

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000474-MR

JAMES R. LAMKIN

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN P. RYAN, JUDGE
ACTION NO. 01-CR-002029

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; BARBER AND COMBS, JUDGES.

EMBERTON, CHIEF JUDGE. James Lamkin appeals from a judgment of the Jefferson Circuit Court convicting him of assault under extreme emotional disturbance, disorderly conduct, and alcohol intoxication and sentencing him to five years' imprisonment, probated for five years after service of ninety days in jail. On appeal, he contends that there was insufficient evidence for a jury instruction on assault under extreme emotional

disturbance and that the instruction given was erroneous. We affirm.

At trial, the following facts were developed: On the evening of May 30, 2001, Lamkin and his friends, Nick Knoth and Seth Stone, visited the Phoenix Hill Tavern in Louisville. All had been drinking. John Brewer worked at the tavern as a valet in the men's restroom. Stone entered the restroom, and after grabbing a handful of mints from the restroom counter, got into a verbal altercation with Brewer. According to Brewer's testimony, Stone shouted obscenities at him, called him a "nigger," and spat on him. Another man in the restroom, Jeffery Hedges, attempted to calm Stone who proceeded to also spit on Hedges.

Hedges and Stone left the restroom and began to fight. At this point Lamkin approached Hedges and struck him in the head with a beer bottle. Off-duty State Trooper Richard Woodside, present at the tavern, saw Lamkin strike Hedges. He restrained Lamkin and then dragged him to a booth.

After Woodside identified himself as a state trooper and attempted to calm him, Lamkin began to curse Woodside and attempted to strike him. Woodside then threw Lamkin under a table and Lamkin struck Woodside with a chair. After an attempt to flee, Lamkin was eventually apprehended by Woodside and detained until police arrived.

At the conclusion of the evidence, the Commonwealth requested the court to instruct the jury on assault under extreme emotional disturbance. Over Lamkin's objection, the court ruled there was sufficient evidence to justify the instruction. KRS¹ 508.040(1) provides in pertinent part:

In any prosecution under KRS 508.010, 508.020 or 508.030 in which intentionally causing physical injury or serious physical injury is an element of the offense, the defendant may establish in mitigation that he acted under the influence of extreme emotional disturbance, as defined in subsection (1)(a) of KRS 507.020.

Although the statute generally works to the benefit of a defendant, there are cases where an accused believes it strategically better not to have the instruction included and leave the jury with only a guilty or not guilty choice on the assault charge. However, in Commonwealth v. Elmore,² the court held that if there is evidence to support the instruction, even if objected to by the accused, it is the duty of the court to give an extreme emotional disturbance instruction.

Extreme emotional disturbance is a temporary state of mind "so enraged, inflamed, or disturbed as to overcome one's judgment, and to cause one to act uncontrollably from the impelling force of the extreme emotional disturbance rather than

¹ Kentucky Revised Statutes.

² Ky., 831 S.W.2d 183 (1992).

from evil or malicious purposes."³ Here, there was sufficient evidence, that in the heat of the barroom brawl, Lamkin acted with physical violence toward Woodside because of his enraged state of mind rather than with evil or malicious intent. The instruction was proper.

Lamkin's objection to the content of the instruction is not well taken. The instructions properly included a self-protection defense. The judgment is affirmed.

ALL CONCUR.

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³ McClellan v. Commonwealth, Ky., 715 S.W.2d 464, 468-69 (1986).