

SUPREME COURT OF KENTUCKY

Harper v. Commonwealth

43 S.W.3d 261 (Ky. 2001) · No. 1999-SC-0935-MR · Decided April 26, 2001

SUMMARY

The Supreme Court of Kentucky reversed Tamara Harper’s convictions for complicity to murder and complicity to first-degree robbery. The court held that the jury instructions under KRS 502.020(1) improperly omitted the requirement that Harper intended to promote or facilitate the charged offenses. The court also addressed lesser-included complicity instructions, including potential instructions based on KRS 502.020(2), and remanded for a new trial.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Johnstone, Justice; Lambert, C.J.; Graves, J.; Johnstone, J.; Keller, J.; Stumbo, J.; Wintersheimer, J.; Cooper, J.
JURISDICTION	Kentucky
DECIDED	April 26, 2001
DOCKET	1999-SC-0935-MR
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Harper appealed as a matter of right from convictions in the Christian Circuit Court for complicity to murder and complicity to first-degree robbery.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion; binding precedent in Kentucky.
PARTIES	Tamara Harper v. Commonwealth of Kentucky

TOPICS

- jury instructions
- lesser included offense instructions
- criminal procedure
- appellate procedure
- statutory interpretation

PRACTICE AREAS

- criminal law
- criminal procedure
- appellate law

QUESTIONS PRESENTED

1. Whether the complicity-to-murder and complicity-to-first-degree-robbery jury instructions were erroneous because they omitted the requirement that Harper intended to promote or facilitate the charged offenses.
2. Whether the evidence was insufficient to permit the jury to infer that Harper possessed the required intent under KRS 502.020(1).
3. Whether the trial court was required to instruct on complicity to first-degree manslaughter and complicity to second-degree manslaughter as lesser-included offenses.
4. Whether Harper was entitled to criminal-facilitation instructions as lesser-included offenses.
5. Whether any other alleged errors required reversal.

HOLDINGS

1. For complicity liability under KRS 502.020(1), the Commonwealth must prove that the defendant specifically intended to promote or facilitate the commission of the charged offense. A jury instruction that omits that element is erroneous and constitutes reversible error.
2. The evidence was sufficient to permit the jury to infer that Harper intended to promote or facilitate Burden's intentional killing of Phillips; therefore, the convictions were not reversed for insufficient evidence.
3. The trial court should have instructed the jury on complicity to first-degree manslaughter because the evidence could support a finding that Burden intended to cause serious physical injury resulting in death and that Harper intended for Burden to act with that intent.
4. Complicity to second-degree manslaughter is not automatically precluded when the principal's conduct was intentional. Under KRS 502.020(2), the accomplice may be liable based on the accomplice's own wanton mental state, even if the principal acted intentionally, and the principal's mental state need not be proved.
5. The propriety of criminal-facilitation instructions could not be finally determined on the first-trial record because the evidence at retrial might differ; the issue was left for the trial court to determine on retrial.

KEY QUOTATIONS

“The language of KRS 502.020(1) and the accompanying commentary make clear that intent is an essential element to a conviction under subsection (1) of the statute.” (43 S.W.3d at 264)

“The failure to instruct at all on her mental state was reversible error.” (43 S.W.3d at 265)

“The primary distinction between these two statutory theories of accomplice liability is that a person can be guilty of “complicity to the act” under KRS 502.020(1) only if he/she possesses the intent that the principle actor commit the criminal act.” (43 S.W.3d at 267)

FACTUAL BACKGROUND

Tamara Harper drove to an Illinois riverboat casino with Enos Burden, Kevin Platt, and George Vanover, and later agreed to give Scott Phillips a ride. During the drive, Burden shot and killed Phillips after an argument, and Vanover removed money from Phillips's wallet and distributed it to the occupants, including Harper. Harper was charged with murder and robbery or complicity to those offenses; she denied guilt and presented an alibi, while Platt and Vanover testified against her under plea agreements.

PROCEDURAL HISTORY

Harper was convicted and sentenced to twenty years for complicity to murder and ten years for complicity to first-degree robbery, with concurrent sentences. She appealed to the Supreme Court of Kentucky, which reversed the judgment and remanded for a new trial because the complicity instructions omitted the defendant's intent to promote or facilitate the charged offenses and because the jury should have received a supported lesser-offense instruction on complicity to first-degree manslaughter.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for a new trial consistent with the opinion. If the evidence at retrial was the same or similar, the trial court was instructed to submit complicity to second-degree manslaughter, or any other appropriate primary or lesser-included offense supported by the evidence. The availability of criminal-facilitation instructions was left for determination on the retrial record.

CASES CITED

- Carpenter v. Commonwealth, 771 S.W.2d 822, 825 (Ky. 1989)
- Watkins v. Commonwealth, 298 S.W.2d 306 (Ky. 1957)
- Wilson v. Commonwealth, 601 S.W.2d 280, 285-286 (Ky. 1980)
- Parker v. Commonwealth, 952 S.W.2d 209, 212 (Ky. 1997)
- Tharp v. Commonwealth, 40 S.W.3d 356, 360 (Ky. 2000)
- Commonwealth v. Southwood, 623 S.W.2d 897 (Ky. 1981)
- Mason v. Commonwealth, 565 S.W.2d 140 (Ky. 1978)
- Bennett v. Commonwealth, 978 S.W.2d 322 (Ky. 1998)