

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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

Supreme Court of Kentucky

2010-SC-000737-MR

JEFFREY ALLEN

APPELLANT

V. ON APPEAL FROM LETCHER CIRCUIT COURT
HONORABLE SAMUEL T. WRIGHT, III, JUDGE
NO. 03-CR-00133

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Jeffrey Allen was convicted of wanton murder in 2006, stemming from the death of his two-year-old foster child, Dakota. This Court reversed that conviction due to the erroneous and prejudicial introduction of recorded non-emergency 911 phone calls. *See Allen v. Commonwealth*, No. 2006-SC-000407-MR, 2008 WL 2484952 (Ky. June 16, 2008). Allen was retried and again convicted of wanton murder. He was sentenced to life in prison. He now appeals as a matter of right. Ky. Const. § 110 (2)(b).

The sole issue raised for review is whether the trial court properly denied Allen's motion for a directed verdict. In his brief, Allen makes no reference to the record where this issue is properly preserved. Neither is there any support cited for the factual assertions. CR 76.12(4)(c)(v). However, in light of the penalty imposed, this Court will exercise its discretion to briefly address the

argument raised. See *Sanderson v. Commonwealth*, 291 S.W.3d 610, 612 (Ky. 2009).

The standard of review on a motion for a directed verdict is well-settled:

[T]he 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).

The evidence presented by the Commonwealth in this case was more than ample to overcome Allen's motion for a directed verdict. The testimony established that Allen and his wife served as foster parents to four siblings. On the afternoon that the child died, a social worker and court-appointed special advocate (CASA) worker visited the Allen home. They noticed that one of the children, Dakota, seemed lethargic and sick. They observed a bruise on his jaw and a mark under his eye. They removed the child's clothing and found no other bruising.

Allen's wife left the home to run errands about the same time that the social worker and CASA worker departed. It was undisputed that Allen stayed

home with the children. A few hours later, Allen called his wife to tell her that Dakota was sick and to summon her father, an EMT, to the house. Allen and his father-in-law drove towards the hospital with Dakota, but stopped along the way at the fire department when the child became unresponsive. The assistant fire chief performed CPR on the child until an ambulance arrived. Dakota was pronounced dead on arrival at the hospital.

The assistant fire chief, two ambulance paramedics, and three hospital nurses testified to the extensive bruising found on Dakota's abdomen. In addition, all noticed bruising in the shape of a large handprint around the child's neck. Dr. Rolf, a medical examiner who performed an autopsy of Dakota's body, also catalogued the severe and extensive bruising found on the child. She opined that Dakota had suffered blunt force injuries to his head, trunk and neck. According to Dr. Rolf, Dakota died of lethal injuries in the area of the abdominal organs that resulted in severe internal bleeding. A contributing cause of death was strangulation or suffocation.

Taking this evidence in the light most favorable to the Commonwealth, it was more than sufficient to induce a reasonable juror to believe beyond a reasonable doubt that Allen was guilty of wanton murder. The motion was properly denied.

For the foregoing reasons, the judgment of the Letcher Circuit Court is affirmed.

All sitting. All concur.

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