

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2013-CA-001155-MR

KE'AVE WILSON

APPELLANT

v. APPEAL FROM HENDERSON CIRCUIT COURT  
HONORABLE KAREN LYNN WILSON, JUDGE  
ACTION NO. 13-CR-00062

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \*

BEFORE: CLAYTON, NICKELL, AND THOMPSON, JUDGES.

CLAYTON, JUDGE: This is an appeal from a decision of the Henderson Circuit Court. Based upon the following, we affirm the decision of the trial court.<sup>1</sup>

BACKGROUND INFORMATION

---

<sup>1</sup> This opinion was delayed due to administrative handling.

Ke'ave Wilson was arrested on January 16, 2013 after he fired a handgun into the air on the porch of his family's home. Wilson was seventeen years old at the time of the incident. A Youthful Offender hearing was held on February 11, 2013, at which the trial court concluded that there was probable cause on the issue of wanton endangerment in the first degree and for tampering with physical evidence. The trial court also noted that the provisions of the automatic transfer statute were met.

After defense counsel asked the trial court for a clarification of the ruling regarding the use of a handgun, the trial court stated that there was probable cause on both charges and that a firearm was used in commission of the felonies. The Commonwealth indicted Wilson for first degree wanton endangerment, tampering with physical evidence, third degree terroristic threatening, possession of a handgun by a minor, and second degree disorderly conduct.

In circuit court, Wilson pled guilty to first degree wanton endangerment, tampering with physical evidence, third degree terroristic threatening, possession of a handgun by a minor and second degree disorderly conduct. Based upon a plea agreement, Wilson received a three (3) year sentence. Wilson subsequently received shock probation as agreed to by the Commonwealth. Wilson now appeals the decision regarding his wanton endangerment charge and the decision to waive him to circuit court.

## DISCUSSION

Wilson first argues that the trial court erred, as a matter of law, when it concluded that probable cause existed for the charge of wanton endangerment in the first degree and allowed the case to be transferred under Kentucky Revised Statute (KRS) 635.020(4). Questions of law are reviewed *de novo*.

KRS 635.020(4) provides, in relevant part, 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.

Thus, the crime charged must be a felony, a firearm must have been used in the commission of that felony, and the child must be at least fourteen years of age. Wilson contends that, as a matter of law, he cannot be guilty of wanton endangerment in the first degree and that, therefore, his transfer based on this charge is inappropriate.

Wanton endangerment is codified in KRS 508.060, which provides as follows:

(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.

The trial court found that the firing of a gun in a residential area, even if it were fired in the air, was wanton endangerment in the first degree. We find nothing to indicate this ruling was in error.

Since the finding of probable cause existed for wanton endangerment in the first degree, Wilson was properly transferred under the automatic transfer statute to adult court. Thus, we affirm the decision of the trial court.

NICKELL AND THOMPSON, JUDGES, CONCUR IN RESULT ONLY.

BRIEF FOR APPELLANT:

John Gerhart Landon  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jack Conway  
Attorney General of Kentucky

Nate T. Kolb  
Frankfort, Kentucky