

RENDERED: August 2, 1996; 2:00 p.m.  
NOT TO BE PUBLISHED

NO. 95-CA-0767-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE JOHN W. POTTER, JUDGE  
ACTION NO. 92-CR-2037 & 94-CR-2879

TIMOTHY WATROUS

APPELLEE

OPINION  
AFFIRMING AND REMANDING

\* \* \* \* \*

BEFORE: DYCHE, JOHNSON and KNOPF, Judges.

KNOPF, JUDGE: This is an interlocutory appeal from a ruling of the Jefferson Circuit Court preventing the introduction of the appellee's prior drunk driving convictions during the guilt phase of his trial for driving under the influence. Based on recent decisions by the Supreme Court of Kentucky, we affirm the trial court.

The appellee, Timothy Watrous was indicted on the charges of driving under the influence (DUI), fourth offense, criminal possession of a forged instrument, operating a motor vehicle with license suspended or revoked for DUI, and possession of a fictitious, cancelled, revoked or altered license. Prior to

trial, the appellee moved to exclude any reference to his prior DUI convictions during the Commonwealth's case-in-chief. The trial court granted the motion, finding that introduction of the prior DUI convictions would be unduly prejudicial to the appellee. The action below was stayed pending this appeal by the Commonwealth.

The Supreme Court of Kentucky recently addressed this issue in three (3) cases: Commonwealth v. Ramsey, Ky., 920 S.W.2d 526 (1996); O'Bryan v. Commonwealth, Ky., 920 S.W.2d 529 (1996); and Dedic v. Commonwealth, Ky., 920 S.W.2d 878 (1996). The Supreme Court noted that the elements for the offense of DUI are wholly contained in KRS 189A.010(1). On the other hand, the penalties are delineated in subsection (4), with the severity of punishment increasing with the number of prior violations of subsection (1). Ramsey, 920 S.W.2d at 528. The Supreme Court held that evidence of prior convictions is not essential to the Commonwealth's case-in-chief in the prosecution of a DUI charge and the introduction of the prior convictions is unduly prejudicial to the defendant. Consequently, prior DUI convictions shall not be introduced during the guilt phase of a DUI trial, but are only admissible during the penalty phase. Id. at 529.

As a result of these decisions, the trial court was correct in excluding any mention of the appellee's prior convictions during the guilt phase. At the trial of this action, if the jury reaches a guilty verdict, the circuit court has authority to conduct a penalty phase pursuant to KRS 532.055, in

which the prior convictions may be introduced and the appropriate sentence determined, following proper instructions to the jury.

Id. at 528.

Accordingly, the ruling of the Jefferson Circuit Court is affirmed and this action is remanded for trial.

ALL CONCUR

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