

**IMPORTANT NOTICE**  
**NOT TO BE PUBLISHED OPINION**

***THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.***

Supreme Court of Kentucky

**FINAL**

2003-SC-0003-TG

DATE 5-13-04 ELLA GROSS, D.C.

JASON A. VANHOOK

APPELLANT

V.

APPEAL FROM LINCOLN CIRCUIT COURT  
HONORABLE DANIEL J. VENTERS, JUDGE  
2001-CR-0084

COMMONWEALTH OF KENTUCKY

APPELLEE

**MEMORANDUM OPINION OF THE COURT**

AFFIRMING

Appellant, Jason A. Vanhook, was found guilty of arson in the first degree following a jury trial before the Lincoln Circuit Court. He was sentenced to a term of twenty-five years' imprisonment. Appellant now brings this direct appeal, claiming that his conviction was obtained in violation of his constitutional rights. For the reasons set forth below, we affirm the judgment of the Lincoln Circuit Court.

**I. Facts**

At some time between 11 p.m. and midnight on October 2, 2001, Natalie Tincher observed a male wearing a camouflage jacket standing on the front porch of the home of her neighbor, Levon White. Minutes later, Ms. Tincher observed the man running from the White residence as the home burst into flames. Coincidentally, Stanford Police Officer Mike Correll was patrolling the area and observed a male wearing a camouflage jacket jump into a waiting car, which then sped off. Officer Correll

attempted to perform a traffic stop, but the driver of the vehicle would not stop and a high-speed chase followed. The vehicle was eventually stopped, and Appellant was taken into custody. At the police station, Appellant was questioned. The interrogation was neither tape recorded nor video taped, and none of the officers present took notes. Detective Rick Edwards conducted this meeting, and testified that Appellant orally confessed. Appellant was formally charged with arson in the first degree. After pleading not guilty, Appellant was ultimately tried before a Lincoln County jury and was found guilty.

Appellant now enters this appeal, raising seven issues for review.

## **II. Suppression of Appellant's Incriminating Statements**

Appellant argues that the trial court erred in denying his motion to suppress a self-incriminating statement made to Detective Edwards after his arrest. Specifically, Appellant argues that the statements should have been suppressed because he was not advised of his Miranda rights and because he previously had requested an attorney. Pursuant to RCr 9.87, a hearing was held and oral findings of fact and conclusions of law were issued. The trial court denied the motion, determining that there was sufficient evidence that Appellant had been informed of his Miranda rights and that he had not requested an attorney.

The standard for appellate review of a trial court's decision on a suppression motion following a hearing is twofold. First, we must determine whether the factual findings of the trial court are supported by substantial evidence. If so, we must then determine if the trial court violated the rule of law in applying it to the established facts. Adcock v. Commonwealth, Ky., 967 S.W.2d 6, 8 (1998). Where the defense objects to the introduction of a defendant's confession at trial, the prosecution must establish by a

preponderance of the evidence that the statement was voluntarily made. Tabor v. Commonwealth, Ky., 613 S.W.2d 133, 135 (1981).

Turning to the present matter, Appellant was stopped by police after a car chase, taken to the station, and questioned by Detective Edwards, Trooper Collins, and Officer Correll. During the interview, Appellant stated that he had gone to the White residence with the intention of starting a fire but, upon reaching the front door, he had changed his mind. Appellant further stated that he had accidentally dropped his cigarette and that inadvertent action apparently started the fire. Appellant moved the trial court to suppress these statements on two grounds: that he was not apprised of his Miranda rights at any point during the interrogation and that, prior to making these statements, he had made a request for an attorney which was denied.

At the suppression hearing, only two persons testified. Appellant reiterated his version of events to the court. The Commonwealth called Detective Edwards, who testified that Appellant was informed of his Miranda rights at the start of the interrogation. Detective Edwards further testified that Appellant never made a request for an attorney. The interrogation was not recorded, nor was Appellant asked to sign a waiver of his Miranda rights. Trooper Collins and Officer Correll were not called to testify. Noting that the issue was essentially a contest between the credibility of Appellant and Detective Edwards, the trial court concluded that Appellant was apprised of his Miranda rights and did not request an attorney.

We find that the factual findings of the trial court are supported by substantial evidence. Detective Edwards testified unequivocally that Appellant did not request an attorney and was informed of his Miranda rights. The trial court was persuaded more by this testimony than the self-serving recollections of Appellant, and we decline to

disturb the trial court's findings of fact. Therefore, the issue becomes whether the trial court violated the rule of law in applying the established facts. Having concluded that Appellant did not request an attorney and did receive a Miranda warning, it was established by a preponderance of the evidence that the statements were voluntarily made. Tabor, 613 S.W.2d at 135. Thus, the trial court properly denied Appellant's motion to suppress the incriminating statements.

### **III. Denial of Appellant's Motion for Mistrial**

Appellant next argues that the trial court erred in denying his motion for mistrial. Specifically, Appellant claims that Detective Edwards' testimony at trial included statements allegedly made by Appellant that were not included in discovery. Because these statements were not revealed prior to trial, Appellant was denied a fair opportunity to prepare a defense or to effectively cross-examine Detective Edwards. The Commonwealth concedes that Detective Edwards' testimony at trial included some details not included in prior testimony, but argues that these details did not change the substance of his testimony and therefore, in no way prejudiced Appellant so as to warrant reversal.

Detective Edwards testified in four proceedings concerning this matter: a preliminary hearing, a grand jury proceeding, a hearing on the motion to suppress, and Appellant's trial. At trial, Detective Edwards testified that Appellant had revealed to him that, on the afternoon before the crime, someone from the White residence had pulled a weapon on him and that an altercation had ensued in front of the home. Defense counsel objected, stating that this fact was not included in any of Detective Edwards' three prior testimonies; the Commonwealth acknowledged the same. Determining that RCr 7.24(1) prohibited the introduction of these statements because they had not been

disclosed in discovery, the trial court admonished the jury to disregard that portion of Detective Edwards' testimony. Defense counsel then moved for a mistrial, arguing that the substance of Detective Edwards' testimony regarding the prior altercation essentially established a motive and that an admonishment to the jury was insufficient to cure that prejudice. After hearing arguments in chambers, the trial court concluded that a mistrial was not warranted.

A mistrial is an extreme remedy to be utilized only when the record reveals a "manifest necessity" for such action. Kirkland v. Commonwealth, Ky., 53 S.W.3d 71, 76 (2001). The decision of the trial court concerning a motion for mistrial should only be disturbed where there is an abuse of discretion. Clay v. Commonwealth, Ky. App., 867 S.W.2d 200, 204 (1993). Here, Appellant's own statements were the basis of the trial court's decision to deny the motion for mistrial. Appellant admitted that he had approached the house with the intent to start a fire, but changed his mind at the last minute, and that the resulting fire was started by accident. Where Appellant himself admits his intent mere minutes before the crime, the trial court reasoned, further evidence of that intent earlier in the day could not be considered prejudicial. Although declining to find that the statements were prejudicial, the trial court nonetheless recognized that they should have been disclosed during discovery as required by RCr 7.24(1). RCr 7.24(9) provides that a permissible remedy to a discovery violation is to "prohibit the party from introducing in evidence the material not disclosed." Here, having concluded that the statements were not prejudicial, the trial court determined that the violation could be cured by an admonition to the jury to disregard the inadmissible testimony of Detective Edwards.

We find no abuse of discretion here. The trial court thoroughly reviewed the matter and entertained arguments in chambers. The decision to deny the motion for mistrial was based on sound logic and we agree that, even if slight prejudice occurred, it was certainly cured by the admonition to the jury.

#### **IV. Evidence of Prior Bad Acts**

Appellant claims that the trial court erred in admitting testimony indicating that Levon White had sworn out a warrant for Appellant's arrest prior to the fire, thus establishing a motive. Appellant argues that he was unaware of the warrant on October 2, and therefore the evidence was insufficient to establish a motive pursuant to KRE 404(b)(1) and should have been excluded.

KRE 404(b) renders inadmissible evidence of prior crimes or bad acts; however, KRE 404(b)(1) allows such evidence to be entered if used to establish proof of motive. In admitting such evidence, the trial court must balance the probative value of the evidence against the danger of undue prejudice. English v. Commonwealth, Ky., 993 S.W.2d 941, 945 (1999). On appellate review, the decision will be upheld absent an abuse of discretion. Partin v. Commonwealth, Ky., 918 S.W.2d 219, 222 (1996).

In the matter before us, the trial court permitted Ms. White to testify that an altercation occurring in August of 2001 between her son and Appellant prompted her to swear out a warrant against Appellant. The warrant itself was not admitted, nor was Ms. White permitted to testify as to any details concerning the facts underlying the warrant. In other words, instead of testifying as to the specifics of prior conflicts between her children and Appellant, Ms. White testified only to her own actions in executing the warrant.

This Court considered a similar argument in Matthews v. Commonwealth, Ky., 709 S.W.2d 414, 419 (1985). In Matthews, the appellant was found guilty of the murders of his estranged wife and her mother. The Commonwealth was permitted to admit evidence that a warrant had been issued charging the appellant with the burglary of his wife's house three nights prior to the double homicide. The appellant in Matthews argued that the warrant was irrelevant as there was no evidence that he was aware of its existence. This Court concluded that evidence of the warrant was admissible, determining that:

although there was no direct evidence that appellant was aware that this burglary warrant was outstanding, the circumstances that led to the warrant, and the warrant itself, reflected on a relevant pattern of conduct. It was part of the circumstances which evidenced the existing domestic difficulties between the appellant and his wife. . . . The general rule foreclosing evidence of other, unrelated crimes, does not apply.

Id. at 418, 419.

Returning to the particular facts of the present matter, we conclude that the trial court did not abuse its discretion in admitting testimony regarding a warrant against Appellant. The evidence admitted was far more limited than that allowed in Matthews. Ms. White's testimony was restricted to her own actions in executing the warrant; no details regarding the underlying altercation were permitted, nor was the actual warrant introduced. The crux of Ms. White's testimony – that a warrant against Appellant did exist – is relevant to establish a possible motive for Appellant to commit the crimes charged. Furthermore, as in Matthews, Ms. White's testimony was relevant to establish the ongoing conflict that existed between her family and Appellant. That Appellant might not have been aware of the warrant does not necessarily urge its exclusion, especially where, as here, the only evidence that Appellant was not aware of the

warrant was his own self-serving statement to that effect. We conclude that Ms. White's testimony was relevant to establish Appellant's possible motive and the contentious nature of the relationship between the White family and Appellant. The trial court did not err.

**V. Denial of Appellant's Motion for Dismissal of the Indictment and Motion for Directed Verdict**

Appellant moved to dismiss the indictment prior to trial, and renewed this motion at the close of defense counsel's evidence. At the close of the Commonwealth's evidence, Appellant moved for a directed verdict. Both motions were denied.

Appellant's arguments concerning the validity of the indictment are without merit. Appellant contends that the indictment is insufficient because, although plainly charging Appellant with first-degree arson, it failed to specify that Appellant was aware that people inhabited or occupied the dwelling at the time of commission. While the requirements of either KRS 513.020(1)(a) or KRS 513.020(1)(b) must be proven to sustain a conviction for arson in the first degree, it is not necessary that such details be specifically enumerated in the indictment. RCr 6.10(2) requires only that the indictment contain a "plain, concise and definite statement of the essential facts" in order to be sufficient. Furthermore, this Court has found that RCr 6.10(2) does not require that the indictment specifically state every technical element of a crime; the indictment is sufficient so long as the language and the applicable statute can be reasonably calculated to put the defendant on notice of the crime charged. Thomas v. Commonwealth, Ky., 931 S.W.2d 446, 449 (1996). Here, the indictment plainly stated

that Appellant was being charged with arson in the first degree. The trial court did not err in denying defense counsel's motion to dismiss the indictment.

Appellant's motion for a directed verdict was properly denied as well. Appellant argues that the Commonwealth failed to prove that Appellant was aware that the White home was inhabited or occupied, as required by KRS 513.020(1)(a). Moreover, Appellant asserts, he could not have reasonably inferred that the White home was occupied or inhabited because, at the time of the crime, the house was dark and no cars were in the driveway.

The official commentary to KRS 513.020 undermines this argument: "in any case involving the burning of a dwelling, absent some special circumstances, the presence of another person would be a reasonable possibility." It is completely unreasonable for Appellant to argue that special circumstances were created because the house was dark and no cars were in the driveway. At midnight, when this crime occurred, most homes are occupied by sleeping residents and are dark. Furthermore, in light of the history of conflict between Appellant and Ms. White's children, it was completely reasonable for the jury to infer that Appellant was aware the building was being used as a dwelling. Finally, any rational person looking at the building itself would immediately assume it is an occupied home.

On appellate review of a denial of a motion for a directed verdict, we must look at the evidence as a whole and determine if it would be clearly unreasonable for a jury to find guilt. Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991). Here, Appellant's only argument that a directed verdict was warranted is based on an alleged lack of evidence that Appellant knew the White home to be occupied or inhabited.

For the reasons stated above, we find no merit to this argument, and the ruling of the trial court is affirmed.

## **VI. Competency Hearing**

Appellant claims that the trial court erred in failing to conduct an in camera review regarding Appellant's competency to stand trial. Appellant concedes that defense counsel never raised this issue. Rather, at a pretrial hearing, Appellant himself asked the trial court if he could be transferred to KCPC. At that point, the trial court stated that nothing had been presented to reasonably call into question Appellant's competency. Appellant now argues that his request triggered a duty by the trial court to review Appellant's mental health records in camera in order to determine if there was reasonable belief to question his competency. We disagree.

KRS 504.100(1) requires the trial court to order a mental health examination or report when the trial court has "reasonable grounds to believe that the defendant is incompetent to stand trial." Upon Appellant's request that he be transferred to KCPC, the trial court specifically stated that it had no reason to question Appellant's competency. At that point in time, the trial court had observed Appellant at two pre-trial hearings and had heard Appellant testify at a suppression hearing. The trial court further stated that it would entertain the issue if some evidence of Appellant's incompetency was presented. Having found no reasonable grounds on which to question Appellant's competency to stand trial, the trial court was under no obligation or duty to order a mental health evaluation. Therefore, the trial court did not err in refusing to hold a competency hearing.

## VII. Failure to Strike Juror for Cause

Appellant next cites error where the trial court refused to remove Juror X for cause. Juror X's husband and son work for the Stanford Fire Department, which responded to the fire at the White residence. Furthermore, Juror X stated that she knew Tim Lawson, an arson investigator with the Stanford Fire Department who testified on behalf of the Commonwealth. Defense counsel twice moved the court to strike Juror X for cause; both motions were denied. Defense counsel ultimately removed the potential juror using a preemptory strike.

It lies within the sound discretion of the trial court to remove a potential juror for cause, and such a determination will be reversed only where the trial court's exercise of discretion was clearly erroneous. Simmons v. Commonwealth, Ky., 746 S.W.2d 393, 396 (1988). Here, no objective evidence of Juror X's potential bias was presented; rather, Appellant contends that Juror X's relationship with two Stanford firefighters creates a bias per se. We disagree. After her relationship to two firefighters was established, Juror X was asked twice whether that relationship would impair her ability to decide the case fairly and impartially. On both occasions, Juror X unequivocally stated that it would not. In response to defense counsel's renewed motion to strike, the trial court concluded that Juror X's demeanor did not indicate any prejudice, and that she had answered questions about her potential bias with sincerity. The trial court also noted that there was no evidence that either her son or her husband had even responded to the fire at the White residence. We find that the trial court acted well within its discretion in refusing to strike Juror X for cause, and we thus affirm its ruling.

**VII. Cumulative Error**

In his final argument, Appellant asks this Court to review his conviction under the palpable error standard of RCr 10.26, noting the cumulative effect of the proceeding errors. Having found no error in the proceeding arguments, there is no resulting cumulative error.

For the foregoing reasons, the judgment of the Lincoln Circuit Court is affirmed.

Lambert, C.J.; Cooper, Graves, Johnstone, Stumbo, and Wintersheimer, JJ.,  
concur. Keller, J., concurs in result only.

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