

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000212-MR

MICHAEL CHARLES HOLLIFIELD

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JOHN R. ADAMS, JUDGE
INDICTMENT NO. 02-CR-00107

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; DYCHE AND TACKETT, JUDGES.

DYCHE, JUDGE. Michael Charles Hollifield appeals from a judgment and probated sentence of twelve months' imprisonment, and a fine of \$100.00 entered by the Fayette Circuit Court pursuant to a jury verdict finding him guilty of Wanton Endangerment, Second Degree. We affirm.

Hollifield argues that the evidence was insufficient to support the conviction. We disagree for two reasons. First, trial counsel for Hollifield agreed, at the bench conference

following the close of the commonwealth's case, that "this would be a case of perhaps wanton second or menacing, but not wanton first degree." In other words, he sought a directed verdict on the First Degree Wanton Endangerment charge, only, admitting that the evidence was sufficient to support the lesser charge. He cannot now argue differently.

Even if he had made a proper motion for a directed verdict on the charge for which he stands convicted, the trial court properly denied it. The evidence was that the victim, Hollifield's live-in girlfriend's son, was walking from the front door of their common residence toward his car, when Hollifield discharged a shotgun from the front door of the residence toward the car. The windshield was hit and cracked. A neighbor testified, and the victim's own 911 call indicated, that Hollifield shot "at" him. With this evidence in the record, it was not unreasonable for the jury to convict Hollifield. Trowel v. Commonwealth, Ky., 550 S.W.2d 530 (1977).

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gene Lewter
Lexington, Kentucky

BRIEF FOR APPELLEE:

Albert B. Chandler III
Attorney General of Kentucky

Perry T. Ryan
Assistant Attorney General
Frankfort, Kentucky