

COMMONWEALTH OF
PENNSYLVANIA

:IN THE COURT OF COMMON PLEAS
:OF LYCOMING COUNTY, PENNSYLVANIA

Vs.

:No. 245 of 2014

JONATHAN P. DEPRENDA

:CRIMINAL DIVISION

OPINION AND ORDER
ON DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

Defendant has filed, inter alia, a petition for writ of habeas corpus relative to counts one through three of the criminal information. Count one charges homicide by vehicle, a felony of the third degree while count two charges involuntary manslaughter, a misdemeanor of the first degree. Count three is reckless endangerment, a misdemeanor of the second degree. A preliminary hearing was held on these charges on February 7, 2014, at which time the charges were bound over for court. The hearing on a timely filed petition for writ of habeas corpus was held on June 30, 2014. The parties have submitted a preliminary hearing transcript to this court for consideration as well as additional evidence.

The Commonwealth has also attempted to introduce an exhibit consisting of a mandatory in-service training course (MIST), taken online by the defendant on or about February 21, 2013, relative to emergency vehicle operation. The Defense has vigorously argued this document is inadmissible for any purpose. The Court however, finds the Commonwealth's argument persuasive on this issue. This document was offered pursuant to Pennsylvania Rule of Evidence 801.3 to show the Defendant's knowledge of the material contained in this brief on-line course. While the Defense argues this is inadmissible hearsay, this exhibit was clearly offered for the purpose of establishing that the statements contained in the course were made, as opposed to

their truth. Here the Commonwealth's exhibit, which the Court will consider, was offered clearly for the purpose of establishing the defendant's familiarity with the contents of the exhibit. Bachman v. Artinger, 285 Pa. Super 57, 426 A. 2d 702 (1981); Schmalz v. Manufacturers and Traders Trust Company, 67 A. 3d 800 (Pa.Super. 2013). Thus, the Court is satisfied that the MIST materials are properly before the court and will be considered.

Turning to the Habeas Corpus issue, the Court will not recite the facts as alleged by both sides, as there seems to be substantial agreement as to the unfortunate events of January 12, 2014. The Defense has argued that the Commonwealth has failed to show a standard of care with adequate specificity. Also, both sides have discussed the implication of Section 3105 of the Motor Vehicle Code, which appears to grant a conditional privilege to operators of emergency vehicles. Frazier v. Commonwealth of Pennsylvania, 845 A. 2d 253 (Pa.Commw. 2004). While that case notes that Section 3105 does not in itself create a statutory duty, the privilege granted is nonetheless conditional.

As noted at argument, the law provides no penalty for a violation of that section of the Motor Vehicle Code, nonetheless, as all parties agree it is relevant. The Commonwealth points out that the Section 3105(e) qualifies the privilege relative to having due regard for safety. Id.

The Defendant further argues that there is insufficient evidence of reckless conduct pursuant to 18 Pa.C.S. § 302(b)(3). Ultimately a jury would be charged as to the elements of recklessness required for the predicate offenses in this case. The Court finds that the evidence thus far is sufficient that a jury could make a finding of recklessness in this case. The Defense seemingly suggests that total discretion is vested in an officer in terms of the operation of his vehicle in the heat of the moment. That interpretation must be rejected by the Court. The civil case of Johnson v. City of Philadelphia, 808 A. 2d 978 (Pa.Commw. 2002), is instructive. In this

civil case, the court had no problem ascertaining the applicable standard of care for the operator of the police car in question, noting that the standard of care requires an increased burden on drivers of emergency vehicles, and consequently, a decreased burden of proof for plaintiffs. Id.

While the standard of proof is far different in a criminal case, the evidence is sufficient for a jury to determine the requisite degree of reckless conduct. As noted in Johnson, supra., reckless conduct is significantly different from negligence, noting that the only difference between reckless conduct and negligent conduct is a substantial difference in the degree of risk. Id. at 983, citing Restatement (Second) of Torts § 500, comment 6 (1965).

The Defense also raises the question of foreseeability. It has been duly noted that the decedent in this case disobeyed traffic laws by not utilizing his turn signals. In this criminal case, however, any contributory negligence on the part of the decedent is not a defense to vehicular homicide, if the defendant's conduct was a direct and substantial factor in bringing about the fatal accident. See Commonwealth v. Nicotra, 425 Pa. Super. 600, 625 A. 2d 1259 (1993). Here there was no doubt as to factually what caused the death of Mr. Robinson. The record is sufficient that a jury could find that the officers' conduct was a direct and approximate cause of the death of Mr. Robinson. 75 Pa.C.S. § 3732.

An appropriate order follows:

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FILED
LYCOMING COUNTY
2014 AUG 14 PM 3:01
SUZANNE M. FEDELE
PROTHONOTARY &
CLERK OF COURTS

ORDER

AND NOW, this 5 day of August, 2014, the Court having determined that Commonwealth's Exhibit 1 offered at the Habeas Corpus hearing held on June 30, 2014, is admissible, and in accordance with the foregoing opinion, Defendant's petition for a Writ of Habeas Corpus is denied.

BY THE COURT:



John B. Leete, Senior Judge
Specially Presiding

cc: Michael Dinges; Dinges, Dinges & Wultz
DA's Office
Court Admin's Office
Judge Leete

SCANNED