

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-000342-MR

LARRY WHITE

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE THOMAS L. CLARK, JUDGE  
INDICTMENT NO. 03-CR-00291

COMMONWEALTH OF KENTUCKY

APPELLEE

### OPINION

### AFFIRMING

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BEFORE: BUCKINGHAM, DYCHE, AND GUIDUGLI, JUDGES.

DYCHE, JUDGE: On January 27, 2003, Marcia White was struck about the head and face with a heavy instrument. She named Larry White, her brother-in-law, as the perpetrator. The incident happened at a party, and, although there were many present, few were sober enough to recount what happened. Those with sufficient memories collaborated Marcia's version of events. Marcia lost her left eye; she now wears a prosthesis in that socket.

Larry White was indicted for first degree assault and first degree persistent felony offender. The latter charge was dropped and is not an issue in this appeal. White's first trial resulted in a mistrial. The jury in the second trial found him guilty of the assault charge, and White waived jury sentencing for an agreed upon sentence of fifteen years' imprisonment. He was sentenced accordingly, and he received credit for 367 days' pretrial incarceration.

White's sole argument on appeal is that the circuit court erred in failing to grant White's motion for mistrial. He specifically complains that an officer's testimony impermissibly made reference to White's Fifth Amendment privilege to speak to an attorney. The offending testimony, White argues, made it impossible for him to obtain a fair trial, and the circuit court thus committed reversible error.

We disagree. "A defendant's motion for a mistrial should only be granted where there is a 'manifest necessity for such an action or an urgent or real necessity.' The trial court has broad discretion in determining when a mistrial is necessary." Gosser v. Commonwealth, 31 S.W.3d 897, 906 (Ky. 2000) (citations omitted).

Here the officer mentioned that White had asked to see his attorney. Defense counsel's objection was sustained, but counsel declined the trial court's offer of a curative

admonition. "The inadvertent mention of [White's] request for counsel was not argued to the jury, nor was it used to impeach him. The inadvertent reference did not deprive [White] of a fair trial." Bills v. Commonwealth, 851 S.W.2d 466, 472 (Ky. 1993) (citations omitted). The trial court committed no error in denying White's motion for mistrial.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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