

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CRIMINAL ACTION
No. 2184-CR-00670

COMMONWEALTH

vs.

RYAN DENVER

**MEMORANDUM OF DECISION AND ORDER
ON DEFENDANT'S MOTION TO DISMISS**

The defendant, Ryan Denver (“Denver”), moved under Commonwealth v. McCarthy, 385 Mass. 160 (1982), to dismiss the Indictment charging him with three counts of assault and battery with a dangerous weapon (a boat) causing serious bodily injury; two counts of assault and battery with a dangerous weapon (a boat); and one count of involuntary manslaughter. All charges arise out of a fatal boat crash (in nautical terms an “allision”) in the early morning hours of July 17, 2021, when a boat Denver was operating hit day marker 5 in Boston Harbor. The Court heard oral argument on November 17, 2022. For the below reasons, the motion is **DENIED.**

DISCUSSION**I. The Legal Standards****A. “McCarthy” Motions**

An indictment must be dismissed if the Commonwealth failed to present sufficient evidence to support a finding of probable cause to believe defendant committed the crime charged. Commonwealth v. McCarthy, 385 Mass. 160, 163 (1982). Although courts generally will not inquire into the “competency or sufficiency of the evidence before the grand jury,”

Commonwealth v. Robinson, 373 Mass. 591, 592 (1977), an indictment will be dismissed if no evidence of criminality was presented to the grand jury. McCarthy, 385 Mass. at 163.

“Probable cause...is a decidedly low standard,” Commonwealth v. Barbosa, 477 Mass. 658, 675 (2017), quoting Commonwealth v. Hanright, 466 Mass. 303, 311 (2013), requiring “more than mere suspicion but something less than evidence sufficient to warrant a conviction.” Commonwealth v. Hason, 387 Mass. 169, 174 (1982). “When reviewing the sufficiency of an indictment, the grand jury evidence must be viewed in the light most favorable to the Commonwealth.” Barbosa, 477 Mass. at 675.

B. Wanton and Reckless Conduct

On Counts 1-5, the five charges of assault and battery, the Commonwealth is proceeding on a theory of wanton and reckless battery, not intentional battery. See, e.g., Commonwealth v. Welch, 16 Mass. App. Ct. 271, 275 (1983). On Count 6, charging involuntary manslaughter, the Commonwealth must also prove wanton or reckless conduct. See Commonwealth v. Godin, 374 Mass. 120, 126 (1977) (involuntary manslaughter is “an unlawful homicide unintentionally caused by an act which constitutes such a disregard of probable harmful consequences to another as to amount to wanton or reckless conduct.”) Wanton or reckless conduct is “intentional conduct...[that] involves a high degree of likelihood that substantial harm will result to another.” Commonwealth v. Earle, 458 Mass. 341, 347 (2010), quoting Commonwealth v. Welansky, 316 Mass. 383, 399 (1944). Whether conduct is wanton or reckless is determined “based either on the defendant’s specific knowledge or on what a reasonable person should have known in the circumstances.” Commonwealth v. Pugh, 462 Mass. 482, 496 (2012).

C. Serious Bodily Injury and Demonstrable Physical Injury

Counts 1-3 require the Commonwealth to prove serious bodily injury to the victim. See G. L. c. 265, sec. 15A. The statute defines “serious bodily injury” as “bodily injury which results in a permanent disfigurement, loss or impairment of a bodily function, limb or organ, or a substantial risk of death.” G. L. c. 265, sec. 15A(d).

Counts 4-5, alleging assault and battery with a dangerous weapon under a theory of wanton and reckless conduct, require the Commonwealth to prove demonstrable physical injury. See Welch, 16 Mass. App. Ct. at 274-276.

II. Application of the Legal Standards

A. The Grand Jury Heard Sufficient Evidence of Wanton and Reckless Conduct

Denver argues that his conduct leading up to the crash was at most careless, and did not rise to the level of wanton or reckless conduct. He also argues that each component of his alleged wanton and reckless conduct is unsupported by credible evidence before the grand jury. Applying the above-noted legal standard for a motion to dismiss, the Court disagrees. The grand jury heard sufficient evidence of multiple factors from which, viewing the evidence in the light most favorable to the Commonwealth, the grand jury could properly have found wanton and reckless conduct.

1. Excessive speed.

Excessive speed presumably would be the most important component of the Commonwealth’s evidence of wanton and reckless conduct at a trial, and Denver fiercely contests the Commonwealth’s evidence of excessive speed in his motion. While the Commonwealth’s evidence would be subject to impeachment at a trial, the grand jury heard evidence sufficient to establish that, at or shortly before the crash, the boat was travelling at a

rate of speed within a few miles per hour of 49.2 mph. See 10/8/21 GJ at 15-16; GJ Ex. 39.¹ An experienced Boston Police Department Harbor Patrol Unit officer (Officer Matthews) testified that even a professional boater should not be travelling at more than 20-25 mph when approaching the City of Boston at night through Boston Harbor. See 9/24/21 GJ at 18-20, 32.

2. Alcohol consumption.

The grand jury heard extensive evidence that Denver was part of a group that consumed alcohol for roughly five hours at two different venues before boarding the boat. See Comm. Opp. Br. at 1-2. More specifically to Denver, a marina employee testified that, when Denver arrived at the marina, he was “flush, red-ish” and had “alcohol coming from his breath.” 8/17/21 GJ at 6, 9. Officer Matthews testified that alcohol reduces one’s ability to safely operate a boat. 9/24/21 GJ at 33.

3. Failure to keep hands on or immediately next to steering wheel.

A passenger on the boat testified that at times Denver left the boat’s steering wheel and, while near the wheel, socialized with other passengers. 8/31/21 GJ 21, 24.

4. Failure to dim cabin interior.

The grand jury heard testimony that the boat’s interior was well-lighted, making it difficult to see anything outside the boat. 8/31/21 GJ at 20-21. Officer Matthews testified that interior cabin lights should be turned off when coming back into Boston by boat at night. 9/24/21 GJ at 29.

¹ Grand jury testimony is referenced by date, “GJ,” and page number. “Comm. Opp. Br.” refers to the Commonwealth’s opposition to the motion.

5. Summary of the factors.

The grand jury could properly conclude, from the evidence of the four above-noted factors, that Denver's operation of the boat created "a high degree of likelihood that substantial harm [would] result" to the boat's passengers. Earl, 458 Mass. at 347. Moreover, there was evidence that neither Denver nor anyone else said anything before the boat collided into day marker 5, see 8/31/21 GJ at 24, and that, at the time of the crash, the light on day marker 5 was lighting up at the correct interval. 10/8/21 GJ at 26. Under these circumstances, the grand jury could properly infer that some combination of the four above-noted factors was responsible for Denver's failure to see day marker 5 in time to avoid a crash that killed one passenger and seriously injured others. This evidence provided more than adequate probable cause of wanton and reckless conduct to satisfy the Commonwealth's burden on a McCarthy motion.

B. The Grand Jury Heard Sufficient Evidence of Serious Bodily Injury and Demonstrable Physical Injury

The grand jury heard sufficient evidence that the boat's passengers named in Counts 1-3 suffered serious bodily injury, and that the passengers named in Counts 4-5 suffered demonstrable physical injury.

With regard to Count 1, Z.M. testified that he was hospitalized and treated for a torn ACL, a fractured kneecap, and a broken arm, that he had had six surgeries on his broken arm, and that he did not have a full range of arm and hand motion or control. 8/25/21 GJ at 72-73. With regard to Count 2, A.L. testified that he suffered a shattered jaw that was broken in three places, a broken forearm, fractured ribs, a fractured shoulder blade, a collapsed lung, and multiple lost teeth. 8/17/21 at 43. With regard to Count 3, there was testimony that M.K. was knocked unconscious by the collision. 9/21/21 GJ at 24. It is self-evident that knocking someone unconscious in the middle of Boston Harbor creates a substantial risk of death. See,


e.g., Commonwealth v. Johnson, 92 Mass. App. Ct. 538, 542 (2017) (reversing dismissal of indictment, finding that profuse bleeding from head resulting from being hit by beer glass was sufficient evidence of substantial risk of death).

With regard to Count 4, P.J. testified that he suffered a dislocated elbow, broken ribs, and lacerations. 9/21/21 at 27. With regard to Count 5, T.G. testified that she suffered a dislocated knee, requiring physical therapy. 8/31/21 GJ at 26-27. This testimony established demonstrable physical injury.

CONCLUSION AND ORDER

For the above reasons, Defendant's *McCarthy* Motion to Dismiss the Indictments (Paper # 35) is **DENIED**.

November 28, 2022



Robert L. Ullmann
Justice of the Superior Court