

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-002027-MR

COMMONWEALTH OF KENTUCKY

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT  
HONORABLE EDWIN M. WHITE, JUDGE  
ACTION NO. 00-CR-00599

CHRISTOPHER LONG

APPELLEE

OPINION  
REVERSING AND REMANDING  
\*\* \*\*

BEFORE: EMBERTON, GUIDUGLI, AND MILLER, JUDGES.

MILLER, JUDGE: The Commonwealth of Kentucky brings this appeal from a September 6, 2001 order of the Christian Circuit Court. We reverse and remand.

On December 29, 2000, Christopher Long was indicted by the Christian County Grand Jury upon one count of reckless homicide. Kentucky Revised Statutes (KRS) 507.050. In June 2001, Long filed a motion to dismiss the indictment alleging that his actions were insufficient to establish recklessness. A hearing ensued, and the circuit court entered its order dismissing the indictment on September 6, 2001. Therein, the court specifically found:

The alleged actions that caused the death of Bobby Sue Lindenmuth were driving a vehicle fifteen miles per hour over the posted speed limit and running a red light. As tragic as this incident is, the Court does not believe that defendant's conduct was reckless as that term is defined in our statutes.

This appeal follows.

The Commonwealth contends the circuit court erred by entering its order dismissing the indictment against Long. Specifically, the Commonwealth alleges that the court is without authority to inquire as to the sufficiency of evidence upon which the indictment was based. We are compelled to agree with the Commonwealth.

In reviewing an indictment, the court is limited to a determination of whether the indictment is valid upon its face, and whether it conforms to statutory requirements. See Hancock v. Commonwealth, Ky. App., 998 S.W.2d 496 (1998). It is well established that the sufficiency of evidence to support an indictment may not be properly considered by the court upon a motion to dismiss the indictment. See Commonwealth v. Hayden, Ky., 489 S.W.2d 513 (1972); Commonwealth v. Hamilton, Ky. App., 905 S.W.2d 83 (1995).

In the case at hand, there was no allegation that the indictment was invalid on its face, or that the indictment failed to conform with statutory requirements. Rather, the circuit court dismissed the indictment based upon its belief that the evidence was insufficient to establish that Long acted with recklessness. We, therefore, must conclude that the circuit

court erred in dismissing the indictment based upon insufficiency of evidence. See Hayden, 489 S.W.2d 513.

As we understand the matter, it is improbable that the Commonwealth will be able to marshal evidence to make out a submissible case of recklessness on the part of Long. The circuit court, of course, will at a later time revisit the issue of whether the evidence is legally sufficient to demonstrate that Long acted recklessly in regard to the automobile accident. Cf. Commonwealth v. Benham, Ky., 816 S.W.2d 186 (1991).

In sum, we are of the opinion that the circuit court committed error by dismissing the indictment against Long.

For the foregoing reasons, the order of the Christian Circuit Court is reversed, and this cause is remanded for proceedings consistent with this opinion.

ALL CONCUR.

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