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RENDERED: JUNE 14, 2018
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2017-SC-000369-MR

WILLIAM CALHOUN — APPELLANT

V.

ON APPEAL FROM TAYLOR CIRCUIT COURT
HONORABLE SAMUEL T. SPALDING, JUDGE
NO. 16-CR-00089

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

On April 30, 2016, a fatal shooting occurred at 120 Catawba Circle in Taylor County, Kentucky. As a result of the incidents of that day, a Taylor County Grand Jury indicted William Calhoun (Calhoun) with murder, assault in the first degree, and three counts of wanton endangerment in the first degree. The case proceeded to jury trial and Calhoun was convicted of wanton murder, first-degree assault, and two counts of first-degree wanton endangerment. The jury recommended a total sentence of twenty years and the court sentenced Calhoun accordingly. Calhoun now appeals his conviction as a matter of right, arguing that the evidence was insufficient to support the court's judgment.

I. BACKGROUND

There are few facts in this case upon which every witness agreed. However, some of the background information was undisputed from most witnesses. Brianna Washington (Washington) had been living with Shenitrea Vaughn (Vaughn) at 120 Catawba Circle in Taylor County. Important to the events of the day is the layout of Vaughn's home. In the downstairs was a living area and kitchen. Up one flight of stairs was a small landing by the front door. To the left of the front door was a flight to the upstairs area. Directly to the right of the front door was the outer wall of the building. Vaughn's home itself was part of a larger building with other residences. However, there was the front door and a door to the downstairs area that were private entrances to Vaughn's home.

The contact between Vaughn and Washington had become contentious and Vaughn told Washington to move out. The morning of April 30, Calhoun and several others went to the county jail where Washington was in detention and bailed her out. Calhoun and Washington were in some kind of relationship at this point although the exact nature of that relationship is unknown. That afternoon, Calhoun took Washington to pick up her things from Vaughn's home. Several witnesses testified at trial as to what unfolded that afternoon. Calhoun argues that the inconsistencies of the witnesses' testimonies rendered the conviction unsupported by evidence. As such, we have reviewed and will describe each relevant witness's account of the events of April 30, 2016.

Shenitrea Vaughn

Per Vaughn's account, Washington owed her about $340 for rent. Washington was coming by on April 30th to retrieve her things. Washington had threatened Vaughn so Vaughn asked her uncle, Seneca Edwards (Seneca), and a cousin, Anna Delgado (Delgado), to come to the house while Washington was there. Washington came to the back door, downstairs at Vaughn's home. Washington and Vaughn went upstairs to get the money Vaughn was owed from Calhoun. Calhoun was at the front door. Washington and Vaughn were in the small landing inside the residence at the front door. Calhoun wanted Vaughn to come outside but she felt unsafe and refused. Calhoun threw the money on the ground outside the front door. Vaughn shut the door on Calhoun and started arguing with Washington about bringing these people to her home. The argument became heated and Seneca came upstairs trying to calm Washington and Vaughn.

Suddenly, there were five large knocks at the front door. Then someone started banging and beating on the door. Seneca took out his gun that he had brought with him and waved it in the air, saying not to come inside or he was going to fire. According to Vaughn, Seneca never pointed the gun at Calhoun. After Seneca waved the gun, Vaughn became frightened, not wanting Seneca to start an altercation so she pushed him down the stairs. Washington said no and backed up, pushing the front door closed behind her. Once the door was closed, shots started firing from outside, through the front door. Washington

bounced into Vaughn and the next thing Vaughn knew, she was falling down the stairs. She did not even know she had been shot until she was at the hospital. She remembers being unable to move her legs once she had fallen down the stairs. At the hospital, doctors determined she had two bullet wounds and multiple bullet fragments in her leg and abdomen. Vaughn is now a paraplegic as a result of her injuries.

Anna Delgado

Delgado had been at Vaughn's home the night before and stayed there the next day. Washington arrived at the downstairs back door and Vaughn and Washington started arguing. After about 15 minutes, Washington went outside and around to the front door. Vaughn went up the stairs and met her at the front door. Delgado listened to what was going on but stayed downstairs. After Washington came back to the front door, Delgado heard Washington and Vaughn resume fighting. Delgado was at the bottom of the stairs. Washington had her back to the door and Vaughn was in front of her; Seneca was a couple steps down from the landing. Delgado saw three people walking around through the window downstairs where she was. She saw Calhoun run around to the front door. Suddenly, she heard banging on the front door and became nervous and moved away from the steps. She then heard kicking on the door. She testified that she distinctly heard the door open and then slam shut. Once she heard the door slam shut, she started hearing the gunfire. She saw someone coming down the steps but stated she was so

scared that she wasn't sure who it was and whether they walked or fell down the stairs. She ran out the back door in fear.

Seneca Edwards

Seneca testified that he brought his gun to Vaughn's home, unbeknownst to Delgado or Vaughn, for protection. He was worried there would be a confrontation. Washington came to the back door downstairs and she and Vaughn began arguing. Washington and Vaughn eventually went upstairs to the landing by the front door. They continued arguing and Seneca went upstairs to tell them to "cool off." As he came upstairs, he could see Calhoun and some other male through the glass in the front door. The two men started banging on the door. Seneca went back downstairs and grabbed his gun from where he'd placed it in the kitchen. He went back upstairs. While he was grabbing the gun, he heard a lot of yelling but could not tell exactly what was going on.

He came back up the stairs and saw Washington right in front of the door with Vaughn to the left side of the landing. Seneca was a couple steps down from the landing and Calhoun was still banging on the door. The door flew open after being kicked or pushed in. Washington and Vaughn were still on the landing so the door did not open all the way. Seneca stepped up on the landing and stuck his gun outside the crack of the door. He stated he did not point the gun at anyone but wanted to show it to scare them away. Washington shut the door and Vaughn pushed Seneca down the stairs. He

slid down the stairs and heard the shots starting through the front door. He was not hit by any of the bullets.

Brian Edwards[1]

Brian Edwards (Brian) is Calhoun's cousin. The day of the shooting, he had been drinking all day with a friend, Deonte. He does not remember most of the events of the day. He knows he was at Vaughn's home for a few seconds but does not remember how or why they went there. Deonte drove and Brandon Edwards (Brandon), Brian and Calhoun's cousin, was also with them. They pulled up at the residence and Brandon went to the front door where Calhoun was standing, attempting to see what was happening. Brian saw someone pull a gun out of one of the vehicles near their car. Brandon did not have a weapon and Brian did not see if Calhoun had a weapon. Brandon ran back to the car, stumbling back from the front door, and the three of them drove quickly away from the home.

Brandon Edwards

As stated, Brandon was a cousin to both Brian and Calhoun. Brandon was with Calhoun the morning of April 30th and went with him to retrieve Washington from jail. That day was Calhoun's birthday and they were all supposed to go out that evening in Louisville to celebrate. Washington wanted to retrieve her clothes from Vaughn's first. Washington and Calhoun left first for Vaughn's but Calhoun called Brian and Brandon from Vaughn's residence

[1] Brian Edwards and Brandon Edwards are cousins. They are both cousins to Calhoun. They are, however, unrelated to Seneca Edwards, the uncle of Shenitrea Vaughn.

to come and meet them there. Calhoun was worried there would be fighting and wanted people for assistance if needed. Brandon and Brian drove together; Brandon drove because Brian was drunk.

Brandon went up to the front door when they arrived; Calhoun was already at the front door with Valchez Coleman (Coleman). Calhoun was telling Brandon that Vaughn would not let Washington leave the house even though Calhoun had paid Vaughn the money she was owed. Brandon started knocking on the front door to check if Washington was inside. He heard Washington talking so he stopped knocking. Someone opened a door and Brandon saw Washington on the steps going upstairs and then saw a hand with a gun. He could not tell who held the gun but it was pointed straight out the door where he, Calhoun, and Coleman were standing. Brandon jumped from the front door and ran to the vehicle where Brian was still waiting. Calhoun and Coleman stayed by the front door. By the time Brandon was back in the car and had turned the car around to leave, the front door was closed. Brandon never saw or heard a gun fired before they fled.

Valchez Coleman

Coleman drove with Calhoun and Washington to retrieve her things from Vaughn's home. He did not know Washington or Vaughn, and only knew Calhoun as a friend of his brother's. He stated he went with them to pass time while he waited on his brother. Washington went to the home and told them to park further away. She went to speak to Vaughn. She came back and told them Vaughn wanted money. The three drove around to the parking lot of the

complex where Vaughn lived. Washington got out of the car with Calhoun and they both went to the front door. Coleman stayed in the backseat of the car.

Coleman saw Calhoun give Vaughn the money and then Vaughn shut the door with Washington inside. The door opened after a minute or so and Coleman saw a gun come outside the door. Coleman told Calhoun to duck and run. He could only see a dark-skinned hand holding the gun but stated it was pointed straight at Calhoun.

Coleman vacillated numerous times on the exact sequence of events but at some point, Calhoun retrieved his gun from the car. Coleman also wavered on whether the door was open or shut when Calhoun started shooting. He admitted he did not want to be there to testify, had his own legal matters that were ongoing, and did not want to get in trouble. Coleman stated Brian and Brandon came up after the shooting occurred but did not see any part of the actual altercation.

William Calhoun

Calhoun declined to testify on his own behalf at trial. However, his interview with police officers was played for the jury and introduced through the interrogating officer. Relevantly in the interview, Calhoun stated he never intended to kill anyone. He specifically said that he "was not expecting to kill anyone. [He] was not expecting to even use [his] gun." He was devastated that he had unintentionally killed Washington. He stated Vaughn had opened the door and pointed a gun at him. According to his statement to police, he shot back while the door was open.

The Commonwealth also presented medical testimony regarding Washington's cause of death and Vaughn's injuries. There was no other testimony from anyone else claiming to be present at the time of the shooting. The door from Vaughn's home was shown to the jury. Law enforcement testified that the evidence showed the shots were fired from the outside, through the front door.

II. STANDARD OF REVIEW

Calhoun challenges the sufficiency of the evidence leading to his conviction. He claims that the trial court erred in failing to grant a directed verdict for the charges of first-degree assault, first-degree wanton endangerment (as to Delgado), and wanton murder. "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) (citing *Commonwealth v. Sawhill,* 660 S.W.2d 3 (Ky. 1983)). Only when such a finding of guilt is "clearly unreasonable" is a defendant entitled to a directed verdict. *Benham,* 816 S.W.2d at 187.

III. ANALYSIS

A. THE TRIAL COURT DID NOT ERR IN DENYING DIRECTED VERDICT FOR FIRST-DEGREE ASSAULT.

Calhoun was convicted of first-degree assault under an instruction for wanton conduct, exhibiting extreme indifference to human life, and causing serious injury. *See* Kentucky Revised Statute (KRS) 508.010(1)(b). On appeal, Calhoun now argues that there was not a scintilla of evidence that Calhoun

acted wantonly in shooting and injuring Vaughn. Instead, Calhoun now argues that all the evidence "pointed to an intentional act."

We also note that on the original motion for directed verdict at the trial court, Calhoun specifically argued that there was absolutely no evidence of intentional behavior. At indictment, the Commonwealth had charged Calhoun with murder under an intentional and/or wanton description. The trial court granted directed verdict as to intentional murder, finding no proof of intent to kill Washington. Calhoun agreed while arguing for directed verdict yet now argues *all* the evidence pointed to an intentional act. "As this Court has stated on numerous occasions, 'appellants will not be permitted to feed one can of worms to the trial judge and another to the appellate court.'" *Elery v. Commonwealth*, 368 S.W.3d 78, 97 (Ky. 2012) (quoting *Kennedy v. Commonwealth*, 544 S.W.2d 219, 222 (Ky. 1976) (*overruled on other grounds by Wilburn v. Commonwealth*, 312 S.W.3d 321 (Ky. 2010))). It is, at the very least, disingenuous for Calhoun to now argue that the evidence proved intent when the opposite argument to the trial court prevented an instruction on intentional murder.

Despite the disingenuous nature of the argument, even addressing the merits of the claim, the trial court did not err in denying the directed verdict for first-degree assault. At least four witnesses testified that Calhoun shot his firearm multiple times through a closed door. Calhoun presented no evidence disputing that his gun caused Vaughn's injuries and Vaughn testified that it was Calhoun who shot through the door and caused her to be paralyzed.

Calhoun's conduct could clearly be considered wanton by a reasonable juror. In *Swan v. Commonwealth*, this Court addressed when shooting a gun near other persons could constitute wanton endangerment in the first degree. 384 S.W.3d 77, 102-04 (2012). In analyzing whether that appellant's conduct could be wanton, we specifically contrasted with "firing blindly into an occupied house, such as through a locked door." *Id.* at 103 (citing *Paulley v. Commonwealth*, 323 S.W.3d 715, 724 (Ky. 2010)). Under this precedent, Calhoun's act of firing through a closed door into an occupied home is clearly sufficient conduct to reach the jury for a wanton assault instruction.

Calhoun argues that his narrative of events—that he shot intentionally in self-defense—is the truth and therefore, any departure in the jury's determination must be clearly irrational. However, this is distinctly contrary to our precedent on directed verdicts. "The credibility and weight to be given the testimony are questions for the jury exclusively." *Sawhill*, 660 S.W.2d at 5. Certain narratives from different witnesses varied; however, if the jury believed Vaughn, Seneca, and Delgado's version of events, it would be wholly reasonable to determine that Calhoun was guilty of first-degree assault. This Court will not undermine a jury verdict when there is evidence supporting the verdict, even if it is not the evidence the defense asserts is more credible. Therefore, we discern no error in the trial court's denial of directed verdict on first-degree assault.

B. THE TRIAL COURT DID NOT ERR IN DENYING DIRECTED VERDICT FOR FIRST-DEGREE WANTON ENDANGERMENT.

Calhoun also alleges that he should have been granted a directed verdict on the charge of wanton endangerment, first degree, as to Anna Delgado. According to witness testimony at trial, Delgado was down the stairs from the front door, where Calhoun was shooting from outside. Delgado was outside the direct line of fire from the front door. Due to her position, Calhoun argues that she was too far away, as a matter of law, to be wantonly endangered and he should have been granted a directed verdict on this count.

"Firing a weapon in the immediate vicinity of others is the prototype of first degree wanton endangerment. This would include the firing of weapons into occupied vehicles or buildings." *Swan*, 384 S.W.3d at 102 (quoting Robert G. Lawson & William H. Fortune, *Kentucky Criminal Law* § 9-4(b)(2), at 388 n. 142 (1998) (citations omitted)). In *Swan*, there was one victim who was not only outside the room of the shooting but in a back bedroom down the hallway from all the shooting. 384 S.W.3d at 103. Although the Commonwealth argued the danger of a ricochet bullet, this Court stated "the danger from ricochets is not endless." *Id.* Given the circumstances of that case, the Court held that Swan had been entitled to a directed verdict as to one of the counts of first-degree wanton endangerment. *Id.* at 104.

In contrast, in *Hunt v. Commonwealth*, Hunt was charged with the murder of his wife and wanton endangerment as to his wife's granddaughter, who was sleeping in a bassinet in the room where the murder occurred. 304

S.W.3d 15, 38 (Ky. 2009). The bassinet was located by the chair where the victim was murdered. *Id.* Bullets were found in the vicinity. *Id.* "It follows that the bullets flew within a matter of feet of" the child. *Id.* Giving "the benefit of all reasonable inferences" to the Commonwealth, this Court held the conduct met the standard for first-degree wanton endangerment. *Id.*

Another distinctive case, similar to the case at hand, is *Hall v. Commonwealth*, 468 S.W.3d 814 (Ky. 2015). There, the defendant shot a high-powered rifle multiple times at his next-door neighbors on their front porch while the neighbors' four children "were somewhere inside the house at the time of the shootings[.]" *Id.* at 817-18. While reversing for other errors, this Court determined that the evidence was sufficient to withstand directed verdict on four counts of first-degree wanton endangerment. *Id.* at 829-30. Contrasting *Swan*, the Court determined that *Paulley* was more helpful in analyzing the *Hall* case. In *Paulley*, "[n]otably, the Court did not consider the precise location of each of the victims inside [the] home in affirming the denial of the directed verdict." *Id.* at 829 (citing *Paulley*, 323 S.W.3d at 724). The Court noted that Hall's weapon fired through intermediate materials. *Hall*, 468 S.W.3d at 829-30. The children in question were also close enough to be heard screaming and crying during the 911 call from one of the victims. *Id.* at 830. Like in *Paulley*, and like Calhoun, Hall was firing "into an occupied house." *Id.* In assessing the evidence, the Court noted that the only requirement to withstand directed verdict is a "mere scintilla" of evidence. *Id.* "Viewing the evidence and the reasonable inferences associated with that evidence in the

light most favorable to the Commonwealth, there was enough evidence, that is, more than a mere scintilla, to justify presenting the wanton endangerment charges to the jury." *Id.* (citations omitted).

Our appellate courts have addressed similar situations many times, considering whether certain acts involving firearms can subject the actor to a charge of first-degree wanton endangerment. "In order to establish first-degree wanton endangerment, the actor must have consciously disregarded a substantial and unjustifiable risk that he was creating a danger of death or serious injury to another person, thus manifesting extreme indifference to human life." *Sweatt v. Commonwealth*, 586 S.W.2d 289, 291 (Ky. App. 1979). This Court has found the "act of pointing a loaded firearm at officers ... accompanied by ... threatening remarks" was sufficient for the charge. *Commonwealth v. Clemons*, 734 S.W.2d 459, 461 (Ky. 1987). This Court has stated "that pointing a gun, whether loaded or unloaded, is conduct sufficient to support an instruction of first-degree wanton endangerment." *Gilbert v. Commonwealth*, 838 S.W.2d 376, 381 (Ky. 1991) (citing *Thomas v. Commonwealth*, 567 S.W.2d 299 (Ky. 1978)). In *Key v. Commonwealth*, where the defendant both pointed the gun and shot a gun near the victims, the Court of Appeals held that "[e]ither conduct, independent of the other, is sufficient to meet the requirements" of wanton endangerment in the first degree. 840 S.W.2d 927, 829 (Ky. App. 1992). In an unpublished case, this Court even determined that firing a gun in front of a row of apartments was sufficient for

the charge. *See Davis v. Commonwealth*, No. 2011-SC-000255-MR, 2012 WL 5289407, *6 (Ky. Oct. 25, 2012).

Given this further clarification of what can constitute wanton endangerment in the first degree, we hold that the circumstances here are more similar to *Hunt* and *Hall* than *Swan*. Delgado testified that she was downstairs but close enough to hear all the fighting and arguing, much like the child victims in *Hall*. She also testified to hearing the door open and slam shut before the shooting began. Vaughn testified as to the small area of her home; the landing in front of the door was described as very small, leading to the staircase where Seneca was located at the time of the shooting. Seneca testified about being forced down the stairs and debris from the shooting falling from different portions of the house around him. Like in *Hall* and *Paulley*, Calhoun shot a weapon through a closed door. Given the particular facts as presented to the jury, we cannot hold that it would have been clearly unreasonable for a juror to find that Delgado's life was endangered. If we give the benefit of all reasonable inferences to the Commonwealth for its evidence presented, it is not unreasonable to make such a determination. The Commonwealth clearly presented more than a "mere scintilla" of evidence. As such, we hold that the trial court did not err in denying directed verdict on this count.

C. THE TRIAL COURT DID NOT ERR IN DENYING DIRECTED VERDICT FOR WANTON MURDER.

Similar to the argument as to first-degree assault, Calhoun claims that the evidence was insufficient to prove wanton murder and he should have

been granted a directed verdict. According to Calhoun, the evidence was lacking to show extreme indifference to human life because Calhoun was actively and intentionally attempting to preserve his own life. Once again, Calhoun's argument seems premised on a jury *having* to accept his explanation of his actions as being required in self-defense. In addition, Calhoun argues that he was unaware Washington was in the line of fire and therefore, he could not have been acting wantonly as to the danger for Washington.

As to justification, the Commonwealth correctly notes that even if Calhoun had been justified in shooting Vaughn or Seneca, his wanton behavior as to Washington would *not* be justified. KRS 503.120(2) specifically states that "justification ... is unavailable in a prosecution for an offense involving wantonness or recklessness toward innocent persons." The commentary gives the exact example of how Washington's death could be described: "[t]he example given is when a defendant, justified in using deadly force against X, fires several shots at X while X is in a large group of people, killing two innocent people in the large group along with X." *Commonwealth v. Caudill*, 540 S.W.3d 364, 368 (Ky. 2018). "Although justified in prosecution for X's death, the justification is unavailable in the prosecution for the deaths of the innocent bystanders." *Id.*; *see also Phillips v. Commonwealth*, 17 S.W.3d 870, 875-76 (Ky. 2000). Thus, even were this Court to accept that Calhoun acted in self-protection from Vaughn or Seneca, this would not prevent his prosecution for wantonly murdering Washington.

Calhoun cites to *Coney Island Co. v. Brown*, in which this Court laid out a narrow and rare exception to overturning a jury's determination of the evidence. There, the Court held that:

> the jury may not, through sympathy or other reason, arbitrarily or capriciously base its verdict upon a statement as to what occurred or how something happened when it is opposed to the laws of nature or is clearly in conflict with the scientific principles, or base its verdict upon testimony that is so incredible and improbable and contrary to common observation and experience as to be manifestly without probative value.

162 S.W.2d 785, 787-88 (Ky. 1942) (citations omitted). Calhoun argues that this exception provides relief for Calhoun, as Vaughn's testimony was overwhelmed by credible evidence that Calhoun was threatened with a gun and he shot in self-defense.

Calhoun fails to recognize that the *Coney Island* exception is "sparingly employed." *Id.* at 788. "[I]t exists as an emergency expedient, for the correction of verdicts palpably wrong[.]" *Id.* Additionally, the case "stands only for the proposition that an appellate court should revisit a trial court's directed verdict decision supported by testimony *only* when the testimony describes events that are impossible." *Buster v. Commonwealth*, 381 S.W.3d 294, 303 (Ky. 2012) (emphasis added). "[W]hen a verdict depends on questions of a witness's credibility, rather than compliance with immutable laws of nature, *Coney Island*'s rule does not apply and a directed verdict is inappropriate." *Id.* (citing *Potts v. Commonwealth*, 172 S.W.3d 345, 350-51 (Ky. 2005)).

In *Buster*, as in here, the jury's decision came down to witness credibility and not a "factually impossible scenario." *Buster*, 381 S.W.3d at 303. "[T]he jury evaluated the victims' credibility and found the Appellant guilty. Absent exceptional circumstances such as factual impossibility, it is precisely the jury's role to do so." *Id.* at 304. Calhoun has pointed this Court to no factual impossibility. Rather, Calhoun simply argues that Vaughn's statement of events is *less* credible than that of other witnesses. Calhoun fails to recognize that multiple witnesses testified that he shot through a closed door and that both Vaughn and Seneca testified Seneca never pointed a gun at Calhoun. Multiple witnesses testified that Washington was right inside the front door, very clearly within Calhoun's sight mere moments before the shooting began. Despite Calhoun's attempt to phrase this as a *Coney Island* exception, this Court is unpersuaded. Instead, this is a perfect example of the judgment of witness credibility, a role in the exclusive province of the jury. Given these facts, we will not hold that such a denial of directed verdict was in error.

IV. CONCLUSION

Calhoun's allegations of error must fail. Under the *Benham* standard, it was not unreasonable for the jury to find Calhoun guilty of first-degree assault, first-degree wanton endangerment, or wanton murder. Therefore, we affirm the judgment of the Taylor Circuit Court.

All sitting. All concur.

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