

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-000001-MR

DARRELL EUGENE JONES

APPELLANT

v. APPEAL FROM MCCREARY CIRCUIT COURT  
HONORABLE JERRY D. WINCHESTER, JUDGE  
ACTION NO. 03-CR-00062

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BARBER, BUCKINGHAM, AND JOHNSON, JUDGES.

BUCKINGHAM, JUDGE: Darrell Eugene Jones pled guilty and was sentenced by the McCreary Circuit Court to eight years in prison on two counts of trafficking in a controlled substance. The facts indicate that Jones drove his truck to the residence of a confidential informant and therein sold the controlled substances. Pursuant to the Commonwealth's motion, the court also ordered Jones's 1999 Ford Ranger pickup truck forfeited to the Lake Cumberland Area Drug Task Force. Jones appealed from this order, and we affirm.

Jones first argues that he was denied his due process rights when the court failed to take evidence and failed to make fact-findings prior to ordering the forfeiture. He concedes that any error in this regard is unpreserved, but he argues that the error was palpable and that relief should be granted. Specifically, Jones argues that no testimony was taken, no adversarial questioning occurred, and no fact-finding was rendered.

KRS<sup>1</sup> 218A.460(4) provides that "the burden shall be upon claimant to property to prove by preponderance of the evidence that it is not subject to forfeiture." Jones was represented by an attorney at the forfeiture hearing, and our review of the record indicates that the facts were not in dispute. Rather, Jones's attorney raised only legal arguments. Therefore, we conclude that there was no need for an evidentiary hearing, especially since one was not requested. In short, we conclude that Jones was afforded his due process rights in connection with the forfeiture of his truck.

Second, Jones argues that the court erred in ordering forfeiture because there was no evidence that the property either aided the commission of, or hindered the detection of, the crime. The court concluded that the property was subject to forfeiture under KRS 218A.410(1)(h) because it was used to

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<sup>1</sup> Kentucky Revised Statutes.

transport the controlled substances to the site of their sale.  
We agree.

Finally, Jones argues that the forfeiture of his truck violates the excessive fines clauses of the Eighth Amendment to the U.S. Constitution and Section 17 of the Kentucky Constitution. He concedes that he did not raise this issue before the circuit court and that any error in this regard is unpreserved. In support of his argument, Jones asserts that his truck has a value of between \$5,580 and \$11,300 and that the sale of the controlled substances only involved \$214. He cites Commonwealth v. Fint, 940 S.W.2d 896 (Ky. 1997), and In Re One 1993 Dodge Intrepid, 645 So.2d 551 (Fla.Ct.App. 1994), a case cited in the Fint case.

In a forfeiture hearing of this nature, the owner of the property "has the burden of establishing any affirmative defense." Hinkle v. Commonwealth, 104 S.W.3d 778, 781 (Ky.App. 2002). In order for the excessive fines clause to be an issue in this case, Jones was required to raise it as an affirmative defense at the forfeiture hearing. See Fint, 940 S.W.2d at 898. His failure to do so precludes him from raising the issue in this appeal. Furthermore, we decline to find palpable error in this regard.

The judgment of the McCreary Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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