

SUPREME COURT OF KENTUCKY

Commonwealth v. Bailey

71 S.W.3d 73 (Ky. 2002) · No. 1999-SC-1004-DG · Decided April 29, 2002

SUMMARY

The Supreme Court of Kentucky held that the Commonwealth may appeal under KRS 22A.020(4) from a circuit court order granting a defendant a new trial in a criminal case. The appeal is not limited to certification of the law; the Court of Appeals may grant substantive relief, including reversing the new-trial order and reinstating the jury’s verdict, provided doing so would not violate double jeopardy or another constitutional right. The court overruled Commonwealth v. Littrell to the extent it imposed the certification-only limitation and remanded for consideration of the Commonwealth’s appeal.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Keller, Justice; Lambert, C.J.; Cooper, J.; Graves, J.; Johnstone, J.; Keller, J.; Wintersheimer, J.
JURISDICTION	Kentucky
DECIDED	April 29, 2002
DOCKET	1999-SC-1004-DG
DISPOSITION	remanded
PROCEDURAL POSTURE	The Commonwealth sought discretionary review of the Court of Appeals' dismissal of its appeal from a circuit court order granting the defendant a new trial after a guilty verdict. The Supreme Court considered whether the Commonwealth's appeal was limited to certification of the law or could seek reversal of the new-trial order and reinstatement of the verdict.
STANDARD OF REVIEW	The merits of a circuit court order granting a new trial are reviewed to determine whether the trial court abused its discretion; the appellate court reviews the record to determine whether the order should be reversed and the verdict reinstated.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Commonwealth of Kentucky v. James Bailey

TOPICS

interlocutory appeal

appellate procedure

criminal procedure

statutory interpretation

double jeopardy

PRACTICE AREAS

criminal appellate procedure

criminal procedure

statutory interpretation

double jeopardy

QUESTIONS PRESENTED

1. Whether the circuit court's postverdict order constituted a new-trial order under RCr 10.02 or a JNOV under RCr 10.24.
2. Whether the Commonwealth may appeal a circuit court order granting a new trial in a criminal case under KRS 22A.020(4).
3. Whether the Commonwealth's appeal may seek substantive relief, including reversal of the new-trial order and reinstatement of the jury's guilty verdict, rather than merely certification of the law.
4. Which appellate court should hear a Commonwealth appeal under KRS 22A.020(4), and whether the appeal stays the effect of a criminal new-trial order.

HOLDINGS

1. The trial court's order granted a new trial under RCr 10.02 rather than a JNOV under RCr 10.24 because the order's operative language ordered a new trial and reflected concern about trial fairness, not insufficiency of the evidence.
2. KRS 22A.020(4) authorizes the Commonwealth to appeal a circuit court order granting a new trial in a criminal case, even though the order may be interlocutory or otherwise not final.
3. The Commonwealth is not limited to certification of the law when appealing a criminal new-trial order; under KRS 22A.020(4), it may seek substantive relief, including reversal of the new-trial order and reinstatement of the guilty verdict, provided doing so would not violate double jeopardy or another constitutional right.
4. Except for specified capital-case appeals and certification requests following acquittals, a Commonwealth appeal under KRS 22A.020(4) should be brought in the Kentucky Court of Appeals. An appeal from a criminal new-trial order stays the effect of that order after the verdict, so the new trial should not begin until appellate review is final.

KEY QUOTATIONS

“Because we find that, in the context of an appeal by the Commonwealth from an order granting a new trial, KRS 22A.020(4) authorizes the Court of Appeals to reverse the trial court's ruling and to reinstate the trial verdict, we hold that the Commonwealth is not limited to seeking certification of the law when a trial court grants a motion for a new trial.” (71 S.W.3d at 74)

“We do not believe that this procedure is necessary, and we overrule Littrell to the extent it limits the Commonwealth's appeal of a new trial order to a certification of the law.” (71 S.W.3d at 80)

“As the relief requested by the Commonwealth would not implicate the constitutional protections against double jeopardy because the Commonwealth seeks reinstatement of the jury's verdict, we hold that the appellate procedure provided by KRS 22A.020(4) does not contemplate merely certification of the law, but rather authorizes the Court of Appeals to grant substantive relief.” (71 S.W.3d at 82)

FACTUAL BACKGROUND

A Christian Circuit Court jury found Bailey, a deputy county clerk, guilty of tampering with public records under KRS 519.060 and recommended a one-year sentence. The Commonwealth presented evidence that Bailey underreported money collected by the county clerk's office and diverted funds to a separately tried codefendant. Before sentencing, Bailey moved for a JNOV or a new trial, and the circuit court concluded that irrelevant evidence concerning other office practices may have affected the fairness of the proceedings, ordering a new trial limited to whether the handling and receipting of money violated KRS 519.060.

PROCEDURAL HISTORY

A Christian Circuit Court jury found Bailey guilty of tampering with public records. Before formal sentencing, Bailey moved for a JNOV or, alternatively, a new trial, and the circuit court granted a JNOV and ordered a new trial. The Court of Appeals characterized the order as granting a new trial and dismissed the Commonwealth's appeal because it sought substantive relief rather than certification of the law. The Supreme Court granted discretionary review, reversed the Court of Appeals' jurisdictional conclusion, and remanded for consideration of the merits.

DISPOSITION

remanded

REMAND INSTRUCTIONS

Remand to the Kentucky Court of Appeals to consider the merits of the Commonwealth's appeal. If the Court of Appeals determines that the circuit court abused its discretion in granting a new trial, it may reverse the order, reinstate the verdict or judgment, and direct the trial court to sentence Bailey.

CASES CITED

- Commonwealth v. Littrell, 677 S.W.2d 881, 885-86 (Ky. 1984)
- Commonwealth v. Devine, 396 S.W.2d 60, 61 (Ky. 1965)
- Commonwealth v. Lewis, 548 S.W.2d 509, 510 (Ky. 1977)
- Commonwealth v. Brindley, 724 S.W.2d 214, 216 (Ky. 1986)
- Collins v. Commonwealth, 951 S.W.2d 569, 576 (Ky. 1997)
- Jackson v. Commonwealth, 445 S.W.2d 835, 838 (Ky. 1969)
- Commonwealth v. Cain, 77 Ky. 525, 14 Bush 525, 531 (1879)
- Commonwealth v. Matthews, 89 Ky. 287, 12 S.W. 333 (1889)
- Commonwealth v. Neal, 223 Ky. 665, 4 S.W.2d 685, 686 (1928)

- Murty Bros. Sales Inc. v. Preston, 716 S.W.2d 239, 241 (Ky. 1986)
- Commonwealth v. Evans, 645 S.W.2d 350, 353 (Ky. App. 1982)
- Commonwealth v. Howard, 665 S.W.2d 320, 323 (Ky. App. 1984)
- Commonwealth v. Ryan, 5 S.W.3d 113, 115 (Ky. 1999)
- Skaggs v. Commonwealth, 803 S.W.2d 573 (Ky. 1990)
- Commonwealth v. Blincoe, 33 S.W.3d 533, 535 (Ky. App. 2000)
- Commonwealth v. Hayes, 734 S.W.2d 467 (Ky. 1987)
- Garnett v. Oliver, 242 Ky. 25, 45 S.W.2d 815, 816 (1931)
- Eaton v. Commonwealth, 562 S.W.2d 637, 639 (Ky. 1978)
- Commonwealth v. Wilson, 215 Ky. 743, 286 S.W. 1065, 1066 (1926)
- Commonwealth v. Williams, 230 Ky. 71, 18 S.W.2d 881, 882 (1929)
- Keffer v. Keffer, 307 Ky. 831, 212 S.W.2d 314, 315 (1948)
- Faulkner v. Faulkner, 270 Ky. 693, 110 S.W.2d 465, 470 (1937)