

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
DYLAN RYAN COBLE	:	No. 442 MDA 2021

Appeal from the Order Entered March 11, 2021,
in the Court of Common Pleas of Columbia County,
Criminal Division at No(s): CP-19-CR-0001101-2020.

BEFORE: PANELLA, P.J., KUNSELMAN, J., and KING, J.

MEMORANDUM BY KUNSELMAN, J.:

FILED: JUNE 13, 2022

The Commonwealth appeals from the trial court's order granting Defendant Dylan Coble's pre-trial writ of *habeas corpus*. Finding that the Commonwealth met its *prima facie* burden at the preliminary hearing to show that Coble acted recklessly and placed his child in danger of death or serious bodily injury, we reverse and remand for the prosecution to proceed.

I. Procedural History

On September 28, 2020, Bloomsburg Police Officer Bradley Sharrow filed a criminal complaint charging Coble with endangering the welfare of a child (EWOC) and recklessly endangering another person (REAP), 18 Pa.C.S.A. §§ 4304(a)(1) and 2705. The Commonwealth alleged that on September 1, 2020, Coble left a marijuana chocolate edible on his desk, where his 14-month-old child A.C. found it and ate it. Coble later explained to the police

that he has a medical marijuana card and had prepared the chocolate with legally purchased THC oil. He noticed that A.C. was unusually sleepy, so he consulted with his mother-in-law, who is a nurse. Once Coble realized that A.C. had eaten the medication, he took A.C. to the emergency room.

The case proceeded to a preliminary hearing on December 2, 2020. Dr. Steven Crellin, who first treated A.C. in the emergency room, testified that A.C. was breathing abnormally and was unresponsive to her surroundings. A.C.'s urine tested presumptively positive for cannabinoids and negative for all other drugs. Dr. Crellin concluded that A.C. had overdosed on THC. He repositioned her airway and gave her oxygen, which improved her oxygen saturation from 70 to 100 percent. A.C. was transferred to the pediatric intensive care unit for monitoring and treatment.

Q. . . . [O]n September 1st, what was [A.C.]'s prognosis?

A. I thought that her prognosis was fair. I mean, I think that she really just needed to be monitored closely to make sure that her oxygen levels didn't drop and that that didn't cause her any harm, and if she were to have oxygen levels that dropped, that we could intervene on her behalf just until she had time to clear the medication.

N.T., Preliminary Hearing, 12/2/20, at 23-24. A.C. was discharged the next day and fully recovered.

At the preliminary hearing, Coble's attorney cross-examined Officer Sharrow about Coble's mental state:

Q. . . . [Y]ou have no evidence that Dylan Coble intended for [A.C.] to ingest the chocolate, correct?

A. Intended?

Q. Yeah.

A. Correct.

Q. And you have no evidence that Dylan Coble was aware [A.C.] was going to ingest the chocolate, correct?

A. Correct.

Q. Okay. This was a mistake, right?

A. She was able to eat this candy that he left on his desk, yes.

Id. at 38. Following the preliminary hearing, the magisterial district judge dismissed the EWOC charge and held the REAP charge for court.

On February 5, 2021, Coble filed an omnibus pretrial motion consisting of a petition for writ of *habeas corpus*. The trial court granted the petition in an opinion and order docketed March 10, 2021. The Commonwealth filed a notice of appeal on April 9, 2021. The Commonwealth and the trial court complied with Pennsylvania Rule of Appellate Procedure 1925.

The Commonwealth raises one issue:

Whether the trial court erred by granting Coble's petition for a writ of habeas corpus because the evidence, viewed in the light most favorable to the Commonwealth, established a *prima facie* case that Coble recklessly endangered another person where his young daughter ate an edible controlled substance that Coble left unattended in a highly accessible area of his home and his daughter subsequently received medical care at an emergency room?

Commonwealth's Brief, at 13.

II. Analysis

We dispose of two preliminary matters before reaching the merits. First, the trial court's order dated March 8, 2021 was not docketed until March 10, 2021. Therefore, the notice of appeal, filed April 9, 2021, is timely. Pa.R.A.P. 903(a); **Commonwealth v. Pena**, 31 A.3d 704, 706 (Pa. Super. 2011). Second, the Commonwealth certified that the trial court's order dismissing the only remaining charge substantially handicaps its prosecution of the case. We therefore have jurisdiction. Pa.R.A.P. 311(d); **Commonwealth v. Holston**, 211 A.3d 1264, 1268 (Pa. Super. 2019) (*en banc*).

Turning to the merits, our review of a trial court's grant of a defendant's pretrial petition for writ of *habeas corpus* is guided by the following principles:

The evidentiary sufficiency, or lack thereof, of the Commonwealth's *prima facie* case for a charged crime is a question of law; this Court's review is plenary. **Commonwealth v. Karetny**, 583 Pa. 514, 880 A.2d 505, 513 (2005) (citing **Commonwealth v. Huggins**, 575 Pa. 395, 836 A.2d 862 (2003)). Indeed, the trial court is afforded no discretion in ascertaining whether, as a matter of law and in light of the facts presented to it, the Commonwealth has carried its pretrial, *prima facie* burden to establish the elements of a charged crime. **Id.**

In **Huggins**, our Supreme Court explained:

At the pre-trial stage of a criminal prosecution, it is not necessary for the Commonwealth to prove the defendant's guilt beyond a reasonable doubt, but rather, its burden is merely to put forth a *prima facie* case of the defendant's guilt. A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes sufficient probable cause to warrant the belief that the accused committed the offense. The evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to go to the jury.

Moreover, “[i]nferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth’s case.”

Id. at 866 (citations omitted).

Holston, 211 A.3d at 1269. The Commonwealth does not meet its burden by relying “solely upon a *tenuous inference* to establish a material element of the charge.” **Id.** (quoting **Commonwealth v. Wojdak**, 466 A.2d 991, 997 (Pa. 1983)). However, our Supreme Court has stressed that viewing evidence in a light most favorable to the Commonwealth includes “all reasonable inferences from that evidence that would support a guilty verdict.” **Commonwealth v. Perez**, 249 A.3d 1092, 1105 (Pa. 2021).

The REAP statute provides: “A person commits a misdemeanor of the second degree if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury.” 18 Pa.C.S.A. § 2705. “This statutory provision was directed against reckless conduct entailing a serious risk to life or limb out of proportion to any utility the conduct might have.” **Commonwealth v. Reynolds**, 835 A.2d 720, 727 (Pa. Super. 2003) (quoting **Commonwealth v. Rivera**, 503 A.2d 11, 12 (Pa. Super. 1985) (*en banc*)). The parties dispute whether the Commonwealth met its *prima facie* burden to show (1) that Coble acted recklessly and (2) that he placed or may have placed A.C. in danger of death or serious bodily injury. Commonwealth’s Brief at 13; Coble’s Brief at 3; Commonwealth’s Reply at 5.

1. Recklessness

We first address the Commonwealth's contention that it presented sufficient evidence at the preliminary hearing to sustain a *prima facie* case that Coble acted recklessly. The trial court found, and Coble argues, that Coble was merely negligent and not reckless. However, we find that the evidence, viewed in a light most favorable to the Commonwealth, supports an inference that Coble acted recklessly.

Our law defines different states of criminal culpability:

(3) A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and intent of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

(4) A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and intent of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

18 Pa.C.S.A. § 302(b)(3), (4). We have explained:

Recklessness requires proof that the defendant both had actual knowledge of a substantial and unjustifiable risk and disregarded that risk despite that knowledge.

Recklessness "implicates knowledge in two ways: (1) the actor must consciously (*i.e.*, with knowledge) disregard a substantial and unjustifiable risk; and (2) the risk that the actor disregards is measured by the circumstances known

to the actor.” “Conscious disregard” of a risk, in turn, “involves first becoming aware of the risk and then choosing to proceed in spite of the risk.”

[**Commonwealth v.**] **Sanders**, 259 A.3d [524,] 532 [(Pa. Super. 2021) (*en banc*)].

Commonwealth v. Fretts, 271 A.3d 383, 389 (Pa. Super. 2021) (citations omitted). In contrast to the “accident or mere inadvertence” of negligence, recklessness reflects “intentional conduct,” “an extreme departure from ordinary care, a wanton or heedless indifference to consequences, an indifference whether or not wrong is done, and an indifference to the rights of others.” **In the Interest of: J.J.M.**, 265 A.3d 246, 265 (Pa. 2021) (citations omitted); **accord In the Interest of E.L.W.**, --- A.3d ---, ---, 2022 WL 1100547, at *3 & n.1 (Pa. Super. 2022) (finding no recklessness where a juvenile did not perceive a risk or purposely ignore it).

Importantly, the Commonwealth can sustain its *prima facie* burden that a defendant acted recklessly if it establishes that a defendant **should be aware** of the risk of his conduct. In **Commonwealth v. Vogelsong**, 90 A.3d 717, 718 (Pa. Super. 2014), cited by the parties, we reviewed a defendant’s conviction for REAP after she let her horse wander onto a highway. Prior civil cases had held that letting a horse onto a highway is sufficient to support a finding of negligence. **Id.** at 719–20 (noting a presumption that a horse owner should be aware of the danger posed by the horse wandering onto a busy roadway). We reasoned:

[T]his presumption of knowledge of the risk is sufficient to present a *prima facie* case for recklessness. While in a criminal matter

this presumption cannot shift the burden of proof to the defendant, it is sufficient to allow a jury to consider whether the defendant acted in a reckless manner.

Id. at 720.

This principle applies here. There is no dispute that Coble acted negligently—he should have been aware of a substantial and unjustifiable risk that A.C. would be harmed by ingesting Coble’s medication. Following the reasoning of **Vogelsong**, Coble’s negligence is sufficient to allow a jury to consider whether Coble was conscious of that risk and chose to disregard it.

We note the effect of Coble’s consulting his mother-in-law and taking A.C. to the hospital after he realized that she ate the medication. The Commonwealth alleges that Coble was reckless when he placed the medication on the desk where A.C. could get it. Coble’s subsequent responsible actions do not retroactively negate his mental state at the moment of the alleged criminal act. And while Coble’s diligence can lead a jury to infer that he had not been reckless,¹ that inference is impermissible at this stage of the

¹ Indeed, if the fact-finder determines that the Commonwealth has not proven that Coble perceived the risk or that he chose to disregard it, then it must find him not guilty. **Cf. Commonwealth v. A.R.C.**, 150 A.3d 53, 59 (Pa. Super. 2016) (finding insufficient evidence for REAP where mother did not know of child’s injuries and took child to doctor); **E.L.W.**, --- A.3d at ---, 2022 WL 1100547, at *6 (finding a juvenile did not perceive the risk of a statement); **J.J.M.**, 265 A.3d at 274 (plurality) (same); **see also S.H. v. Dep’t of Human Servs.**, 228 A.3d 22, 28 (Pa. Cmwlth. 2020) (finding a father was not reckless in letting his child strangle herself with a lanyard because he did not perceive the risk); **J.M.K. v. Dep’t of Human Servs.**, 2020 WL 6256861, at *6 (Pa. Cmwlth. Oct. 23, 2020) (memorandum) (finding no recklessness where the stepmother of a child who ingested drugs did not perceive the risk).

proceedings, where we must draw all reasonable inferences in favor of the Commonwealth. ***Holston, supra; Perez, supra.***

We also address the trial court's concern that prosecuting Coble under these facts will discourage others from seeking help for their children. Trial Court Opinion, 6/11/21, at 2. While we are sympathetic to the plight of Coble and of similarly situated parents, the choice to prosecute is squarely within the discretion of the Commonwealth.² ***See generally Commonwealth v. Hill***, 239 A.3d 175 (Pa. Super. 2020) (holding that a trial court abused its discretion by *sua sponte* dismissing drug charges for policy reasons). And although Coble suggests that this prosecution results from a cultural bias against marijuana, he has not argued why this should require dismissal of the charge against him. Coble's Brief, at 16–17.

Because the Commonwealth's evidence is sufficient to allow the jury to determine whether Coble was reckless, the trial court erred in concluding otherwise.

2. Danger of Serious Bodily Injury

We next address whether the Commonwealth met its *prima facie* burden to establish that Coble placed or may have placed A.C. "in danger of death or serious bodily injury." 18 Pa.C.S.A. § 2705. The trial court did not address this element of REAP. We find that the Commonwealth met its burden.

² The legislature has provided for criminal immunity for people who seek help in certain drug overdose cases, which does not apply to a prosecution for REAP. ***See*** 35 P.S. § 780–113.7(b) (listing offenses).

REAP requires an actual danger of death or serious bodily injury. ***Commonwealth v. Edwards***, 256 A.3d 1130, 1138 (Pa. 2021). The Crimes Code defines bodily injury as “[i]mpairment of physical condition or substantial pain” and serious bodily injury as “[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” 18 Pa.C.S.A. § 2301. In meeting its *prima facie* burden to prove this element of REAP, the Commonwealth must “establish that there may have been the possibility or risk of harm, regardless of the likelihood of the manifestation of that harm.” ***Commonwealth v. Cordoba***, 902 A.2d 1280, 1289 (Pa. Super. 2006). “Danger, not merely the apprehension of danger, must be created.” ***Commonwealth v. Klein***, 795 A.2d 424, 427 (Pa. Super. 2002) (quoting ***Commonwealth v. Hopkins***, 747 A.2d 910, 916 (Pa. Super. 2000)).

Here, the Commonwealth presented the testimony of Dr. Crellin, who concluded that A.C. had overdosed on THC. He explained: “An overdose is when a potentially toxic amount of a substance is ingested. . . . One can overdose on any substance.” N.T., 12/2/20, at 21. At the hospital, A.C.’s mental status was altered, and she intermittently stopped breathing. A.C.’s initial oxygen saturation was 70, which improved to 100 when Dr. Crellin gave her oxygen.

This is sufficient to establish a *prima facie* case that A.C. was in actual danger of death or serious bodily injury. A jury could find, based on A.C.’s overdose, altered mental state, and reduced breathing, that she faced a

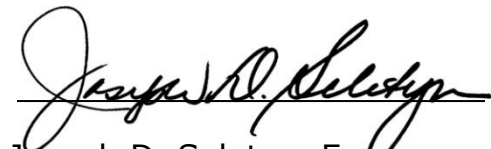
substantial danger of death or serious bodily injury. Although Coble suggests that A.C.'s reduced oxygen was merely the result of her crying, this inference does not view the evidence in a light most favorable to the Commonwealth, as we must do at this stage. Therefore, we conclude that the Commonwealth met its burden to establish that Coble placed or may have placed A.C. in danger of death or serious bodily injury.

III. Conclusion

The Commonwealth presented a *prima facie* case that Coble acted recklessly and that he placed or may have placed A.C. in danger of death or serious bodily injury. The trial court erred in holding otherwise. At this juncture, because we are constrained to view all inferences in favor of the Commonwealth, we must reverse the trial court's order granting Coble's petition for a writ of *habeas corpus* and remand for trial on the charge of REAP.

Order reversed. Case remanded for trial. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/13/2022