

SUPREME COURT OF KENTUCKY

James Maxie v. Commonwealth of Kentucky

82 S.W.3d 860 (Ky. 2002) · No. 2001-SC-0636-MR · Decided August 22, 2002

SUMMARY

The Supreme Court of Kentucky affirmed James Maxie's convictions for first-degree trafficking in a controlled substance, possession of drug paraphernalia, and being a second-degree persistent felony offender. The court rejected challenges concerning juror removal, denial of a mistrial, proof of age for persistent felony offender status, admission of a prior indictment, and prosecutorial comments during closing argument.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Kentucky                                                                                                                                                                                                                                                                                                                                                     |
| WRITING FOR THE COURT | Justice Graves; Graves, Justice                                                                                                                                                                                                                                                                                                                                               |
| JURISDICTION          | Kentucky                                                                                                                                                                                                                                                                                                                                                                      |
| DECIDED               | August 22, 2002                                                                                                                                                                                                                                                                                                                                                               |
| DOCKET                | 2001-SC-0636-MR                                                                                                                                                                                                                                                                                                                                                               |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Maxie appealed as a matter of right from his McCracken Circuit Court convictions and twenty-year sentence for first-degree trafficking in a controlled substance, possession of drug paraphernalia, and second-degree persistent felony offender status.                                                                                                                      |
| STANDARD OF REVIEW    | The denial of a motion to strike a juror for cause and the denial of a motion for mistrial are reviewed for abuse of discretion. Alleged unpreserved error is reviewed under RCr 10.26 for palpable error. The admissibility of evidence during the combined sentencing and persistent-felony-offender phase is reviewed under the applicable statutes and evidentiary rules. |
| PRECEDENTIAL VALUE    | Published Kentucky Supreme Court opinion; precedential                                                                                                                                                                                                                                                                                                                        |
| PARTIES               | James Maxie v. Commonwealth of Kentucky                                                                                                                                                                                                                                                                                                                                       |

TOPICS

- jury selection
- criminal procedure
- sentencing
- prosecutorial misconduct
- appellate procedure

## PRACTICE AREAS

Criminal law

Criminal procedure

Evidence

Appellate procedure

## QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by refusing to remove for cause a prospective juror who knew a prosecution witness.
2. Whether the trial court erred by denying a mistrial after a prospective juror stated that he could not be impartial and believed the existence of charges implied proof of guilt.
3. Whether the Commonwealth failed to prove that Maxie was at least eighteen years old when he committed the prior offense necessary to establish second-degree persistent felony offender status.
4. Whether the Commonwealth properly introduced the prior indictment during the combined persistent-felony-offender and truth-in-sentencing phase.
5. Whether the prosecutor committed misconduct by commenting during closing argument that Maxie had not called his mother as a witness.

## HOLDINGS

1. A prospective juror is not automatically disqualified merely because the juror knows a prosecution witness; where the juror assures the trial court that she can fairly and impartially weigh the evidence, the trial court may deny a motion to strike for cause, subject to abuse-of-discretion review.
2. A mistrial is not required when a trial court's detailed curative admonition sufficiently removes the prejudice from a prospective juror's improper statement, absent manifest necessity or actual prejudice.
3. The absence of direct testimony stating the defendant's age at the time of the prior offense did not require reversal where the evidence established the defendant's birth date and the date of the prior offense, permitting a reasonable inference of age, and the error caused no prejudice.
4. During the combined persistent-felony-offender and truth-in-sentencing phase, the Commonwealth may introduce evidence concerning the nature of prior convictions, including a prior indictment containing a general description of the prior offense, when authorized by KRS 532.055.
5. A prosecutor may comment on the evidence and the failure to call a witness who could have corroborated the defendant's specific defense, so long as the comment does not undermine the Commonwealth's burden of proof and the overall fairness of the trial is not compromised.

## KEY QUOTATIONS

*"The record must reveal a manifest necessity for a mistrial before such an extraordinary remedy will be granted."* (82 S.W.3d at 863)

*"It is the judgment of conviction which establishes the prior conviction, not the indictment."* (82 S.W.3d at 865)

*"For the foregoing reasons, the judgment and sentence of the McCracken Circuit Court are affirmed."* (82 S.W.3d at 866)

## FACTUAL BACKGROUND

Police conducted an undercover purchase of crack cocaine from Maxie at his home using an informant who had been searched, supplied with marked money, and wired so the transaction could be monitored. Based on the recorded transaction and the purchased cocaine, police obtained a search warrant and found additional crack cocaine, plastic baggies, a crack pipe, cash, and a pager in Maxie's home. At trial, Maxie's sole defense was that the voice on the recording was not his; he presented no witnesses or other evidence.

## PROCEDURAL HISTORY

Following an undercover controlled-buy investigation and execution of a search warrant, Maxie was indicted and tried before a jury in the McCracken Circuit Court. The jury convicted him on all charges, and the trial court imposed a total sentence of twenty years. The Supreme Court of Kentucky affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Sanders v. Commonwealth, 801 S.W.2d 665 (Ky. 1991), cert. denied, 502 U.S. 831 (1991)
- Jones v. Commonwealth, 737 S.W.2d 466 (Ky. App. 1987)
- Caldwell v. Commonwealth, 634 S.W.2d 405 (Ky. 1982)
- Scruggs v. Commonwealth, 566 S.W.2d 405 (Ky. 1978), cert. denied, 439 U.S. 928 (1978)
- Gould v. Charlton Co., Inc., 929 S.W.2d 734, 738 (Ky. 1996)
- Skaggs v. Commonwealth, 694 S.W.2d 672, 678 (Ky. 1985)
- Alexander v. Commonwealth, 862 S.W.2d 856, 859 (Ky. 1993)
- Stringer v. Commonwealth, 956 S.W.2d 883 (Ky. 1997), cert. denied, 523 U.S. 1052 (1998)
- Davis v. Commonwealth, 899 S.W.2d 487, 490 (Ky. 1995)
- Martin v. Commonwealth, 13 S.W.3d 232, 233 (Ky. 2000)
- White v. Commonwealth, 611 S.W.2d 529 (Ky. App. 1980)
- Pace v. Commonwealth, 636 S.W.2d 887 (Ky. 1982)
- Commonwealth v. Harrell, 3 S.W.3d 349 (Ky. 1999)
- Bray v. Commonwealth, 703 S.W.2d 478, 480 (Ky. 1985)
- Commonwealth v. Reneer, 734 S.W.2d 794, 797-803 (Ky. 1987)
- Lemon v. Commonwealth, 760 S.W.2d 94, 95 (Ky. App. 1988)
- Robinson v. Commonwealth, 926 S.W.2d 853 (Ky. 1996)
- Williams v. Commonwealth, 810 S.W.2d 511, 513 (Ky. 1991)
- Commonwealth v. Petrey, 945 S.W.2d 417 (Ky. 1997)
- Slaughter v. Commonwealth, 744 S.W.2d 407 (Ky. 1987), cert. denied, 490 U.S. 1113 (1989)
- Derossett v. Commonwealth, 867 S.W.2d 195 (Ky. 1993)

- *Houston v. Commonwealth*, 641 S.W.2d 42 (Ky. App. 1982)

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