

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001661-MR

TOMMY LAMBERT

APPELLANT

v. APPEAL FROM KNOX CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 02-CR-00042

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: KNOPF, TACKETT, AND VANMETER, JUDGES.

VANMETER, JUDGE. This is an appeal from a judgment entered by the Knox Circuit Court after a jury found appellant Tommy Lambert guilty of being a convicted felon in possession of a firearm. We affirm.

In January 2002, Lambert's former stepfather reported that a handgun had been stolen from him. The gun subsequently was recovered from a local pawn shop. As a result of his

alleged pawning of the gun, appellant was indicted for being a felon in possession of a handgun.

During the trial the pawn shop owner, Mike Mills, reported that he had known Lambert for several years prior to January 10, 2002, when Lambert entered the pawn shop alone and carrying the gun. After Mills personally completed pertinent paperwork and obtained Lambert's signature thereon, the gun and a necklace were pawned by Lambert to Mills in exchange for a \$125 loan. Lambert's mother testified, however, that she and Lambert together took the gun to the pawn shop since he is a convicted felon, and that Lambert never was in possession of the weapon. She denied that she or Lambert signed any paperwork during the transaction. The jury convicted appellant of the charged offense and he was sentenced to eight years' imprisonment. This appeal followed.

Lambert contends that the circuit court erred during the trial by permitting the Commonwealth to elicit certain testimony from the investigating detective. The detective testified that he had obtained a copy of Lambert's Kentucky Identification Card from the circuit clerk, that the identification numbers on that card and the pawn shop documents matched, and that the signatures on the documents appeared to be the same. Lambert's counsel objected, asserting that the Commonwealth had failed to properly produce the circuit clerk's

copy of the identification card as required by a pretrial discovery order which directed the Commonwealth to provide Lambert with "all discovery and inspection . . . described in RCr 7.24(2)." We disagree.

RCr 7.24(2) pertains to a trial court's ability to order the Commonwealth to "inspect and copy or photograph books, papers, documents or tangible objects, or copies or portions thereof, that are in the possession, custody or control of the Commonwealth[.]" RCr 7.24(9) in turn provides that

[i]f at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or an order issued pursuant thereto, the court may direct such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as may be just under the circumstances.

Here, the record contains nothing to suggest that Lambert's original state identification card was not accessible to him or, indeed, in his possession throughout the discovery period. We find it difficult to understand either how the Commonwealth's possession of a copy of that card, obtained from the circuit clerk, made the document one which was in the Commonwealth's "possession, custody or control," or how Lambert might have been injured by the Commonwealth's failure to provide him with another copy of the card which presumably was already

accessible to him. Moreover, even if the Commonwealth somehow was obligated to provide Lambert with a copy of his identification card, under RCr 7.24(9) the trial court was vested with wide discretion in determining how to address the failure to disclose that document. Although Lambert argued below that he would have retained the services of a handwriting expert if he had known of the Commonwealth's intent to compare the two signatures in court, Lambert never sought a continuance of the proceeding in order to secure the services of such an expert. Given the fact that the issue of handwriting comparisons was first raised by Lambert during his cross-examination of his former probation officer, as well as the overwhelming nature of the evidence against him, we simply cannot say that any error in the admission of the evidence affected Lambert's substantial rights. CR 61.01.

Lambert also asserts that he is entitled to relief on the ground that the copy of the identification card constituted hearsay, as the circuit clerk from whom it was obtained did not appear in court to testify as to the card's authenticity. However, the identification card clearly fell within the KRE 803(8) exception to the hearsay rule for public records and reports compiled by a "public office or agency setting forth its regularly conducted and regularly recorded activities." In any event, given the fact that the identification card included a

photograph of Lambert and no dispute existed that the card accurately depicted him, the trial court did not err by taking judicial notice of the fact that the card identified Lambert. KRE 201(b)(2).

The court's judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Michael C. Lemke
Louisville, KY

BRIEF FOR APPEELLANT:

Albert B. Chandler III
Attorney General of Kentucky

Gregory C. Fuchs
Assistant Attorney General
Frankfort, KY