

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2017-CA-001121-MR

ROBERT STEELMAN

APPELLANT

v. APPEAL FROM HARDIN CIRCUIT COURT  
HONORABLE KEN M. HOWARD, JUDGE  
ACTION NO. 16-CR-00159

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: JOHNSON, MAZE AND NICKELL, JUDGES.

NICKELL, JUDGE: Robert Steelman appeals from the Hardin Circuit Court's judgment of conviction and sentence imposed following his entry of a conditional guilty plea to two counts of criminal possession of a forged instrument in the second degree.<sup>1</sup> Following a careful review, we affirm.

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<sup>1</sup> Kentucky Revised Statutes (KRS) 516.060, a Class D felony.

On February 10, 2016, Steelman was stopped by police for a minor traffic violation. When asked for his identification, Steelman initially gave the officer a Kentucky Driver's License for Daniel Hyre. He subsequently admitted to the officer he was not, in fact, Daniel Hyre. Steelman then produced a Kentucky Identification Card bearing his name which was later found to have been altered. He was charged with theft by unlawful taking under \$500,<sup>2</sup> failure to or improper signal,<sup>3</sup> no operator's license,<sup>4</sup> and expired registration plates.<sup>5</sup> On February 15, 2016, Steelman pled guilty to theft by unlawful taking and an amended charge of license to be in possession;<sup>6</sup> the improper signal and expired registration charges were dismissed. He was sentenced to sixty days in jail with fifty-five days suspended for two years.

Ten days later, Steelman was indicted for two counts of criminal possession of a forged instrument in the second degree and being a persistent felony offender in the first degree (PFO I).<sup>7</sup> Citing KRS 505.020 and 505.040,

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<sup>2</sup> KRS 514.030(2), a Class A misdemeanor.

<sup>3</sup> KRS 189.380, a violation.

<sup>4</sup> KRS 186.410(1), a Class B misdemeanor.

<sup>5</sup> KRS 186.170, a violation.

<sup>6</sup> KRS 186.510, a Class B misdemeanor.

<sup>7</sup> KRS 532.080(3).

Steelman moved to dismiss the indictment, contending he had already entered a guilty plea in Hardin District Court for charges arising from the same events as those underlying the new charges and therefore, principles of collateral estoppel, *res judicata*, and prior jeopardy barred what he believed to be successive prosecution.

The trial court rejected Steelman's assertions, concluding his misdemeanor convictions did not operate as a bar to the instant felony charges after carefully analyzing the various statutory provisions. In so holding, the trial court found the charges of license to be in possession and criminal possession of a forged instrument were not lesser-included offenses of each other, inconsistent findings of fact were not necessary for establishing both offenses, and proof of different facts were required in the former prosecution than in the instant one. Steelman then entered a conditional guilty plea to the two counts of criminal possession of a forged instrument, reserving the right to appeal the trial court's denial of his motion to dismiss. By agreement of the Commonwealth the PFO I charge was dismissed. Steelman received an aggregate sentence of six years' imprisonment and this appeal followed.

Steelman contends the trial court erred in denying his motion to dismiss the indictment. He relies exclusively on the provisions of KRS 505.040 to assert the Commonwealth was barred from prosecuting him for criminal

possession of a forged instrument because he had previously pled guilty to the amended charge of license not in possession based on the same underlying facts.

KRS 505.040 states, in pertinent part:

[a]lthough a prosecution is for a violation of a different statutory provision from a former prosecution or for a violation of the same provision but based on different facts, it is barred by the former prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal, a conviction which has not subsequently been set aside, or a determination that there was insufficient evidence to warrant a conviction, and the subsequent prosecution is for:

(a) An offense of which the defendant could have been convicted at the first prosecution; or

(b) An offense involving the same conduct as the first prosecution, unless each prosecution requires proof of a fact not required in the other prosecution or unless the offense was not consummated when the former prosecution began; or

(2) The former prosecution was terminated by a final order or judgment which has not subsequently been set aside and which required a determination inconsistent with any fact necessary to a conviction in the subsequent prosecution . . . .

Steelman argues the felony prosecution is barred by the plain language of KRS 505.040(1)(a) because he could have been convicted of these charges in the first prosecution. He contends the Commonwealth should have charged him with all crimes associated with the events of February 10, 2016, at the

same time, and the failure to do so was fatal. Alternatively, Steelman asserts the collateral estoppel provisions of KRS 505.040(2) act as a bar to the current prosecution. We disagree and affirm.

Stelman's arguments have previously been analyzed and rejected in a procedurally similar case decided by this Court. In *Commonwealth v. Barnhill*, 552 S.W.2d 241 (Ky. App. 1977), the defendant was intoxicated when he crashed his car, killing his passenger. He was charged with operating a motor vehicle under the influence of an intoxicating beverage. He entered a guilty plea and paid a fine. Two weeks later, he was indicted for reckless homicide. The trial court subsequently granted a motion to dismiss the indictment because it arose from the same conduct as the earlier driving under the influence charge. A panel of this Court reversed, applying KRS 505.040(1)(b) in holding "[t]he rule against splitting an act into separate offenses does not apply where a single act is common to two offenses but each contains additional elements not common to the other, nor if different parts of one continuous transaction or series of acts are separate offenses and can be separately proved." *Id.* at 242 (citation omitted).

As in *Barnhill*, it is clear the offenses at issue in the case *sub judice* require proof of different facts. KRS 186.510 requires a driver to have a valid license in his immediate possession when operating a motor vehicle. KRS 516.060 criminalizes knowingly possessing a forged instrument "and with intent to defraud,

deceive or injure another, he utters or possesses any forged instrument of a kind specified in KRS 516.030.” The offenses involved in this case are separate, independent, and distinct criminal acts arising from the same events. Neither is an included offense of the other. Thus, the exception contained in KRS 505.040(1)(b) is controlling and the trial court correctly denied Steelman’s motion to dismiss the indictment. There was no error.

For the foregoing reasons, the judgment of the Hardin Circuit Court is  
**AFFIRMED.**

**ALL CONCUR.**

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