RENDERED: MARCH 2, 2007; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001780-MR

CHARLES ANTHONY COATES — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE KATHLEEN VOOR MONTANO, JUDGE
ACTION NO. 04-CR-003217

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING IN PART,
REVERSING IN PART, AND REMANDING

** ** ** ** **

BEFORE: TAYLOR AND WINE, JUDGES; PAISLEY,[1] SENIOR JUDGE.

WINE, JUDGE: On November 16, 2004, a Jefferson County grand jury indicted Charles Anthony Coates on one count each of first-degree assault, first-degree burglary, and first-degree wanton endangerment. Following a jury trial in April 2005, the jury found Coates guilty but mentally ill on all three counts and fixed his sentence at a total of eighteen years' imprisonment. Based on the guilty but mentally ill verdict, the trial court

[1] Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

reduced Coates' sentence to a total of twelve years' imprisonment.

On appeal, Coates argues that he is entitled to a new trial because the trial court improperly denied his requests to instruct the jury on the lesser-included offense of first-degree criminal trespass and the defense of extreme emotional disturbance, erroneously allowed evidence of his prior bad acts to be admitted, and improperly denied his motion to dismiss the wanton endangerment count. We conclude that the trial court did not err by denying Coates' requested instructions for extreme emotional disturbance and first-degree criminal trespass. We have reservations about the trial court's admission of evidence of Coates' prior bad acts, but determine that any error was harmless. Lastly, we agree with Coates that his convictions for both assault and wanton endangerment violated his rights against double jeopardy. But while we find that the wanton endangerment count should have been merged into the assault, dismissal of this count will not otherwise affect the jury's verdict or Coates' sentence. Hence, we affirm in part, reverse in part, and remand for entry of a new judgment of conviction.

The essential facts of this action are not in dispute. At approximately 8:00 a.m. on May 6, 2004, Coates arrived at the residence of his parents, Tony and Mickey Coates. Mickey refused to allow Coates to enter the house, but Coates entered anyway. Coates then proceeded to demand that his parents give him some money and then became angry when his parents refused. However, Tony was eventually able to calm Coates down and persuade him to leave.

Several hours later, Coates returned to his parents' house. Upon seeing Mickey at the door, he exited his vehicle and began yelling at his mother. Mickey could

not understand what Coates was saying, but she did hear him call her bad names. As Coates approached the front door, Mickey locked the glass storm door. She also tried to close and lock the wooden door before Coates could enter the house. But as she stopped to answer her cell phone, Coates forced open the storm door and entered the house.

Over the phone, Tony heard Coates demand money from Mickey, and he heard Mickey tell Coates not to enter the house. Coates then came at Mickey and began to choke her with his hands and to beat her head against the wall. As a result, Mickey lost consciousness.

Tony arrived at the house shortly afterward and found Mickey unconscious on the couch and the house in disarray. Mickey's face and neck were covered in blood. She had a large knot on the side of her head and both eyes were swollen and closed. Her nose and lip were cut and she had scratches and bruises on her stomach, her side and her legs.

After Tony called for an ambulance, Coates returned to the house. He told Tony that he would keep coming back and beat up his mother until she gave him what he wanted. He also threatened Tony. When Tony told Coates that the police were on their way, Coates left the residence and he was arrested some time later.

At trial, Coates primarily relied on an insanity defense. There was significant undisputed evidence that Coates' personality had changed markedly following a motorcycle accident in 1997. After the accident, Coates was diagnosed with schizoaffective disorder, bi-polar type. However, he would often refuse to take his medication. During such periods, his behavior became erratic and he would quickly

become angry. He displayed poor impulse control and was irresponsible with money. Coates frequently displayed delusional thinking about himself and others. In particular, Coates expressed beliefs that he was god-like and could not be harmed. In addition, Coates believed that his parents had abused and mistreated him throughout his life and that his parents should provide him with financial assistance whenever he wanted it. Due to his condition, Coates was unable to hold employment and was drawing social security disability benefits.

The trial court instructed the jury on the defense of insanity as well as the permissible verdict of guilty but mentally ill. However, the trial court denied Coates' request for an instruction on the defense of extreme emotional disturbance. Coates first argues that he presented sufficient evidence to establish that the culpability of his conduct on May 6, 2004, was diminished by the extreme emotional disturbance he was experiencing at the time. We disagree.

Extreme emotional disturbance (EED) is a temporary state of mind so enraged, inflamed, or disturbed as to overcome one's judgment, and to cause one to act uncontrollably from the impelling force of the EED rather than from evil or malicious purposes. *McClellan v. Commonwealth*, 715 S.W.2d 464, 468-69 (Ky. 1986). The mere presence of mental illness, standing alone, does not constitute EED. But evidence of mental illness does not preclude a finding of EED either. Rather, it is the presence of adequate provocation, not the absence of mental illness, which is essential to a finding of EED. *Fields v. Commonwealth*, 44 S.W.3d 355, 359 (Ky. 2001).

The event which triggers the explosion of violence on the part of the criminal defendant must be sudden and uninterrupted. A defendant cannot simply claim a gradual victimization from his or her environment unless the additional proof of a triggering event is sufficiently shown. *Foster v. Commonwealth*, 827 S.W.2d 670, 678 (Ky. 1991). The EED must have a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. *Spears v. Commonwealth*, 30 S.W.3d 152, 155 (Ky. 2000). The presence of mental illness is relevant to a subjective evaluation of the reasonableness of the defendant's response to the provocation. *Fields*, 44 S.W.3d at 359.

Coates contends that his mother's refusal to give him money triggered "memories of a lifetime of abuse that he believed he suffered at the hands of his parents." Thus, Coates asserts that there was a reasonable explanation for his reaction when the circumstances are viewed as Coates believed them to be. But even considering Coates' mental illness, Mickey's mere resistance to his demand for money was not "a reasonable explanation or excuse" for Coates to become so enraged, inflamed or disturbed as to be entitled to the defense of EED. *Caudill v. Commonwealth*, 120 S.W.3d 635, 668 (Ky. 2003). Further, the delusional beliefs his mother had sexually abused him as a child are consistent with Dr. Wayne Heiner's and Dr. Steven Free's diagnosis that Coates suffered from schizoaffective disorder, bi-polar type.

And while the concept of adequate provocation is broad enough to include the cumulative impact of a series of related events, the triggering event must be sudden

and uninterrupted. *Holland v. Commonwealth*, 114 S.W.3d 792, 807 (Ky. 2003). In this case, Coates failed to present evidence of a "sudden and uninterrupted" triggering event. There was substantial evidence that Coates often became angry when his parents refused to give him money. After his parents had refused to give him money earlier on May 6, 2004, Coates left their house and discussed the situation with his cousin. He returned to the house more than four hours later and attacked his mother after demanding money from her for a second time.

Coates clearly had a cooling-off period of sufficient duration to interrupt the "provocation" caused by his parents' refusal to give him money. *See Fields*, 44 S.W.3d at 360. And by his own admission, Coates' attack on his mother was triggered by delusions of past abuse and mistreatment by his parents. Even considering his mental illness, his reaction was not reasonably related to the triggering events. Under the circumstances, Coates was not entitled to an EED instruction.

Coates next argues that he was entitled to an instruction on first-degree criminal trespass as a lesser-included offense of first-degree burglary. First-degree criminal trespass, KRS 511.060, differs from burglary, KRS 511.020, to the extent that the burglary statute requires "with intent to commit a crime" at the time the defendant enters or unlawfully remains in a building. *Commonwealth v. Sanders*, 685 S.W.2d 557, 558 (Ky. 1985). Thus, the offense of criminal trespass is a lesser crime included in the crime of burglary. *Martin v. Commonwealth*, 571 S.W.2d 613, 614-15 (Ky. 1978).

It is well settled that a defendant is entitled to have his theory of the case submitted to the jury. *Mondie v. Commonwealth*, 158 S.W.3d 203, 205 (Ky. 2005). A

defendant is entitled to an instruction on a separate, uncharged, lesser crime when a guilty verdict as to the alternative crime would amount to a defense against the higher charge. *Hudson v. Commonwealth*, 202 S.W.3d 17, 22 (Ky. 2006). Coates contends that the jury could reasonably have believed that he did not intend to commit a crime at the time he entered the house.

In support of this argument, he relies heavily on *McClellan*, *supra*, in which the defendant forced his way into the apartment of his estranged wife's paramour. McClellan testified at trial that he did not intend to commit a crime when he entered, but he became enraged when he saw his wife emerge unclothed from beneath the bed. The Supreme Court held that this testimony would have permitted the jury to find McClellan guilty of first-degree criminal trespass rather than burglary. *Id.* at 466.

As in *McClellan*, Coates concedes that there was evidence supporting his conviction for first-degree burglary. But he asserts that the jury could have reasonably concluded that he only intended to ask for a loan when he entered his parents' house. Therefore, Coates argues that the trial court erred by rejecting his tendered instruction for first-degree criminal trespass.

Had the assault against his mother occurred during his first visit to the house on May 6, 2004, we might agree that an instruction for first-degree criminal trespass would have been warranted. In that case, Coates could reasonably argue that he had no intent to commit a crime at the time he entered the house. But such an inference is not reasonable given the events as they actually transpired.

Unlike in *McClellan*, there was evidence that Coates planned to injure his parents before he entered the house. After the first argument at the house around 8:00 a.m., Tony persuaded Coates to leave the house. Several hours later, Coates told his cousin, Chris Jackson, that he planned to damage his parents' house or physically harm them with his hands. He returned to his parents' house shortly after making this statement.

Moreover, in *McClellan*, the defendant testified that his sole purpose in entering the apartment was to talk to his wife and attempt to persuade her to return home with him. In this case, Coates expressed an intent to harm his parents if they did not give him money. His behavior upon his arrival at the house demonstrates this intent. When she saw Coates pull into the driveway, Mickey told Coates not to enter. He forced his way into the house, immediately demanded money from Mickey with his hands out, and then began to choke her. Coates did not testify at trial regarding his intention when he entered the house, and he told the police after the event he could not remember most of the details of the incident. Simply put, there was no evidence from which the jury could infer that Coates did not intend to commit a crime until after he entered the house. Consequently, he was not entitled to an instruction for first-degree criminal trespass.

Coates' third argument is that the trial court erred by allowing the Commonwealth to present evidence of his prior bad acts. Before trial, the Commonwealth provided notice under KRE 404(b) that it intended to introduce testimony showing that Coates damaged a family-owned house in 1997 or 1998 because his parents would not give him money. Generally, evidence of prior bad acts is not

admissible to prove the character of a person in order to show action in conformity therewith, KRE 404(b), but it may be admissible if it is probative of another issue and where the probative value of, and need for, the evidence outweighs its unduly prejudicial effect. *Eldred v. Commonwealth*, 906 S.W.2d 694, 703 (Ky. 1995).

KRE 404(b)(1) allows other crimes evidence to be admitted "[i]f offered for some other purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." The Commonwealth argued, and the trial court agreed, that such evidence was admissible to show motive, identity and intent in the present case. In particular, the trial court determined that the evidence of Coates' prior acts of aggression toward his mother was probative regarding his defenses of insanity and mental illness.

In this case, the prior conduct was similar to the charged conduct and was also directed toward Coates' parents. However, we question how this evidence was particularly probative of the issues presented in this case. Since Coates was not permitted to rely on a defense of EED, this evidence was not probative to disprove a temporary, sudden and uninterrupted event which triggered the attack. There was no question involving identity in this case, and the prior acts were too remote in time to show a common scheme or plan. Likewise, Coates admitted that his actions were motivated out of anger at his mother because she would not give him money.

Coates' defense rested primarily on his evidence that he became mentally ill as a result of injuries from his motorcycle accident in 1997. Evidence of Coates' prior acts of aggression toward his mother involving disputes about money would only be

relevant if they occurred before the mental illness manifested itself or during periods when it was under control by medication. While there was some question about when the prior acts occurred, there was no evidence that they occurred before the motorcycle accident or during periods when Coates was unaffected by his mental illness. Consequently, the evidence of Coates' prior acts of aggression toward his parents had only limited relevance to the issue of motive.

But even if the evidence was improperly admitted, we cannot find that Coates suffered any unfair prejudice as a result. If anything, the inferences which the jury could draw from the evidence were as favorable to his defenses of insanity and mental illness as they were against. Under the circumstances, we conclude that any error in admitting this evidence was harmless.

Finally, however, we agree with Coates that the trial court erred in denying his motion to dismiss the charge of first-degree wanton endangerment. The double jeopardy clauses of the Fifth Amendment to the United States Constitution and Section 13 of the Kentucky Constitution prohibit a person from being twice punished or twice convicted for the same offense. But double jeopardy does not occur when a person is charged with two crimes arising from the same course of conduct, as long as each statute requires proof of an additional fact which the other does not. *Commonwealth v. Burge*, 947 S.W.2d 805, 811 (Ky. 1997), *citing Blockburger v. United States*, 284 U.S. 299, 304, 52 S. Ct. 180, 182, 76 L. Ed. 306 (1932). This rule is further explained in KRS 505.020, which allows prosecution for multiple offenses arising from a single course of conduct,

but prohibits such prosecution if the offense is designed to prohibit a continuing course of conduct and the defendant's course of conduct was uninterrupted by legal process.

We agree with the Commonwealth that, generally, assault and wanton endangerment each require evidence of facts which the other does not. First-degree assault requires a finding of serious physical injury, KRS 508.010, whereas wanton endangerment merely requires conduct which creates a substantial danger of death or serious physical injury to another. KRS 508.060. Unlike assault, the gravamen of wanton endangerment is creating the risk of death or physical injury, not actually causing it. *Matthews v. Commonwealth*, 44 S.W.3d 361, 365 (Ky. 2001); *Hennemeyer v. Commonwealth*, 580 S.W.2d 211 (Ky. 1979).

Coates' act of choking his mother until she lost consciousness did not merely create a "substantial danger of death or serious physical injury"; it actually caused serious physical injury to her. Furthermore, creating a substantial risk of death is subsumed within the definition of "serious physical injury." KRS 500.080(15). Thus, Coates' act of choking his mother clearly constitutes an assault. And since wanton endangerment is not a lesser-included offense of first-degree assault, *Matthews*, 44 S.W.3d at 365, it also stands to reason that acts which constitute an assault cannot also constitute wanton endangerment of the same victim.

Moreover, the Commonwealth is attempting to parse out discrete acts out of Coates' unbroken course of conduct toward a single victim. We agree with the Commonwealth that the assault and wanton endangerment statutes prohibit individual acts and not a course of conduct. *Welborn v. Commonwealth*, 157 S.W.3d 608, 612 (Ky.

2005). Thus, the Commonwealth may separately prosecute each individual act. As a practical matter, however, such prosecutions generally involve discrete acts directed at a single victim, s*ee Welborn* (allowing separate prosecutions for assault based upon each shot that the defendant fired at a police officer), or a single act implicating distinct offenses. *See McKinney v. Commonwealth*, 60 S.W.3d 499, 510 (Ky. 2001) (allowing multiple prosecutions for arson, abuse of a corpse, and tampering with physical evidence based upon a single act of setting fire to a building); *Matthews*, 44 S.W.3d at 365, (allowing separate prosecutions for assault and wanton endangerment based upon drunk driving which injured one driver and endangered another); *Burge*, 947 S.W.2d at 812, (allowing multiple prosecutions for criminal contempt and burglary and criminal contempt and assault based on same course of conduct); and *Alexander v. Commonwealth*, 766 S.W.2d 631, 632 (Ky. 1988) (allowing multiple prosecutions for murder and wanton endangerment based upon a single shot fired into a crowded room).

The Commonwealth contends that Coates' actions fell into the former category. In the indictment, the Commonwealth charged Coates with first-degree wanton endangerment based upon his acts of choking his mother, and with first-degree assault based upon his acts of beating his mother after she lost consciousness. The Commonwealth argues that Coates had sufficient time after Mickey lost consciousness to "reflect on his conduct and formulate the intent to commit another act." Thus, the Commonwealth asserts that Coates can be charged with two separate offenses.

But there was no evidence of any break in the sequence of events between Coates' acts of choking his mother and his acts of beating her with his hands and feet.

Coates' actions toward his mother constituted a single course of conduct and a single assault. Consequently, we conclude that Coates could not be charged with both wanton endangerment and assault arising from the same course of conduct and directed at the same individual.

Nevertheless, we recognize that this ruling will not affect Coates' total sentence. The trial court only imposed two years' imprisonment for wanton endangerment, and the court directed that sentence to run concurrently with his twelve-year sentence for the assault. Furthermore, there is no indication in the record that the court considered the wanton endangerment as an aggravating factor in the sentencing. Thus, while we must set aside Coates' conviction for wanton endangerment, Coates' total sentence will remain the same.

Accordingly, the judgment of the Jefferson Circuit Court is reversed as to the conviction for first-degree wanton endangerment, but is affirmed as to all other issues and as to the sentence. This matter is remanded to the Jefferson Circuit Court with directions to enter a new judgment of conviction as set forth in this opinion.

ALL CONCUR.

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