

Commonwealth Of Kentucky
Court of Appeals

NO. 2006-CA-001298-MR

DAVID NEWTON

APPELLANT

v. APPEAL FROM MARION CIRCUIT COURT
HONORABLE ALLAN RAY BERTRAM, JUDGE
ACTION NO. 04-CR-00153

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: ACREE AND NICKELL, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

ACREE, JUDGE: David Newton appeals from a judgment of the Marion Circuit Court finding him guilty of second-degree manslaughter, tampering with physical evidence, possession of a gambling device, and selling alcoholic beverages without a license. On appeal he argues that the trial court improperly denied his motions for a directed verdict due to insufficient evidence. We disagree and affirm the trial court.

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Newton, age fifty-six at the time of his arrest, maintained a gathering place for his friends in a barn on his property. At the barn he sold cans of beer for one dollar, charged fifty cents to play pool, and provided food free of charge. A poker machine was also installed at the barn.

The victim, Daniel Smith was seventeen years old and a friend of Newton's son. Newton befriended Smith, but the pair were prone to arguing with one another. Smith also occasionally did work for Newton.

While the individual testimonies of those present at Newton's bar on June 30, 2004, vary in detail, the basic timeline of that afternoon's events is consistent. Newton and at least eight other people, including Smith, were at his barn. Newton became upset with Smith for laying a cigarette on his pool table and told him that if he did it again he was going to have to leave. Sometime later, Smith picked up a knife, put it to Newton's throat and threatened to cut off his head. Newton told Smith several times to put down the knife. Smith did, but then physically threatened Newton. While the exact details of what happened next are not clear, it is known that Smith punched Newton at least once and that Newton then stabbed Smith in his chest. Several people testified Smith died almost immediately after being stabbed.

Newton gave two taped statements to the police, both of which were presented to the jury at trial. Newton claimed that Smith hit him four times, knocking him to the ground. He

said Smith then got out a knife which Newton took from him. He stated that he did not know Smith had been stabbed and speculated that Smith might have fallen on the knife. After Newton stabbed Smith, he dragged him out of the barn and started to put him in his van, but decided to leave him on a concrete slab, angled in a way that Newton believed would assist Smith's blood flow. Newton also closed, chained and locked the barn. He then went to a neighbor's home to call the police. Newton claimed Smith was alive when he returned from the neighbor's house and died five minutes later. As the taped statements revealed, Newton contradicted himself, stating that the fight started outside the barn on the concrete slab where Smith was later found and that he threw the knife in a wood pile.

After obtaining a search warrant, the police entered Newton's barn. Drag marks were visible from the barn to the outside concrete slab, and it was obvious an altercation had taken place inside the barn. The police found the knife in the wood pile.

At the close of the Commonwealth's case, Newton moved for a directed verdict. The trial court denied the motion. At the close of Newton's case, he renewed his motion for a directed verdict. It was again denied.

A jury found Newton guilty of second-degree manslaughter, tampering with physical evidence, possession of a gambling device, and selling alcoholic beverages without a license. The jury recommended, and Newton was sentenced to, a

total of 15 years' imprisonment for the crimes. This appeal followed.

Newton contends that the trial court erred in denying his motion for directed verdict because the evidence presented against him was insufficient to support his manslaughter and tampering with physical evidence convictions. "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." *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991).

KRS 507.040(1) states that: "A person is guilty of manslaughter in the second degree when he wantonly causes the death of another person[.]"

A person acts wantonly with respect to a result or circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

KRS 501.020(3).

There is no dispute as to the existence of sufficient evidence as to the means of attack and the seriousness of the resultant injury. Instead, Newton's challenge goes to motive and intent. At trial, Newton made no attempt to deny the fact that he intentionally stabbed Smith. Rather, he attempted to

present a case of self-defense. The jury was free to reject his self-defense claim. Given the facts presented at trial, we cannot say it was clearly unreasonable for the jury to return a verdict of guilty as to manslaughter in the second degree. Further, we cannot say the court erred in allowing this charge to go to the jury.

Next, we examine Appellant's claim that he was entitled to a directed verdict on the charge of tampering with physical evidence. KRS 524.100 reads, in relevant part,

(1) A person is guilty of tampering with physical evidence when, believing that an official proceeding is pending or may be instituted, he:

(a) Destroys, mutilates, conceals, removes or alters physical evidence which he believes is about to be produced or used in the official proceeding with intent to impair its verity or availability in the official proceeding[.]

Before calling the police, Newton moved Smith's body, disposed of the knife used to stab him, and locked his barn. He argues that because he had an alternative explanation for why he did each of these things, a jury could not perceive them as tampering with physical evidence. We disagree. Based on these facts, it was just as reasonable to accept the Commonwealth's interpretation of these acts as it would have been to accept Newton's explanation. By definition, it was not unreasonable for the jury to find Newton guilty of attempting to conceal

evidence that could be used to prosecute criminal charges against him.

When viewed as a whole, there was sufficient evidence to submit the issue of Newton's guilt on the charged offenses to the jury. Therefore, the trial court did not err by denying his motion for a directed verdict.

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

ALL CONCUR.

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