

RENDERED: June 20, 2003; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-001331-MR

DENNIS ADAMS

APPELLANT

APPEAL FROM CHRISTIAN CIRCUIT COURT
v. HONORABLE EDWIN M. WHITE, JUDGE
ACTION NO. 01-CR-00177

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: COMBS, BARBER, AND KNOPF, JUDGES.

KNOPF, JUDGE: Dennis Adams appeals from a conviction by the Christian Circuit Court for first degree assault. The jury fixed a sentence of thirteen years, which the trial court imposed. On appeal, Adams asserts that statements made during the Commonwealth's closing argument rose to the level of prosecutorial misconduct such that his trial was fundamentally

unfair. We find the Commonwealth's closing arguments did not render Adams trial fundamentally unfair. Hence, we affirm.

In the early morning hours of March 3, 2001, Adams fought with Kit Nelson in the parking lot of Mushie's Tavern in Mannington. During the course of the fight, he stabbed Nelson in the neck. When medical personnel arrived Nelson was still walking around, but he died a few hours later at Regional Medical Center in Madisonville. According to the autopsy report, the cause of Nelson's death was a stab wound to the neck. The grand jury indicted Adams for murder and he stood trial on March 11, 2002. At trial, Adams admitted to stabbing Nelson, but claimed he did so in self-defense. He also claimed the stab wound did not cause Nelson's death.

Adams contends that the prosecutor's improper comments on self-defense, on Nelson's medical training, and on Adams's payment of his expert witness, rendered the trial fundamentally unfair. Considering these contentions, we are mindful that the prosecution is given broad latitude in closing arguments. The prosecutor's comments must be looked at in the context of the trial as a whole. Dean v. Commonwealth, Ky., 844 S.W.2d 417, 421 (1992). We note, moreover, the trial court sustained all of Adams's objections to the prosecutor's comments and he requested no further relief.

Adams first asserts that his trial was fundamentally unfair due to the comments the Commonwealth made regarding self-defense. Adams testified that he feared for his life when Nelson and Jeremy Tapp, Nelson's friend, came towards him. He claims he was justified in stabbing Nelson in self-defense. During his closing, the prosecutor said, "Does the 'victim' (and I use the term loosely) believe he [Nelson] has a knife? If he thinks he has a gun - that's self-defense . . . When does he [Adams] ever say 'I thought he had a knife or gun or something?' He's not entitled to . . ." Adams then objected.

Adams contends the Commonwealth, in these comments, attempted to "narrow the jury's understanding of what constituted self-defense by referring to having a knife or a gun." This narrowing of the issue, he maintains, denied him a proper consideration of his defense. Adams objected to these statements, however, and the trial court sustained the objection. He did not ask for any further relief. Although Adams contends that the Commonwealth did not correct itself following the objection, the Commonwealth is not required to do so without further requests from the defense. Bell v. Commonwealth, Ky. App., 473 S.W.2d 820, 821 (1971). Absent such a request, Adams has no ground upon which to complain. Id.

Adams also argues that the Commonwealth's closing statement about Nelson's previous medical training was not in

evidence and thus could not be addressed in the closing. The prosecutor stated "Kit Nelson had received some medical training, emergency medical training, that's what he told her (Sabrina Husley). Kit Nelson knew." The prosecutor was referring to a previous statement regarding Nelson's training and he apparently meant to say that Nelson knew he was going to die. At that point Adams objected. Adams asserts that the prosecutor's statement was meant to counter his claim that loss of blood from the knife wound did not cause Nelson's death. Rather, he claimed, Nelson's combativeness during intubation caused difficulties that resulted in a lack of oxygen and death. Adams argues that the prosecutor wrongly implied that if Nelson thought he would die after the knife wound and before emergency medical personnel arrived, then the jury could believe that the knife wound caused Nelson's death. This issue is moot inasmuch as the jury acquitted Adams of murder. Furthermore, as with the prosecutor's self-defense comment, the trial court sustained the defense objection and he requested no further relief.

Finally, Adams contends the Commonwealth's closing statements regarding the payment of Dr. McLamore, the defense's expert witness, were not in evidence and thus could not be addressed in the closing. During the trial, the Commonwealth asked Dr. McLamore on cross-examination how much he was paid. The trial court overruled Adams's objection, and Dr. McLamore

stated the amount was not yet agreed upon. Later during closing, the Commonwealth stated "how much was he paid; we don't know." Adams objected and the trial court sustained the objection. Once again, however, he asked for no further relief.

Adams objected to all three statements made by the prosecution. The trial court sustained the objections and Adams requested no further relief. Absent Adams's request for additional relief, his objections must be deemed to have cured the Commonwealth's alleged misstatements. No prejudicial error occurred. Adams's trial was fair and a new trial is not warranted.

Accordingly, the judgment of conviction and the sentence imposed by the Christian Circuit Court are affirmed.

ALL CONCUR.

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