

RENDERED: September 24, 2004; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001683-MR

WILLIAM HARRY MEECE

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LAURANCE B. VANMETER, JUDGE
ACTION NO. 02-CR-01355

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: SCHRODER AND TACKETT, JUDGES; EMBERTON, SENIOR JUDGE.¹

EMBERTON, SENIOR JUDGE. William Henry Meece was convicted of conspiracy to commit murder and sentenced to twelve years' imprisonment. He alleges that the trial court erred when it denied his motion in limine to exclude evidence regarding a conspiracy to murder a fictitious person. He also alleges that the indictment should have been amended to state the actual name

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

of the intended victim and the evidence was insufficient to support a conspiracy conviction. Finally he contends that the trial court should have included a definition of voluntary intoxication in the jury instructions. We affirm.

Georgia Rhodes was visiting her daughter when Meece approached her about "taking care" of Rhodes's boyfriend who had been causing her domestic problems. Rhodes, concerned with Meece's offer, informed a friend, who later directed Rhodes to Sergeant Dennis Benningfield of the Kentucky State Police. Rhodes told the Sergeant about the offer, and although she believed Meece was intoxicated at the time, she feared he was serious. Rhodes agreed to meet with Meece wired with a tape recorder and transmitter. During the meeting Rhodes asked Meece whether he was serious about the murder and he replied he "could be." The conversation continued and Meece told her that the murder would cost a couple thousand dollars and be accomplished in approximately one week.

A second meeting occurred during which Rhodes was again wired and a video camera placed in her purse. To protect her boyfriend the police told Rhodes to tell Meece that the boyfriend's name was Danny Baker, not his actual name Robert Reilly, and was given \$500.00 in marked money. Rhodes gave Meece the \$500.00 and informed him that her boyfriend's name was Danny Baker. Meece then told Rhodes about the weapon he would

use and that he would send her a Polaroid picture after the murder was completed. He then told her to give him a picture of her boyfriend, his description, and instructed her on what to do if approached by the police. He further told Rhodes where to drop the rest of his fee following the murder and that they could have no further contact.

After review of the tapes, Meece was arrested and charged with conspiracy to commit murder. The \$500.00 was recovered on his person and a note containing the description of "Danny Baker" given to him by Rhodes was found.

Meece contends that the trial court erred when it refused to prohibit the Commonwealth from introducing any evidence relating to the fictitious name, Danny Baker. The name Danny Baker is not only relevant to the conspiracy charge but it is the name of the proposed victim. Meece contends that it would be factually impossible for him to kill Danny Baker. Factual impossibility, under KRS² 506.040 is not a defense to a conspiracy charge. The statute provides:

- (1) A person having the intention of promoting or facilitating the commission of a crime is guilty of criminal conspiracy when he:
 - (a) Agrees with one (1) or more persons that at least one (1) of them will engage in conduct constituting that crime or an

² Kentucky Revised Statutes.

attempt or solicitation to commit such a crime; or

- (b) Agrees to aid one or more persons in the planning or commission of that crime or an attempt or solicitation to commit such a crime.

And, KRS 506.050 requires proof of an overt act in furtherance of the conspiracy. The focus of the statute is the agreement to commit the offense, not its commission. The commission of the offense is immaterial if the elements of conspiracy are present.³ There was sufficient evidence that Meece knowingly agreed to commit murder and accepted payment. The elements of the statute were met.

The Commonwealth was not required to amend the indictment to reflect the actual name of Rhodes's boyfriend. Again, the charge is conspiracy to commit the murder of Danny Baker and the indictment sufficiently gave Meece notice of that charge.⁴

Meece contends that he was entitled to a directed verdict based on the insufficiency of the evidence. Only if it would be clearly unreasonable for a jury to find a defendant guilty is he entitled to a directed verdict.⁵ Meece contends

³ Davis v. Commonwealth, 311 Ky. 249, 223 S.W.2d 893 (1949).

⁴ Wylie v. Commonwealth, Ky., 556 S.W.2d 1 (1977).

⁵ Commonwealth v. Benham, Ky., 816 S.W.2d 186 (1991).

that there was no evidence that he took steps to actually commit the murder so he could not be convicted of conspiracy. KRS 506.050(1) requires an "overt act" and any act beyond the agreement satisfies the element.⁶ Meece completed the conspiracy once he took the money from Rhodes and the description of her boyfriend.

Rhodes, who came to the police voluntarily, did not intend to have her boyfriend killed and her actions were at the direction of the police. Meece contends that without a co-conspirator who truly agreed to the murder, he could not be convicted of conspiracy. He cites federal cases interpreting the federal conspiracy statute holding that where there is an alleged conspiracy between one defendant and one government agent, the agreement is insufficient to establish a conspiracy.⁷ Rhodes was not a government agent but a private individual seeking the aid of police. And, this Commonwealth has rejected the federal view:

Criminal conspiracy at common law traditionally has been considered as an agreement to accomplish an unlawful act involving two or more persons sharing a "bilateral" or "multilateral" relationship. Some courts required proof that at least two of the conspirators were actually guilty of the conspiracy. The commentary to KRS

⁶ Commonwealth v. Speakes, Ky., 740 S.W.2d 941 (1987).

⁷ See United States v. Esparsen, 930 F.2d 1461 (11th Cir. 1991); United States v. Giry, 818 F.2d 120 (1st Cir. 1987).

506.070 points out that one of the problems with this analysis is that no conspiracy can exist if one of the parties is irresponsible or innocent. However, the Model Penal Code indicates that the actor's liability is not affected by such factors and are extraneous to culpability.⁸

Meece's final assignment of error is unpreserved. He is entitled to review only if the alleged error is one that has resulted in a manifest injustice.⁹ The jury was instructed on the element of criminal conspiracy to commit murder and given a separate instruction on intoxication with a directive that the jury not find Meece guilty if he was so intoxicated at the time of the offense that he could not form the required intent. In Holland v. Commonwealth,¹⁰ the court held that the defendant was entitled to have voluntary intoxication defined where there was evidence to support involuntary intoxication as a defense. In this case there is no evidence that Meece was involuntarily intoxicated and no need to distinguish the terms voluntary and involuntary. We find no error.

We have considered all errors raised and find no error. The judgment is affirmed.

ALL CONCUR.

⁸ Commonwealth v. Sego, Ky., 872 S.W.2d 441, 443 (1994).

⁹ RCr 10.26; Brock v. Commonwealth, Ky., 947 S.W.2d 24 (1997).

¹⁰ Ky., 114 S.W.3d 792 (2003).

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