

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2005-CA-001458-MR

FRANK A. SMITH

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE ANN O'MALLEY SHAKE, JUDGE  
ACTION NO. 03-CR-002681

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: JOHNSON AND TAYLOR, JUDGES; BUCKINGHAM,<sup>1</sup> SENIOR JUDGE.

BUCKINGHAM, SENIOR JUDGE: Frank A. Smith appeals from a judgment of the Jefferson Circuit Court wherein he was convicted of criminal offenses and sentenced to ten years in prison. The issue, which he raises for the first time on appeal, is whether the circuit court had jurisdiction to try him for the offenses and to enter a judgment in the case. We conclude that it did. Thus, we affirm.

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

On September 16, 2003, Smith was arrested and charged with second-degree assault, a felony, based upon a complaint made by his mother that he had assaulted her with a wooden stick after she failed to give him \$10 after he had asked for it. When Smith appeared in the Jefferson District Court on September 29, 2003, the charge was amended to fourth-degree assault, a misdemeanor.

On October 16, 2003, a Jefferson Circuit Court grand jury indicted Smith on felony charges of knowing abuse or neglect of an adult by a caretaker (KRS 209.990(2)) and attempted knowing and willful exploitation of an adult (KRS 209.990(8)). Following a jury trial, Smith was convicted of the charged offenses and sentenced to ten years in prison. His appeal herein followed.

Smith's sole argument on appeal is that the circuit court (and grand jury) lacked jurisdiction over his case because the case was being prosecuted in the district court as a misdemeanor when the grand jury issued the indictment charging him with the felony offenses. He reasons that the district court had exclusive jurisdiction over the case based on KRS 23A.010 and KRS 24A.110.<sup>2</sup> He also argues that the commonwealth

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<sup>2</sup> KRS 23A.010 gives the circuit court original jurisdiction over "all justiciable causes not exclusively in some other court." KRS 24A.110(2) grants the district court exclusive jurisdiction over misdemeanor offenses, except where the charge is joined with an indictment for a felony. See *Dickerson v. Commonwealth*, 174 S.W.3d 451, 460 (Ky. 2005).

was estopped from presenting his case to the grand jury because "(t)he Commonwealth's Attorney was bound by the County Attorney's representation that appellant was guilty of Assault, 4<sup>th</sup> Degree."

Smith's arguments are without merit. While it is true that the district court had jurisdiction over the misdemeanor charge since it was not joined with felony charges, such did not prohibit the commonwealth from pursuing a grand jury indictment against Smith for felony charges. As noted by the commonwealth in its brief, KRS 505.020(1) provides that "(w)hen a single course of conduct of a defendant may establish the commission of more than one (1) offense, he may be prosecuted for each such offense."

Furthermore, the grand jury had the authority to issue the indictment based on Kentucky Rule of Criminal Procedure 5.02 which states in part that "(t)he court shall swear the grand jurors and charge them to inquire into every offense for which any person has been held to answer and for which an indictment or information has not been filed, or other offenses which come to their attention or of which any of them has knowledge." The fact that a misdemeanor charge was pending in the district court did not deprive the grand jury of its right to indict Smith on felony charges. Once the indictment was issued, the circuit court acquired jurisdiction over the felony offense.

Finally, we reject the estoppel argument as no authority was given to support it nor are we aware of any such authority.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. David Niehaus  
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BRIEF FOR APPELLEE:

Gregory D. Stumbo  
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