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# Commonwealth of Kentucky

# Court of Appeals

NO. 2011-CA-002044-DG

B. B., A CHILD UNDER EIGHTEEN — APPELLANT

ON DISCRETIONARY REVIEW FROM JEFFERSON CIRCUIT COURT
v. HONORABLE A. C. MCKAY CHAUVIN, JUDGE
ACTION NO. 10-XX-000057

COMMONWEALTH OF KENTUCKY — APPELLEE

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: COMBS, LAMBERT, AND THOMPSON, JUDGES.

LAMBERT, JUDGE: B.B. appeals from the Jefferson Circuit Court's opinion and order affirming the district court's order finding him guilty of manslaughter in the second degree; assault in the first degree; and wanton endangerment in the first degree. After careful review, we reverse the decision of the Jefferson Circuit Court upholding the adjudication by the Jefferson District Court and remand for proceedings consistent with this opinion.

This case arises from an appeal to the Jefferson Circuit Court from the Jefferson District Court's judgment entered on July 28, 2010. That judgment found B.B. guilty of various offenses, including one count of manslaughter in the second degree, one count of assault in the first degree, and four counts of wanton endangerment in the first degree.

The underlying events giving rise to this lawsuit occurred on June 30, 2009, at approximately 9:30 p.m. B.B. was driving seven non-relative passengers under the age of twenty to a party. The vehicle they were riding in, a 2000 Ford Explorer, was a two-door compact SUV designed to carry a maximum of five people. B.B. left his home at approximately 8:30 p.m. to go to a friend's birthday party. B.B. did not originally intend to go to the party, but his friend, Brandon, asked him for a ride. Soon, other friends asked for a ride, and in total seven passengers got into B.B.'s SUV to ride to the party: Brandon, Adam, Hayden, Amanda, Holly, Chase, and Natalie. On the way to the party, B.B. got lost, made a wrong turn, and mistakenly turned onto a road that entered the Scenic Loop Road in Cherokee Park. It was dark, and the road was shrouded by trees. Just past Barney Avenue in the park, a sudden "S-curve" in the road surprised B.B. He was driving too fast for the curve, hit the brakes, lost control, and the truck flipped over. B.B. was the only person wearing his seatbelt.

The passengers in B.B.'s vehicle sustained various injuries from the crash. Tragically, Natalie was ejected from the vehicle and died on the scene from her injuries. Upon the request of Natalie's family, the park erected regulation size

speed limit signs and designated pedestrian roads in Cherokee Park after the accident. At the time of the accident, the only speed limit sign on the scenic loop was a green sign stating 25 mph that was not regulation size.

Approximately three months after the accident, B.B. was arrested and charged with manslaughter in the second degree, two counts of assault in the first degree, four counts of wanton endangerment in the first degree, one count of assault in the fourth degree, and traffic violations for violating his intermediate phase driver's license, speeding, and reckless driving. The Commonwealth asserted that because B.B. only had an intermediate driver's license, which restricted passengers to one non-relative under the age of 20 and because he was driving approximately 10 to 15 miles per hour over the speed limit, B.B. acted wantonly.

At trial, all of the passengers in B.B.'s car testified that he was a good driver, that he was not driving erratically the night of the accident, and that B.B. was not under the influence while driving. All of the passengers knew that B.B. had a restricted license that did not allow so many passengers under the age of twenty to ride with him. None of the passengers knew what the speed limit in the park or curve was, and they did not think that B.B. was going too fast until they entered the curve in the road. All of the passengers believed what occurred was a tragic accident.

At trial, the passengers in B.B.'s car on the night of the accident testified. Brandon testified that he asked B.B. for a ride and that they picked up

their other friends along the way when those friends called and said that they also needed a ride to the party. On the way to the party, B.B. stopped for gas and then went onto Eastern Parkway but soon realized they were going in the wrong direction. They got off the parkway and made a wrong turn. Brandon thought they were going at a normal speed when they entered Cherokee Park. When they went around a curve, the tires started to screech, B.B. lost control of the truck, and they flipped over. Brandon stated that before the curve, "I thought he was driving fine."

Hayden testified next. Hayden was in the front seat with Holly. He stated that B.B. became lost and so Chase gave directions and they wound up in Cherokee Park. "Like right before we were crashing I was like slow down. Right before we were, like when we were coming to the turn, I was like, slow down. As soon as I said it he hit the brakes and we lost control." By the time they noticed that they were going too fast for the curve, "it was already too late." Hayden did not see the curve in the road until right before it happened, at which point B.B. slammed on the brakes. Hayden did not know that B.B. was driving over the speed limit until after the crash. Hayden stated that he was "shocked" when B.B. was charged with criminal responsibility for the crash.

Holly then testified. She was sitting next to B.B. while he was driving, and she stated that he had his hands on the wheel the whole time. While they were driving in the park, she was looking at the road ahead of them and did not see the curve until it was too late. She confirmed Hayden's testimony that he did not tell B.B. to slow down until the accident was already happening. Like

Brandon and Hayden, she did not think that B.B. was going too fast until the curve and they started to roll. She testified that no one complained about the truck being too crowded or that there were not enough seatbelts. During the crash, she was thrown from the truck, but she only received "road rash" and treatment for scrapes and glass. Holly stated that she was friends with Natalie, who was killed, but that she was shocked when B.B. was charged. She testified, "He didn't mean for any of this to happen."

Adam testified next and stated that he was in the back seat on the passenger side of the truck. He testified that B.B. did not want to pick up Natalie, but he pushed B.B. into it. While driving, they started to sing to the radio, but B.B. got annoyed at the noise and wanted everyone to be quiet. B.B. was driving normally, and Adam was not scared and did not think B.B. was speeding. When in the park, "everything was normal. I didn't see the curve coming. We turned and started skipping a little bit." Adam was looking straight ahead when the curve "came out of nowhere." "It was hard to see because of the trees." During the accident, Adam was ejected from the car but his only injury was a scrape on his head that did not require stitches. Adam testified that they all had an intermediate driver's license due to their age, but they never followed the passenger restrictions.

Chase testified that he was sitting in the cargo area of the truck, facing the side of the truck, sitting next to Natalie. Chase stated that B.B. got turned around, didn't know where he was going, and Chase directed him onto the wrong street. Chase realized his mistake once they passed the statue in the park. He had

not been to Cherokee Park before and so he did not know that there was a curve ahead. Chase was paying attention to the road once he realized they were lost and did not see the curve. During the accident, Natalie was ejected from the back of the truck, but Chase was not and received only minor injuries.

Amanda testified next. She stated that she was in the back seat of the truck next to Brandon and Adam. She stated that at the gas station, no one tried to change seats; they were all happy where they were seated. Amanda explained her statement to the police, saying that she was not scared until they started losing control and realized they were going too fast for the curve. When the truck came to rest, B.B. pulled her out. She only had minor injuries and was released from the hospital the same night.

The Commonwealth called Thomas Ames to testify. Mr. Ames testified that he is a deputy reserve for the Sheriff's department. He had been jogging in Cherokee Park the night of the incident. He saw the vehicle take the "S-curve," tip to the right, heard the tires squeal, and then saw the vehicle lose traction. The vehicle was then lost from his view and seconds later, he heard the crash. Mr. Ames ran over to the scene, assisted the passengers and assisted in calling 911. Mr. Ames stated that he had jogged before in Cherokee Park and was aware of its layout. In the area of the accident, there was very dense foliage; he could not see the accident because of the foliage. He described the curve where the accident occurred as "tunnel-like" with a canopy covering the area. He testified that there was no sign on the road indicating a sharp curve ahead, nor any

signs on that section of the road. He did not recall seeing any posted signs indicating the speed limit for the park. Mr. Ames reviewed the defense counsel's photographs and stated that they fairly represented the amount of foliage the night of the incident. He further agreed that without road signs, the "sharp" curve would take a driver unprepared and would "jump up on you." Mr. Ames also testified that the curve just past Barney Avenue where the accident occurred is the sharpest curve in the park up to that point.

Kelly Harris Matthew testified next. She stated that she is a physician and was walking in the park with her fiancé when the incident occurred. She was on a hill when she heard brakes screeching. She turned towards the direction of the truck and saw headlights flipping and the sound of the crash. She described it as being dark enough where she would not be able to read a book and needed the aid of a flashlight at the scene of the accident. Ms. Matthew went to the aid of Natalie and administered CPR until the medics arrived. Another medical professional, Carrie Schanie, was also in the park and went to Natalie's aid, but determined that she was near death.

Two experts also testified about the speed they believed B.B. was traveling when the vehicle began to roll over. The Commonwealth's expert witness estimated B.B.'s speed at the time of the roll-over to be 39 miles per hour (mph). B.B.'s expert witness estimated the speed at the time of the roll- over to be between 36 and 40 mph. The speed limit on the Scenic Loop was 25 mph, but as stated above, there was no reflective regulation size speed limit sign on the portion

of the Scenic Loop that B.B. traversed prior to the accident. The sign at the entrance of the park was a non-regulation green sign that packed a great deal of information in small print, including a 25-mph speed limit situated in the middle of all the other pieces of information contained within that sign. The Commonwealth's witness admitted that the sign was replaced after the accident and that the one it replaced was "confusing."

On June 11, 2010, the district juvenile court found B.B. guilty of all charges: manslaughter in the second degree; two counts of assault in the first degree; four counts of wanton endangerment in the first degree, one count of assault in the fourth degree; and traffic violations for violating his restricted driver's license, speeding in excess of 15 mph, and reckless driving. B.B. appealed to the circuit court, and that court affirmed the adjudication. B.B. sought discretionary review, which was granted by this Court on February 21, 2012.

On appeal, B.B. first argues that the Commonwealth did not meet its burden to prove beyond a reasonable doubt that B.B. acted wantonly so as to support the adjudications of manslaughter in the second degree, assault in the first degree, and wanton endangerment in the first degree. Thus, B.B. argues that he did not receive due process of law.

Our standard of review with respect to the sufficiency of evidence to support a criminal conviction is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Potts v.*

*Commonwealth*, 172 S.W.3d 345, 349 (Ky. 2005) (quoting *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)).

A person is guilty of manslaughter in the second degree when they "wantonly cause[] the death of another person, including, but not limited to, situations where the death results from the person's . . . [o]peration of a motor vehicle . . . ." Kentucky Revised Statutes (KRS) 507.040. B.B. argues that no reasonable trier of fact could have found him guilty of the felony offenses for which he was charged because the Commonwealth presented insufficient evidence that he acted wantonly. B.B. argues that he was a safe driver who got lost and did not realize until it was too late that he was traveling too fast for a sharp curve that he could not see down the road. The fact that his passengers chose not to wear their seatbelts and pile into an SUV that was too full did not make B.B.'s actions wanton. Further, B.B. argues that his violation of the passenger restrictions of his intermediate license was not sufficient evidence of wanton conduct where the violation was punishable merely by an extension of the limitations of his license. B.B. requests that this Court reverse and vacate his adjudications.

In support of his argument, B.B. argues that all of the felony offenses for which he was convicted require the *mens rea* of wantonness. Wantonness is defined by the Kentucky Penal Code as

> [W]hen [one] is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exits. The risk must be of such nature and degree that disregard thereof constitutes a

> gross deviation from the standard of conduct that a reasonable person would observe in the situation. . . .

KRS 501.020(3). Wantonness "presupposes an awareness of the creation of substantial homicidal risk, a risk too great to be deemed justifiable by any valid purpose that the actor's conduct serves." *Cook v. Commonwealth*, 129 S.W.3d 351, 363 (Ky. 2004) (citing KRS 507.020 1974 Commentary). B.B. argues that the Commonwealth was required to prove beyond a reasonable doubt that (1) there was a substantial and unjustifiable risk of injury to passengers in B.B.'s vehicle, (2) that B.B. consciously disregarded this risk, and (3) that this disregard was a gross deviation from what a reasonable person would have done in this situation.

B.B. contends that the Commonwealth failed to provide sufficient evidence that he consciously disregarded a substantial and unjustifiable risk of injury to his passengers. B.B. contends that in order to establish that he consciously disregarded the risk of injury to his passengers, the Commonwealth had to show an "I-don't-care attitude." *See* 57A Am. Jur. 2d *Negligence* § 249 (Westlaw elec. version May 2014 ). "[A]lthough circumstantial evidence may be used to prove the element of knowledge, the question may not be left to the conjecture or speculation of the jury. Moreover, it is not enough that it can be inferred that the defendant noticed an abnormality; it must also be capable of inference that the defendant would realize that the abnormality was likely to result in danger." 57A Am. Jur. 2d *Negligence* § 268 (Westlaw elec. version May 2014) (footnotes omitted). While these concepts are espoused in civil cases, B.B. argues that they

provide guidance in criminal cases because more than mere civil negligence is required to prove vehicular manslaughter. *Commonwealth v. Tackett*, 299 Ky. 731, 187 S.W.2d 297, 299 (1945) ("In order to hold one criminally negligent there must be a higher degree of negligence proven than is required to establish negligence in a civil action.").

B.B. argues that there was no evidence that he drove with an "I-don't- care attitude." He argues that in fact, the testimony at trial indicated that he was a conscientious driver. He wore his seat belt, had his headlights on, and disapproved when the music got too loud and made his friends turn it down. While B.B. may have known that he was violating the rule as to the number of passengers allowed in his vehicle under his intermediate license, he argues the Commonwealth was required to prove that he knew that exceeding the passenger limit created a *substantial and unjustifiable* risk of injury to those passengers. B.B. contends that only circumstances that overtly affect the ability to drive are such that create a substantial risk of an accident, such as driving while intoxicated or texting while driving. These circumstances affect the driver's ability to perceive obstacles in the road, reaction time, etc. While having seven passengers in the car *could* cause distracted driving and thus constitute a disregard of substantial risk, in this case B.B. argues that the evidence did not demonstrate that it affected his driving. In support of this, B.B. notes that the passengers testified that his driving was normal and he was not distracted. He did not run any stop signs, red lights, or swerve. He

contends that as soon as he became aware that he was traveling too fast for the road, he took corrective action by applying his brakes.

B.B. also argues that if having more than one passenger in a car is a substantial and unjustifiable risk for a teenage driver, then certainly a violation of such a restriction would carry a more severe penalty than merely an extension of the intermediate licensing provisions. Further, if having a multitude of passengers is so risky, the restriction would not be limited to non-relatives only. As stated by a witness for the Commonwealth, B.B. could have had a multitude of related passengers with him—his brother, his sister, his cousin, etc. The restriction was only for non-related persons under the age of twenty. Thus, B.B. argues that there was no substantial correlation between the intermediate license restriction for the number of passengers and a substantial risk of injury.

B.B. further argues that the fact that he was driving 10 to 15 mph over the speed limit when he took the turn in Cherokee Park did not amount to wanton conduct because he was not conscious of the speed limit or the sharp curve and thus could not have known about the risk associated with his actions. All of the passengers in the vehicle testified that they did not see any speed limit signs in the park and no one knew that the speed limit was 25 mph. Therefore, B.B. argues that it was impossible for him to be aware of and consciously disregard the risk of driving 35 to 40 mph. Moreover, B.B. argues that speeding was only a substantial risk if he also knew that there was a sharp curve ahead, of which indisputably there was no warning and of which no one was aware. All of B.B.'s passengers, as well

as the deputy sheriff, all stated that the foliage was so thick on the road, that drivers could not see the sharp curve ahead. In fact, the curve was the sharpest in the entire park. B.B. argues it is not enough that he *should* have known the risks on the road—which he would have only had the cause to do if he was familiar with Cherokee Park, which he was not. The law requires proof that B.B. *actually* knew the risk and disregarded it in order to have acted wantonly.

The Commonwealth counters that the evidence at trial was sufficient for the trier of fact—the juvenile court—to conclude that B.B. acted wantonly. The Commonwealth concedes that while no one single event or occurrence that night, in and of itself, rose to the level of "wanton conduct," that is not the test to be applied here. Instead, the Commonwealth argues that it is the totality of the circumstances—the choices, decisions and conduct which caused the final result. The Commonwealth argues that B.B. ignores the legal basis supporting his convictions in his attempt to downplay his responsibility and misconstrues the facts. The Commonwealth argues that B.B. was held accountable for the death and destruction he caused not because he violated two minor vehicular statutes, but because he made a series of bad choices, which were both illegal and "grossly wanton." The Commonwealth contends that it is not a simple negligence case, but is instead a criminal case where B.B. was found to be criminally responsible based upon the totality of his behavior, choices, and actions.

B.B. next argues that the Commonwealth did not provide sufficient evidence that his actions were a gross deviation from the reasonable person

standard of care. B.B. contends that no reasonable trier of fact could have found that B.B. consciously disregarded the risk to his passengers of driving 10 to 15 mph over the speed limit while taking a sharp curve given the testimony of the passengers and witnesses at trial. The Commonwealth also contended B.B. acted wantonly because he exceeded the passenger limitation of his intermediate driver's license. B.B. argues that the Commonwealth failed to prove that he acted wantonly when he violated this provision because driving with a number of passengers over the limit of the license was not a substantial and unjustifiable risk. In addition, violating the license provision for passengers was not a "gross deviation from the standard of conduct" that a reasonable person would observe in the situation. KRS 501.020(3).

B.B. contends that when a teenager first receives his/her driver's license, he or she is placed on an intermediate license for 180 days. This license limits passengers to one unrelated person under twenty years of age. Violating this provision is not a crime. Rather, if a person violates this provision, the intermediate license is simply extended for another 180 days.

B.B. contends that whether violating the licensing provision constitutes wanton behavior hinges on whether a reasonable person would have adhered to the restriction. The reasonable person standard is the standard against which triers of fact measure individuals conduct or blameworthiness. It is a standard found throughout the law, including determinations of whether a person is in custody under *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

This standard, though it is an objective one, requires some degree of individualization. For example, under *Miranda*, whether a reasonable person would believe that he is free to leave is considered in the context of the defendant's age and maturity. *J.D.B. v. North Carolina*, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011).

B.B. also argues that in this Commonwealth, juveniles are not simply miniature adults. *See Elmore v. Commonwealth*, 282 Ky. 443, 138 S.W.2d 956, 961 (1940) (stating questions of law should weigh in a juvenile's favor); *Commonwealth v. Merriman*, 265 S.W.3d 196, 199 (Ky. 2008) (discussing the different treatment youthful offenders receive under the Juvenile Code). B.B. urges this Court to take note that negligence law in Kentucky already recognizes a different reasonable person standard for children. *Williamson v. Garland*, 402 S.W.2d 80, 82 (Ky. 1966). B.B. urges us to review the judgment in this case with a reasonable juvenile standard in mind and to evaluate what a reasonable juvenile would have done in this situation.

The Commonwealth argues that no reasonable person simply ignores restrictions placed upon him — especially someone who is given the privilege to operate a several-thousand-pound vehicle for the first time. The Commonwealth urges this Court to conclude that a reasonable person, in this case, a reasonable juvenile, would take cognizance of the fact that the vehicle can reach high speeds and is capable of causing death and destruction.

The Commonwealth also argues that B.B. has "conveniently ignored" the fact that our Legislature has decreed that violations of traffic laws by juveniles over the age of sixteen shall be treated as if the juvenile were an adult. *See* KRS 610.010(1). The Commonwealth argues that this adult treatment of juveniles renders B.B.'s proposed reasonable juvenile standard meaningless.

B.B. cites to *Commonwealth v. Mitchell*, 41 S.W.3d 434, 435-36 (Ky. 2001), and argues that it is controlling in the case at bar. In that case, a father was convicted of reckless homicide for failing to secure an infant daughter (who was killed) in a proper child restraint system—in violation of the seatbelt law. The other children with the father were unrestrained as well. The conviction was reversed by this Court, and that reversal was affirmed by the Supreme Court on discretionary review. That Court stated, "This conduct [not properly restraining the daughter], standing alone, without any other evidence of recklessness, is not sufficient to constitute the standard of recklessness required by KRS 507.050, which is a gross deviation from the standard of care that a reasonable person would observe in the situation." *Id*. The Court pointed out that the Commonwealth "presented no evidence to support its position that the conduct of the father was reckless other than the failure to secure the infant in a proper child restraint system." *Id*.

The Commonwealth argues that *Mitchell* is distinguishable from the instant case because there is an abundance of evidence of recklessness in this case. The Commonwealth argues that it was not just B.B.'s intentional violation of his

restricted operator's license standing alone; instead B.B.'s wanton conduct manifested itself in several different ways, which include his disregard for the restrictions on his license; overloading the passenger capacity of his vehicle; allowing people to sit in the cargo portion of his vehicle that was not intended for passenger use; and speeding.

The Commonwealth argues that when all of these factors are taken into account collectively, they unquestionably constitute wanton conduct. When examined in their entirety, the risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. According to the Commonwealth, B.B. knew that he was in engaged in every one of these acts, and that the majority of his decisions constituted law violations. Thus, it was a conscious decision on his part to partake in this conduct without regard for the consequences of his actions. Simply put, the Commonwealth argues that not only did B.B.'s conduct create a substantial danger of death or serious physical injury, but it brought about those very results. The Commonwealth urges this Court to hold that B.B.'s actions were indicative of circumstances manifesting extreme indifference to human life.

B.B. points out that in *Mitchell,* the passengers were all infants who were incapable of deciding for themselves whether to ride in a vehicle unrestrained. Therefore, the responsibility for the statutory violation and the unsafe circumstances rested solely on the driver-parent and care provider. However, in

this case, the passengers were all old enough to decide for themselves whether they wanted to ride in a truck where they could not sit properly restrained or with someone who had a provisional license. B.B. argues that to find criminal liability in this case, but not in *Mitchell*, where the driver had the sole responsibility for placing his children in the vehicle safely, is illogical and inconsistent with the rulings of this Court.

We agree with B.B. that this case is directly comparable to *Mitchell*. While B.B. most definitely disregarded his restricted operator's license, other than having too many passengers in his vehicle, there is no other evidence that B.B. was acting wantonly or with indifference to human life. The passengers in his vehicle testified that he was driving carefully, had the music turned down, and simply got lost. Unfortunately, B.B. turned into a park with an S-curve and did not see the speed limit sign, which was not properly marked or sized at the time of this incident. We agree with B.B. that while he did violate the restriction on his license by having too many non-related passengers in his car, those passengers also made a conscious decision to enter his vehicle and ride unrestrained. Simply put, a tragic accident occurred. However, this Court is unwilling to hold B.B. criminally responsible for manslaughter based on a license infraction for which the punishment is to extend the restricted license period for 180 days. We simply cannot say that this conduct amounts to manslaughter in the second degree.

B.B. next argues that the Commonwealth did not meet its burden to prove beyond a reasonable doubt that B.B. acted with extreme indifference to the value

of human life so as to support the adjudications of two counts of assault in the first degree and four counts of wanton endangerment in the first degree.

The Commonwealth charged B.B. with the assault and wanton endangerment charges for the injuries sustained by the other passengers in the car as a result of the accident. In addition to the *mens rea* element of wantonness set forth above, these offenses require proof beyond a reasonable doubt that B.B. acted with an extreme indifference to human life. KRS 508.010(1)(b); 508.060(1). B.B. argues that the Commonwealth did not provide sufficient evidence that B.B.'s actions were so heinous.

B.B. argues that this case is similar to *Ison v. Commonwealth*, 271 S.W.3d 533, 534 (Ky. App. 2008), in which this Court examined the element of extreme indifference to human life in the context of a vehicular collision that resulted in charges of reckless homicide, assault in the first degree, and wanton endangerment in the first degree. Ison was driving a Ford Mustang on a highway when he lost traction and skidded into oncoming traffic, causing a collision that killed three of his passengers. Ison was not speeding and safely negotiated a curve just prior to the collision. Toxicology reports showed the presence of marijuana, Xanax, and hydrocodone in Ison's system. *Id*.

> [A]lthough Ison's vehicle was described as having rear tires which were extremely worn, the eyewitness to the collision testified that Ison was not speeding or driving erratically before the tires lost traction immediately prior to the collision. Further, the toxicology report showed no alcohol or drugs in Ison's blood. While hydrocodone, marijuana, and Xanax were found in his urine . . . there is

> no toxicologic evidence to support a finding that he was under the influence of any substance at the time of the collision.

*Id*. at 536. This Court reversed all of the charges, finding the facts insufficient to establish extreme indifference or recklessness. *Id*. at 538.

Again we agree with B.B. Because his conduct did not amount to wantonness, we simply cannot find him criminally liable for assault or wanton endangerment. None of the passengers in the vehicle testified that this accident was B.B.'s fault or that he acted wantonly that night. There is no evidence that violating a license restriction is wanton conduct. Accordingly, we reverse the judgment finding B.B. guilty of assault and wanton endangerment.

Based on the foregoing, we reverse the judgment of the Jefferson District Court and the Jefferson Circuit Court's adjudication affirming the district court's judgment. We remand for proceedings consistent with this opinion.

ALL CONCUR.

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