

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-002087-MR

JAMES ERIC HORD

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JAMES M. SHAKE, JUDGE
ACTION NO. 12-CR-002862

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, MAZE AND STUMBO, JUDGES.

STUMBO, JUDGE: James Hord appeals from his conviction of first-degree wanton endangerment. He argues that the trial court should have granted a directed verdict in his favor, that a witness who testified at trial was not qualified to testify as an expert, and that there was improper victim impact testimony during the trial's penalty phase. We find no error and affirm.

In July of 2012, Hord and Crissie Heil were living together and carrying on a romantic relationship. From July 24, 2012, to July 27, 2012, Heil alleged that Hord had prevented her from leaving their house and that he had sexually assaulted and strangled her. Hord, on the other hand, claimed that during these three days the two were engaged in consensual rough sex which included erotic asphyxiation. On July 27, Heil's sister became concerned and contacted the police to perform a welfare check. Heil's sister and the police found Heil and took her to the University of Louisville hospital. Heil was examined by Amanda Corzine, a sexual assault nurse examiner (SANE) who took Heil's history, examined her for injuries, and collected evidence. Heil described to the SANE nurse what happened to her, including being strangled by Hord.

Hord was charged with sodomy, attempted rape, sexual abuse, unlawful imprisonment, and first-degree wanton endangerment. The wanton endangerment charge was brought about because Hord strangled Heil. The jury acquitted Hord of all the charges except wanton endangerment. He was sentenced to serve five years in prison. This appeal followed.

Hord's first argument on appeal is that the trial court erred in denying his motion for directed verdict on the charge of wanton endangerment. Hord claims that a directed verdict should have been granted because the Commonwealth put forth no evidence that he created a substantial danger of death or serious physical injury to Heil. We believe that the court correctly denied the motion.

On motion for directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. If the evidence is sufficient to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty, a directed verdict should not be given. For the purpose of ruling on the motion, the trial court must assume that the evidence for the Commonwealth is true, but reserving to the jury questions as to the credibility and weight to be given to such testimony.

On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal.

Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky. 1991). “A reviewing court does not reevaluate the proof because its only function is to consider the decision of the trial judge in light of the proof presented.” *Id.* “Circumstantial evidence is sufficient to support a criminal conviction as long as the evidence taken as a whole shows that it was not clearly unreasonable for the jury to find guilt.” *Bussell v. Commonwealth*, 882 S.W.2d 111, 114 (Ky. 1994) (citing *Trowel v. Commonwealth*, 550 S.W.2d 530 (Ky. 1977); *Benham*, 816 S.W.2d at 187).

Kentucky Revised Statutes (KRS) 508.060(1) states that “[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.” SANE nurse Corzine testified that ten seconds of pressure could cause someone to lose consciousness and that four to five minutes of continuous strangulation could cause death or serious physical injury. This was the only

testimony regarding the dangers of strangulation. Hord alleges that because the Commonwealth put forth no evidence as to how long Hord strangled Heil, the evidence was insufficient to prove that he created a substantial danger of death or serious physical injury to Heil. We disagree.

The relevant testimony of SANE nurse Corzine is as follows:

During strangulation there's occlusion of blood vessels or airway that cause a lack of oxygen to the brain. It can be a very lethal injury depending on how the strangulation occurs but as little as ten seconds of pressure can cause someone to pass out or become unconscious from the strangulation . . . death and serious brain damage can occur within four to five minutes of continuous strangulation.

We believe this testimony, when viewed in conjunction with the testimony of Heil, precluded the trial court from granting a directed verdict. Heil testified that she thought she may have lost consciousness when she was strangled, but was not entirely sure. Heil's testimony that she believed she lost consciousness and SANE nurse Corzine's testimony regarding the dangers of strangulation were sufficient to overcome the motion for directed verdict. This testimony could reasonably lead the jurors to conclude that Hord created a substantial danger of death or serious physical injury.

Hord's next argument on appeal is that the trial court erred in allowing SANE nurse Corzine to testify as an expert. During the Commonwealth's questioning of SANE nurse Corzine, it asked the following question: "What happens to someone when they are strangled?" Defense counsel objected on the

basis that this line of questioning exceeded lay witness testimony and the nurse had not been qualified as an expert witness. The Commonwealth responded that SANE nurses are trained in the forensic aspects of strangulation and the risks it poses.

The court sustained the objection, but allowed the Commonwealth to proceed if it laid a proper foundation as to the nurse's training. The Commonwealth then asked SANE nurse Corzine if she had been trained with regard to strangulation. SANE nurse Corzine stated: "Yes we have. It's part of the sexual assault nurse examiner training we receive. We're trained on how to evaluate injuries, also the mechanisms of injury with strangulation and the physical and medical effects of strangulation." Defense counsel objected again, but this objection was overruled and SANE nurse Corzine was allowed to testify as to what happens to a person during strangulation and what physical signs of strangulation were found on Heil.

The proper standard for review of evidentiary rulings is abuse of discretion. *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 577 (Ky. 2000). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). We believe SANE nurse Corzine was qualified to testify as to the physical effects of strangulation.

Hord argues that there was no testimony as to SANE nurse Corzine's training or experience regarding strangulation. We disagree. As previously discussed, SANE nurse Corzine testified that strangulation is covered in the SANE training. In addition, her testimony at trial also revealed that she has advanced

training in the sexual assault medical-forensic exam which includes one hundred hours of classroom and hands-on training on injury documentation, evidence collection, and medical treatment of sexual assault victims. She is also a registered nurse with a bachelor's of science degree in nursing from Bellarmine University. She also testified that she has conducted almost three hundred exams in her five years as a SANE nurse. We believe this training and experience qualified SANE nurse Corzine to testify as to the physical effects of strangulation and the trial court did not abuse its discretion in allowing said testimony. *See Edmonds v. Commonwealth*, 433 S.W.3d 309, 316-17 (Ky. 2014), where a SANE nurse was allowed to testify in a similar manner under similar circumstances.

Hord's final argument on appeal is that Heil made improper statements during her victim impact testimony. During her testimony, she discussed having a counselor with her at the hospital while she was undergoing tests related to the rape. In addition, she stated: "I know that if there's another woman that maybe she won't go through what as bad as I've gone through because at least they'll be some kind of record because God and I know what happened that day even if someone else doesn't remember correctly." Hord argues that this was improper victim impact testimony because it related to the charges for which he was acquitted and that victim impact testimony is limited to the crimes for which a person is convicted.

This issue was not preserved, but Hord asks for palpable error review pursuant to Kentucky Rules of Criminal Procedure (RCr) 10.26.

A palpable error which affects the substantial rights of a party may be considered by the court on motion for a new trial or by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.

RCr 10.26. “[I]f upon consideration of the whole case the reviewing court does not conclude that a substantial possibility exists that the result would have been any different, the error complained of will be held to be nonprejudicial.” *Jackson v. Commonwealth*, 717 S.W.2d 511, 513 (Ky. App. 1986) (citation omitted). “To discover manifest injustice, a reviewing court must plumb the depths of the proceeding . . . to determine whether the defect in the proceeding was shocking or jurisprudentially intolerable.” *Martin v. Commonwealth*, 207 S.W.3d 1, 4 (Ky. 2006).

We do not believe Heil’s testimony was improper, let alone palpable error. During the penalty phase, KRS 532.055(2)(a)(7) allows the Commonwealth to put forth evidence of “[t]he impact of the crime upon the victim or victims . . . including a description of the nature and extent of any physical, psychological, or financial harm suffered by the victim or victims[.]” “[T]he purpose of such proof is to give the jury an understanding of the impact of the crime being tried, not the defendant’s bad character or overall negative effect on society.” *St. Clair v. Commonwealth*, 451 S.W.3d 597, 625 (Ky. 2014).

Hord was tried on a charge of rape. Heil’s testimony described the nature of the harm she suffered as is allowed by the statute. Even though Hord was

acquitted of this charge, he was still tried on a charge of rape. In addition, all evidence introduced in the guilt phase of a trial can be considered by the jury in the penalty phase. *Harper v. Commonwealth*, 978 S.W.2d 311, 317 (Ky. 1998).

Heil's testimony was not improper.

For the foregoing reasons, we affirm the judgment of the trial court.

ALL CONCUR.

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