

**KENTUCKY SUPREME COURT
JANUARY 2024**

CRIMINAL:

COMMONWEALTH OF KENTUCKY V. STEVEN D. ROARK

2022-SC-0386-DG

January 18, 2024

Opinion of the Court by Justice Bisig. VanMeter, C.J.; Bisig, Conley, Keller, Lambert, and Nickell, JJ., sitting. All concur. Thompson, J., not sitting.

The Court of Appeals reversed defendant Roark’s conviction for manufacturing methamphetamine, holding that the underlying jury instruction violated Roark’s right to a unanimous verdict. Consistent with KRS 218A.1432, that instruction allowed the jury to find Roark guilty if it found either that 1) he had knowingly manufactured methamphetamine, or 2) he knowingly had in his possession certain meth-making materials with intent to manufacture methamphetamine. The Supreme Court granted discretionary review and held that the jury instruction was a permissible combination instruction that did not violate the right to a unanimous verdict because it allowed the jury to convict on either of two theories of criminal liability, both fully supported by the evidence. First, the theory of completed manufacture was supported by evidence showing Roark’s possession of a meth lab and a connected bottle containing methamphetamine, as well as additional equipment and materials used in the manufacture of methamphetamine. Second, the theory of possession of materials used in the manufacture of methamphetamine was supported by this same evidence. The Supreme Court therefore reversed the Court of Appeals and affirmed the judgment and sentence of the trial court.

MEDICAL MALPRACTICE:

**SAINT ELIZABETH MEDICAL CENTER, INC. D/B/A ST. ELIZABETH
FLORENCE V. RONALD N. ARNSPERGER, JR.**

2022-SC-0302-DG

January 18, 2024

Opinion of the Court by Justice Conley. All sitting. All concur.

On December 14, 2015, Arnsperger underwent surgery on his left ankle that involved an intentional fracturing of his ankle bone and its realignment by placing two screws in the bone. During surgery, the drill bit failed and scattered metal shards throughout the ankle. Consequently, the surgeon was only able to place one screw in. On numerous occasions in the subsequent days, Arnsperger was told by his surgeon he needed to get x-rays to confirm his

ankle had been properly aligned. On December 18, 2015, when he was being pushed in a wheelchair to receive these x-rays, a collision occurred with a desk. The nature of that collision is a factual dispute. The x-rays confirmed that his ankle bone was not correctly aligned. Arnsperger alleged in his Complaint that the collision caused his ankle to be misaligned. St. Elizabeth contends the ankle bone had not been properly aligned at the December 14 surgery. The trial court concluded that expert medical testimony would be required as to causation. Arnsperger proposed two experts, but both denied that they would testify as to causation and neither offered an opinion as to the cause of Arnsperger's misaligned bone. The trial court granted summary judgment to St. Elizabeth. On appeal, the Court of Appeals reversed by holding that expert testimony was not necessary to establish the duty or breach thereof of an employee pushing a wheelchair-bound patient, and that no expert was necessary to link Arnsperger's claimed injury to the collision. St. Elizabeth sought discretionary review which was granted.

Upon review, a unanimous Court reversed the Court of Appeals. The Court held that the issue in this case was not the duty or breach of an employee pushing a wheelchair-bound patient, but whether the allegedly negligent acts of that employee caused Arnsperger's ankle to be misaligned. The Court held that the Layman's Exception for medical malpractice cases was nothing other than *res ipsa loquitur* and that doctrine only applied when causation was established—i.e., the facts in evidence must not only support an inference of negligence as to the tortfeasor but exclude any other cause that could be attributed to another person or was outside the tortfeasor's control. The Court determined that the facts in this case would have supported an inference that the ankle was misaligned due to the December 14 surgery because St. Elizabeth had proposed an expert who would testify to that effect, and no expert was proposed by Arnsperger who would testify the ankle misalignment was due to the desk collision. The Court further held that this was true whether Arnsperger had brought a medical malpractice case or was considered an ordinary negligence case. Even assuming this is a case of ordinary negligence, the Court reasoned that the trial court had determined expert testimony was necessary and this decision was within its discretion to make. Finally, the Court held that the question of whether Arnsperger's ankle bone had been correctly aligned at the December 14 surgery or injured on December 18 was not a question within the common knowledge of a jury. Arnsperger's own surgeon could not conclusively determine the bone had been correctly aligned absent x-rays, therefore the jury could not make an inference that the bone had been correctly aligned after the surgery without the aid of expert testimony. Thus, Arnsperger's failure to produce an expert who would testify that the ankle bone had been misaligned as a result of the desk collision was a failure of proof warranting summary judgment. The Court of Appeals was reversed and the trial court's summary judgment was reinstated.