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RENDERED: DECEMBER 13, 2018
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2017-SC-000238-MR

COREY CHAPMAN — APPELLANT

V.

ON APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANGELA MCCORMICK BISIG, JUDGE
NO. 16-CR-000219

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

A Jefferson Circuit Court jury convicted Appellant, Corey Chapman, of murder and possession of a handgun by a convicted felon and found him to be a persistent felony offender. It recommended a sentence of thirty-five years' imprisonment for the murder charge and twenty years' imprisonment for the possession of a handgun by convicted felon charge (enhanced by its finding that Chapman was a first-degree persistent felony offender). Further, the jury recommended that the sentences run concurrently for a total sentence of thirty-five years' imprisonment. The trial court sentenced Chapman accordingly. He now appeals as a matter of right, Ky. Const. § 110(2)(b), alleging that the trial court erred by failing to instruct the jury on the lesser-included offense of first-degree manslaughter. For the following reasons, we affirm.

I. BACKGROUND

Chapman and the victim, Leontynae Wade, had two children together. Chapman and Wade argued outside of Chapman's home. Wade's cousin, Sharika Turpin, lived across the street from Chapman and heard the argument. She testified that Chapman stated, "you're not going to keep calling him from my phone." Turpin testified that upon hearing Wade's voice, she exited her home and walked to her driveway. She stated she saw Chapman chasing Wade down the street and shooting at her. Turpin testified that when Wade reached a nearby intersection, Chapman fired his final three shots. She said at that point, Chapman walked back to his house and made eye contact with Turpin as he walked.

Turpin testified that she had not seen Wade fall to the ground and that she had hoped Wade would reach the intersection, then come through Turpin's backdoor as she had done in the past. She said that after Chapman walked back to his house, she saw him drive away.

A neighbor, Deanna Wright, who lived two houses down, testified that while on her front porch, she heard an argument down the street. Wright stated that she saw a woman running up the street followed by a man firing a gun at her. She testified that when Wade reached the nearby intersection, Wade tried to turn down the street when Chapman fired three more times and Wade went down. Wright said that she ran to Wade and that Wade grabbed her (Wright's) shirt. Wright testified that she saw Chapman take off back in the direction of his house, get into a vehicle and drive off. Wade told Wright not to

leave her, then said "Corey Chapman, Corey Chapman, baby daddy, Corey Chapman." She said that she stayed with Wade until the police arrived.

Shanil Malone was Chapman's friend. On the night in question, Chapman banged on her door. Malone testified that upon opening the door, Chapman fell into her house holding his son. She stated that Chapman said he had shot and killed Naenae (Wade's nickname). Malone indicated that she had Chapman leave her house because she thought the police would come there looking for him.

Wade was pronounced dead that evening. The cause of death was a gunshot wound to the lower abdomen that severed the iliac vein[1] causing her to bleed to death. Kentucky State Police Firearms and Toolmark Examiner, Scott Doyle, testified that the crime scene unit brought his office eleven fired cartridge casings from the scene for examination. He stated that the cartridge cases were fired from the same Glock semi-automatic pistol.

Chapman was arrested and brought to trial. At trial, Chapman tendered jury instructions for murder (intentional and wanton), and the lesser-included offenses of first-degree manslaughter, second-degree manslaughter, and reckless homicide. The trial court denied Chapman's tendered first-degree manslaughter jury instruction. That denial forms the basis of this appeal.

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[1] The major vein in the pelvis.

II. ANALYSIS

Chapman argues the trial court should have instructed the jury on the lesser-included offense of first-degree manslaughter. Chapman preserved this issue for appeal by tendering a jury instruction arguing that it should be a lesser-included charge. *See* RCr. 9.54; *Elery v. Commonwealth*, 368 S.W.3d 78, 89 (Ky. 2012).

This Court reviews a trial court's refusal to give a lesser-included offense instruction under the 'reasonable juror' standard set out in *Allen v. Commonwealth*:

> [W]e review a trial court's decision not to give a criminal offense jury instruction under the same "reasonable juror" standard we apply to the review of its decision to give such an instruction. *See Commonwealth v. Benham*, 816 S.W.2d 186 (Ky. 1991). Construing the evidence favorably to the proponent of the instruction, we ask whether the evidence would permit a reasonable juror to make the finding the instruction authorizes. We typically do not characterize our review under this standard as either *de novo* or for abuse of discretion . . . . In this context, the characterization makes little difference and so the inconsistency is more apparent than real. . . . Regardless of the characterization, however, the "reasonable juror" is the operative standard, in the appellate court as well as in the trial court.

338 S.W.3d 252, 255 (Ky. 2011). Therefore, we construe the evidence most favorably to the proponent of the instruction and "ask whether the evidence would permit a reasonable juror to make the finding the instruction authorizes." *Id.*

The trial court has the duty in a criminal case "to prepare and give instructions on the whole law of the case, and this rule requires instructions applicable to every state of the case deducible or supported to any extent by the

testimony." *Taylor v. Commonwealth*, 995 S.W.2d 355, 360 (Ky. 1999). However, "[a]n instruction on a lesser-included offense is appropriate if and only if on the given evidence a reasonable juror could entertain reasonable doubt of the defendant's guilt on the greater charge, but believe beyond a reasonable doubt that the defendant is guilty of the lesser offense." *Skinner v. Commonwealth*, 864 S.W.2d 290, 298 (Ky. 1993).

The tendered first-degree manslaughter jury instruction reads:

> Instruction No. 2: Manslaughter in the First Degree
>
> If you find the defendant not guilty under Instruction No. 1, you will also find the defendant, Corey Chapman, not guilty under this Instruction unless you believe from the evidence alone and beyond a reasonable doubt all of the following:
>
> 1) That in Jefferson County, Kentucky, on or about January 20, 2016, he killed Leontynae Wade by shooting her;
> 2) That he did not intend to kill Leontynae Wade, but intended to cause serious physical injury to her.

KRS 507.030 states:

> (1) A person is guilty of manslaughter in the first degree when:
>
> (a) With intent to cause *serious physical injury* to another person, he causes the death of such person or of a third person . . . .

(Emphasis added).

Here, Chapman presents the argument that the evidence presented was "indicative of an intent to injure." He supports this argument by referring to the portion of Malone's testimony in which he claims she expressed her belief that Wade was merely injured, rather than dead. Chapman bases this contention on the fact that Malone stated in her

testimony that she feared Wade would inform police Chapman may be found at her residence.

We are tasked with determining whether a reasonable juror could believe from this testimony that Chapman intended to seriously injure but not kill Wade. We hold that a reasonable juror could not so believe.

According to Malone's testimony, Chapman's first words to Malone were that he had killed Wade. Malone's concern that Wade would tell the police that Chapman might be at her place is not evidence that provides any proof that Chapman intended to seriously injure but not kill Wade.

First, this statement was merely Malone's conclusion that the police would come to her place looking for Chapman. It was not proof of Chapman's intent to seriously injure but not kill Wade. Second, a person with a deadly injury may still be able to talk before she dies, as Wade did in this case. Malone's testimony fails to provide any evidence in support of Chapman's contention that he intended to seriously injure but not kill Wade.

Further, his argument relies on Turpin's testimony, in which she stated that when she saw Wade on the ground, Wade waved at her, which led Turpin to believe that Wade was okay. Turpin's interpretation of Wade's condition and the possible meaning of waving her hand are irrelevant to Chapman's intention and whether he was aiming to shoot Wade in a part of the body that would do serious physical injury without killing her. A person could be shot in a vital area with the intent to kill

and might still survive with appropriate medical care. Unfortunately, Wade died.

Chapman argues that Scott Doyle, who examined the shell casings, testified that he could not determine from the casings on the ground if Chapman was aiming directly at Wade, or aiming in the air. Chapman attempts to use this testimony in support of his argument that the evidence adduced at trial entitled him to a lesser-included offense jury instruction on first-degree manslaughter. Chapman contends this is evidence that he may not have been shooting directly at Wade. However, like the other evidence relied upon by Chapman for this proposition, this testimony lacks probative value.

Doyle testified that he could not tell from the shell casings if Chapman had been aiming at Wade and/or shooting up in the air. Doyle was unable to testify about what Chapman was aiming at or Chapman's intent. Therefore, the testimony lacks any probative value in determining whether Chapman intended to kill Wade. However, to be clear, both Turpin and Wright witnessed the altercation and testified that Chapman was shooting at Wade.

The testimony reflects that Chapman shot Wade, then walked away, leaving her to bleed out into the street. The evidence Chapman relies on to support the argument that he merely intended serious physical injury to Wade is not probative. Chapman shot Wade in a vital area (the right lower quadrant of her abdomen) causing her death. There

was no evidence presented that reflected that Chapman intended to shoot Wade in an area that would cause serious physical injury but not death.

The trial court found *Gonzalez v. Commonwealth*, 2013 WL 1188020 (Ky. 2013), to be directly on point to this issue based on the factual similarity. In *Gonzalez*, the defendant fired more than a dozen rounds into a home, targeting mostly the front bedroom. Just as Chapman in the present case, Gonzalez tendered a first-degree manslaughter jury instruction and this Court upheld the trial court's denial of such instruction by holding: "there was no evidence to suggest that a reasonable jury could believe that Appellant merely intended to harm someone in the house, but did not intend to kill anyone nor act in a wanton manner with respect to causing death." *Id.* at 12.

Further, this Court held:

> Appellant was not simply unlucky enough to cause a death in the course of intending to commit only an assault. He fired more than a dozen 7.62 x 39 mm jacketed rounds capable of penetrating a house from a semi-automatic assault weapon. He intentionally fired the rounds into the house and specifically targeted the front bedroom at night. There is no evidence whatsoever that Appellant merely intended to injure someone in the house. Again, no rational jury would acquit Appellant of murder but believe he intended only to cause an injury. The trial court therefore did not abuse its discretion by denying Appellant's proposed first-degree manslaughter instruction.

Id. at 13. Chapman refers to this quotation, stating that his "actions were 'simply unlucky enough to cause a death in the course of intending to commit only an assault.'" *Id.*

He attempts to distinguish *Gonzalez* from the case at hand by arguing that he and Wade had known each other for years, had children together, that they were in frequent contact, and that it was not unusual for Wade to take off toward the intersection where she was fatally wounded and circle back to safety at Turpin's back door. These factors are evidence of the connection between Chapman and Wade and how she had escaped from him in the past but are not evidence of an intent to seriously injure but not kill Wade. Chapman's arguments fail to distinguish this case from *Gonzalez.*

Chapman contends that the "comprehensive evidence is indicative of intent to injure." We are not persuaded by this argument. To reiterate the facts, Chapman intentionally fired a Glock semi-automatic pistol eleven times in Wade's direction. One of the last three bullets fired by Chapman struck Wade in a vital area, resulting in her death. Chapman *then walked away and* left Wade bleeding out into the street. No evidence has been presented that by firing eleven shots from a Glock semi-automatic pistol Chapman intended to shoot Wade in an area that caused mere serious physical injury.

Chapman was not simply "unlucky enough" to cause a death in the course of intending to commit only an assault. *Id.* Rather, as in

Gonzalez, "no rational jury would acquit [Chapman] of murder but believe he intended only to cause an injury." *Id.*

Consistent with the holdings in *Allen*, which this Court cited in *Gonzalez*, and *Wallen v. Commonwealth*, 2014 WL 2811305 (Ky. 2014), Chapman's conduct "'so clearly posed a grave risk of killing [another person]' and 'so clearly manifested [his] extreme indifference to that possibility that a reasonable juror could not find [he] engaged in that conduct without also finding that he was guilty of the sort of aggravated wantonness punishable as murder.'" *Id.* at 3.

Therefore, we hold that the trial court did not err in denying the tendered jury instruction on first-degree manslaughter in the case at hand. The evidence simply would not "permit a reasonable juror to make the finding the instruction authorizes." *Allen*, 338 S.W.3d at 255.

III. CONCLUSION

For the foregoing reasons, we affirm the trial court.

All sitting. All concur.

COUNSEL FOR APPELLANT:

Daniel T. Goyette
Louisville Metro Public Defender of
Counsel Office of the Louisville Metro Public Defender

Cicely Jaracz Lambert
Chief Appellate Defender

COUNSEL FOR APPELLEE:

Andy Beshear
Attorney General of Kentucky

Jeffrey Allan Cross
Assistant Attorney General