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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001910-MR

JOSHUA ELTON PRIDDY — APPELLANT

v.

APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CRAIG Z. CLYMER, JUDGE
ACTION NO. 14-CR-00084

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, THOMPSON, AND VANMETER, JUDGES.

CLAYTON, JUDGE: This is an appeal from a jury verdict in the McCracken Circuit Court. The Appellant, Joshua Priddy, was convicted of First-Degree Wanton Endangerment and Persistent Felony Offender II. Priddy argues that the trial court erred in denying his motion for a directed verdict. Based upon the following, we affirm the decision of the trial court.

BACKGROUND SUMMARY

Priddy and Julia Starr are the parents of two children. On October 1, 2013, Priddy called Julia and asked her to come get the children immediately. Starr was at work and did not get off until midnight, so she went to get the children around 12:45 a.m. on October 2nd. Starr's boyfriend, Lavar Washington, drove her to Priddy's residence to pick up the children. Washington remained in his vehicle while Starr went inside to retrieve the children.

Starr testified at trial that when she entered the residence all the lights were off. She also stated that she heard a "click, click" sound that, in retrospect, she thought was the sound of a round being chambered into a gun. Starr stated that she turned on the lights and began to get the children out of bed when Priddy pointed a gun at her head. She then told the children to go outside.

Starr testified that Priddy was telling her that he wanted them to be a family and that he was going to kill them all so they would all be together in heaven. Starr left the home without any physical injuries and spent the night with her children in Washington's hotel room. The next morning, Starr went to the police station in Paducah and reported the incident to police. While she was at the station, Priddy phoned her and she put her phone on speaker so Officer Danna Davie could listen to the conversation. It was not recorded; however, both Starr and Officer Davie testified that Priddy apologized for the night before, specifically for pointing the gun at her and threatening to kill her.

Priddy was indicted by the McCracken County Grand Jury for one count of first-degree wanton endangerment and one count of being a persistent felony offender in the second degree. A trial was held on September 15, 2014, at which only Starr and Officer Davie testified as to the events. The jury found Priddy guilty of both counts of the indictment and recommended a sentence of ten years' imprisonment. The trial court accepted the jury's recommendation and Priddy then brought this appeal as a matter of right.

STANDARD OF REVIEW

In *Spivey v. Sheeler*, 514 S.W.2d 667, 673 (Ky. 1974), the Kentucky Supreme Court held that:

> In a ruling upon a motion for directed verdict, the trial court must draw all fair and rational inferences from the evidence in favor of the party opposing the motion, and a verdict should not be directed unless the evidence is insufficient to sustain the verdict. The evidence of such party's witness must be accepted as true.

(Quotation omitted).

With this standard in mind, we review Priddy's appeal.

DISCUSSION

Priddy argues that the act of putting a gun to someone's head does not constitute first-degree wanton endangerment without other factual allegations.

Specifically, he contends that the Commonwealth failed to prove that there was "substantial danger of death or physical injury" when Priddy threatened Starr with his gun.

Kentucky Revised Statutes (KRS) 508.060 provides that:

> (1) A person is guilty of wanton endangerment in the first degree when, under circumstances manifesting extreme indifference to the value of human life, he wantonly engages in conduct which creates a substantial danger of death or serious physical injury to another person.

While Priddy concedes that, in certain circumstances pointing a gun at someone's head is sufficient evidence to support a conviction for a first-degree wanton endangerment instruction, he argues that the fact patterns in such cases involve more substantial evidence of wanton behavior than was presented as evidence in this case.

KRS 501.020(3) provides that a perpetrator 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 circumstances exists…[when] disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

Priddy asserts that the cases of *Thomas v. Commonwealth*, 567 S.W.2d 299 (Ky. 1978), *Gilbert v. Commonwealth*, 637 S.W.2d 632 (Ky. 1982), and *Commonwealth v. Clemmons*, 734 S.W.2d 459 (Ky. 1987), provide support for his argument. He points to the following passage in *Clemmons*, which references both *Thomas* and *Gilbert*:

> *Thomas* and *Gilbert* suggest that in certain circumstances, depending on the existence of other facts, pointing a firearm at another person may be sufficient to constitute a violation of KRS 508.060. On the other hand, however, much of our case law suggests that a person may be guilty of wanton endangerment in the first degree with the use of a firearm only by firing it. See *Watson v. Commonwealth,* Ky., 579 S.W.2d 103 (1979) and *McIntosh v. Commonwealth*, Ky. App., 582 S.W.2d 54 (1979).

Clemons at 461.

Clemons also examined the Commentary to the statute and held as follows:

> In accord with this view is the Commentary accompanying the Kentucky Penal Code in which KRS 508.060 and 508.070 are analyzed as follows:
>
> > KRS 508.060 and 508.070 reflect the same judgment that forms the rationale for the law of criminal attempt, namely that certain conduct which is harmless in fact indicates a dangerousness of character sufficient for the imposition of criminal sanctions. The types of conduct indicating such character and punishable under these two statutes are such things as discharging firearms in public, pointing firearms at others, obstructing public highways, and abandoning containers which are attractive to children.
>
> Likewise, in accord with the view expressed in the Commentary quoted above, is 1 Palmore and Lawson, *Kentucky Instructions to Juries*, § 2.20, Comment; and Aprile, "Elements of Crimes, Statutory Charges and Indictments," *Criminal Law of Kentucky Annotated* (1986) at 886 which provides as an example of a properly drafted indictment under KRS 508.060 the following: "pointed a loaded revolver at John Jones...."

Id.

Based upon the following, the act of pointing the gun at Starr's head was sufficient, under the statute, to find a defendant guilty of first-degree wanton endangerment. Thus, we affirm the decision of the trial court in dismissing the motion for directed verdict.

ALL CONCUR.

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