

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002940-MR

SHAWNTA ROBERTSON

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE STEVEN R. JAEGER, JUDGE
ACTION NO. 98-CR-00132

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BARBER, MCANULTY AND COMBS, JUDGES.

BARBER, JUDGE: This is an Opinion Affirming the trial court's denial of a motion for directed verdict and jury verdict of second-degree manslaughter against Appellant Shawnta Robertson.

Robertson was pulled over during a traffic stop at 2:00 a.m. on January 4, 1998. The record shows that Robertson was suspected of drunk driving at the time he was signaled to pull over. The police officer instituting the stop stated that he had suspicion of DUI and possession of an illegal substance. While in police detention, but prior to being arrested or handcuffed, Robertson ran from the police officers who had pulled him over. He fled onto a bridge crossing the Ohio river. Robertson soon

gave up his attempt to flee and was arrested and handcuffed by the police officer.

While Robertson was fleeing, the arresting officer radioed for assistance. Police officers from another department coming from the Cincinnati side of the bridge got out of their vehicle and joined in the chase. At an undisclosed time during or shortly after the chase of Robertson, a Covington Police Officer, (Officer Partin), disappeared. It was eventually assumed that he had stepped into a gap in the Ohio River bridge, fell through to the river below and drowned. Apparently, Officer Partin misjudged the width of an opening in the pavement over which he was crossing while joining in the chase of Robertson.

Police officers who testified at trial stated that foot pursuits were not uncommon in that location. The officers stated that they were aware of the gap in the bridge between the pavement and the sidewalk. Both Robertson and the arresting officer stepped from the pavement to the sidewalk without difficulty during the chase. The witnesses testified that it was necessary for anyone to step over this narrow gap in order to move from the pavement to the sidewalk. No witnesses saw or heard Officer Partin fall from the bridge. One officer saw him vault over the barrier between the pavement and the sidewalk "like he'd done it a million times", but did not see him either fall or make it onto the sidewalk.

Immediately after his arrest, Robertson was given a Miranda warning. He stated that he did not know that Officer Partin had joined in the chase, and did not learn that he had

fallen from the bridge until after he was arrested. Robertson was later charged with three misdemeanors, driving under the influence (first offense), disregarding a traffic control device, and possession of marijuana. Robertson was indicted in March, 1998, and charged with second-degree manslaughter, pursuant to KRS 507.040, in the death of Officer Partin.

Five months later the badly deteriorated body of Officer Partin was found in the Ohio River. Following an autopsy, it was concluded that Officer Partin had drowned. No evidence was available as to the cause of the fall. Additionally, no evidence was found showing whether Officer Partin was ill so as to cause the fall, whether he was conscious when he fell, or conscious when he hit the water. The Commonwealth accused Robertson of wanton or reckless conduct causing the death of the officer. Robertson was sentenced to six years on the charge of second-degree manslaughter.

At trial, both Robertson and the arresting officer testified that they did not know that the Covington Police Officer was attempting to assist in the chase, or that Partin had fallen off the bridge. Robertson testified that he did not know Partin had fallen until some time after he was arrested and placed into the police officer's vehicle. The law holds that "a person's state of mind may be inferred from actions preceding and following the charged offense." Parker v. Commonwealth, Ky., 952 S.W.2d 209, 212 (1997). The evidence showing Robertson's state of mind at the time of the charged offense shows that he was

aware that he was under police detention, and that he intentionally fled from the arresting officer.

Robertson asserts that his conduct did not cause Officer Partin's death. Robertson was on the sidewalk of the bridge when Partin decided to join in the chase and was not in a situation which should have exposed the officer to the risk of falling. Officer Partin's fall was the result of an accident, Robertson argues, and was not intentionally caused by his actions. However, as the Commonwealth argues, Robertson knew or should have known that when he fled from the detention of the arresting officer, that the police officers would attempt to follow him. Robertson first fled into heavy traffic on the paved portion of the bridge, before moving over the barrier and onto the sidewalk. His conduct exposed the chasing officers to the risk of harm from various sources, including motor vehicles, roadway defects, and accidental injury.

A person is properly found guilty of manslaughter in the second degree where he wantonly causes the death of another person. KRS 507.040(1). Robertson asserts that his actions were not the cause of Officer Partin's death, and that he did not act in a wanton manner.

KRS 501.020 defines the terms wanton and reckless as follows:

(3) "Wantonly" - 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. The risk must be of such nature and degree that disregard thereof

constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. . . .

(4) "Recklessly" - A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

Id. The jury was given definitions of both of these actions, and could have found Robertson innocent or guilty merely of reckless conduct. The jury found that Robertson had acted wantonly and should, therefore, be found guilty of second-degree manslaughter.

A defendant should be held liable for a charged offense where the elements of the offense have been proven. KRS 501.060 provides, in pertinent part:

(1) Conduct is the cause of a result when it is an antecedent without which the result in question would not have occurred

(3) When wantonly or recklessly causing a particular result is an element of an offense, the element is not established if the actual result is not within the risk of which the actor is aware or, in the case of recklessness, of which he should be aware unless:

(a) The actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the probable injury or harm would have been more serious or more extensive than that caused; or

(b) The actual result involves the same kind of injury or harm as the probable result

and occurs in a manner which the actor knows or should know is rendered substantially more probable by his conduct.

Id.

It is uncontroverted that Robertson had no specific intention to harm Officer Partin, but the record shows that he did engage in behavior that was unreasonably dangerous to officers who chose to follow him on foot. The specific injury to Officer Partin may have been unforeseeable, but could be found a probable result of Robertson's behavior. A defendant may be found guilty where the act he performs or the injury he causes is within the ambit of the applicable statute. Commonwealth v. Welch, Ky., 864 S.W.2d 280, 281 (1993). In the present case, Robertson's actions rose to the level of wanton conduct so as to support a verdict of manslaughter in the second degree.

The Commonwealth claims that even though Robertson did not intend to kill Officer Partin, he was aware of and consciously disregarded a substantial and unjustifiable risk that his conduct would result in the death of another person. Elliott v. Commonwealth, Ky., 976 S.W.2d 416, 419 (1998). Robertson had no weapons, and took no aggressive action against the officer. He was running on the sidewalk of the bridge when it is presumed that Officer Partin fell. The fact that Robertson fled lawful police detention at night, over a bridge and uneven pavement, and through heavy traffic, shows that he wantonly or recklessly exposed the officers chasing him to a substantial and unjustifiable risk. This conduct rises to the level of wanton action.

A person is "presumed to intend the logical and probable consequences of his conduct." Hudson v. Commonwealth, Ky., 979 S.W.2d 106, 110 (1998). The record contains substantial evidence showing that although traveling across the bridge on foot was a safe and common occurrence, certain risks were inherent in moving from the pavement to the sidewalk. The gap through which Officer Partin is presumed to have fallen is forty-one inches wide at some points. The risk that someone involved in the chase might fall through a gap in the bridge or otherwise suffer injury was great. Some type of injury to the officers following Robertson was a logical or probable consequence of Robertson's actions. Wanton conduct is not limited to certain defined circumstances, but exists whenever an individual exposes another to a substantial and unjustified risk of injury or death. Voluntary intoxication is not a defense to such a charge. Hancock v. Commonwealth, Ky. App., 998 S.W.2d 496, 498 (1998).

The Commonwealth asserts that Robertson's behavior, in running away from the officer who had performed the traffic stop prior to any arrest taking place, was a gross deviation from the standard of conduct that a reasonable person would have observed, and that therefore Robertson should be found to have recklessly or wantonly caused the death of Officer Partin. The law is clear in holding that a person be aware of and consciously disregard a substantial and unjustifiable risk that his conduct will cause the death of another person in order to be found guilty of manslaughter in the second degree. Gray v. Commonwealth, Ky., 695 S.W.2d 860 (1985). "[I]f the defendant

did not intend to kill, and if his mental state with respect to the victim's death was neither wanton nor reckless, the death was accidental and the defendant is not guilty of any degree of homicide." Elliott v. Commonwealth, Ky., 976 S.W.2d 416, 419 (1998). Evidence which meets this standard must clearly show that the defendant knew or should have known that his actions were likely to kill another person, such as firing a pistol into an occupied vehicle, or setting an occupied house on fire. See Nichols v. Commonwealth, Ky., 657 S.W.2d 932 (1983).

In the present case, Robertson fled police detention, which was not the action of a reasonable and prudent person following a traffic stop. By taking such action, Robertson assumed the risk that his wanton or reckless conduct could cause injury to those pursuing him. For this reason, the jury's verdict must be affirmed.

This Court notes that Robertson was not under arrest at the time he ran from the police officer. The uncontroverted evidence is that he ran as the police officer was beginning to search and handcuff him. To support a conviction for second-degree manslaughter, the prosecution must show that the foreseeable consequence of a criminal act was the death of a person. Jones v. Commonwealth, Ky., 830 S.W.2d 877, 878 (1992). The elements of the crime charged include both certain specified criminal conduct and necessary consequences. Id. Running from a police officer while being questioned is wrongful, as Robertson was in police detention at the time he attempted to flee. Robertson was not acting in a reasonable or prudent fashion when

he fled from the investigating officer. Thus evidence existed under which Robertson could be found guilty of second degree manslaughter.

Robertson claims that the trial court erred in failing to grant his motion for directed verdict. A motion for directed verdict was made based upon the record and Robertson claimed that the prosecution's case and the testimony at trial did not support a finding of wanton or reckless conduct on his part. The evidence at trial showed that Robertson fled police detention, exposing officers pursuing him to a risk of injury or death. For this reason, Robertson was not entitled to have his motion for directed verdict granted by the trial court.

Under Kentucky law, a directed verdict should only be entered where it would be unreasonable for the jury to find the defendant guilty of the charged offense. Yarnell v. Commonwealth, Ky., 833 S.W.2d 834, 836 (1992). On a motion for directed verdict the trial court must draw all fair and reasonable inferences in favor of the Commonwealth. Questions of credibility and weight of evidence are jury matters. Estep v. Commonwealth, Ky., 957 S.W.2d 191, 193 (1997). The defendant should be granted a directed verdict only where the prosecution has produced nothing but a "mere scintilla" of evidence of guilt. Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991). The Commonwealth presented more than a scintilla of evidence supporting a finding of guilt in the present case. For this reason, Robertson is not entitled to reversal of the denial of the motion for directed verdict.

COMBS, JUDGE, CONCURS.

MCANULTY, JUDGE, DISSENTS.

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