

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000214-MR

DANTE RHONJIA PARDUE

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE BARRY WILLETT, JUDGE
ACTION NO. 07-CR-002771

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: STUMBO, TAYLOR, AND VANMETER, JUDGES.

STUMBO, JUDGE: Dante Rhonjia Pardue appeals from a Judgment of Conviction of the Jefferson Circuit Court reflecting a conditional plea of guilty on one count each of reckless homicide, complicity to commit robbery in the first degree and complicity to commit burglary in the first degree. Pardue argues that the circuit court lacked subject matter jurisdiction over the murder charge (later

pled to reckless homicide) because no probable cause was tendered on that charge when the Commonwealth successfully moved to transfer the proceeding from district court to circuit court. We conclude that the circuit court properly determined that a murder charge arose out of the same course of conduct as the robbery charge, and accordingly affirm.

On July 1, 2007, Pardue and Jordan Adams went to the residence of a drug dealer, Troy Cole, for the purpose of robbing Cole. Pardue and Adams were each 15 years old at the time. Pardue allegedly asked Adams to participate in the crime because Adams had possession of a firearm. Upon arriving at Cole's apartment, Pardue and Adams rushed in when Cole answered the door. Adams pointed the gun at Cole's head and demanded money. The record indicates that Cole initially appeared to comply, but after a brief struggle, Cole produced a handgun and shot Adams. Adams subsequently died. Cole was later found to have acted in self defense, though he was charged with various drug offenses.

Pardue was subsequently arrested and charged with one count of first-degree robbery. Because of Pardue's age, the matter proceeded in district court.¹ During the pendency of the proceeding, the Commonwealth filed a motion to transfer the matter to Jefferson Circuit Court pursuant to Kentucky Revised Statutes (KRS) 635.020(4). In support of the motion, the Commonwealth relied on the fact that Pardue's accomplice, Adams, was armed with a gun at the time of the robbery.

¹ Consistent with local practice, Pardue uses the term "district court" rather than juvenile or family court.

A hearing on the motion was conducted on July 17, 2007, in district court. The court determined that Pardue was over the age of fourteen at the time of the offense and that probable cause existed that a handgun was used in the commission of the offense. At the conclusion of the hearing, jurisdiction over the action was transferred to Jefferson Circuit Court.

Thereafter, the Commonwealth went before the Jefferson Grand Jury and obtained an indictment against Pardue on one count each of first-degree robbery, first-degree burglary and wanton murder. Pardue subsequently moved to dismiss the murder charge for lack of subject matter jurisdiction. In support of the motion, Pardue argued that he was not charged with murder in district court, that the district court made no probable cause finding as to the then nonexistent murder charge, and that as such there was no statutory basis for the circuit court to adjudicate a murder charge against a juvenile. Hearings on the motion were conducted on September 19, 2008, and November 5, 2008, resulting in an Order denying the motion to dismiss the murder charge.

The Commonwealth subsequently offered Pardue a plea agreement providing that, in exchange for a guilty plea, the charges would be reduced to complicity to commit first-degree robbery, complicity to commit first-degree burglary and reckless homicide. Pardue accepted the plea, subject to the reservation of his right to appeal the denial of his motion to dismiss the murder charge. The plea was entered on December 9, 2007, and a Judgment of Conviction

reflecting the plea was rendered by the Jefferson Circuit Court on January 7, 2009.

This appeal followed.

Pardue now argues that the Jefferson Circuit Court committed reversible error in denying his motion to dismiss the murder charge for lack of subject matter jurisdiction. Pardue contends that the circuit court never gained jurisdiction over the murder charge since that charge was not before the district court during the transfer hearing and it is not an offense that falls under KRS 635.020(4), which Pardue refers to as the automatic gun transfer statute. The focus of Pardue's claim of error is that only those charges which were before the district court and raised at the transfer hearing, or charges which arose from the same course of conduct, may properly be transferred to the circuit court pursuant to KRS 635.020(4). Pardue contends that testimony at the transfer hearing created probable cause to believe that he committed robbery and burglary. However, he maintains that no probable cause existed for the later allegation that he engaged in wanton murder. In sum, Pardue argues that Adams' use of a firearm and his subsequent death did not arise out of the same course of conduct as the burglary and robbery, and that as such, the circuit court was without jurisdiction to adjudicate the murder charge.

KRS 635.020(4) provides that a juvenile over the age of fourteen years who is charged with a felony in which a firearm was used, shall be transferred to the circuit court. It states that,

Any other provision of KRS Chapters 610 to 645 to the contrary notwithstanding, if a child charged with a felony in which a firearm, whether functional or not, was used in the commission of the offense had attained the age of fourteen (14) years at the time of the commission of the alleged offense, he shall be transferred to the Circuit Court for trial as an adult if, following a preliminary hearing, the District Court finds probable cause to believe that the child committed a felony, that a firearm was used in the commission of that felony, and that the child was fourteen (14) years of age or older at the time of the commission of the alleged felony. If convicted in the Circuit Court, he shall be subject to the same penalties as an adult offender, except that until he reaches the age of eighteen (18) years, he shall be confined in a facility or program for juveniles or for youthful offenders, unless the provisions of KRS 635.025 apply or unless he is released pursuant to expiration of sentence or parole, and at age eighteen (18) he shall be returned to the sentencing Circuit Court for proceedings consistent with KRS 640.030(2).

In accordance with this statute, a transfer hearing was conducted on July 17, 2007, in Jefferson District Court. The district court determined that probable cause existed to believe that Pardue committed the felony of robbery, that a firearm was used in the commission of the robbery, and that Pardue was over the age of fourteen years. Pardue contends that because he was not charged with murder at the time of the hearing, no probable cause could have existed to support the then nonexistent murder charge, resulting in no charge to transfer to the circuit court.

We do not find this argument persuasive. Both Pardue and the Commonwealth direct our attention to *Osborne v. Commonwealth*, 43 S.W.3d 234 (Ky. 2001), and *Pollini v. Commonwealth*, 172 S.W.3d 418 (Ky. 2005), in support

of their respective arguments. We find these cases to be directly on point and dispositive of Pardue's claim of error. The Kentucky Supreme Court stated in *Pollini* at 425 that,

In *Osborne v. Commonwealth*, 43 S.W.3d 234, 238 (Ky. 2001), this Court stated that "it is the offender that is transferred to circuit court, not the offense." Accordingly, subsequent charges against a youthful offender may be brought directly in circuit court without conducting a second set of transfer proceedings if (1) proper District transfer proceedings have previously been held and a valid transfer order from those proceedings has been entered; and (2) the subsequent charges "aris[e] out of the same course of conduct that gave rise to the offense that caused the child to be transferred to circuit court." *Id.*

The question then is whether Pardue's subsequent charge, i.e., the count of wanton murder handed down by the grand jury, arose out of the same course of conduct which gave rise to the robbery charge. If so, then it was properly before the circuit court pursuant to KRS 635.020(4). We must answer that question in the affirmative. The facts giving rise to the burglary of Cole's apartment, the robbery of Cole and the death of Jordan Adams are so co-mingled as to be inseparable. It is uncontroverted that Adams' death occurred during the course of the burglary and robbery. The record indicates that Pardue and Adams pushed their way into Cole's apartment when Cole answered the door, and that Adams immediately produced a firearm for the purpose of robbing Cole. Adams pointed the gun at Cole, resulting in a struggle terminated by Cole's shooting and killing Adams. According to Cole, Adams fired a shot during the struggle which grazed Cole. It cannot reasonably be said that Adams' death did not, in the

language of *Osborne* and *Pollini*, arise out of the same course of conduct that gave rise to the robbery. The circuit court's exercise of jurisdiction over the murder charge comported with KRS 635.020(4) as well as *Osborne* and *Pollini*. As such, we find no error in the circuit court's December 1, 2008 Order denying Pardue's motion to dismiss for lack of subject matter jurisdiction.

For the foregoing reasons, we affirm the Judgment of Conviction of the Jefferson Circuit Court.

ALL CONCUR.

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