

**IMPORTANT NOTICE**  
**NOT TO BE PUBLISHED OPINION**

***THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.***

Supreme Court of Kentucky **FINAL**

2005-SC-0241-MR

DATE 10-12-06 EWA Growth, D.C.

CHRISTOPHER RAY

APPELLANT

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE PAMELA GOODWINE, JUDGE  
INDICTMENT NO. 02-CR-01183-1

V.

COMMONWEALTH OF KENTUCKY

APPELLEE

**MEMORANDUM OPINION OF THE COURT**

Affirming

A jury of the Fayette Circuit Court convicted Appellant, Christopher David Ray, of Murder and Robbery in the First Degree. For these crimes, Appellant was sentenced to a total of sixty years imprisonment. Appellant now appeals to this Court as a matter of right. Ky. Const. § 110(2)(b). For the reasons set forth herein, we affirm Appellant's convictions.

On August 25, 2001, Appellant robbed and shot Marvin Fair. Being critically wounded, Fair was rushed to the hospital and immediately placed on artificial life support. Fair was diagnosed after several days as having no meaningful chance of recovery. Based upon this medical opinion, Fair's family agreed to withdraw the mechanical support systems that were maintaining Fair's circulation and respiration. Fair died shortly thereafter.

Appellant was convicted by jury of the crimes set forth above. Appellant now appeals to this Court alleging that the trial court erred in denying Appellant's motion for directed verdict on the charge of murder. We disagree and thus affirm Appellant's convictions.

Appellant's sole argument on appeal is that there was insufficient evidence for a reasonable jury to conclude that Fair's death was caused by the gunshot wounds inflicted by Appellant. A directed verdict is appropriate in any given case if, as a matter of law, the evidence is insufficient "to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty." Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky. 1991).

In order to be found guilty of murder, the jury must find that the defendant caused the death of another human being. KRS § 507.020, see also, Robertson v. Commonwealth, 82 S.W.3d 832, 835 (Ky. 2002) (sufficient evidence existed to submit charge of manslaughter to jury where defendant resisted arrest by unlawfully fleeing from police officer and the police officer subsequently fell to his death while pursuing the defendant). KRS § 501.060 defines conduct as being the cause of a particular result "when it is an antecedent without which the result in question would not have occurred." The commentary to KRS § 501.060 explains that any antecedent which "constitute[s] a 'substantial factor' in bringing about the result in issue" is a legal cause of that result. Id.

In this case, it is undisputed that Appellant's conduct was the sole and primary factor in bringing about the failure of Fair's basic physiological functions and thus his placement onto artificial life support. Appellant claims nonetheless that the Fair family's decision to withdraw the artificial life support was an intervening cause of Fair's death

which relieved him of any causal liability therefor. We find this proposition to be completely without merit.

First, it is important to note that Appellant does not claim that the Fair family's decision was in anyway inappropriate or unlawful. Rather, Appellant simply maintains that if the Fair family had not withdrawn the artificial life support, there is some miniscule chance<sup>1</sup> that Fair may not have died. As it has been held by almost all, if not all, other jurisdictions that have been presented with this question, the lawful decision to withdraw artificial life support from a loved one is simply not an independent, intervening cause of death sufficient to relieve one of causal liability, since people have a right to refuse the artificial maintenance of their essential physiological systems. See, e.g., State v. Pelham, 824 A.2d 1082, 1090-91 (N.J. 2003) (holding that removal of life support is not an independent, intervening cause of death and citing to numerous jurisdictions that have held similarly); Carrigg v. State, 696 N.E.2d 392, 396 (Ind. App. 1998) ("In order for an intervening cause to break the chain of criminal responsibility, the intervening cause must be so extraordinary that it would be unfair to hold the defendant responsible for the actual result."); State v. Yates, 824 P.2d 519, 523 (Wash. App. 1992) ("When life support is removed, the cause of death is not the removal, but whatever agency generated the need for the life support in the first instance."); see also, State v. Cunningham, 474 S.E.2d 772, 783 (N.C. 1996); Trepal v. State, 621 So.2d 1361, 1366 (Fla. 1993); State v. Meints, 322 N.W.2d 809, 813-14 (Neb. 1982).

Second, Appellant's infliction of gunshot wounds into Fair's head and abdomen would still be a legally sufficient cause of Fair's death even if removal from life support

---

<sup>1</sup> Fair's treating physician testified that he anticipated a 90% mortality rate from the nature of Fair's brain injury and a 10% possibility that Fair could exist for some time in a deep vegetative coma.

were considered an intervening cause. The comments to KRS § 501.060 state that an intervening cause of death is not sufficient to relieve one of causal liability if “the harm or injury resulting from the [intervening cause] is deemed to have been reasonably foreseeable by the first actor.” Id. In this case, the acts of being placed on and then lawfully removed from artificial life support systems are reasonably foreseeable results of being shot in the head and abdomen by a .38 caliber revolver. Accordingly, there was sufficient evidence in this case for the jury to conclude that Appellant’s acts legally caused Fair’s death.

The judgment of the Fayette Circuit Court is affirmed.

Lambert, C.J., Graves, McAnulty, Minton, Roach, and Scott, J.J., concur.

Wintersheimer, J., concurs in result only.

**ATTORNEY FOR APPELLANT**

Shelly R. Fears  
Assistant Public Advocate  
Department for Public Advocacy  
100 Fair Oaks Lane, Suite 302  
Frankfort, KY 40601

**ATTORNEY FOR APPELLEE**

Gregory D. Stumbo  
Attorney General

George G. Seelig  
Assistant Attorney General  
Office of Attorney General  
Criminal Appellate Division  
1024 Capital Center Drive  
Frankfort, KY 40601