

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-1551-2017  
:   
vs. :   
:   
: Motion to Reconsider  
SHAWN RHINEHART, : Habeas Corpus Decision  
Defendant

**OPINION AND ORDER**

By Opinion and Order filed on November 2, 2018, the court denied Defendant's petition for habeas corpus with respect to Counts 6 and 7, respectively aggravated assault by vehicle, a felony of the third degree, and recklessly endangering another person, a misdemeanor of the second degree.

In viewing the facts in a light most favorable to the Commonwealth, the court found that for prima facie purposes, Defendant was driving a triaxle dump truck and without any reason whatsoever traveled completely out of his lane of traffic and into oncoming traffic in the opposing lane, apparently at a straight shot. The dump truck driven by Defendant hit the victim's vehicle in the front end and continued traveling straight into a field before stopping. There were no skid marks whatsoever.

The court further concluded that from this evidence, a jury could reasonably infer that Defendant did not apply the brakes on the dump truck or take any other evasive actions to avoid striking the victim's vehicle. Additionally, there was no apparent reason for the accident but for Defendant's motor vehicle violations. Defendant driving his triaxle dump truck into the opposing lane of traffic and directly into the victim's vehicle without taking any efforts to avoid the collision demonstrated a conscious disregard of a substantial and unjustifiable risk that the victim would be killed or seriously injured.

On or about February 22, 2019, Defendant filed a motion for reconsideration in light of the Superior Court decision rendered in *Commonwealth v. Wyatt*, 203 A.3d 1115 (Pa. Super. 2019). Argument on Defendant's motion for reconsideration was held before the court on April 18, 2019.

At the hearing, Defendant argued that merely crossing the road and causing an accident with another vehicle does not constitute criminal negligence or recklessness. Defendant further argued that his case "is factually better for Defendant than the facts in *Wyatt*."

In *Wyatt*, the defendant was driving a tractor trailer southbound on Interstate 380. At approximately 10:00 a.m., the defendant's vehicle crossed the grassy median separating the north and southbound lanes of travel on Interstate 380 and struck a northbound tractor trailer and passenger bus, resulting in the deaths of three people and serious injuries to five others. The Commonwealth presented a collision and accident reconstruction specialist report which concluded that speed, weather conditions and mechanical defects were not contributing factors to the vehicle collision. The report also explored the potential human element of distracted driving, noting that the cab of the truck contained food, beverages, a radio and two unrestrained dogs. The report ultimately concluded that driver distraction could not be ruled out as a contributing factor.

The Commonwealth also presented a GPS report from a device that recorded certain periodic driving statistics from the defendant's tractor trailer. Specifically, it indicated that defendant started the ignition on his tractor trailer at 8:09 a.m. on the day of the collision and recorded a travel speed of zero miles per hour at that time. The next reading was at 9:24 a.m. which indicated a travel speed of three miles per hour. At 9:39 a.m., the

tractor trailer reached a speed of 66 miles per hour and at 9:54 a.m., it was traveling at a speed of 61 miles per hour. At 10:08 a.m., the GPS report indicated a moving speed of zero miles per hour, which was consistent with when the collision occurred. The speed limit on Interstate 380 ranges from 65 to 70 miles per hour and it was determined that speed was not a contributing factor to the collision.

The Commonwealth also introduced the defendant's phone records. Between 9:24 a.m. and 10:08 a.m. while Wyatt was driving the tractor trailer, he received 4 text messages. He did not send any text messages until after the collision. Inspections of all three vehicles involved in the collision revealed no defects. The only restriction on the defendant's commercial driving license was corrective lenses.

No erratic driving on the defendant's part was discovered and the scene did not reveal braking or skid marks. There was no evidence that the defendant looked at his phone while driving, or was distracted by radios, beverage, food or his dogs. No medical condition contributed to the collision. When asked about his version of events, the defendant told investigators and medical responders that he had blacked out and did not remember the collision.

The issue in *Wyatt* was whether the Commonwealth presented sufficient evidence of recklessness or gross negligence in order to sustain its prima facie burden at the habeas corpus proceeding. The Commonwealth maintained that it presented sufficient prima facie evidence to establish that the defendant acted recklessly. Specifically, the Commonwealth cited the lack of other contributing causes and the existence of potentially distracting circumstances to support its contention that the defendant was distracted and that such inattentiveness was, in and of itself, sufficient to demonstrate the level of recklessness

sufficient to sustain the charges at the prima facie level.

The Superior Court, however, disagreed. At best, the evidence established negligence, carelessness or inattentiveness. Neither negligence nor the mere occurrence of an accident, even a fatal accident, without more, was sufficient under the current law to establish or raise a permissible inference of recklessness sufficient to support the charges challenged by the defendant. While the collision was unquestionably tragic and the court was cognizant of the extreme dangers of distracted driving, any reason proffered by the Commonwealth for the collision, based on the evidence presented, was mere speculation.

In this case, the Commonwealth argues that there are several factual differences between this case and the *Wyatt* decision which are determinative in establishing for prima facie purposes that Defendant acted recklessly or with gross negligence. First, the Commonwealth claims that Defendant presented a false version of what occurred or, at the very least, a version that was inconsistent with the facts. Specifically, Defendant stated that he came around the corner, noticed the GMC pickup truck was on the double yellow line and he hit his brakes and slid over into that lane. (Preliminary Hearing Transcript, August 2, 2017, Vol. I, at I-10). The Commonwealth asserts that this “false version” is “consciousness of guilt.”

The court questions what portion of Defendant’s version is allegedly “false” to a sufficient degree to constitute consciousness of guilt. The Commonwealth’s witness, John Buttorff, Jr., who was traveling behind the victim’s truck, testified that the victim was on his side of the road. When Defendant was about half way through the sharp curve in the road, Mr. Buttorff saw the back of Defendant’s dump truck bounce a couple of times and then it shot straight into the victim’s truck, across a ditch and into a field. Although the

Commonwealth presented evidence that there were no skid marks, its witnesses also testified that it had just rained and the roads were damp or wet. (Preliminary Hearing Transcript, Vol. I, at I-17, I-43, I-46). The wet road could explain the lack of skid marks in this case.

Furthermore, Defendant never said that the victim's truck was in Defendant's lane of travel.

Nevertheless, viewing the evidence and reasonable inference in favor of the Commonwealth, i.e., assuming that Defendant's version of the incident is false and the jury would infer consciousness of guilt, the Commonwealth still hasn't established a *prima facie* case.

The Commonwealth establishes a *prima facie* case when it produces evidence that, if accepted as true, would warrant the trial judge to allow the case to go to a jury. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001); see also *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003); *Commonwealth v. Nieves*, 876 A.2d 423, 424 (Pa. Super. 2005). A jury, however, cannot reach a guilty verdict based solely on consciousness of guilt. *Commonwealth v. Horwat*, 515 A.2d 514, 516 (Pa. 1986)(an inference of consciousness of guilt may arise from an intentional alteration in appearance, which, *in connection with other proof*, may form a basis upon which guilt may be inferred; however, an instruction that enabled the jury to reach a verdict of guilt based *solely* upon fact that appellant had changed his appearance was erroneous and entitled appellant to a new trial); Pa.SSJI (Crim) §3.14 (2016)(“You may not find the defendant guilty solely on the basis of flight or concealment.”); Pa.SSJI (Crim) §3.15 (2016)(jury may, but is not required to, consider evidence that the defendant made false and contradictory statements when questioned by the police as tending to prove the defendant's consciousness of guilt; jury should consider and weigh this evidence along with all the other evidence in the case).

Therefore, in addition to consciousness of guilt, the Commonwealth must present some additional evidence that Defendant's conduct was reckless as opposed to merely inattentive or negligent.

Next, the Commonwealth argues that the defendant was driving a large vehicle on a small rural roadway which was only two-lane. The Commonwealth argues that, under these circumstances, Defendant consciously disregarded a substantial and unjustifiable risk.

Lastly, the Commonwealth argues that under the circumstances, including the size of the vehicles, the speed on the roadway, the terrain, the direction of the roadway and the two-lane nature of the roadway that there was a much slighter or lower margin of error than there would be on an interstate highway. Again, the Commonwealth argues that the defendant consciously disregarded a substantial and unjustifiable risk. In addition, the Commonwealth argues that the risk, under the circumstances, was of such a nature and degree that Defendant's conduct and the circumstances known to him involved a disregard or a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

The court cannot agree that there is a greater risk or a lower margin of error on a small rural roadway than on an interstate highway with a posted speed limit of 65 or 70 miles per hour. Furthermore, in both this case and in *Wyatt*, the defendant was driving a large vehicle which inexplicably left its lane of traffic, and collided into oncoming traffic, resulting in serious injury. Distinguishing a dump truck on a rural, two-laned roadway striking oncoming traffic from a tractor trailer on a highway with posted speed limits of 65 or 70 miles per hour striking oncoming traffic are distinctions without a difference. If anything,

the tractor trailer traveling at the higher rates of speed is a greater risk.

While the court was extremely impressed with the Commonwealth's creative theories in attempting to distinguish *Wyatt*, one crucial fact remains unproven even for *prima facie* purposes. Specifically and as indicated in *Wyatt*, there was no evidence as to what caused the collision. Any reason proffered by the Commonwealth for the collision, based on the evidence presented, was mere speculation. The Commonwealth has not presented any evidence to conclude that Defendant was engaging in any conduct that would raise his culpability to a conscious disregard of a substantial risk so as to reach the level of reckless or grossly negligent behavior. As the trial court noted in *Wyatt*, the Commonwealth argues that this tragic motor vehicle accident occurred when, for factually unexplained reasons, the defendant failed to maintain his lane of travel and because non-criminal causes have been ruled out, defendant must have acted recklessly.

Furthermore, the Commonwealth argues that the facts of this case more squarely fit within the facts of *Commonwealth v. Setsodi*, 450 A.2d 29 (Pa. Super. 1982).

In *Setsodi*, the court found that the defendant driver's conduct may constitute criminal negligence or recklessness. The defendant made a left turn into a private driveway in front of a motorcyclist who was unable to stop or otherwise avoid the collision. The defendant created a hazard by failing to yield the right of way to approaching traffic when making a left turn. The court found that inattention was established for *prima facie* purposes given the testimony of a handful of witnesses. The court noted in citing other cases that "it was reckless for the defendant not to observe the approaching traffic."

*Setsodi* is clearly distinguishable. The defendant in *Setsodi* **intentionally** made a left turn, which put his vehicle in the path of oncoming traffic. Here, the

Commonwealth has no idea how or why Defendant's dump truck shot into the opposing traffic lane. Clearly, this case is more factually similar to *Wyatt* than *Setsodi*.

In conclusion, the court agrees with Defendant that *Wyatt* is determinative. The Commonwealth has failed to produce sufficient prima facie evidence to prove that Defendant acted with recklessness necessary to sustain the charges contained in Counts 6 and 7. Speculation is insufficient. This was indeed a tragic accident. This court's duty, however, is to uphold the law and to render decisions based on the law and facts and not any sympathy for or bias against any party.

**ORDER**

**AND NOW**, this \_\_\_\_ day of May 2019, for the reasons set forth above, the court GRANTS Defendant's motion for reconsideration and DISMISSES Count 6, aggravated assault by vehicle, a felony of the third degree and Count 7, recklessly



endangering another person, a misdemeanor of the second degree.

By The Court,

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Marc F. Lovecchio, Judge

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