

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2005-CA-002406-MR

GREG MORRISON

APPELLANT

v. APPEAL FROM SCOTT CIRCUIT COURT  
HONORABLE PAUL F. ISAACS, JUDGE  
ACTION NO. 02-CR-00176

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: ACREE, SCHRODER, AND VANMETER, JUDGES.

ACREE, JUDGE: Greg Morrison appeals from a judgment of the Scott Circuit Court convicting him of first offense driving under the influence and first-degree manslaughter and sentencing him to ten years' imprisonment. Morrison entered a conditional guilty plea to the charges after the trial court denied his request for a motion to exclude any evidence of the accident victim's pregnancy at the time of her death. Having reviewed the arguments and the law on the issue, we affirm the trial court's decision.

Morrison was originally indicted for driving under the influence and capital murder after a July 2002 car accident where his vehicle collided with a car driven by Jennifer Bartley, causing her death. During the pendency of this case, the parties became aware that Bartley was pregnant when she died. Morrison, who had no prior connection with the victim, and, therefore no knowledge of her condition, filed a motion *in limine* asking the trial court to exclude any evidence of her pregnancy during his trial. When the trial court refused, he entered a conditional guilty plea to DUI and the lesser-included offense of first-degree manslaughter.

On appeal, Morrison argues that evidence of Bartley's pregnancy was inadmissible under the Kentucky Rules of Evidence (KRE), as well as existing legal precedent. KRE 401 defines relevant evidence "as evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 402 excludes irrelevant evidence, and Rule 403 requires a balancing test between the probative value and the prejudicial effect of evidence that may be introduced. Morrison contends that evidence of Bartley's pregnancy was irrelevant and extremely prejudicial. He maintains it might have resulted in the jury wanting to punish him for the death of her unborn child, which was not a legal

consequence of his act in causing her death. Morrison draws our attention to a 1979 decision of the Kentucky Supreme Court which held that evidence of an automobile accident victim's pregnancy at the time of her death was erroneously admitted. Neeley v. Commonwealth, 591 S.W.2d 366 (Ky. 1979).

The Commonwealth points to a more recent line of decisions allowing the limited admission of such evidence. Commonwealth v. English, 993 S.W.2d 941 (Ky. 1999), held that the outcome of the balancing test between probative value and prejudice was within the sound discretion of the trial court. Moreover, the Kentucky Supreme Court has specifically held that no error occurs where a jury is permitted to hear a brief mention that a murder victim was pregnant at the time of her death. Parrish v. Commonwealth, 121 S.W.3d 198, 203 (Ky. 2003).

It was not prejudicial error to admit evidence that the female victim was pregnant at the time of her murder. The fact that the female victim was pregnant was only minimally presented during trial. It related to her physical condition and the jury was entitled to hear such evidence. This Court has previously stated that evidence about whom and what the victim was prior to death was properly admitted.

Wheeler v. Commonwealth, 121 S.W.3d 173, 181 (Ky. 2003).

Although Parrish and Wheeler both dealt with intentional murders, evidence of the pregnancy of a woman killed by a driver who struck her with his car while driving recklessly

and after consuming alcoholic beverages has also been deemed admissible. Cook v. Commonwealth, 129 S.W.3d 351, 362 (Ky. 2004). In Cook, there were minimal references to the victim's pregnant condition. They were nonetheless greater in number and more substantial than in the case before this court. In denying Morrison's motion *in limine*, the trial court ordered that evidence of Bartley's pregnancy "be limited to only one reference to this fact by one witness and the Commonwealth cannot comment on this particular piece of evidence in its closing argument." This is entirely consistent with Cook.

Morrison has cited to no authority that would contradict the clearly controlling precedents found in Parrish, Wheeler, and Cook. Thus, we find no abuse of discretion in the trial court's refusal to exclude any mention of Bartley's pregnancy at the time of her death.

For the foregoing reason, the judgment of the Scott Circuit Court is affirmed.

ALL CONCUR.

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