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Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000970-MR

MYRA CASTLE

APPELLANT

v. APPEAL FROM JOHNSON CIRCUIT COURT
HONORABLE JOHN DAVID PRESTON, JUDGE
ACTION NO. 13-CR-00131

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, CLAYTON, AND DIXON, JUDGES.

ACREE, JUDGE: Myra Castle appeals the May 27, 2014 judgment of the Johnson Circuit Court entered upon a jury verdict convicting her of second-degree manslaughter and operating a motor vehicle under the influence (DUI). She seeks reversal of the circuit court's decision denying her motions for a directed verdict.

Castle also argues juror misconduct and the jury's observation of an altered accident scene entitles her to a new trial. We disagree and affirm.

I. Facts and Procedure

On August 16, 2013, at roughly 8:15 p.m., the motorcycle driven by Casey Roger (CJ) Mollett, Jr. collided with the small SUV operated by Castle. CJ died as a result of his injuries. The general facts surrounding the accident are uncontested.

Castle was travelling in the southbound lane of Route 201 in Johnson County, Kentucky; CJ was travelling in the northbound lane. Route 201 is a winding, rural road with a posted speed limit of 55 miles per hour (mph). Moving at approximately 10 to 15 mph, Castle initiated a left turn into a private driveway. CJ saw Castle, and attempted futilely to stop, skidding no less than 185 feet. When Castle's vehicle was fully situated across the northbound lane, CJ crashed into the passenger front fender area of Castle's SUV. CJ was ejected from the motorcycle. He sustained severe blunt force trauma injuries to his neck, ribs, hip, pelvis, and chest.

The collision occurred on a slightly inclined, but straight stretch in the "300 block" of Route 201. The site distance for both Castle and CJ immediately preceding the accident was approximately 800 feet.

CJ was traveling at an excessive rate of speed – at least 74 to 79 miles per hour. Multiple witnesses observed CJ pass two vehicles in or near curves shortly before the collision site. These witnesses placed CJ's speed at between 80

and 90 miles per hour prior to impact. They also stated that CJ's motorcycle had on its lights. At the time of the accident, it was dusk but not yet dark.

CJ was not wearing a helmet. The severity of his injuries was such that a helmet would not have saved his life.

Castle was under the influence of alcohol and drugs. Immediately after the accident, she exited her vehicle and made her way to her friend's house. The friend's son and daughter-in-law, Joseph and Jennifer Witten, were the only people home at the time. Jennifer attended to Castle, while Joseph located CJ. Castle immediately asked Jennifer for a breath mint. Having none, Jennifer offered Castle alcohol-free mouthwash. Jennifer could smell alcohol on Castle's person. Several first responders, including Deputy Byron Fairchild and Fire Chief Jimmy Kessner, interacted with Castle at the collision scene. Both smelled alcohol on Castle's breath and body. Castle failed the horizontal gaze nystagmus (HGN)¹ field sobriety test, indicating intoxication. Castle advised Deputy Fairchild that she had prescription medication, that she had not had anything to drink, that she was not turning when the accident occurred, and that she did not know why she was turning.

Joseph and Jennifer described Castle as "shaken up," "disoriented," "addled," and "in shock." Castle did not ask about or express any concern for CJ. She did inquire as to the condition of her vehicle.

¹ "An inability of the eyes to maintain visual fixation as they are turned from side to side (in other words, jerking or bouncing) is known as horizontal gaze nystagmus, or HGN." *Leatherman v. Commonwealth*, 357 S.W.3d 518, 527 (Ky. App. 2011) (citation omitted).

Castle was transported to a local hospital, where she was treated for minor injuries. Kentucky State Trooper Adam Hensley again administered the HGN test. Castle again failed. Trooper Hensley also detected the smell of alcohol on Castle. Castle admitted to Trooper Hensley that she had been drinking vodka earlier in the day.

Detective Jason Dials interviewed Castle shortly after the accident. Castle stated she had had a fight with her husband, was upset, and decided to drive up the road. By way of explanation, Castle described her husband as a “teetotaler,” and stated, “I don’t work, I sit there and I’m bored and depressed and I know you guys don’t understand that and I’m told what to do all the time.” She stated she was driving and looking straight when the collision happened, and she did not see the motorcycle. At one point, Castle changed her story, claiming she had turned around in a different driveway 400 feet north of the accident site and that the collision had occurred there. Castle also admitted she had been drinking vodka earlier, including a couple of shots around noon – eight hours before the accident – but declared she had not consumed any alcohol later in the day or prior to leaving her house. Castle said she takes prescription medication, including Percocet, blood-pressure medication, and anti-depressants; she stated she had not taken her Percocet in 3 or 4 days. According to Castle, her doctor did not advise her not to consume alcohol with her medications, and her prescription bottles did not contain alcohol-consumption warnings. Detective Dials later testified that Castle giggled

twice during the interview, and this combined with her body language and demeanor indicated to him that she was impaired by drugs, alcohol, or both.

Lab results later revealed Castle's blood alcohol concentration (BAH) to be 0.200 grams/100 milliliters, two and a half times the legal limit of 0.08.² Castle's blood also tested positive for diazepam/nordiazepam (Valium), and trazodone. Castle's purse, recovered at the scene, contained five prescription pill bottles; all were empty with the exception of one marked Klonopin.

Castle was placed under arrest upon her release from the hospital. The local grand jury subsequently returned an indictment charging her with second-degree manslaughter and DUI. A three-day jury trial was held on April 21-23, 2014. Toxicology expert Greg Davis, M.D., testified that Castle's BAH was possibly higher than 0.200 at the time of the crash and inconsistent with her story that she drank no alcohol in the hours preceding the collision. Dr. Davis explained that alcohol consumption slows reflexes and reaction time, and affects a person's judgment, perception, and awareness. More specifically, a person with a 0.200 BAH would have a decreased ability to judge things like time, distance, acceleration, and deceleration. The combination of prescription medications and alcohol causes a cumulative effect.

Expert Reconstructionist, Eddie Crum, testified on Castle's behalf. Crum stated that, had CJ been travelling 69 mph or less, the motorcycle would

² "(1) A person shall not operate or be in physical control of a motor vehicle anywhere in this state: (a) Having an alcohol concentration of 0.08 or more[.]" Kentucky Revised Statute (KRS) 189A.010(1)(a).

have stopped prior to the collision. He found nothing out of the ordinary regarding Castle's turn – her speed and turn angle were normal. Crum opined that Castle likely could not have seen CJ given his rate of speed, and that CJ was at least a football field away (300 feet) when Castle started to turn.

During the course of the trial, the circuit court allowed the jury to visit the scene of the accident. Castle requested that the circuit court remove a memorial to CJ that had been erected in the ditch where CJ's body landed. The memorial consisted of an orange cross adorned with the words "CJ 'Bub' Mollett, Fly High, Rest Easy," along with a small picture of CJ. The circuit court denied Castle's motion.

At the close of the Commonwealth's case, Castle requested a directed verdict, arguing there was no evidence from which a reasonable juror could find that Castle *caused* CJ's death. The circuit court denied Castle's motion, finding a reasonable juror could infer causation from the evidence. Again, at the close of all evidence, Castle renewed her motion for a directed verdict. Again, it was denied.

The jury found Castle guilty of both indicted offenses, and recommended seven-years' imprisonment for second-degree manslaughter and thirty-days' imprisonment for DUI. The circuit court entered a judgment consistent with the jury's verdict, and denied Castle's post-trial motion for a new trial.

Subsequently, Castle discovered a possible connection between a jury member – Juror X – and the victim. The circumstances of the accident garnered

considerable media attention. A group called “Justice for CJ” picketed extensively on the Courthouse steps, and organized an online social media campaign on CJ’s behalf. The circuit court asked specific questions during *voir dire* to measure each juror’s possible exposure to media and online scrutiny. Likewise, the Commonwealth asked the jury venire if any possible juror: recognized a photograph of CJ; has more than two hundred Facebook friends; has Facebook friends who have a large number of friends; or had seen or read anything online about this case. Juror X answered each question negatively. It eventually came to Castle’s attention, after trial, that Juror X’s son had attended CJ’s funeral, and Juror X “liked” on Facebook a group photo taken at CJ’s funeral depicting Juror X’s son and several other males, including members of the “Justice for CJ” movement, accompanied by a caption reading, “Blood brothers you mess with one you gotta take us all!!”

Castle filed a motion pursuant to CR³ 60.02 and RCr⁴ 10.02 to alter, amend, or vacate the judgment, for an evidentiary hearing, and for a new trial, contending Juror X’s conduct compromised the integrity of the verdict. The circuit court held an evidentiary hearing, after which it denied Castle’s motion.

This appeal followed.

Castle presents three arguments on appeal. First, she was entitled to a directed verdict on the manslaughter charge given the utter lack of proof on the

³ Kentucky Rules of Civil Procedure.

⁴ Kentucky Rules of Criminal Procedure.

essential element of causation. Second, the circuit court erred in denying her motion to amend or vacate the judgment after discovering that Juror X failed to disclose relevant information during *voir dire*. And, third, that the circuit court erred in allowing the jury to view a memorial to the deceased during the jury's visit to the scene of the accident.

We will refer to additional facts as needed as part of our analysis.

II. Directed Verdict

A motion for a directed verdict tests the sufficiency of the evidence. *See Mitchell v. Commonwealth*, 231 S.W.3d 809, 811 n.2 (Ky. App. 2007); *Leslie County v. Hart*, 232 Ky. 24, 22 S.W.2d 278, 279 (1929). “On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal.” *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991). “All evidence which favors the prevailing party must be taken as true and the reviewing court is not at liberty to determine credibility or the weight which should be given to the evidence, these being functions reserved to the trier of fact.” *Lewis v. Bledsoe Surface Min. Co.*, 798 S.W.2d 459, 461-62 (Ky. 1990) (citations omitted). Furthermore, “[t]he prevailing party is entitled to all reasonable inferences which may be drawn from the evidence.” *Id.* at 462.

Castle asserts it was clearly unreasonable for the jury to find her guilty of second-degree manslaughter because the Commonwealth presented no evidence that she caused CJ's death. As a result, Castle argues, the Commonwealth failed to

prove every element of the offense beyond a reasonable doubt, necessitating a directed verdict in her favor.

A person is guilty of second-degree manslaughter when she wantonly causes the death of another person, including circumstances in which the death results from the defendant's operation of a motor vehicle. KRS⁵ 507.040(1). Causation is an essential element of second-degree manslaughter. An accused cannot be convicted of the crime unless the Commonwealth proves a causal link, beyond a reasonable doubt, between the accused's conduct and the victim's death. *See id.*

“Kentucky is somewhat unique in having statutory coverage of criminal causation.” George G. Seelig, *Kentucky Criminal Law* § 2–4(a)(4) at 63 (2d. ed. 2008). KRS 501.060 defines conduct as being the cause of a particular result “when it is an antecedent without which the result in question would not have occurred.” KRS 501.060(1). Simply put, the harm would not have occurred absent – that is, but for or without which – the defendant's conduct. *Burrage v. United States*, 134 S. Ct. 881, 887-88, 187 L. Ed. 2d 715 (2014) (“The Model Penal Code [upon which KRS 501.060 is modeled] reflects this traditional understanding[.]”).

Further, “it is not necessary that defendant's act should have been the sole cause of the harm[.]” Seelig, *Kentucky Criminal Law* § 2–4(b) at 64 (citation omitted). “The rule that conduct can be the legal cause of a result without being its only cause is so fundamental and so essential that it undoubtedly survives the

⁵ Kentucky Revised Statute.

reduction of the causation doctrine to statute.” *Id.* This is further supported by the commentary to KRS 501.060, which explains that any antecedent which “constitute[s] a ‘substantial factor’ in bringing about the result in issue” is a cause of that result. *Id.*, 1974 Kentucky Crime Commission/LRC Commentary. KRS 501.060(4) leaves the question of causation to the jury.

While admitting she was intoxicated, Castle submits she actually drove in a perfectly normal, safe manner, making a legal left turn at a safe speed, with an oncoming motorcycle rider who was as far away as a football field, and Castle’s vehicle was struck by that motorcycle rider because he was driving at a high rate of speed on a undulating, rural road. Castle argues that CJ’s recklessness, not her conduct, caused CJ’s death.

There is ample evidence in this case from which the jury could reasonably conclude that Castle caused CJ’s death. The Commonwealth presented evidence that Castle was operating her vehicle in a drunken haze that severely impacted her perception, reaction, and judgment. Castle’s own statements after the accident suggest she was unaware of how the accident occurred or that she was indeed negotiating a turn. Had Castle perceived CJ, it is possible she would have recognized his high rate of speed and yielded the right of way until he passed. Instead, she crossed the center line and was fully blocking CJ’s lane of travel when the collision occurred; all the experts agree that CJ was firmly in his lane of travel at the time of the crash.

There is no doubt that CJ's excessive rate of speed contributed to the accident. However, we are also firmly convinced that it was reasonable for the jury to surmise that Castle's conduct was also a contributing cause. Simply put, there was ample evidence from which the jury could conclude that Castle's wanton⁶ conduct was a substantial factor in bringing about CJ's death and, but for Castle's wanton actions, the accident and CJ's death would not have occurred. KRS 501.060(1).

In sum, we find a directed verdict was not warranted in this case. A reasonable juror could find Castle wantonly caused CJ's death. We affirm.

III. Juror Misconduct

Castle next contends that the circuit court erred in denying her motion for a new trial based on juror misconduct when evidence surfaced post-trial that Juror X possessed a Facebook connection to CJ. Castle asserts Juror X failed to reveal this information during *voir dire*, despite direct questions posed during standard and individual *voir dire* designed to reveal a juror's connection to the deceased and/or possible exposure to the case through social media.

⁶ "A person acts wantonly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists." KRS 501.020(3). Generally, "wanton conduct involves conscious risk-taking[.]" *Id.*, 1974 Kentucky Crime Commission/LRC Commentary. In this case, Castle does not take issue with the *mens rea* (wanton) element of the crime charged, and Kentucky law has often recognized that driving intoxicated is evidence of wanton conduct. *See Walden v. Commonwealth*, 805 S.W.3d 102, 105 (Ky. 1991) (depending on the degree of intoxication, drunk driving could imply wantonness so extreme as to justify wanton murder, or to a lesser degree justifying involuntary manslaughter); *Steen v. Commonwealth*, 318 S.W.3d 116, 118 (Ky. App. 2010) (noting that a juror could reasonably conclude that the defendant wantonly caused the death of another based on the defendant's level of intoxication).

Upon Castle's motion, the circuit court held a post-trial evidentiary hearing. Juror X testified: she has a Facebook page that she shares with her husband; she is Facebook friends with her son; she does not know how many Facebook friends she or her son has; she never saw prior to trial two pictures of her son and other boys taken at CJ's funeral that were posted on Facebook; and she did not remember "liking" a photograph of her son (and others) taken at CJ's funeral. Juror X stated that, looking solely at the pictures, it is not clear how they are connected to CJ. Juror X clarified she is not a Facebook junkie and she gets on Facebook randomly. She does not often visit her son's page, but sees pictures of him on her "newsfeed." Juror X's son never talked about CJ or brought CJ home, and Juror X never heard her son use the phrase "blood brothers." She did not know her son attended CJ's funeral. Juror X testified she did not recognize CJ in the photograph published during *voir dire*, she would not recognize CJ today, and she does "not know him."

Castle argues she was entitled to know that a juror who sat on her trial had a son who was a friend of the victim, and Juror X's answers and silence during *voir dire* constituted juror misconduct. Had Juror X disclosed her son's connection to CJ, she would have been subject to being stricken for cause and, if she was not stricken for cause, then Castle would have elected to strike her with a peremptory challenge. Castle declares that the circuit court's decision to uphold the verdict denied Castle her right to a fair trial with an impartial jury.

Whether to grant a new trial is largely within the discretion of the trial court, and our review standard is whether the circuit court abused that discretion. *Foley v. Commonwealth*, 55 S.W.3d 809, 814 (Ky. 2000). “As a general rule, anything which is good cause for challenge for disqualification of a prospective juror is deemed good cause for a new trial if not known or discoverable to the defendant or his counsel before the verdict and they were misled by a false answer on *voir dire*.” *Combs v. Commonwealth*, 356 S.W.2d 761, 764 (Ky. 1962). The fundamental concern “is whether the rights of the accused have probably been prejudiced by concealed impartiality [sic].” *Id.*

“It is now common knowledge that merely being friends on Facebook does not, *per se*, establish a close relationship from which bias or partiality on the part of a juror may reasonably be presumed.” *McGaha v. Commonwealth*, 414 S.W.3d 1, 6 (Ky. 2013).

“‘[F]riendships’ on Facebook and other similar social networking websites do not necessarily carry the same weight as true friendships or relationships in the community, which are generally the concern during *voir dire*.” Therefore, no presumption arises about the nature of the relationship between a juror and another person with an interest in the litigation simply from their status as Facebook friends. “As with every other instance where a juror knows or is acquainted with someone closely tied to a case, it is the extent of the interaction and the scope of the relationship that is the relevant inquiry.”

Id. at 6 (quoting *Sluss v. Commonwealth*, 381 S.W.3d 215, 222-23 (Ky. 2012)).

The burden is upon the litigant claiming juror bias or impartiality to prove the

point “sufficient to undermine the integrity of the verdict.” *Sluss*, 381 S.W.3d at 225. To ferret out such bias, an evidentiary hearing is often required and, when held, we review the circuit court’s factual findings for clear error and its legal conclusions *de novo*. *Id.* at 229; CR 52.01.

The circuit court found, and we agree, that Castle’s rights have not “been prejudiced by concealed impartiality” or tainted by unfairness or juror bias as to require a new trial. *Sluss*, 381 S.W.3d at 224, 229. The circuit court found that Juror X had “little to no knowledge relating to” CJ and she “did not answer any questions untruthfully and did not fail to answer any questions that she should have answered.” Juror X’s testimony at the evidentiary hearing fully supports the circuit court’s findings.

It appears Juror X is “Facebook friends” with her son, and her son is “Facebook friends” with friends of CJ.⁷ Juror X’s responses during the hearing indicate she did not purposely mislead or deceive the parties during *voir dire*. She answered the *voir dire* questions directed at social-media relationships to the best of her knowledge. Castle also did not fail to disclose a social media connection to CJ. She was unaware of her son’s tenuous connection to CJ, and the photograph “liked” by Juror X mentions neither CJ nor the “Justice for CJ” group, nor is it obvious that the photograph was taken at CJ’s funeral. In fact, the picture merely depicts a group of boys standing in front of a white truck near a road. Juror X made it perfectly clear that she in no way knows CJ. She possessed no preexisting

⁷ There was no evidence submitted that Juror X’s son was even a direct Facebook friend of CJ.

opinion or knowledge of CJ or the collision that claimed his life. The extent and nature of Juror X's connection to CJ is virtually non-existent.

We discern no bias by Juror X, and we agree with the circuit court that Castle was tried by a fair and impartial jury. Again, we affirm.

IV. Crime Scene View

Castle's last argument is that the circuit court erred when it allowed the jury to view an altered crash scene. KRS 29A.310(3) "permits a jury to view the place where the charged offense was committed when deemed necessary by the trial court. The decision lies within the sound discretion of the lower court."

Debruler v. Commonwealth, 231 S.W.3d 752, 760-61 (Ky. 2007). We review the circuit court's decision for an abuse of discretion. *Id.*

Citing *Juett v. Calhoun*, 405 S.W.2d 946 (Ky. 1966), Castle argues that it was error to allow a jury view of a scene in which the scene has been altered. In *Juett*, the jury was permitted to view chalk marks highlighting damage to a building during the accident scene view. The extent of damage to that building was the contested fact of the civil suit in *Juett*. Our Supreme Court concluded that the highlighting of the areas of damage with chalk marks was not in evidence and therefore the chalk marks constituted an impermissible "speaking . . . in the sense that they conveyed a specific message to the jury in connection with a sensitive and vital portion of the lawsuit." *Id.* at 951. "[T]his was equivalent to permitting one of the [plaintiffs below] to point out the matters of which they complained." *Id.*

Juett is distinguishable from this case in a material way. In *Juett*, the extent of the accident damage was contested and altering the accident scene by highlighting damage with chalk was deemed prejudicial. In the court's words: "It is significant that there was material contrariety in evidence as to the nature and extent of the cracks in the building. The chalk marks may well have drawn the attention of the jury to matters not otherwise discernible." *Id.* In this case, there was no "contrariety in evidence as to" CJ's name, likeness, or the fact of his death. This makes the case before us more analogous to one of the cases *Juett* distinguishes, *Turner v. Shropshire*, where "there is no proof to the contrary" of these facts indicated at the accident scene. 285 Ky. 256, 147 S.W.2d 388, 393 (1941).

Trial courts must be conscious of the risk of prejudice when a jury visits a crime scene that has been altered, and must take care to limit the "exhibition of inflammatory evidence to a jury[.]" *Adkins v. Commonwealth*, 96 S.W.3d 779, 794 (Ky. 2003) (citation omitted). We think the question is properly framed as whether the jury's view of an altered crime scene, no matter how slight the alteration, caused the defendant to suffer demonstrable prejudice. *See generally Allen v. Commonwealth*, 286 S.W.3d 221, 229 (Ky. 2009). We discern no such prejudice in this case. Again, CJ's name, picture, and death, and the location of his body post-collision, were all known to the jury prior to the scene visit. The memorial was simple and neither overstated nor inflammatory. *See id.* at 229 n.23 ("[A]ll a court may do in such a situation is to look at the [crime] scene

presented to the jury and determine whether what they saw was so inherently prejudicial as to pose an unacceptable threat to the defendant's right to a fair trial." (quoting *In re: Woods*, 154 Wash.2d 400, 114 P.3d 607, 616 (2005)).

We decline to find, under the facts of this case, that the presence of the cross at the crime scene was so inherently prejudicial as to demonstrate an urgent or real necessity for a new trial.

V. Conclusion

We affirm the May 27, 2014 judgment of the Johnson Circuit Court declaring Castle guilty of second-degree manslaughter and DUI, and the July 11, 2014 Order denying Castle's motion for a new trial.

ALL CONCUR.

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