

RENDERED: MAY 28, 2004; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2003-CA-000168-MR

DARRELL BREWER

APPELLANT

v. APPEAL FROM MONTGOMERY CIRCUIT COURT
HONORABLE BETH LEWIS MAZE, JUDGE
ACTION NO. 02-CR-00040

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: EMBERTON, CHIEF JUDGE; GUIDUGLI AND KNOPF, JUDGES.

KNOPF, JUDGE: Darrell Brewer appeals from a judgment of the Montgomery Circuit Court, entered January 14, 2003, convicting him of second-degree manslaughter in violation of KRS 507.040 and sentencing him to five years' imprisonment. Brewer contends that the trial court erred by denying his motions for a directed verdict. We affirm.

During the late afternoon of February 12, 2002, Brewer lost control of the car he was driving northbound on Route 11

between Clay City and Mount Sterling in Montgomery County. At a point where the northbound lane curves to the left, his vehicle went straight, left the road, traveled across a gravel parking lot and collided with the support structure of a mobile home. Brewer's passenger, his thirteen-year-old nephew, died as a result of injuries he suffered in the collision.

Police investigators found evidence that Brewer had been intoxicated when he drove into the mobile home, and in March 2002 a grand jury indicted him for wanton murder. As noted above, following trial in December 2002, the jury convicted Brewer of second-degree manslaughter. The jury found, that is, that Brewer wantonly caused his nephew's death. A person behaves wantonly for the purposes of KRS 507.040 when he disregards a substantial and unjustifiable risk of death under circumstances indicating a gross deviation from a reasonable person's standard of conduct.¹ It is well established that substantial evidence of impaired driving will support a jury finding of wantonness.²

The evidence of impairment in this case included blood test results indicating that Brewer's blood-alcohol concentration was 0.08 following the collision and his admission that he had consumed two beers just prior to his trip and part

¹ KRS 501.020(3).

² Walden v. Commonwealth, Ky., 805 S.W.2d 102 (1991).

of a third en route. There was also evidence that Brewer's car had neither skidded nor veered but had driven straight off the road and into the mobile home, suggesting that Brewer's attention had lapsed.

Against this evidence, Brewer denied having been intoxicated, notwithstanding the beer, and claimed that he had been forced from the road by a southbound truck encroaching in the northbound lane. An eyewitness testified, however, that there had been no other traffic. The evidence permitted a rational juror to believe beyond a reasonable doubt that Brewer's driving had been impaired and that the impairment caused the fatal collision. The trial court did not err, therefore, when it denied Brewer's motions for a directed verdict.³

Accordingly, we affirm the January 14, 2003, judgment of the Montgomery Circuit Court.

ALL CONCUR.

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³ Commonwealth v. Benham, Ky., 816 S.W.2d 186 (1991).