

96-CA-2357-MR

RITCHY GOFF

APPELLANT

v. APPEAL FROM BUTLER CIRCUIT COURT  
HONORABLE RONNIE C. DORTCH, JUDGE  
ACTION NO. 96-CR-0010

COMMONWEALTH OF KENTUCKY

APPELLEE

**OPINION**

**AFFIRMING**

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BEFORE: BUCKINGHAM, KNOFF, and SCHRODER, Judges.

BUCKINGHAM, JUDGE. Ritchy Goff (Goff) appeals from a judgment of the Butler Circuit Court convicting and sentencing him to a term of imprisonment of three and one-half years and a \$5,000 fine for the offense of trafficking in marijuana, more than eight ounces but less than five pounds, in violation of KRS 218A.1421(3). Having examined the record and considered the arguments of counsel and the applicable law, we affirm.

On October 22, 1994, Bryant Goodman, a friend of Goff's who was working undercover for law enforcement officers, allegedly made a controlled buy of nine ounces of marijuana from Goff. Wearing a cassette recorder, Goodman entered Goff's

residence, paid Goff \$90 for the marijuana, and returned the recorder and the marijuana to the officers after making the buy and leaving the residence.

Goff was indicted and convicted by a jury of trafficking in marijuana, for which he was sentenced and fined. Goff now appeals from that conviction and sentence.

Goff argues that the trial court erred in allowing the Commonwealth to admit the testimony of Goodman, the confidential informant, since the Commonwealth did not reveal the informant's identity prior to trial. Kentucky Rule of Evidence (KRE) 508(a) grants a general rule of privilege to the Commonwealth to refuse to disclose the identity of a person who has furnished information concerning a criminal investigation to a law enforcement officer. However, there is an exception to this privilege if the informer appears as a witness for the Commonwealth. KRE 508(c)(1).

A written motion was filed on Goff's behalf prior to trial to compel the Commonwealth to reveal the identity of the confidential informant and to compel the Commonwealth to release a copy of the cassette recording. The motion was filed on July 29, 1996, although the notice at the end of the motion stated that the motion would be heard on July 26, 1996, three days earlier. The trial court entered a written order on August 5, 1996, directing the Commonwealth to release a copy of the tape recording to Goff, but the order did not address Goff's motion as

it concerned the identity of the confidential informant.<sup>1</sup> The trial commenced on the following day, August 6, 1996.

On the morning of the trial, counsel for Goff indicated to the trial court that he wanted to address matters concerning the identity of the confidential informant and the tape recording that he had been provided of the drug transaction. Nevertheless, when the jurors were assembled a few minutes later to begin the trial and the trial court asked counsel for each party if they were ready to begin, Goff's counsel announced "ready."

Citing Barclay v. Commonwealth, Ky., 499 S.W.2d 283 (1973), the Kentucky Supreme Court held in Sargent v. Commonwealth, Ky., 813 S.W.2d 801 (1991), that an announcement of "ready" waives any alleged noncompliance with the discovery order of the trial court. Id. at 802. Similarly, the announcement of "ready" by Goff's counsel in this case waives any alleged noncompliance by the Commonwealth concerning any discoverable information which had been requested.<sup>2</sup>

Goff's counsel acknowledged that he knew prior to trial that the Commonwealth planned to call the confidential informant as a witness, and Goff's counsel should have either requested a ruling by the trial court on the motion in advance of the trial

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<sup>1</sup> The trial judge stated on the morning of the trial that he had been under the mistaken impression that the Commonwealth had not decided whether to call the informant as a witness.

<sup>2</sup> We again note that no discovery order compelling the Commonwealth to reveal the identity of the confidential informant had been entered prior to trial.

or should not have announced "ready" and should have moved for a continuance if he believed such was necessary.<sup>3</sup> We find no abuse of discretion in refusing to grant relief to Goff under these circumstances.<sup>4</sup>

Goff's other argument is that the trial court erred in allowing the Commonwealth to admit a tape recording of the alleged drug transaction into evidence since the tape provided to Goff pursuant to the August 5, 1996, order was mainly inaudible, but the tape played to the jury was more audible and of better quality than the copy provided to Goff. Goff contends that the introduction into evidence of the more audible tape impacted his trial strategy and that he should have at least been given a continuance.

We again conclude that Goff's announcement of "ready" prior to the empaneling of the jury waived any complaint concerning compliance with the order of August 5, 1996, directing the Commonwealth to provide a copy of the tape. By receiving a somewhat inaudible copy of the tape recording, it was surely obvious that the original might be of better quality. In fact, Goff was given a transcription of the drug transaction by the Commonwealth prior to trial, and Goff's counsel was given the

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<sup>3</sup> The Commonwealth disclosed the identity of the confidential informant as being Bryant Goodman during the voir dire proceedings of the trial, and Goff's counsel requested no further relief concerning the timeliness of the disclosure until after the jury had been selected.

<sup>4</sup> Goff's counsel had requested that he be granted any of the five alternative avenues of relief set forth in KRE 508(c)(2).

opportunity to listen to the tape before it was played to the jury and introduced into evidence. Furthermore, when the trial judge ruled that he would permit the Commonwealth to play the original tape, he also ruled that the trial would be recessed until the next day following completion of the Commonwealth's proof to enable Goff to revise his trial strategy, if necessary. We perceive no error or abuse of discretion in this regard.

The judgment of the Butler Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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