IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 864 - 2007
	:	
vs.	:	CRIMINAL DIVISION
	:	
KEVIN L. GRIFFITH,	:	
Defendant	:	Petition for Habeas Corpus

OPINION AND ORDER

Before the Court is Defendant's Petition for Habeas Corpus, filed August 17, 2007. A hearing on the petition was held September 19, 2007, at the conclusion of which counsel requested additional time in which to file a brief. Defendant's brief was filed October 1, 2007; the Commonwealth did not respond.

Defendant has been charged with endangering welfare of children, conspiracy to endanger the welfare of a child, involuntary manslaughter, recklessly endangering another person, five counts of corruption of minors, five counts of conspiracy to corrupt minors, twelve counts of furnishing alcohol to minors, obstructing administration of justice and tampering with evidence, as a result of a party for his daughter's eighteenth birthday at which he provided alcohol to minors, and following which a nineteen-year-old young man died and a fifteen-year-old boy was injured in an automobile crash just after leaving Defendant's home. In the instant petition for habeas corpus, Defendant contends the evidence is insufficient to support the charges of endangering welfare of children, conspiracy to endanger the welfare of a child and involuntary manslaughter.

With respect to the first two charges, which have been charged as felonies, Defendant specifically argues that the Commonwealth has not shown a "course of conduct", a necessary element of the felony crime of endangering the welfare of children.[1] Defendant relies on Commonwealth v. Popow, 844 A.2d 13, 17 (Pa. Super. 2004)(citation omitted), wherein the conduct before the Court was found not to constitute a course of conduct, and the

Court stated, "the logical interpretation of the legislative language in subsection (b) is that it is designed to punish a parent who over days, weeks, or months, abuses his children, such as repeatedly beating them or depriving them of food. … The statute was clearly not designed for an event that occurs within minutes, or, perhaps in a given case, even hours." This Court is constrained to agree with Defendant that a "course of conduct" has not been shown in the instant case. While the Court believes the alleged behavior to be reprehensible, it cannot say that such, hosting a single beer party which occurred over a period of a few hours, constitutes anything other than a single event. Count 1 of the Information will therefore be amended to a misdemeanor, as will Count 2, as it necessarily depends on the grading of Count 1.[2]

With respect to the charge of involuntary manslaughter, Defendant contends the Commonwealth has failed to show that his conduct was directly and substantially linked to the victim's death,[3] and asks the Court to rely on caselaw which indicates that it would be unfair to hold an individual responsible for the death of another if his actions are remote or attenuated and the victim's death was attributable to other factors.

In defining the requirement that a defendant's conduct be a direct factor in the death of another, while courts have indeed excluded from prosecution those cases where "the actual result [was] so remote and attenuated that it would be unfair to hold the defendant responsible for it", Commonwealth v. Rementer, 598 A.2d 1300,1304-05 (Pa. Super. 1991), the Courts have nevertheless held that "so long as the defendant's conduct started the chain of causation which led to the victim's death, criminal responsibility for the crime of homicide may properly be found." Commonwealth v. McCloskey, 835 A.2d 801 (Pa. Super. 2003), *quoting* Commonwealth v. Nicotra, 625 A.2d 1259, 1264 (Pa. Super. 1993). In McCloskey, the Court found the defendant's conduct, furnishing of alcohol to minors, to be a direct factor in the

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[1] The Crimes Code indicates that while ordinarily endangering the welfare of a child is a misdemeanor of the first degree, where there is a course of conduct of endangering the welfare of a child, the offense constitutes a felony of the third degree. 18 Pa.C.S. Section 4304(b).

[2] According to Section 905 of the Crimes Code, conspiracy is a crime of the same grade and degree as the most serious offense which is an object of the conspiracy. 18 Pa.C.S. Section 905(a)

[3] The Crimes Code provides that "[a] person is guilty of involuntary manslaughter when as a direct result of the doing of an unlawful act in a reckless or grossly negligent manner, … he causes the death of another person." 18 Pa.C.S. Section 2504(a). Our appellate courts have interpreted this to mean that the Commonwealth must prove that the defendant's conduct was so directly and substantially linked to the actual result as to give rise to the imposition of criminal liability. Commonwealth v. Long, 624 A.2d 200 (Pa. Super. 1993).

victims' deaths, indicating that "[h]er outrageous conduct, in knowing the teens were consuming alcohol, interacting with them as they drank and allowing the illegal and unsupervised behavior to continue into the night, is the source of her culpability." Commonwealth v. McCloskey, *supra*, at 809.

In the instant case, the Court has no trouble concluding that Defendant's furnishing of alcohol to minors, including the victim, "started the chain of causation" which led to the victim's death. The Commonwealth has offered evidence that not only did Defendant know that minors were consuming alcohol at the party at his home, he himself purchased the alcohol for them to consume. As in McCloskey, the occurrence of a fatal automobile accident following a teenager's consumption of alcohol at a teenage beer party is neither "remote" nor attenuated", and it is not "unfair" or "unjust" to hold Defendant responsible under these facts, despite the other factors which combined with his conduct to achieve the tragic result.

Defendant points to evidence of his having provided a "sign-in sheet" and requiring all party-goers to turn in their keys prior to consuming any alcohol as evidence of his "supervision" of the minors, and argues this "supervision" distinguishes his case from McCloskey. While the McCloskey court did note the defendant's lack of supervision, the Court found such lack of supervision under the circumstances therein to "merely increase[] the level of recklessness", and that such was "not the sole factor that constitutes recklessness." Id. at 809, n.5. Indeed, the Court noted that it was addressing only the facts before it, and pointed out that its "assessment of these facts in no manner condones or approves of parents who host teen alcohol parties and purport to "supervise" or "control" these events, by limiting alcohol intake, confiscating car keys or encouraging teens to stay at the premises overnight." Id. This Court believes that the facts of the instant case warrant a finding of recklessness, and that the McCloskey Court would also find such recklessness in this case.

Accordingly, the Information will be amended as specified herein, but Defendant is not otherwise entitled to relief.

ORDER

AND NOW, this 15th day of October 2007, for the foregoing reasons, Counts 1 and 2 of the Information shall be amended to reflect misdemeanor offenses rather than felonies. In all other respects, Defendant's Petition for Habeas Corpus is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
George Lepley, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson