

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001288-MR

ERIC ANTHONY DAVIS

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE R. JEFFREY HINES, JUDGE
INDICTMENT NO. 01-CR-00229

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** **

BEFORE: BAKER, GUIDUGLI, AND KNOPF, JUDGES.

KNOPF, JUDGE: Eric Anthony Davis appeals from a judgment of the McCracken Circuit Court wherein he was convicted, following a jury trial, of second-degree assault under extreme emotional disturbance. Davis argues that the trial court erred in not granting his directed verdict motion. After thoroughly reviewing the record and the applicable law, we affirm.

The testimony at trial concerned the events of July 4, 2001, and July 5, 2001, as well as the interactions of Davis,

John Backus and Pam Deihl. Davis and Deihl are former spouses; their marriage ended in divorce in 2000. During the spring of 2001, Davis met Backus at a local housing project. Thereafter, Davis introduced Deihl to Backus. After this introduction, Backus and Deihl later began a sexual relationship.

During the morning of July 4, 2001, Backus met Davis at Deihl's apartment. Backus and Davis went to the waterfront and consumed six to seven beers each. Around 3:30 p.m., Backus returned to Deihl's apartment so that he could take Deihl to the fireworks display scheduled for that evening. Davis did not return to Deihl's apartment, opting to visit Bob's, a local bar, to continue drinking. Davis then watched the fireworks from a friend's house. After the fireworks, Davis returned to Bob's and consumed more alcohol.

At the completion of the fireworks display, Deihl and Backus engaged in an argument over each other's consumption of alcohol. According to Deihl's testimony, she and Backus were both extremely intoxicated. Deihl left Backus in the parking lot of the Silver Bullet bar and told Backus that she wanted him to stay away from her. Backus testified that he thought Deihl had been drinking too much, left her, and returned to her apartment. Backus fell asleep leaning on the back door of Deihl's apartment during the early morning hours of July 5, 2001.

After leaving the Silver Bullet, Deihl proceeded to Bob's where she ran into Davis. Deihl invited Davis to stay at her apartment for the night since it was after curfew at the mission where Davis resided. Upon arriving at the apartment, Davis and Deihl discovered Backus asleep against the back door.

At trial, Backus testified that he awoke being beaten and kicked by Davis. Backus then heard Deihl yell at Davis and threaten to shoot Davis if he did not get off of Backus. At this point, Davis went after Deihl to retrieve the gun. Backus, meanwhile, rolled down several steps and stumbled approximately six blocks to the Executive Inn hotel, where someone called an ambulance. Backus denied ever touching or provoking Davis in any manner. Concerning his injuries, Backus testified that he was hospitalized for four days following this attack. Backus noted that his jaw was broken in several places, his cheekbone was fractured and he lost several teeth. Backus's jaw had to be wired shut for eight weeks. Further, permanent steel plates were installed to correct the broken jawbones and cheekbones. Backus also sustained an injury to his eye socket and was unable to work for nine weeks.

Deihl provided more information concerning Davis's attack. Deihl testified that Davis asked Backus why he was asleep against the back door to Deihl's apartment. Backus answered, "I live here." At this point, Deihl realized that

there would be trouble. She saw Davis's fist up around Backus's jaw and acknowledged that she retrieved a gun from her apartment in an attempt to get Davis to stop hitting Backus. Finally, Deihl stated that Davis was jealous of her relationship with Backus.

Dr. John Russer testified that he treated Backus for the injuries sustained during this incident. Dr. Russer noted that the steel plates installed in Backus's jaws would never be removed unless some type of complication developed. Dr. Russer also stated that, during his last consultation with Backus on September 21, 2001, Backus experienced numbness and nerve damage around the areas of the broken bones. Moreover, Dr. Russer noted that Backus experienced significant pain with these injuries. According to Dr. Russer, these injuries were consistent with blows from a fist or feet. Finally, Dr. Russer testified that Backus was on a liquid diet for three weeks while his jaw was wired shut. Backus was also placed on a soft diet for six weeks thereafter.

At the close of the Commonwealth's proof, Davis moved for a directed verdict arguing that the Commonwealth failed to prove serious physical injury as required by statute. The trial court denied Davis's motion. At this point, Davis testified in his own defense. During his testimony, Davis acknowledged observing Backus asleep by Deihl's apartment. Davis stated that

he leaned over to Backus in an attempt to get Backus up. However, when he touched Buckus, Davis testified, Backus grabbed his hair. Davis asserted that he has a failed fusion of his neck and claimed that, with Backus pulling his hair and having the potential to suddenly move his neck, he feared paralysis or death. At this point, Davis struck Backus in the head with his knee at least two times in order to get Backus to release him.

After considering all of the evidence produced at trial, the jury convicted Davis of second-degree assault under extreme emotional disturbance and recommended a sentence of five (5) years in prison. The court accepted this recommendation and sentenced Davis accordingly. This appeal followed.

Davis maintains that the Commonwealth failed to prove that he caused "serious physical injury" to Backus as required by KRS 508.020. We disagree.

"Serious physical injury" is defined in KRS 500.080(15) as follows:

[P]hysical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

A directed verdict is warranted only where the Commonwealth's evidence fails to establish guilt. Butler v. Commonwealth, Ky., 516 S.W.2d 326 (1974). On appellate review,

the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then is the defendant entitled to a directed verdict of acquittal. Commonwealth v. Benham, Ky., 816 S.W.2d 186 (1991); Trowel v. Commonwealth, Ky., 550 S.W.2d 530 (1977). A defendant is not entitled to a directed verdict of acquittal on insufficient evidence if it would not be unreasonable for a jury to find him guilty. Yarnell v. Commonwealth, Ky., 833 S.W.2d 834 (1992); Commonwealth v. Sawhill, Ky., 660 S.W.2d 3 (1983).

There was sufficient evidence that Backus sustained serious physical injuries as required by Kentucky law. Specifically, Backus testified that, as a result of Davis's strikes to his head, he sustained two fractures to the mandible, one on the left and the other on the right, as well as a multiple fracture to the cheekbone. Backus and Dr. Russer both testified that one mandible fracture was treated by installing metal plates on the fractures and wiring the jaw shut. The other mandible fracture and the cheekbone fracture were not operated on, but these injuries did require the jaw to be wired shut. As a result of his jaw being wired shut, Backus was forced to go on a liquid and a soft diet for approximately eight weeks. Moreover, Dr. Russer noted that Backus experienced numbness and nerve damage more than three months following Davis's assault. We believe that, through this testimony, the

Commonwealth submitted proof that Davis caused prolonged impairment of Backus's health, caused prolonged impairment of Backus's jaw and cheek bones and, with the instillation of a permanent metal plate, caused serious and prolonged disfigurement of Backus's jaw. Accordingly, the question of whether Backus sustained prolonged impairment of his health, as required by the definition of "serious physical injury," was a proper question for the jury to determine. Rowe v. Commonwealth, Ky. App., 50 S.W.3d 216, 221 (2001).

Davis asserts that the medical evidence submitted to the jury failed to prove that any serious disfigurement or prolonged impairment occurred. Additionally, Davis submits that this Court has previously held that medical testimony is the preferred method of proving "serious physical injury." Johnson v. Commonwealth, Ky. App., 926 S.W.2d 463, 465 (1996). But although medical testimony is the preferred method of proving serious physical injury, medical proof is not an absolute requisite to prove serious physical injury. Key v. Commonwealth, Ky. App., 840 S.W.2d 827, 829 (1992). A victim is competent to testify about his own injuries. Ewing v. Commonwealth, Ky., 390 S.W.2d 651, 653 (1965). Thus, the jury may consider lay testimony by the victim concerning physical injuries. Johnson, 926 S.W.2d at 465. Here, the jury considered all of the evidence, both medical and lay testimony,

that was brought before it. The jury obviously gave the testimony from Backus and Dr. Russer decisive weight, as it was entitled to do. See Matherly v. Commonwealth, Ky., 436 S.W.2d 793 (1968). Since the entire record reveals that it was not clearly unreasonable for the jury to find Davis guilty under these facts, we find no error in the trial court's denial of Davis's motion for a directed verdict.

Finally, we are also aware that whether the victim's injury is a "serious physical injury" is often a matter of the application of a jury's common sense. Commonwealth v. Hocker, Ky., 865 S.W.2d 323 (1993). Here, we believe that Backus's testimony, as well as Dr. Russer's testimony concerning the medical consequences of these injuries, provided sufficient evidence to induce a reasonable juror to believe beyond a reasonable doubt that Backus's injuries constituted "serious physical injury" in the statutory sense. Benham, 816 S.W.2d at 187.

For the aforementioned reasons, the judgment of the McCracken Circuit Court is affirmed.

ALL CONCUR.

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