

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001451-MR

CARMEL DEAN CHARLES, JR.

APPELLANT

v.

APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 02-CR-00184

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

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

GUIDUGLI, JUDGE. In this criminal action, Carmel Dean Charles, Jr. (hereinafter "Charles") is directly appealing his conviction of First-Degree Manslaughter¹ and an eighteen-year sentence imposed by the Pike Circuit Court following a jury trial. The only issues presented on appeal relate to whether the trial court erred in denying Charles' motion and renewed motion for a directed verdict and in allowing the victim's mother to remain

¹ KRS 507.030.

in the courtroom despite her emotional state. Having reviewed the record on appeal, the parties' briefs and the applicable case law, we affirm.

On October 2, 2002, the Pike County Grand Jury indicted Charles on one count of Murder² for unlawfully shooting Norman Adams (hereinafter "Adams"), thereby causing his death. The facts leading up to the shooting were disputed below, and we shall attempt to succinctly summarize them for purposes of this opinion and with the knowledge of our standard of review.

On the evening of September 29, 2002, Charles left his home on Upper Chloe Road near Pikeville, Kentucky, to purchase cigars. Rather than going directly to the store, he stopped by the home of his cousin Roger Smith (hereinafter "Smith"), who also lived on Upper Chloe Road. As he arrived, Adams came out of Smith's house. Charles and Adams apparently had a violent history as a few months prior to that time, Adams had severely beaten Charles. Another neighbor joined the men, and Charles and Adams began "shot gunning" beers. Following a disagreement between Charles and Smith, Charles left Smith's residence with Adams, again intending to purchase cigars. After stopping by Adams' home, Adams rejoined Charles and asked to borrow \$150 in order to bail his girlfriend, Michelle Keene (hereinafter "Michelle"), out of jail. Charles agreed, and later agreed to

² KRS 507.020.

Adams' request for \$200. However, Charles refused to loan him \$250 as he did not have that sum of money in his account.

After picking up Michelle's cousin, Misty Chapman (hereinafter "Misty"), from Michelle's house, the three went to an ATM to withdraw the money, and proceeded to the jail to get Michelle. The group decided to return to Charles' house to "socialize". At some point, a decision to steal items from Charles was made, as he was an "easy target". Once at Charles' house, they began dancing and drinking Vodka. At some point, Charles decided to take a shower. Following his shower, Charles saw one of the women darting from a bedroom. Larry Blackburn (hereinafter "Blackburn") and his girlfriend arrived at Charles' house sometime between 11:00 p.m. and 12:00 a.m., at which time Adams, Michelle and Misty quickly left. They got a ride back to Adams' trailer, also on Upper Chloe Road, and then went to his sister, Lynn Adams' (hereinafter "Lynn") trailer on the same property.

After Adams, Michelle and Misty left his house, Charles realized that he was missing a newly filled bottle of prescription medication and his wallet. He drove to Adams' trailer to discuss the matter. When Adams came out of the trailer, they discussed the missing wallet, and Adams denied having taken it. During this time, Blackburn pulled into Adams' driveway, blocking Charles' Jeep. Adams ordered Blackburn to

leave his property, which he did, and then Charles backed out of the driveway. Once on the road, Charles stopped his Jeep, and more arguing or discussion between him and Adams ensued. Finally, Charles drew his .44 Magnum handgun³ from the side pocket of his Jeep and shot Adams one time in the groin area. A hollow-point bullet severed Adams' femoral artery, and he died during surgery the following morning. The coroner later recovered Charles' wallet and one bottle of prescription Diazepam (valium) belonging to Charles in the clothing Adams was wearing when he was shot. Lastly, photographs of Charles taken by the responding police officers reveal a large cut to his upper lip.⁴

The matter proceeded to trial on June 2, 2003. At the close of the Commonwealth's case-in-chief, Charles moved the trial court for a directed verdict of acquittal on the murder charge. This motion and his renewed motion for a directed verdict were both denied. The trial court instructed the jury on the authorized verdicts of Murder, First-Degree Manslaughter, Second-Degree Manslaughter, and Reckless Homicide, as well as on self-protection. The jury returned a verdict of First-Degree Manslaughter, and later fixed his punishment at eighteen years. The trial court entered a Final Judgment and Order of

³ Charles had a concealed weapons permit.

⁴ Charles claimed that he received the cut from blows he received from Adams that night, while the Commonwealth attributed the cut to the strong recoil of the .44 Magnum handgun.

Imprisonment in conformity with the jury's verdict on July 7, 2003. This appeal followed.

On appeal, Charles argues that the trial court erred in denying his motion and renewed motion for a directed verdict, as there was insufficient evidence of his intent to kill Adams presented to allow the case to go to the jury. Additionally, Charles argues that the trial court committed substantial error by permitting Adams' mother to remain in the courtroom. The Commonwealth asserts that in a light most favorable to it, there was sufficient evidence to support the trial court's denial of Charles' motions and that it was not clearly unreasonable for the jury to find guilt. As to Charles' argument regarding Adams' mother, the Commonwealth argues that Charles failed to show that any manifest injustice resulted in her continued presence in the courtroom.

In Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991), the Supreme Court of Kentucky restated the directed verdict rule as follows:

On motion for directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. If the evidence is sufficient to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty, a directed verdict should not be given. For the purpose of ruling on the motion, the trial court must assume that the evidence for the Commonwealth is true, but reserving to the jury questions as to the

credibility and weight to be given to such testimony.

Relying upon Commonwealth v. Sawhill, Ky., 660 S.W.2d 3 (1983), the Benham court went on to state:

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. Sawhill.

As stated in Sawhill, there must be evidence of substance, and the trial court is expressly authorized to direct a verdict for the defendant if the prosecution produces no more than a mere scintilla of evidence.

Benham, 816 S.W.2d at 187-88. The applicable statute in this case is KRS 507.020, which details the crime of murder:

- (1) A person is guilty of murder when:
 - (a) With intent to cause the death of another person, he causes the death of such person or of a third person; except that in any prosecution a person shall not be guilty under this subsection if he acted under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be. However, nothing contained in this section shall constitute a defense to a prosecution for or preclude a conviction of

manslaughter in the first degree
or any other crime.

With both this statute and our standard of review in mind, we shall review the trial court's rulings in light of the evidence presented in this case.

In this case, there is no question that Charles shot his gun at Adams; he admitted that he did so. Several witnesses testified that Charles revealed at his house that he was in possession of one or more handguns on the night of September 29th, and that he was doing so to ensure that Adams would not attempt to harm him. Misty testified that while he was showing Adams a gun, Charles told him, "I'm not going to fight and let you whip me tonight." Likewise, Michelle testified that Charles told Adams that he would shoot him as he did not want to be beaten up. There was also testimony to the effect that Charles was proficient in using a gun and often went target practicing. Additionally, testimony established that Charles went to Adams' residence to confront him about his missing medication and wallet. Witnesses testified that Charles and Adams were in a heated argument about the missing items and that Charles threatened to kill Adams because of his belief that he had taken the items. According to Misty, Charles stated to Adams, "I'm going to kill you. You took my pills." Michelle related that Charles told her, "I oughta just shoot him." Just prior to the

shooting, Lynn testified that Charles told Adams, "I'll kill you." Blackburn heard Charles tell Adams, "I'll just shoot you." Finally, Misty heard Charles say, "I ought to just shoot you." Each witness then testified that Adams turned around at this point, said something, and Charles shot him. Evidence as to the entry and upward path of the bullet indicated that Adams was several feet away from Charles' Jeep when he was shot, as opposed to Charles' testimony that Adams was holding onto the door and leaning inside his Jeep.

Together, this evidence creates the "mosaic" the Commonwealth described in its brief. In support of this, the Commonwealth cited Davis v. Commonwealth, Ky., 795 S.W.2d 942 (1990), in which the Supreme Court stated, "[w]hile the Commonwealth's proof in this case was not overwhelming, when the various items of evidence are added together, a mosaic appears upon which a reasonable jury could look and conclude that appellant was guilty of murder." Id. at 947. The trial court properly drew all of the reasonable inferences from the evidence in favor of the Commonwealth, and determined that there was sufficient evidence that would allow the jury to reasonably find Charles guilty of murder beyond a reasonable doubt. Therefore, the trial court properly denied the motion and renewed motion for a directed verdict, and permitted the jury to decide the case. That the jury returned a verdict on the lesser-included

charge of First-Degree Manslaughter after reviewing the evidence as a whole in no way negates the trial court's rulings as the evidence had to be viewed in a light most favorable to the Commonwealth.

Charles next raises an issue under the palpable error rule regarding the presence of Adams' mother in the courtroom. Pursuant to RCr 10.26, "[a] palpable error which affects the substantial rights of a party may be considered by . . . an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error."

Throughout the trial, other than when several autopsy photographs were introduced, Adams' mother is clearly visible in the front row of the gallery behind the prosecutor. She can be seen wiping her eyes and quietly crying, and can occasionally be heard sniffing.⁵ At no time did she lose control in any type of emotional outburst, and prior to the jury's return of its verdict, the trial court noted that everyone had been calm throughout the trial. Charles has not established that her behavior during the trial in any way created a bias against him in the mind of the jury or resulted in a manifest injustice.

⁵ Later in the trial, Adams' sister as well as spectators sitting behind Charles, including his former wife and presumably his daughter, can be seen crying.

The strength of the evidence presented against Charles belied any harm her continued presence might have created, if there was any harm at all.

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

ALL CONCUR.

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