

RENDERED: MAY 26, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001985-MR

DAVORRAH MILLER

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANN O'MALLEY SHAKE, JUDGE
ACTION NO. 03-CR-002166

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

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

TACKETT, JUDGE: Davorrah Miller appeals from the judgment of the Jefferson Circuit Court, entered on a conditional guilty plea to assault in the second degree, driving under the influence with aggravator assault in the fourth degree, tampering with physical evidence, two counts of wanton endangerment in the first degree, criminal mischief in the first

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.

degree, possession of marijuana and possession of drug paraphernalia. Miller was sentenced to a total of fifteen years' imprisonment for the above offenses. Miller asserts that it was error for the court not to allow her to present the defense of mental illness negating the element of intent. We disagree, and affirm.

Miller was driving while intoxicated on Bardstown Road in Louisville when she struck another vehicle, severely injuring the passenger. Miller was uninsured, and officers stated that she had a strong odor of alcohol. A preliminary breath test gave a 0.2 reading, well over twice the legal limit. She admitted to drinking and to taking Valium before driving. While being taken to jail, she stuffed marijuana and rolling papers into the cruiser's seat, where it was discovered by officers.

Miller was originally charged with assault in the first degree and driving under the influence (second offense). She filed a memorandum with the court stating that she intended to assert the defense of alcoholism as a mental illness, negating the element of intent for many of the offenses charged. By being compelled to drink, she argued, she was not 'voluntarily intoxicated'. The circuit court ruled that under Kentucky law, alcoholism and other forms of addiction are not mental illness, and cannot be used as a defense as Miller

sought. Miller then agreed to a conditional plea agreement as above, and this appeal followed.

Miller argues at length and with zeal that alcoholism is a mental illness and should be treated as such by Kentucky law. Kentucky Revised Statute 504.020 draws the boundaries of the use of mental illness as a defense. If, as a result of mental illness or retardation, a defendant lacks substantial capacity either to appreciate the criminality of her conduct or to conform her conduct to the requirements of law, the defendant cannot be held criminally responsible. Miller argues that alcoholism is a compulsion to drink, and that because of that compulsion she could not be said to be voluntarily intoxicated, negating the element of intent for many of the charged offenses. Unfortunately, Miller cannot surmount the obstacle of Tate v. Commonwealth, 897 S.W.2d 368, 372 (Ky. 1995), which represents the final word on the issue and unequivocally states that alcoholism is not a mental illness for purposes of our statute. "The legislature has not intended that drug addiction arising from the voluntary ingestion of drugs, by itself, affords a defense to a criminal charge on the basis of mental illness," the Kentucky Supreme Court stated in Tate. Miller argues that Tate should not apply, because an alcoholic's compulsion to drink is not voluntary ingestion. This attempt to avoid the central holding in Tate by recasting addiction as a compulsion

is directly contradicted by the quoted language above. This court is bound to follow Tate as the established precedent on the sole issue presented to this Court. Accordingly, we affirm the decision of the circuit court.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. Fox Demoisey
Louisville, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Bryan D. Morrow
Assistant Attorney General
Frankfort, Kentucky