



Legal Update

Commonwealth v. Colas

February 22, 2021

Defendant can be criminally culpable for injuries sustained by innocent bystanders in a shooting that occurred after defendant pointed but did not shoot a gun at a rival on a crowded street

Commonwealth v Colas
SJC-12701

Relevant Facts

On August 23, 2014 a crowd had gathered on Blue Hill Avenue in Dorchester for a parade. The defendant and a friend entered a convenience store. Two (2) other men entered the store. Looks and stares were exchanged between the groups. After the defendant and his friend exited the store, his friend lingered outside. The other two (2) men exited the store and words were exchanged. The two other (2) men were joined by Keith Williams and headed up the street. The defendant and his friend followed them.

A witness testified to the “tense” situation in the store and the altercation outside. This witness testified that he saw the defendant holding a pistol, raise it and point it down the street at which point the witness turned and ran. The witness testified to hearing shots fired in distance.

On the street, Williams was seen holding a gun. Williams fired four (4) or (5) shots down Blue Hill Avenue toward the defendant. The defendant was not hit. Two (2) bystanders were hit by the bullets, one (1) died.

It is undisputed that the defendant never fired a round.

For specific guidance on the application of these cases or any law, please consult your supervisor or your department’s legal advisor or prosecutor.

Issue: Can the defendant be criminally culpable for the injuries sustained by the bystanders when he did not shoot his gun?

Short answer: Yes. The level of culpability will depend on the facts and circumstances of the case.

Discussion

First degree murder

The act of pointing a gun at someone, even in the midst of an argument, is not, without more, sufficient to infer an intent to kill necessary for a first degree murder conviction. In this case, there was no evidence that the defendant's gun was loaded, or that he did anything so that the gun could be fired at any moment. There also was no evidence that the defendant fired the gun even after Williams shot at him. The first degree murder charge was vacated.

The court found that these facts could support a second degree murder conviction under the third prong or "depraved heart" malice theory. "[A] reasonable juror could have found the defendant had an intent to commit an act that, in the circumstances known to him, created a plain and strong likelihood of death." "A reasonable juror could have concluded from the evidence introduced at trial that the act of pointing a firearm at a rival, on a crowded street, likely would provoke a deadly response, thereby demonstrating an indifference to human life." These facts could also support an involuntary manslaughter conviction as an unintentional, unlawful killing caused by wanton and reckless conduct. The case was remanded to the Superior Court for a trial on a charge of murder in the second degree.

Assault and battery by means of a dangerous weapon.

The defendant was convicted of ABDW on the bystander that was shot and injured by Williams. That conviction was upheld. To prove ABDW the Commonwealth must prove that the defendant intended to do an act causing the injury. Causation can be proved by evidence that the defendant "directly and substantially set in motion a chain of events that produced the serious injury in a natural and continuous sequence." *Commonwealth v. Marinho*, 464 Mass. 115, 119 (2013).

The court found that the act of pointing a gun at Williams, on a crowded street, caused the battery to the bystander. The assault and battery with a dangerous weapon conviction was affirmed.

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