

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1997-CA-002758-MR

FRANK RATLIFF

APPELLANT

v.

APPEAL FROM JOHNSON CIRCUIT COURT  
HONORABLE JAMES A. KNIGHT, JUDGE  
ACTION NO. 94-CR-00048

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING  
\*\* \*\* \* \* \* \* \*

BEFORE: BUCKINGHAM, HUDDLESTON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from a conviction of receiving stolen property. Appellant, Frank Ratliff, argues that his retrial, after his first trial ended in a mistrial, violated his constitutional protection against double jeopardy, and that the resulting conviction is, therefore, invalid. After reviewing the record and the applicable case law, we affirm.

Appellant was subject to three separate indictments, for a total of three counts of receiving stolen property and two counts of obscuring the identity of a machine. The indictments all involved appellant selling stolen equipment. In December

1992, appellant sold a stolen backhoe to Hobert Williams. In February 1993, appellant sold a stolen bulldozer to Phil Clark. In May 1993, appellant sold a stolen bulldozer to Morris Caudill. Appellant contended that he didn't know that the equipment that he had purchased to resell was stolen.

Appellant's first trial began on April 11, 1994. On the morning of the second day of trial, April 12, 1994, defense counsel moved for a mistrial, on the basis of remarks made by the judge before recessing, stating that he expected counsels to have all their documents in order before the next day. Defense counsel said that the judge's comments were prejudicial. The judge denied the motion, and the trial continued. During the testimony of a police detective, defense counsel produced a document allegedly signed by Hobert Williams, who had purchased a stolen backhoe from appellant, which supported appellant's claim that he didn't know the equipment was stolen. The document stated:

This written agreement is between Frank Ratliff and Hobert Williams and shows that Frank Ratliff has given back to Hobert Williams one 1946 Ford . . . and twenty-five hundred dollars in cash money. Both the car and money being a finders' [sic] fee on a John Deere backhoe. This finder's fee is being returned only because the backhoe Hobert Williams purchased was an alleged illegal piece of property. Hobert Williams acknowledges that this was not Frank Ratliff's fault and that he is solely responsible for the purchase himself. Hobert Williams acknowledges that Frank Ratliff was not obligated to return this finder's fee.

The document was allegedly signed by Hobert Williams and Frank Ratliff. The backhoe referred to in the document was reported stolen on December 9, 1992, and recovered on

September 10, 1993. The document was dated October 23, 1993. The Commonwealth objected to the introduction of this document as it had not been provided to the Commonwealth in discovery. The trial judge allowed the questioning to continue "for the sake of expediency." The detective stated that he had never seen the document before. Later, during Hobert Williams's testimony, the prosecutor asked Williams if he had seen the document before. He replied that he had not, and further stated that the signature on the document was not his.

The court then recessed. In chambers, defense counsel and the prosecutor argued about the document. The prosecutor argued that the signature was a forgery. Defense counsel argued that it was authentic. After continued arguing between defense counsel and the prosecutor over the document, the judge concluded that a handwriting expert was needed to determine the authenticity of the signature. The judge then stated that he was, therefore, going to declare a mistrial. Defense counsel objected. The judge stated that the signature ". . . must be checked out because it would have a definite bearing on the outcome of this particular case." The judge also noted that defense counsel had earlier in the day moved for a mistrial. The jury was then brought back into the courtroom, and the judge declared a mistrial.

Appellant was retried on September 17, 1997 and convicted of one count receiving stolen property over \$300, which involved the stolen backhoe sold to Hobert Williams. Appellant was acquitted of the other charges. Appellant was sentenced to four years' imprisonment. Appellant argues that his retrial

after the mistrial violated his constitutional protection against double jeopardy. Appellant contends that the retrial should have been barred as the mistrial was declared over his objection, and without "manifest necessity". We disagree.

The Kentucky Supreme Court has stated that "The declaration of a mistrial is a matter within the sound discretion of the trial judge. When a mistrial has been granted, a retrial does not expose a defendant to double jeopardy unless the trial judge abused his discretion by declaring a mistrial when there was no manifest necessity to do so." Gray v. Goodenough, Ky., 750 S.W.2d 428, 429 (1988); KRS 505.030(4)(b). "A party seeking to prevent his retrial upon double jeopardy grounds must show that the conduct giving rise to the order of mistrial was precipitated by bad faith, overreaching or some other fundamentally unfair action of the prosecutor or the court." Tinsley v. Jackson, Ky., 771 S.W.2d 331, 332 (1989); See also, Anderson v. Commonwealth, Ky. App., 902 S.W.2d 269 (1995). The record does not indicate, nor does appellant assert, that there was any misconduct on the part of the Commonwealth.

In reviewing a trial court's decision to grant a mistrial, "the trial court must have a measure of discretion." Grimes v. McAnulty, Ky., 957 S.W.2d 223, 224 (1997). The Kentucky Supreme Court stated that "The interest in orderly, impartial procedure would be impaired if [the trial judge] were deterred from exercising that power by a concern that at any time a reviewing court disagreed with his assessment of the trial situation a retrial would automatically be barred" and that "adopting a stringent standard of review in this area would . . .

seriously impede the trial judge in the proper performance of his [duties]." Id., at 225, quoting Arizona v. Washington, 434 U.S. 497, 513, 98 S. Ct. 824, 834, 54 L. Ed. 2d 717 (1978); See also, United States v. Dinitz, 424 U.S. 600, 96 S. Ct. 1075, 47 L. Ed. 2d 267 (1976).

After reviewing the record, we conclude that the trial court did not abuse its discretion in declaring a mistrial. The trial judge was in the best position to determine whether or not a mistrial was appropriate. See, Goodenough, 750 S.W.2d at 429. The judge believed that the authenticity of the signature would have a definite bearing on the outcome of the case, as the document indicated that appellant was not responsible for one of the charges. Manifest necessity has "been found to exist when the defendant introduces improper evidence which prejudices the Commonwealth's right to a fair trial." Grimes, 957 S.W. 2d at 224. See also, Chapman v. Richardson, Ky., 740 S.W.2d 929 (1987); Stacy v. Manis, Ky., 709 S.W.2d 433 (1986). The judge's written order noted that the document in question had not been provided to the Commonwealth prior to trial, the Commonwealth strenuously questioned the authenticity of the document, and therefore the Court felt compelled to order an investigation.

It should also be noted that appellant had moved for a mistrial earlier in the proceedings. Absent prosecutorial or judicial misconduct, which we have established was not present, the general rule is that a defendant who sought a mistrial may not prevent his retrial on double jeopardy grounds. Tinsley, 331 S.W.2d at 332; KRS 505.030(4)(a).

For the foregoing reasons, we adjudge that the trial court did not abuse its discretion in declaring a mistrial over the objection of appellant. Therefore, the retrial and conviction of appellant were not barred by double jeopardy. The judgment of the Johnson Circuit Court is affirmed.

BUCKINGHAM, JUDGE, CONCURS.

HUDDLESTON, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

Michael C. Lemke  
Louisville, Kentucky

BRIEF FOR APPELLEE:

A. B. Chandler, III  
Attorney General

Gregory C. Fuchs  
Assistant Attorney General  
Frankfort, Kentucky