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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002259-MR

PHILLIP EDWARD CLINE

APPELLANT

v. APPEAL FROM FLOYD CIRCUIT COURT
HONORABLE JOHN DAVID CAUDILL, JUDGE
ACTION NO. 03-CR-00101

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, HENRY, AND JOHNSON, JUDGES.

BARBER, JUDGE: Appellant, Phillip Cline (Cline), appeals his Floyd Circuit Court conviction of reckless homicide. Cline contends that a separate federal conviction barred the state charge. The circuit court found that the state charge was separate and distinct. We affirm the trial court's ruling.

Cline was tried and convicted in federal court on charges of carjacking, and use and possession of a gun while under a domestic violence protective order. Cline was sentenced

to 220 months in prison, three years of supervised release, and a fine. On appeal to the Sixth Circuit Court of Appeals, Cline's conviction was affirmed. Subsequent to the federal trial, Cline was indicted for murder by the Martin County Grand Jury. Venue was changed to the Floyd Circuit Court. Cline moved to dismiss the state charge, claiming that double jeopardy and collateral estoppel prevented the state action. Cline entered a conditional guilty plea to the state charge. This appeal follows.

The incident began when Cline assaulted his wife. Luther Smith left a party all three were attending in a motor vehicle with Cline's wife. Cline followed Smith's car. Eventually Smith stopped his car, and engaged in an altercation with Cline. Cline beat Smith and left him severely injured on or beside the roadway before leaving the scene with his wife. A passing unknown vehicle ran over Smith while he was unconscious beside the road. Smith died as a result of being run over.

At the federal trial, Cline testified that he had not killed Luther Smith beside the roadway, but had knocked him out and left him lying beside the roadway, where a passing car struck and killed him. In his motion to dismiss the state court charge, Cline argued that the federal jury found him not guilty of causing serious injury or death to Smith. Cline argues that the circuit court was in error when it failed to dismiss the

homicide charge against him based on principles of collateral estoppel.

Cline contends that the federal jury decided the issue of ultimate fact when it determined that the carjacking offense did not cause Smith's death. Cline argues that the federal determination barred re-litigation of the issue as to whether he caused Smith's death. The issue of murder was never before the federal jury. That jury was charged with determining whether Cline had carjacked Luther Smith's vehicle, and whether Cline was in possession of handguns while he was under a domestic violence order, and while he was beating his wife.

The record clearly shows that the federal jury never addressed the issue of whether Cline left Smith unconscious beside the road. It was that act which allowed a passing vehicle or vehicles to strike Smith and cause his death which was the subject of the state suit. The only issue before the federal jury, with relation to Smith, was whether the carjacking itself caused him death or serious physical injury. As the carjacking admittedly did not cause Smith's death, the federal jury did not find him guilty on that charge. The carjacking was unrelated to the vehicular injury which caused Smith's death.

The state indictment charged Cline with "wantonly engaging in conduct which created the grave risk of death to another and thereby caused the death of [Luther Smith]. . . ."

Cline pleaded guilty to engaging in an altercation with Smith, striking him three times, and then leaving him beside the road where Smith was later struck by a passing vehicle. It was only after knocking Smith unconscious that Cline escaped in Smith's vehicle, forcing his wife to go with him.

The federal carjacking statute holds that a person should be found guilty of the offense where the defendant:

. . . with the intent to cause death or serious bodily harm takes a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation . . .

18 U.S.C. Section 2119. Where the carjacking causes serious bodily injury, subsection (1) of the statute imposes a greater penalty upon the defendant. If death results from the carjacking, the defendant faces a life sentence or the death penalty under subsection (2) of the statute. The statute has been found to encompass three separate offenses due to this breakdown, a simple carjacking, a carjacking resulting in injury, and a carjacking resulting in death. See: Jones v. United States, 526 U.S. 227 (1999).

The federal jury instructions required the jury to find Cline guilty of simple carjacking unless they determined that "the carjacking was a substantial contributing factor in the death or serious bodily injury. . . ." The uncontroverted

evidence before the court was that Cline beat Smith and left him unconscious in or alongside the roadway. The automobile was not involved in either the assault on Smith or the injuries which resulted in death. The jury in the federal case found that Cline was guilty of simple carjacking.

Cline contends that this finding amounts to a finding of guilty to a lesser-included offense of murder. He argues that the federal jury "impliedly acquitted [him] of causing the death of Luther Smith." During arguments before the Floyd Circuit Court, counsel for Cline asserted that Cline took no further action with regard to Smith after he left the scene in the car. She contended that this showed that no serious injury to Smith occurred during the carjacking. Cline asserts that "a conviction of homicide in Kentucky does not require proof of a fact not required in the federal [carjacking] prosecution." Cline also argues that conviction of homicide in the state action required determination of a fact inconsistent with the federal jury's findings. We reject this contention. The fact that the federal jury determined that the carjacking did not cause Smith's death does not preclude a state court finding that Cline beat Smith unconscious and left him near the roadway to be run over by a passing car.

The federal indictment alleged, at Count 1, that Cline did:

Knowingly and unlawfully, by force and violence, take and attempt to take from the presence of Luther Smith and Jeana Cline, a motor vehicle, which had previously been transported, shipped or received in interstate commerce, said taking resulting in the death of Luther Smith and serious bodily injury to Jeana Cline. . . .

This indictment included charges that the carjacking itself caused the injury to Smith, and to Jeana Cline. The jury instructions were worded so as to ask whether "death or serious injury resulted to Luther Smith" as a result of the above offense [carjacking]. To find that the carjacking resulted in the death of Smith, the jury had to find that "the carjacking was a substantial contributing factor in the death or serious bodily injury. . . ." The jury found that Cline had carjacked the vehicle, but did not find that the carjacking itself caused the death or serious injury to Smith. This finding was in accordance with the instructions before the jury, but does not constitute a finding that Cline did not otherwise act so as to injure Smith.

The Double Jeopardy Clause of the United States Constitution is intended to prevent infringements upon a defendant's rights. "It protects against a second prosecution for the same offense after acquittal. It protects against a second punishment for the same offense after conviction. And it protects against multiple punishments for the same offense."

Schiro v. Farley, 510 U.S. 222, 114 S.Ct. 783, 127 L.Ed.2d 47 (1994). KRS 505.050(1) prohibits successive prosecution for the same offense where the former prosecution "resulted in an acquittal." Cline was not acquitted of causing Smith's serious physical injury or death in the federal court. The federal judgment is unrelated to the state proceedings. The federal carjacking charges and the charges of wanton murder under Kentucky law do not describe the same offense. Punishment under the federal law does not affect charges under the state law in the present circumstances.

Collateral estoppel bars relitigation of a central issue "when an issue of ultimate fact has been determined by a valid and final judgment. . . ." Schiro v. Farley, supra., 510 U.S. at 232, citing Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970). The first jury must have decided the case on an issue necessary to convict in the subsequent case. Benton v. Crittenden, 14 S.W.3d 1 (Ky. 2000).

The evidence before the jury was that Cline attacked Smith beside the road, before he intended to, or did, in fact, take the vehicle. The injury to Smith and the intent to leave him unconscious in the roadway were not part of the carjacking. The car was taken later, after Smith was injured. The question under Kentucky law was whether Cline injured Smith and left him to be run over. The question before the federal jury was

whether Cline took Smith's vehicle. The offenses are separate and distinct. A judgment on one does not bar litigation on the other. For this reason, the federal judgment does not constitute a finding on the ultimate issue before the state jury. It follows that the federal conviction did not preclude the state prosecution. We affirm the ruling of the circuit court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Richard Hoffman
Assistant Public Advocate
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky
Frankfort, Kentucky

Dennis W. Shepherd
Assistant Attorney General
Frankfort, Kentucky