

RENDERED: JANUARY 8, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000172-MR

JUAN L. HUNT

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE AUDRA J. ECKERLE, JUDGE
ACTION NOS. 08-CR-000971 & 08-CR-003057

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: FORMTEXT FORMTEXT COMBS, CHIEF JUDGE; TAYLOR,
JUDGE; HENRY, SENIOR JUDGE.

TAYLOR, JUDGE: Juan L. Hunt brings this appeal from a December 24, 2008,
judgment of the Jefferson Circuit Court upon a jury verdict finding him guilty of
sundry offenses and sentencing him to a total of six-years' imprisonment. We
affirm.

Hunt was indicted by a Jefferson County Grand Jury upon the charges of illegal possession of a controlled substance (first degree), tampering with physical evidence, speeding too fast for conditions, and with being a persistent felony offender (second degree). Following a jury trial, Hunt was convicted of the above charges and sentenced to a total of six-years' imprisonment. This appeal follows.

Hunt's sole issue on appeal is that Kentucky Revised Statutes (KRS) 532.055(2)(c) is unconstitutional as violative of Section 11 of the Kentucky Constitution.¹ Hunt, however, admits that he failed to notify the Attorney General of this constitutional challenge as mandated by KRS 418.075 and Kentucky Rules of Civil Procedure (CR) 24.03. He urges this Court, nevertheless, to review the merits of his challenge to KRS 532.055(2)(c) as unconstitutional and specifically argues:

As to KRS 418.075, it is somewhat disheartening that the Supreme Court of Kentucky persists in relying on a statute that has no application whatever in a criminal prosecution. The statute appears in a Chapter devoted to a particular form of statutory action – declaratory judgments. Subsection (1) of KRS 418.075 does state that notice is required “in any proceeding which involves the validity of a statute.” But it is unreasonable to believe that the Legislative Branch intends KRS 418.075(1) to impose a duty of notification in every conceivable legal action. The “any proceeding” language must be read as meaning “any proceeding” brought under KRS Chapter 418.

Hunt's Reply Brief at 1-2.

¹ Although irrelevant to this appeal, we note that KRS 532.055(2)(a)6 was held unconstitutional in *Manns v. Commonwealth*, 80 S.W.3d 439 (Ky. 2002).

As an intermediate appellate court, we are bound to follow Supreme Court precedent. Rules of the Supreme Court 1.030(8)(a); *Special Fund v. Francis*, 708 S.W.2d 641 (Ky. 1986). Supreme Court precedent is clear that KRS 418.075 and CR 24.03 require a defendant to serve the Attorney General with notice of any constitutional challenge to a statute. *Brashars v. Com.*, 25 S.W.3d 58 (Ky. 2000); *Benet v. Com.*, 253 S.W.3d 528 (Ky. 2008). Indeed, the Supreme Court has held that “[w]e have made plain that strict compliance with the notification provisions of KRS 418.075 is mandatory.” *Benet*, 253 S.W.3d at 532. If a party fails to strictly comply with the notification provision of KRS 418.075, any constitutional challenge to a statute is deemed unpreserved and will not be reviewed upon the merits. *Brashars*, 25 S.W.3d 58; *Benet*, 253 S.W.3d 528.

In the case at hand, it is undisputed that Hunt failed to notify the Attorney General of his challenge to the constitutionality of KRS 532.055(2)(c). As Hunt neither complied with the notification provisions of KRS 418.075 nor of CR 24.03, his challenge to the constitutionality of KRS 532.055(2)(c) is unpreserved; consequently, we are precluded from reaching the merits thereof. As Hunt raises no other issue in this appeal, we summarily affirm Hunt’s judgment of conviction.

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

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT
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ORAL ARGUMENT FOR
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