

IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

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RENDERED: SEPTEMBER 18, 2003
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2001-SC-0902-MR

FINAL

DATE 10-9-03 E.A. Gray, Jr., D.C.

VICTOR EDWARD HIATT

APPELLANT

V.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE THOMAS L. CLARK, JUDGE
2001-CR-0407

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant, Victor Edward Hiatt, was convicted of wanton murder by a Fayette County jury and received a sentence of life imprisonment. His appeal comes before this Court as a matter of right. Ky. Const. § 110(2)(b). Appellant argues on appeal that the trial court erred in instructing the jury on both intentional and wanton murder. We disagree and affirm the conviction.

On the evening of March 5, 2001, Appellant stabbed Van Williams to death. Upon his arrest, Appellant told police that this killing arose out of a confrontation with Gary Looney, the estranged husband of Appellant's girlfriend, Tina Miller. Fearing that Looney had put out a contract for Miller's life, Appellant went to the Hideaway Bar in Lexington to investigate the details of the alleged contract. Miller met Appellant at the

bar soon after he arrived. As Appellant and Miller were leaving, they were recognized by Looney who was also at the bar drinking with friends. There was much commotion and arguing among the group as they filed out onto the street. Eventually, only Appellant, Miller, and Williams, Looney's friend, remained outside the bar. Appellant told the police that he thought Williams might be the man hired by Looney to kill Miller. Williams was extremely intoxicated and the argument with Appellant escalated. The facts are in dispute as to who chased who; however, the confrontation ended several blocks away with Williams' death by multiple stab wounds. Appellant maintained that Williams brandished a knife during their confrontation, but no knife was recovered at either the crime scene or in the vicinity of the bar.

Appellant was indicted for the murder of Van Williams on April 16, 2001, in Fayette County. Appellant asserted both self-defense and defense of others as justification for killing Williams. The jury was instructed on intentional murder, wanton murder, first-degree manslaughter, second-degree manslaughter, reckless homicide, self-defense, and defense of others. The instruction on wanton murder was given over Appellant's objection. Nevertheless, the jury rejected Appellant's claims of self-defense and defense of others and found him guilty of wanton murder.

Appellant argues that the trial court erred in giving the instruction on wanton murder because the evidence demonstrated nothing but intentional actions taken by the Appellant. We disagree and hold that the alternative mental state instructions were supported by the evidence.

In Kentucky, it has been held that "[a]n instruction of an alternative nature is proper only when either theory (intentional/wanton) is reasonably supported by the evidence." Hudson v. Commonwealth, Ky., 979 S.W.2d 106, 109 (1998) (quoting

Barbour v. Commonwealth, Ky., 824 S.W.2d 861, 863 (1992)). Appellant argues that the evidence only supports an instruction on intentional murder.

Williams died from eleven stab wounds that damaged many vital organs including both lungs, a kidney, the liver, and heart. Appellant argues that the nature of the wounds precludes a reasonable finding of wantonness. Appellant cites Parker v. Commonwealth, Ky., 952 S.W.2d 209, 212 (1997), cert. denied, 522 U.S. 1122, 118 S. Ct. 1066, 140 L. Ed. 2d 126 (1998), claiming that "[i]ntent may be inferred from actions because a person is presumed to intend the logical and probable consequences of his conduct"

We have dealt squarely with this issue in Hudson, supra, where alternative mental state instructions were held to be without error in a murder case because the evidence supported both theories. In Hudson, the defendant was convicted of wanton murder and asserted error claiming the evidence only pointed to intentional conduct. Appellant cites from Hudson in which this Court stated ". . . neither the inference nor the presumption of intent are mandatory." Hudson, 979 S.W.2d at 110. In Hudson, we went on to state that the method and means of death alone cannot determine whether intent exists because that would make inferences and presumptions of intent mandatory. Id. Not only would such inferences and presumptions of intent be mandatory, the resulting rule would remove the necessity of determining a defendant's mens rea and most trials would become "mere formalities." Id. The question of whether a defendant actually possessed the intent to kill remains a subjective matter. Id. (citing Smith v. Commonwealth, Ky., 737 S.W.2d 683, 688 (1987)).

This Court has also spoken on alternative mental state instructions as they relate to a defendant's assertion of self-defense. In Wallen v. Commonwealth, Ky., 657 S.W.2d 232, 234 (1983), this Court held that in light of the totality of the evidence, instructions on both wanton and intentional murder were warranted despite the defendant's assertion that the killing was intentionally done in self-defense. The defendant in Wallen shot the victim shortly after learning that the victim allegedly raped his daughter. Id. at 233. The defendant testified that the victim approached him carrying a knife, however, no knife was recovered. Id. The alternative mental state instructions were free from error because ". . . a verdict cannot be successfully attacked upon the ground that the jurors could have believed either of two theories of the case where both interpretations are supported by the evidence." Id. at 234 (quoting Wells v. Commonwealth, Ky., 561 S.W.2d 85, 88 (1978)).

The Commonwealth presented a video recording of Appellant's police interview to the jury. On the tape, Appellant stated that he had "been on edge" and he "didn't intend to kill the man, just stop him." Appellant also told police, "If I had really meant to kill the man, I would have done it there, [outside the Hideaway Bar]." Additionally, Appellant stated that he did not know if he was actually stabbing Williams because he did not see any of Williams' blood and thought his switchblade was malfunctioning. In light of this evidence and the other circumstances of the case, we are convinced that the jury could reasonably find that Appellant "was wantonly engaging in conduct which created a grave risk to another and thereby caused the death of Van Clayton Williams under circumstances manifesting an extreme indifference to human life."

Therefore, we find that the trial court committed no error by including both intentional and wanton murder in its instructions to the jury. Accordingly, the judgment of the Fayette Circuit Court is affirmed.

All concur.

COUNSEL FOR APPELLANT:

Randall L. Wheeler
Assistant Public Advocate
Department of Public Advocacy
Suite 302, 100 Fair Oaks Lane
Frankfort, KY 40601

COUNSEL FOR APPELLEE:

A. B. Chandler, III
Attorney General of Kentucky

Elizabeth A. Heilman
Assistant Attorney General
Criminal Appellate Division
Office of the Attorney General
1024 Capital Center Drive
Frankfort, KY 40601-8204