

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-003210-MR

JERRY LEE ROBERTS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE GARY D. PAYNE, JUDGE
ACTION NO. 97-CR-00985

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE, GUIDUGLI, AND MILLER, JUDGES.

MILLER, JUDGE: Jerry Lee Roberts (Roberts) appeals from a December 10, 1997, judgment of the Fayette Circuit Court. We affirm.

On November 27, 1995, Roberts was arrested for operating a motor vehicle while he was under the influence of intoxicants (DUI) (Ky. Rev. Stat. (KRS) 189A.010) and for driving on a DUI suspended license (KRS 189A.090). After appearing in district court for arraignment on November 28, 1995, Roberts appeared again on December 5, 1995. On that date, his

preliminary hearing was continued to December 19, 1995, and his bond was reduced. Bond was posted on December 9, 1995, whereupon, Roberts signed two documents indicating he would return to court on December 19, 1995. He was released from custody thereafter. Roberts failed to appear in court on December 19, December 20, or December 27, 1995. He finally appeared in court on July 23, 1997.

Roberts was subsequently indicted for fourth offense DUI, a felony; driving on a DUI suspended license; and bail jumping in the first degree (KRS 520.070). He was also charged as a persistent felony offender (PFO) in the second degree (KRS 532.080). The bail jumping charge emanated from his failure to appear in district court in December 1995. Roberts made an oral motion to sever said charge from the indictment but same was denied. A jury trial ensued on November 3, 1997, wherein Roberts was found guilty of all underlying charges. He pled guilty to the PFO charge in exchange for the Commonwealth's recommendation of a total sentence of five years. On December 10, 1997, Roberts was sentenced in accordance with the plea agreement. This appeal follows.

Roberts's sole argument is that the circuit court erred by overruling his motion for severance of the bail jumping charge. We disagree. Ky. R. Crim. P. (RCr) 6.18 provides for the joinder of offenses if they are "based on the same acts or transactions connected together." A trial judge is given broad discretion as to joinder, and his decision will not be overturned unless it constitutes a clear abuse of discretion. Violett v. Commonwealth, Ky., 907 S.W.2d 773 (1995) (citing Schambon v.

Commonwealth, Ky., 821 S.w.2d 804 (1991), and Wilson v. Commonwealth, Ky., 695 S.W.2d 854 (1985)). A significant factor in determining whether joinder is proper is whether "evidence of one of the offenses would be admissible in a separate trial for the other offense." Id. at 775 (citing Spencer v. Commonwealth, Ky., 554 S.W.2d 355 (1977)).

In a separate trial for bail jumping, Roberts's DUI charge would have been admissible as proof that he failed to appear in court "at a specified time and place in connection with a charge of having committed a felony." KRS 520.070. Similarly, proof of Roberts's bail jumping would have been admissible as evidence of guilt in a separate DUI trial. See Commonwealth v. Howard, Ky., 287 S.W.2d 926 (1956), and Napier v. Commonwealth, 306 Ky. 75, 206 S.W.2d 53 (1947). In sum, we cannot say the circuit court abused its discretion by overruling Roberts's motion for severance.

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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