeal, Brown again contends that the trial court erred by refusing to grant a mistrial when a potential juror stated that he knew Detective Hart from church. According to Brown, Juror #463 improperly bolstered Detective Hart's testimony because this juror's statements painted Detective Hart as a credible witness. We disagree.

A mistrial should be granted only where there exists a manifest necessity for such action, or an urgent or real necessity for such an 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. A trial court's decision to deny a motion for a mistrial, however, will not be disturbed absent an abuse of discretion. Gould v. Charlton Co., Inc., Ky., 929 S.W.2d 734 (1996).

Our review of the record reveals that Juror #463's statements, as complained of by Brown, did not mandate a mistrial. Juror #463, in front of the entire venire, stated that he knew Detective Hart from church, considered him a friend

and would believe him based upon that friendship. At no point did this potential juror inform the entire venire that it should believe Detective Hart because of his religious convictions, or that Detective Hart was, as Brown claims, "a truth telling church member." Moreover, it appears that Juror #463's dismissal stemmed solely from his friendship with Detective Hart, not from any implication that Detective Hart was a religious person whom the jury panel should believe.

Brown relies heavily upon Brown v. Commonwealth, Ky., 983 S.W.2d 513 (1999). In Brown, the Kentucky Supreme Court held that it was reversible error to allow a witness to testify while holding a Bible. "[T]he effect of Mr. Barker's testimony while holding a Bible likely served to bolster his credibility with the jury and it did so prior to any attempt by Appellant's trial counsel to impeach Mr. Barker. Additionally, KRE 404 contemplates bolstering the credibility of a witness in the form of opinion or reputation, holding a Bible while testifying is not contemplated by the rule." Id., at 515.

We find Brown to be easily distinguishable from this case before us. The Supreme Court reached its decision in Brown using the rationale that a Bible carries the historical and inherent connotation that one who testifies while holding it is telling the truth. Brown does not stand for the principle that a witness should be presumed to be truthful simply because the

jury panel knows that the witness attends church. Here, Juror #463 simply stated that he knew the witness from church, considered him as a friend and would believe the witness's testimony. Juror #463 never disclosed the location of the church, the particular beliefs of the faith, or whether that particular faith condemns untruthfulness. Moreover, Brown has not demonstrated that he was actually prejudiced at trial because of Juror #463's voir dire responses. "Prejudice must be shown unless it may be clearly implied in a given case from the totality of the circumstance." Brewster v. Commonwealth, Ky., 568 S.W.2d 232, 235 (1978). From the face of this juror's voir dire answers, we conclude that Juror #463 never clearly implied that Detective Hart's religious convictions would give his trial testimony more credibility. Accordingly, we believe that the trial court did not abuse its discretion in not granting Brown's motion for a mistrial.

Our review of the record herein also shows that Brown failed to request an admonition from the trial court instructing the jury to give Juror #463's comments no credence. Our Supreme Court, in Romans v. Commonwealth, Ky., 547 S.W.2d 128, 131 (1977), held that "[t]he aggrieved party must exhaust all reasonably available means to have the error rectified . . . before he can be in a position to demand a mistrial." While an admonition cannot rehabilitate jurors who should otherwise be

disqualified, Montgomery v. Commonwealth, Ky., 819 S.W.2d 713, 718 (1991), there is a presumption that such admonitions will be followed by a jury. Maxie v. Commonwealth, Ky., 82 S.W.3d 860 (2002); Alexander v. Commonwealth, Ky., 862 S.W.2d 856, 859 (1993), overruled on other grounds, Stringer v. Commonwealth, Ky., 956 S.W.2d 883 (1997). In Maxie, the Supreme Court found that "a detailed curative admonition given by the trial court provided a legally sufficient remedy" after a potential juror stated before the entire venire his belief that those charged with crimes are guilty. Maxie, 82 S.W.3d at 863.

Although we cannot say what effect an admonition would have had on this jury, Brown's failure to request a curative instruction left the trial court with the decision of whether to declare a mistrial. A court will consider a mistrial only in the most extreme situations, "when there is a fundamental defect in the proceedings which will result in a manifest injustice." Gould, 929 S.W.2d at 738. Since Juror #463's statements and subsequent dismissal can be interpreted in non-prejudicial ways and because Brown failed to request an admonition, we find that the trial court did not abuse its discretion in denying a mistrial.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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