NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellant v. RACHID LABOUDI, Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1830 EDA 2012

Appeal from the Order Entered June 4, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0002473-2012

BEFORE: BENDER, J., BOWES, J., and STRASSBURGER, J.*

MEMORANDUM BY BENDER, J.: **FILED AUGUST 26, 2013**

The Commonwealth, as Appellant, appeals from the trial court's June 4, 2012 order granting Rachid Laboudi's motion to quash multiple charges in the criminal indictment. For the reasons that follow, we are compelled to vacate the court's order and remand for further proceedings.

Laboudi was charged with accidents involving death or personal injury, simple assault, recklessly endangering another person (REAP), and criminal mischief based on the following facts:

> The facts adduced at the [p]reliminary [h]earing of February 24, 2012 involve a motor vehicle accident that occurred on May 7, 2011. Ms. Karen McBride testified that she was in the street, loading items into the rear passenger door on the driver's side of her parked car on 11th [Street] in Philadelphia. At that time a vehicle later determined to have been driven by [Laboudi] hit the open door of Ms. McBride's vehicle. On the day in question, [Laboudi] was working as a pizza delivery driver, using his personal vehicle. The door of Ms. McBride's car swung inward

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* Retired Senior Judge assigned to the Superior Court.

> and struck her in the back. [Laboudi's] rear view mirror came loose from his car and struck Ms. McBride's ankle. [Laboudi] did not stop after the accident but continued to drive away. Ms. McBride was transported to Methodist Hospital, where she was diagnosed with, and treated for, back spasms, torn ligaments, and a fractured left ankle.

Trial Court Opinion (T.C.O.), 12/17/12, at 2.

Based on this evidence, all of the charges pending against Laboudi were bound over for trial. However, on March 26, 2012, Laboudi filed a motion to quash the criminal indictment, arguing that the Commonwealth failed to "put forth sufficient evidence to establish a *prima facie* case of guilt" for the offenses with which he was charged.[1] After conducting a hearing on June 4, 2012, the trial court granted Laboudi's motion with respect to the charges of accidents involving death or personal injury, simple assault, and REAP. The court directed that the case proceed to trial on the charge of criminal mischief.

The Commonwealth filed a timely notice of appeal from the court's order,[2] as well as a timely concise statement of errors complained of on

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[1] Typically, "[a] defendant may challenge the sufficiency of the evidence presented by the Commonwealth at the preliminary hearing by filing a motion for a Writ of Habeas Corpus in Common Pleas Court." ***Commonwealth v. McBride***, 595 A.2d 589, 590 n.2 (Pa. 1991). However, in Philadelphia County, this motion is generally referred to as a motion to quash. ***Id.***; ***see also Commonwealth v. Karetny***, 880 A.2d 505, 524 (Pa. 2005) (accepting a motion to quash as an appropriate filing by which to challenge the sufficiency of the evidence presented by the Commonwealth at the preliminary hearing).

[2] The Commonwealth's appeal from this order is permitted under Pa.R.A.P. 311(d), which states that "the Commonwealth may take an appeal as of right from an order that does not end the entire case where the

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appeal pursuant to Pa.R.A.P. 1925(b). Herein, the Commonwealth raises one issue for our review: "Did the lower court err in quashing charges (75 Pa.C.S. § 3742, accidents involving death or personal injury; 18 Pa.C.S. § 2701, simple assault; and 18 Pa.C.S. § 2705, [REAP],) supported by evidence sufficient to prove a *prima facie* case, where [Laboudi] drove his car at a high speed into the partially open door of the victim's parked car next to which she was standing, striking her with the door and causing her serious injuries including broken bones, and then fled the scene?" Commonwealth's Brief at 4. We examine this issue under the following standard of review: "It is settled that the evidentiary sufficiency, or lack thereof, of the Commonwealth's *prima facie* case for a charged crime is a question of law as to which an appellate court's review is plenary."[3] ***Karetny***, 880 A.2d at 513 (citation omitted).

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Commonwealth certifies in the notice of appeal that the order will terminate or substantially handicap the prosecution." The Commonwealth's notice of appeal satisfies this requirement. Commonwealth's Notice of Appeal, 6/26/12, at 1. Thus, we conclude that this appeal is properly before us. ***See also Karetny***, 880 A.2d at 512-513 (concluding the Commonwealth had the right to appeal from an order quashing certain charges, where it satisfies the certification requirement under Rule 311(d)).

[3] In ***Karetny***, the issue before our Supreme Court was whether the trial court erred in granting a motion to quash the charge of risking a catastrophe on the basis that the Commonwealth failed to present a *prima facie* case at the preliminary hearing. 880 A.2d at 528. In this Court's review of that issue, ***Commonwealth v. Karetny***, 837 A.2d 474 (Pa. Super. 2003), *rev'd*, 880 A.2d 505 (Pa. 2005), we stated that "[o]ur scope of review is limited to determining whether the Commonwealth presented a *prima facie* case, and we reverse the trial court only for abuse of discretion." ***Id.*** at 477 n.2. On appeal, however, the Supreme Court concluded that we "misapprehended
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The Commonwealth contends that it presented sufficient evidence at the preliminary hearing to meet its burden of proving a *prima facie* case of the three charges quashed by the trial court. Initially, we note that,

> [a]t the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove the defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused committed the offense. Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury.

Karetny, 880 A.2d at 513 - 514 (citations omitted).

The offense of accidents involving death or bodily injury is defined in the Crimes Code as follows:

> **(a) General rule.--**The driver of any vehicle involved in an accident resulting in injury or death of any person shall immediately stop the vehicle at the scene of the accident or as close thereto as possible but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of section 3744 (relating to duty to give information and render aid). Every stop shall be made without obstructing traffic more than is necessary.

75 Pa.C.S. § 3742(a). A conviction under this section requires proof that the defendant knew, or should have known, that he was involved in an accident

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the governing standard [of review]," reasoning that "the trial court is afforded no discretion in ascertaining whether, as a matter of law and in light of the facts presented to it, the Commonwealth has carried its pre-trial, *prima facie* burden to make out the elements of a charged crime." ***Karetny***, 880 A.2d at 513. Instead, the Court directed that issues such as that involved in the present case be subject to "plenary review … as questions of law." ***Id.*** (citation omitted).

that caused injury or death to another person. ***Commonwealth v. Woosnam***, 819 A.2d 1198, 1206 (Pa. Super. 2003).

Instantly, the trial court found that the Commonwealth had not presented sufficient evidence to demonstrate the *mens rea* element of accidents involving death or bodily injury. The court reasoned that "[w]hen the accident occurred, it was dark and the complainant was bent down leaning into the car." T.C.O. at 3. Additionally, the court declared that "[s]imply because the mirror on [Laboudi's] vehicle struck portions of the McBride vehicle does not mean [Laboudi] knew, or should have known that someone was hurt." ***Id.***

The Commonwealth, on the other hand, maintains that "[t]he evidence at the preliminary hearing … simply does not support [the trial court's] factual analysis." Commonwealth's Brief at 13. For instance, Ms. McBride testified that streetlights were on when the accident occurred. N.T. Preliminary Hearing, 2/24/12, at 19. Moreover, the Commonwealth contends that "there was no evidence that [Ms. McBride] was bent over leaning into her car and hence not visible to [Laboudi]." Commonwealth's Brief at 13. Instead, the Commonwealth interprets Ms. McBride's preliminary hearing testimony as indicating that she was standing upright at the time of the collision. Namely, it relies on Ms. McBride's statements that she "was putting things into [her] car and [she] had the door leaning up against her back," and her declaration that during the collision, her car door "hit [her] whole back." N.T. Preliminary Hearing, 2/24/12, at 5-8. In any

event, the Commonwealth argues that because Laboudi approached Ms. McBride's vehicle from the rear, there was no car door or other impediment blocking her from Laboudi's view even if she was leaning into the car at the time of the accident.

Laboudi, for his part, agrees with the trial court that Ms. McBride's testimony indicates that she was "partially bent into her car placing objects within the vehicle with the back passenger door partially ajar." Laboudi's Brief at 6. In support, he cites her testimony that she was "loading" and "putting things" into the backseat of her vehicle, a Ford Focus compact car. ***Id.*** at 6 (citing N.T. Preliminary Hearing, 2/24/12, at 4, 5, 19). Laboudi asks this Court to take "judicial notice" of the fact that a Ford Focus "has a maximum height of 57.7 inches from the ground," arguing that "[a]ny normally-sized adult needs to bend over to place things into the back seat of a car which has a height at the roof of slightly less than four feet, ten inches." ***Id.*** at 6-7. Moreover, while Laboudi acknowledges that "[t]he street on which the accident took place was illuminated by streetlights," he contends that "the mere fact that streetlights were present does not cause an inference that a person bent over and leaning into an unlit car, with the door partly closed against her, is plainly visible at 9:30 p.m." ***Id.*** at 6.

Clearly, there are two differing interpretations of Ms. McBride's preliminary hearing testimony. While we agree with the court and Laboudi that Ms. McBride's testimony *could* imply that she was leaning into her car at the time of the collision, it is equally reasonable to infer that she was

standing upright and was visible to Laboudi when his vehicle struck hers. The Commonwealth need not disprove every inference of innocence in order to make out a *prima facie* case; rather, it need only show that "the question is at least such that reasonable men could differ as to result." ***Pastuszek v. Murphy Plywood Corp.***, 280 A.2d 644, 654-46 (Pa. Super. 1971). As the Commonwealth has met that burden instantly, the trial court erred in quashing the charge of accidents involving death or bodily injury.

Moreover, the evidence suggesting that Laboudi could see Ms. McBride standing alongside her car as his vehicle struck hers was sufficient to demonstrate that he "attempt[ed] to cause or intentionally, knowingly, or recklessly cause[d] bodily injury to another." 18 Pa.C.S. § 2701(a)(1) (defining simple assault). Likewise, the evidence also constituted *prima facie* proof that Laboudi consciously disregarded a known risk of death or great bodily harm to another person to satisfy the *mens rea* element of REAP. Ms. McBride estimated that Laboudi's vehicle was "definitely going over forty, forty-five" miles per hour when it struck the opened door of her car, next to which she was standing. N.T. Preliminary Hearing, 2/24/12, at 9. Laboudi's car struck Ms. McBride's door so hard that his rearview mirror ripped off and struck Ms. McBride with such force that it broke several bones in her ankle. We conclude that this evidence supported a *prima facie* case of both simple assault and REAP.

In sum, we agree with the Commonwealth that the trial court erred in granting Laboudi's motion to quash three of the charges pending against

him. While it is unclear whether the Commonwealth's evidence will prove Laboudi's guilt of these three crimes beyond a reasonable doubt when his case proceeds to trial, it is apparent from Ms. McBride's preliminary hearing testimony that the Commonwealth has satisfied its burden of demonstrating a *prima facie* case against him. Accordingly, we vacate the trial court's order and remand for trial.

Order vacated. Case remanded for further proceedings. Jurisdiction relinquished.

Judgment Entered.

Prothonotary

Date: 8/26/2013