

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002438-MR

STEVEN DARNELL CHENAULT

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE REBECCA M. OVERSTREET, JUDGE
ACTION NO. 2001-CR-00597

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * ** **

BEFORE: COMBS, GUIDUGLI, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Appellant, Steven Darnell Chenault (Chenault), was convicted of manslaughter in the second degree and sentenced to ten years' imprisonment. Chenault raises one issue on appeal, whether the trial court should have granted his motion for a directed verdict. After reviewing the record, we affirm.

On April 14-15, 2001, Chenault, Timothy Owsley (Owsley), Ronald Barber (Barber), Leonard Alexander Woods (Woods), Anwar Jenkins (Jenkins), and Lamar Boyd (Boyd) were drinking at Chenault's house. There was conflicting testimony as to whether they were also smoking marijuana. Nevertheless, sometime in the early morning hours of April 15, 2001, they

decided to leave the Chenault residence and ride their bikes to another residential area. Before leaving the residence, Chenault got a gun from Boyd who stayed behind. On the trip Owsley fell behind the rest of the group. Chenault went back to where Owsley was and words were exchanged between the two. The stories of the witnesses were conflicting as to the exact words exchanged. Chenault either told Owsley to hurry up or he would have to shoot him or that Chenault told Owsley to shut up or he would have to shoot him. Owsley said, "Just shoot me." None of the witnesses saw the actual shooting, but after the exchange of words they heard the gun go off and turned to see Owsley fall to the ground. Chenault immediately stated that he had accidentally shot Owsley and that the gun "just went off."

The bikers then moved Owsley's body and his bike off the path into some bushes and returned to Chenault's home. Chenault returned the gun to Boyd and told him that he "might want to get rid of it." He told the others not to tell anyone. After Owsley's body was discovered, the police investigation led to the witnesses. At first they denied knowing anything about it, but one of them later returned to the police and told what had happened. When questioned for the second time, Chenault confessed to shooting Owsley but maintained that it was an accident and the gun "just went off."

Chenault was indicted by a Fayette County Grand Jury on the offenses of murder and tampering with physical evidence. A jury trial was held October 1-2, 2001. At the end of the prosecution's case, Chenault moved for a directed verdict. The motion was denied. Instructions were given to the jury on

murder, second-degree manslaughter, reckless homicide, and tampering with physical evidence. The jury convicted Chenault of manslaughter in the second degree and acquitted him of the tampering charge. The only issue on appeal is whether the circuit court erred in denying the motion for directed verdict.

A directed verdict of acquittal should be granted when, viewing the evidence in the light most favorable to the Commonwealth, it would be unreasonable for a jury to find guilt. If the evidence is sufficient to induce a reasonable juror to believe beyond a reasonable doubt that a defendant is guilty, a directed verdict should not be given. Commonwealth v. Benham, Ky., 816 S.W.2d 186 (1991).

The forensic pathologist testified that Owsley was shot while the gun was in direct contact with his head. The firearms examiner testified that he tested the gun to ensure that it functioned properly. He testified that the gun could be fired two ways; one requiring 3-½ pounds of pressure and the other requiring 11-to-12 pounds of pressure on the trigger, that the gun had safety features to avoid inadvertent firing, and that in order to fire the weapon one would have to apply constant pressure. While there was some inconsistency in the testimony as to the words exchanged between the two and the witnesses, all testified that they thought the two were engaging in a "play argument". Woods said that when they returned to Chenault's, he was thinking about it because he "didn't know if they were playing or not."

When this evidence is viewed in a light most favorable to the Commonwealth, we must conclude that the trial judge

properly denied the motion for a directed verdict of acquittal. Nichols v. Commonwealth, Ky., 657 S.W.2d 932 (1983). This evidence was more than a mere scintilla and the case was properly presented to the jury for determination. Benham, 816 S.W.2d at 188.

While Chenault is correct that the evidence does not show that he intended to kill Owsley, it nevertheless was not unreasonable for a jury to find that his conduct and/or state of mind met the statutory definition for murder, second-degree manslaughter or reckless homicide. Even though Chenault may not have intended to kill, if the jury found that his conduct was such that it created a grave risk of death to Owsley and thereby caused his death under circumstances manifesting extreme indifference to human life, they could find him guilty of murder. KRS 507.020(1)(b). If the jury found that Chenault was aware of and consciously disregarded a substantial and unjustifiable risk that his conduct would result in the death of Owsley, they could find him guilty of second-degree manslaughter. KRS 507.040. If the jury found that Chenault failed to perceive a substantial and unjustifiable risk that his conduct would result in the death of Owsley, they could find him guilty of reckless homicide. KRS 507.050 and 501.020. Of course, if the jury determined that Chenault did not intend to kill, and if his mental state with respect to the Owsley's death was neither wanton nor reckless, the jury could have found that the death was accidental and that Chenault was not guilty of any degree of homicide. Elliot v. Commonwealth, Ky., 976 S.W.2d 416 (1998).

Although the prosecution in a criminal case has the burden of proving every element of the defendant's guilt beyond a reasonable doubt, KRS 500.070(1), In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970), Commonwealth v. Collins, Ky., 821 S.W.2d 488, 490 (1991), mens rea, specifically intent, can be inferred from circumstances. McClellan v. Commonwealth, Ky., 715 S.W.2d 464, 466 (1986), cert. denied, 479 U.S. 1057, 107 S. Ct. 935, 93 L. Ed. 2d 986 (1987); Commonwealth v. Phillips, Ky., 655 S.W.2d 6 (1983), cert. denied, 465 U.S. 1072, 104 S. Ct. 1427, 79 L. Ed. 2d 751 (1984); Wilson v. Commonwealth, Ky., 601 S.W.2d 280 (1980).

When the evidence is circumstantial and does not conclusively establish a defendant's state of mind at the time of the killing, it is appropriate to instruct on all degrees of homicide and leave it to the jury to sort out the facts and determine what inferences and conclusions to draw from the evidence. Commonwealth v. Wolford, Ky., 4 S.W.3d 534 (1999). The evidence showed that Chenault threatened to shoot Owsley. The question as to whether this was said in jest was properly a question for the jury. Commonwealth v. Smith, Ky., 5 S.W.3d 126, 129 (1999); Estep v. Commonwealth, Ky., 957 S.W.2d 191, 193 (1997). The evidence showed that Chenault held a loaded gun to the head of Owsley. From the testimony of the firearms examiner, it was reasonable for the jury to infer that the gun did not go off accidentally as Chenault contended, but rather that he pulled the trigger. This evidence as a whole was sufficient to create a

jury issue and therefore, the Court properly denied the motion for directed verdict.

For the reasons stated, we affirm the judgment of conviction imposed by the Fayette Circuit Court.

ALL CONCUR.

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