

RENDERED: FEBRUARY 3, 2006; 10:00 A.M.  
ORDERED NOT PUBLISHED BY KY. SUPREME COURT: DECEMBER 13, 2006  
(2006-SC-000426-D)

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-001106-MR

JOHN BELLFIELD

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT  
HONORABLE WILLIAM T. JENNINGS, JUDGE  
ACTION NO. 03-CR-00152

COMMONWEALTH OF KENTUCKY

APPELLEE

AND: NO. 2004-CA-001133-MR

ANDREW JOHNSON

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT  
HONORABLE WILLIAM T. JENNINGS, JUDGE  
ACTION NO. 03-CR-00152

COMMONWEALTH OF KENTUCKY

APPELLEE

AND: NO. 2004-CA-001141-MR

ALEX BURDETTE

APPELLANT

v. APPEAL FROM MADISON CIRCUIT COURT  
HONORABLE WILLIAM T. JENNINGS, JUDGE  
ACTION NO. 03-CR-00152

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; McANULTY, JUDGE; PAISLEY, SENIOR JUDGE.<sup>1</sup>

McANULTY, JUDGE: The question in these cases, to be heard together on appeal, is whether the preliminary hearing called for in KRS 635.020(4) is governed by RCr 3.10, requiring that it be held within the time limits of that Rule. Appellants John Bellfield, Alex Burdett, and Andrew Johnson are juveniles whose cases were transferred to circuit court, where they entered conditional guilty pleas to an amended charge of attempted murder, reserving the right to appeal the above issue.

Bellfield filed a motion, in which the other appellants joined, to dismiss the indictment and/or to prohibit trial as a youthful offender. The Commonwealth's motion to transfer the case to circuit court pursuant to KRS 635.020(4) was not made until Bellfield's arraignment, ten days after the detention hearing. The motion was set for hearing on September 18, 2003, but before the transfer motion was heard Bellfield filed his motion to dismiss.

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<sup>1</sup> Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Bellfield acknowledged that he had a detention hearing in district court two days after he was arrested and charged, at which time the court found probable cause to detain him. The other defendants also received timely detention hearings. Nevertheless, all asserted that their preliminary/transfer hearings were not held within the appropriate time limits. Appellants collectively alleged that their transfer hearings did not comport with the Kentucky Rules of Criminal Procedure in that they had not received preliminary hearings pursuant to RCr 3.10(2) within ten days.

The district court denied their motions. The court held that the term "preliminary hearing" as used in KRS 635.020(4) and KRS 640.010 is not the same hearing as that governed by RCr 3.10. The district court reasoned that the hearing required by the statutes is different because it requires "a more extensive inquiry" than the probable cause inquiry of the RCr 3.10(2) preliminary hearing. The court stated that the fact that both were referred to as preliminary hearings was not decisive as that was only a "descriptive term rather than . . . a classification of a specifically prescribed inquiry." Additionally, the court held that Bellfield had previously been afforded a probable cause determination within 48 hours of incarceration, and so his constitutional rights were not violated.

The court found probable cause to believe that the appellants were over the age of fourteen and had participated in a felony involving the use of a firearm. The court therefore ordered the case transferred to circuit court. Appellants' conditional pleas of guilty reserved the right to appeal the issue of whether the transfer hearings were held in a timely manner. Appellants maintain on appeal that a preliminary hearing is required to be conducted in accordance with the Criminal Rules of Procedure, and so the transfer hearing held by the juvenile court had to be held within ten days of their initial appearance in court.

RCr 3.10 requires that a preliminary hearing under the Rules be held "within a reasonable time but no later than ten days following the initial appearance if the defendant is in custody and no later than 20 days if the defendant is not in custody." KRS 635.020(4) states, in pertinent part:

Any other provision of KRS Chapters 610 to 645 to the contrary notwithstanding, if a child charged with a felony in which a firearm, whether functional or not, was used in the commission of the offense had attained the age of fourteen (14) years at the time of the commission of the alleged offense, he shall be transferred to the Circuit Court for trial as an adult *if, following a preliminary hearing, the District Court finds probable cause to believe that the child committed a felony, that a firearm was used in the commission of that felony, and that the child was fourteen*

(14) years of age or older at the time of the commission of the alleged felony.

(Emphasis supplied.) If probable cause is found under KRS 635.020(4), jurisdiction is automatically vested in the circuit court. Deweese v. Commonwealth, 141 S.W.3d 372 (Ky. App. 2003).

The Commonwealth argues that the juvenile court properly denied the motions to dismiss and to prohibit transfer for several reasons. The Commonwealth argues, first, that the detention hearings, which all of the appellants were afforded within 72 hours of their arrests, were analogous to and met the requirements of RCr 3.10 and 3.14. The detention hearing is governed by KRS 610.280(1)(a) and requires findings as to whether an offense has been committed and whether the juvenile committed that offense.

The Commonwealth continues by arguing that RCr 3.10 should not be applied to juvenile cases. The Commonwealth cites KRS 610.015(1), which states that:

A child who is charged with an offense which classifies him for trial as an adult in the Circuit Court or the adult session of the District Court shall, *at the time the decision is made by the court to try the child as an adult*, be subject to the arrest, post-arrest, and criminal procedures that apply to an adult, except for the place of confinement, as provided in the Kentucky Revised Statutes and the Rules of Criminal Procedure.

(Emphasis supplied.) The Commonwealth argues that this establishes that the adjudication is only subject to the criminal rules once the decision to try as an adult is made and, therefore, that it is solely governed by the juvenile code prior to that decision.

We agree. KRS 635.020(4) calls for an expedited hearing with the sole purpose of determining if transfer to circuit court is appropriate under its terms. The effect of KRS 635.020(4) is to facilitate transfer of juveniles accused of committing a felony with a firearm to the circuit court by bypassing the proof required under KRS 640.010(2). Britt v. Commonwealth, 965 S.W.2d 147 (Ky. 1998). KRS 640.010 is the general preliminary hearing statute for the juvenile code which states in section (2) that such preliminary hearings shall be governed by the Rules of Criminal Procedure. That statute excludes KRS 635.020(4) from its scope. We agree with the Commonwealth that KRS 610.015 and the juvenile code control this matter and the Rules of Criminal Procedure do not apply to the transfer hearing. We further agree with the trial court that, although they employ the same term, the preliminary hearing called for in KRS 635.020(4) is not the RCr 3.10 hearing. As a result, the trial court was correct in determining that the ten day limit of RCr 3.10 was inapplicable.

The only adverse interpretation is our decision in Deweese, on which appellants rely. This Court determined in that case that the General Assembly intended that the criminal rules governing preliminary hearings should apply to preliminary transfer hearings in juvenile court. Deweese, 141 S.W.3d at 376. The opinion attempted to reconcile KRS 635.020(4) and KRS 610.015(1) with that portion of KRS 640.010 which states that the juvenile "preliminary hearing shall be conducted in accordance with the Rules of Criminal Procedure." Id. at 376. However, as alluded to above, KRS 640.010 was amended by the General Assembly in 1998 to exclude section (4) of KRS 635.020. Thus, we do not believe that statute supports the conclusion that the General Assembly intended the Rules of Criminal Procedure to apply to the automatic transfer hearing of KRS 635.020(4). Instead, the amendment displays an intent that the Rules of Criminal Procedure not apply. Thus, we do not rely on the Deweese opinion. We affirm the court's decision to deny the motions to dismiss the indictment or prohibit transfer.

Appellants raise an additional question regarding the constitutionality of KRS 635.020(4). They note that the trial court and prosecutor below both took the position that the court did not have discretion regarding transfer once it found that a firearm was used by a juvenile fourteen years or older in the commission of a felony. Appellants argue that this shows that

the statute violates the "separation of powers" doctrine because it impermissibly takes prosecutorial decisions away from prosecutors. Appellants' contention is that the court erred in deciding that KRS 635.020(4) requires the prosecution to seek transfer of the case to circuit court.

Appellants did not include this issue as part of their conditional plea of guilt, nor did they make this argument before the court below, and they concede that it is unpreserved for appellate review. However, they argue that it concerns whether they were entitled to be tried as juveniles in district court and ask that we review this pursuant to RCr 10.26 to avoid a manifest injustice.

We believe the district court correctly interpreted the statute and we are not persuaded that appellants have shown any constitutional infirmity. The Kentucky Supreme Court in Commonwealth v. Halsell, 934 S.W.2d 552 (Ky. 1996), concluded that KRS 635.020(4) vests jurisdiction in circuit court over this particular class of offenders. Id. at 556. The Court found it to be a constitutional exercise of legislative authority because of the General Assembly's power pursuant to Kentucky Constitution § 113(6) to limit the jurisdiction of the district court. Id. at 555. KRS 635.020(4) does not interfere with any prosecutorial function, but instead determines the jurisdiction of the courts to decide the cases. The prosecutor



decides whether or not to prosecute and what charge to file or bring before the grand jury, Commonwealth v. Self, 802 S.W.2d 940, 941-942 (Ky. App. 1990), but within the courts of the Commonwealth the prosecutor does not decide which court shall have jurisdiction to hear a case being prosecuted.

Thus, we do not agree that the statute abridges prosecutorial powers, and we do not perceive any constitutional issue. Moreover, since juvenile courts are established by the legislature, a juvenile offender cannot be said to possess a constitutional right to be tried in juvenile court. See Stout v. Commonwealth, 44 S.W.3d 781 (Ky. App. 2000). Thus, there was no error by which we could find that a manifest injustice has occurred in this case.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Timothy G. Arnold  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo  
Attorney General of Kentucky

Todd D. Ferguson  
Assistant Attorney General  
Frankfort, Kentucky