

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-001422-MR

CHARLES B. KEENE

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE GREGORY M. BARTLETT, JUDGE  
ACTION NO. 01-CR-00114

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BARBER, GUIDUGLI, AND PAISLEY, JUDGES.

BARBER, JUDGE: Appellant Charles Keene appeals a conviction for the offense of trafficking in cocaine and a finding that he was a persistent felony offender in the first degree.

Keene was indicted for two separate sales of cocaine, and for being a persistent felony offender. The investigating officer used a confidential informant to attempt to purchase drugs from Keene. The testimony of the investigating officer was given at trial to link Keene with the charged offense. When

questioned, the officer admitted that he had failed to search the confidential informant completely for drugs prior to the alleged drug buy; had signed an affidavit falsely stating that he had witnessed the transaction and kept the informant under surveillance at all times during the transaction; that he was mistaken about the sum of money he gave the informant, and that there was a marked discrepancy in the weight of the cocaine allegedly purchased by the informant and the weight of the cocaine submitted for testing by the lab. Keene argued at trial that the slipshod investigation did not properly link him to the charged offenses. The jury acquitted him on one charge of selling drugs, and found him guilty of the other.

Keene objects to introduction of a prior offense into evidence. He asserts that the underlying case was one in which any error could tip the balance in favor of conviction on the second offense. Keene argues that prejudicial error occurred tainting his case.

On direct examination the Commonwealth elicited from the informant that he was able to identify Keene "from a picture I got from the County Jail of him." Defense counsel moved for a mistrial arguing that the jury had become aware of Keene's criminal past through that statement. That motion was denied, but defense counsel asked for and received an admonishment to the jury. As a matter of law, the jury is presumed to have

followed the admonition given by the court. Stanford v. Commonwealth, Ky., 734 S.W.2d 781 (1987).

The mention of a mug shot, which is followed by an admonishment by the court, is not properly considered reversible error. Sargent v. Commonwealth, Ky., 813 S.W.2d 801, 802 (1991). A photograph or a discussion of a photograph or mug shot may not constitute reversible error where the photograph is used for identification purposes. Cane v. Commonwealth, Ky. App., 556 S.W.2d 902, 905 (1977). Although the witness' statements were improper, we believe that the trial court's admonishment cured any error below. For the foregoing reason, the judgment is affirmed.

ALL CONCUR.

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