

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 01-10,873
:
:
vs. : CRIMINAL DIVISION
:
HAROLD E. GRIMES, :
Defendant : Omnibus Pretrial Motion

OPINION AND ORDER

Before the Court is Defendant's pre-trial Motion to Quash the Information lodged in the above-captioned matter, filed June 21, 2001. Argument on the motion was heard July 25, 2001.

Defendant has been charged with homicide by vehicle, 75 Pa.C.S. Section 3732, and related summary offenses, in connection with an accident in which he was involved on December 16, 2000. Section 3732 of the Vehicle Code was amended, however, on December 20, 2000, effective in 60 days. Defendant contends that since the statute was amended after he was charged,¹ the Commonwealth can no longer prosecute him as charged,² and the information must be dismissed. The Court does not agree.

In support of his position, Defendant relies on Commonwealth v. Bangs, 393 A.2d 720 (Pa. Super. 1978). There, the Court dismissed a charge of statutory rape of a 14-year-old based on an amendment to 18 Pa.C.S. Section 3122 which lowered the age of the victim from "less than 16" to "less than 14" years of age. The Court noted that, by the amendment, the legislature had determined that sexual intercourse with a person who was 14 or 15 years old was no longer criminal. In dismissing the charge, the Court relied on In re Dandridge, 337 A.2d 885, 888 (Pa. 1975), wherein the Pennsylvania Supreme Court quoted with approval from the United States Supreme Court's opinion in Bell v. Maryland, 378 U.S. 226 (1964), as follows:

¹Defendant was charged on February 9, 2001, the date of the criminal complaint.

²The information follows the language of the statute prior to the amendment in question.

“...(W)hen the legislature repeals a criminal statute or otherwise removes the State’s condemnation from conduct that was formerly deemed criminal, this action requires the dismissal of a pending criminal proceeding charging such conduct.”

Bangs, supra, at 722. The rule of Bangs is not applicable in the instant case, however.

Prior to the amendment on December 20, 2000, Section 3732 read as follows:

Any person who unintentionally causes the death of another person while engaged in the violation of any law of this Commonwealth or municipal ordinance applying to the operation or use of a vehicle or to the regulation of traffic except section 3731 (relating to driving under influence of alcohol or controlled substance) is guilty of homicide by vehicle, a misdemeanor of the first degree, when the violation is the cause of death.

75 Pa.C.S. Section 3732 (before amendment)(emphasis added). After amendment, the section now reads:

Any person who recklessly or with gross negligence causes the death of another person while engaged in the violation of any law of this Commonwealth or municipal ordinance applying to the operation or use of a vehicle or to the regulation of traffic except section 3731 (relating to driving under influence of alcohol or controlled substance) is guilty of homicide by vehicle, a felony of the third degree, when the violation is the cause of death.

75 Pa.C.S. Section 3732 (emphasis added). The amendment substituted the words “recklessly or with gross negligence” for “unintentionally” and increased the crime’s seriousness from a misdemeanor to a felony.

While it is true that Defendant cannot now be charged with a felony (but only a misdemeanor),³ the change in wording with respect to the mens rea does not remove Defendant’s

³The Commonwealth agrees that to prosecute Defendant under the new statute would violate the rule prohibiting ex post facto application of the law.

conduct from that which is deemed criminal. The term “unintentional” (as contained in the prior homicide by vehicle statute) has been defined by the appellate Courts as “criminally negligent” or “reckless”. Commonwealth v. Heck, 535 A.2d 575 (Pa. 1987); Commonwealth v. Francis, 665 A.2d 821 (Pa. Super. 1995); In Interest of Hyduke, 538 A.2d 66 (Pa. Super. 1988). “Criminal negligence” as used in Heck is that term as defined in 18 Pa.C.S. Section 302(b)(4):

A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor’s failure to perceive it, considering the nature and intent of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor’s situation.

Thus, the terms “gross negligence” and “reckless” do not at all change the crime of homicide by vehicle. Unlike the defendant in Bangs, Defendant’s conduct remains subject to the same standard of care and Defendant may be prosecuted for allegedly having violated that standard of care, in spite of amendment to the statute.

ORDER

AND NOW, this 6th day of August, 2001, for the foregoing reasons, Defendant's Motion to Quash Information is hereby DENIED.

By The Court,

Dudley N. Anderson, J.

cc: DA
John Campana, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson