

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001977-MR

HOLLIS D. KING

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE REBECCA OVERSTREET, JUDGE
ACTION NO. 98-CR-00048 & 98-CR-00197

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: HUDDLESTON, MCANULTY, AND MILLER, JUDGES.

MILLER, JUDGE: Hollis D. King brings this appeal from a July 30, 1998, Judgment of the Fayette Circuit Court. We affirm.

King was indicted on January 12, 1998, upon one felony count of first-degree trafficking in a controlled substance (Kentucky Revised Statutes (KRS) 218A.1412) and one misdemeanor count of operating a motor vehicle without an operator's license (KRS 186.410). On February 7, 1998, King posted bond and was released from jail with instructions to appear for trial on February 12, 1998. On said date, he failed to appear. King was subsequently indicted on a charge of first-degree bail jumping (KRS 520.070). Pursuant to the Commonwealth's motion, the bail

jumping charge was joined with the charges contained in the previous indictment. Ky. R. Crim. P. (RCr) 9.16. King subsequently moved, unsuccessfully, to sever the bail jumping charge from the remaining charges. At trial, the jury found King guilty of first-degree trafficking in a controlled substance, driving without an operator's license, and first-degree bail jumping. He was ultimately sentenced to seven years imprisonment. This appeal followed.

King alleges but one point of error on appeal. He argues the circuit court erred in joining the bail jumping charge with the trafficking charge.¹ He maintains the bail jumping charge is wholly unrelated to the trafficking charge; therefore, he was prejudiced by the joinder of the offense. See RCr 9.16. We disagree.

At the outset, we note the circuit court has broad discretion in deciding whether to grant severance under RCr 9.16. Rearick v. Commonwealth, Ky., 858 S.W.2d 185 (1993). Its decision will not be disturbed without a showing of prejudice and clear abuse of discretion. Id. A significant factor in ascertaining prejudice is the extent to which evidence of one offense would be admissible in a trial of the other offense. Id.

We believe evidence of the bail jumping charge would be admissible in a separate trial for trafficking. It is well-established that evidence of flight or escape from custody is admissible as evidence of guilt. See Commonwealth v. Howard,

¹King does not complain of the joinder of the bail jumping charge with the charge of driving without an operator's license.

Ky., 287 S.W.2d 926 (1956), and Napier v. Commonwealth, 306 Ky. 75, 206 S.W.2d 53 (1947). King posted bail and signed a document indicating he was to return for trial on the trafficking and driving without a license charges. Thereafter, he failed to appear for trial. We deem King's evasion of trial tantamount to flight or escape and, *a fortiori*, evidence of guilt of the separate offenses for which he was to be tried.

We also note that evidence of trafficking would be admissible in a separate trial for bail jumping. In KRS 520.070, first-degree bail jumping is defined, in relevant part, as follows:

A person is guilty of bail jumping in the first degree when, having been released from custody by court order, with or without bail, upon condition that he will subsequently appear at a specified time and place in connection with a charge of having committed a felony, he intentionally fails to appear at that time and place.

We believe that in a separate trial for bail jumping, evidence that King was charged with trafficking would be admissible to prove that King failed to appear in court on a "felony" charge.

Upon the whole, we do not think King was prejudiced or the circuit court abused its discretion in joinder of the bail jumping and trafficking charges.

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

ALL CONCUR.

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