

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002566-MR

RANDY SMITH

APPELLANT

v. APPEAL FROM MONROE CIRCUIT COURT
HONORABLE EDDIE C. LOVELACE, JUDGE
ACTION NO. 02-CR-00031

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: EMBERTON, CHIEF JUDGE; DYCHE AND TACKETT, JUDGES.

TACKETT, JUDGE: Randy Smith appeals from the judgment of the Monroe Circuit Court, in which a jury found Smith guilty of three counts of wanton endangerment in the first degree and for which he was sentenced to one year in prison on each count, to be served concurrently. Smith argues on appeal that the evidence was not sufficient to support a conviction. We affirm.

Smith was involved in an incident with three teenagers on May 12, 2002. Allegedly, Smith pointed a pistol at Jacob Hale, Dillon Bartley, and Lakala Hume, and then blocked the roadway with his truck while armed with a rifle. Smith denied

that he pointed a gun at the teenagers and said that they misinterpreted the incident with the truck and the rifle as a threat, arguing that it was mere coincidence that his truck was partly blocking the roadway and he was in his front yard while holding a rifle. The teenagers affirmatively stated that Smith pointed a pistol at them and accused them of yelling obscenities as they drove by his house. The teenagers said that Smith grabbed Bartley, who punched Smith in the face, and that Smith picked up the handgun again and pointed it at them, causing them to run away. Smith then left, but said "I'll be waiting for you when you leave." Later, as the teenagers were leaving the area, they saw Smith in his yard holding a rifle, and his pickup truck blocking the roadway in front of his house. Hale was speeding, and swerved to avoid the truck, but hit a part of the truck, causing Hale's truck to careen into the ditch on the opposite side. Hale then got his truck back onto the road, drove to the next house, and called the police.

Deputy Sheriff Daryl Ford investigated the incident and arrested Smith that night. Ford stated that Smith was staggering and his speech was slurred when he arrived at Smith's house an hour after the incident. The next day, Ford videotaped the area where the trucks collided, showing the damage done to the roadway and the embankment. The videotape was shown to the

jury. Smith was convicted at trial and sentenced as stated above. This appeal followed.

Smith's sole argument on appeal is that the evidence was not sufficient to sustain a conviction for wanton endangerment. In order to meet this standard, it must be clearly unreasonable for a jury to find the defendant guilty under the evidence as a whole. This standard is identical to the standard used for directed verdict. Schloenbachler v. Commonwealth, Ky., 95 S.W.3d 830, 836 (2003); Commonwealth v. Sawhill, Ky., 660 S.W.2d 3 (1983).

Wanton endangerment requires proof that "under circumstances manifesting extreme indifference to the value of human life", a person "wantonly engages in conduct which creates a substantial danger of death or serious physical injury to another person." Kentucky Revised Statute 508.060(1). It has been consistently held by the courts of this Commonwealth that pointing a firearm at another person can satisfy the statute. The Commonwealth cites Thomas v. Commonwealth, Ky., 567 S.W.2d 299 (1978), as an example of such a case. In that case, Thomas pointed an unloaded firearm at another person, causing such fear in his victim that the victim purposely endangered himself by running his car into a police cruiser. Pointing a loaded firearm at someone, as Smith was alleged to have done, also qualifies as wanton endangerment. This Court held in Key v.

Commonwealth, Ky. App., 840 S.W.2d 827 (1992), that pointing a gun that is loaded or that there is reason to believe may be loaded is conduct proscribed by this statute. Here, Smith committed two acts which may be the proper subject of this charge; pointing a gun at the teenagers, and the later incident with the rifle and truck. While Smith argues that there is no evidence that supports a conviction for endangering Lakala Hume, who he says never testified that she saw Smith pointing the gun, at the very least the incident with the truck certainly qualifies.

Smith explains that the incident with the truck was just a misinterpretation on Hale's part, and that he just happened to be in his front yard with a rifle that he was carrying to his house from his truck, which he claims was not blocking the roadway. He also denied pointing a pistol at the teenagers. However, it is well settled that a jury may choose to believe or disbelieve any testimony presented to it. Our function is only to discern whether the proof was so lacking that it was clearly unreasonable for a jury to find the defendant guilty of the offenses charged. We cannot do so in this case, and affirm the judgment.

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

ALL CONCUR.

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