

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001456-MR

ROBBIN LINN HINES

APPELLANT

v.

APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CRAIG Z. CLYMER, JUDGE
INDICTMENT NO. 02-CR-00098

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE, GUIDUGLI, AND McANULTY, JUDGES.

DYCHE, JUDGE: On January 28, 2001, a scuffle between two neighboring business owners escalated into a knife fight.

Robbin Linn Hines was charged with stabbing Jim Leach multiple times. Hines was tried and convicted of assault in the first degree and carrying a concealed deadly weapon. He was sentenced to a total of ten years' imprisonment. Hines appeals making three arguments. We affirm.

Hines first argues that the trial court should have entered a directed verdict of acquittal on the assault charge. Hines insists that he "amply demonstrated that he stabbed Jim Leach because of his need for self-protection." The record does not support this assertion. In order to obtain a directed verdict Hines would have had to prove conclusively that he was justified and that his proof established all the elements of the statutory definition of self-defense. KRS 503.050; Barnes v. Commonwealth, Ky., 91 S.W.3d 564 (2002). Here the jury was required to determine whether Hines used excessive force, especially given the Commonwealth's evidence that the victim was not armed. Hines was not entitled to a directed verdict of acquittal.

We are next asked to address the issue of whether the trial court, because of the wording of the first and second degree assault instructions, usurped the jury's function of deciding whether the victim's injuries were "serious physical injuries." Hines contends that the jury was precluded from discerning the extent of the victim's injuries and properly deciding whether to convict of a lesser included offense.

Hines concedes that this issue is not preserved for appellate review. He seeks review under RCr 10.26 for palpable error. We find none. The knife wounds inflicted upon the victim by Hines included two to the neck near the carotid sheath

and jugular vein, two to the abdomen (one of which penetrated the liver), and multiple superficial wounds to the head and chest. The victim required extensive surgery and a lengthy hospital stay. He testified about the residual effects of his injuries. And appellant admits in his brief that "there can be no question that the type of attack Mr. Leach suffered could have had serious if not fatal consequences." There was more than sufficient evidence to support the conviction for first degree assault.

In a similar vein Hines argues that the trial court erred in determining that the knife used was a "deadly weapon." The knife was not an ordinary pocket knife, as appellant maintains. KRS 500.080(4). It was a switchblade, a detail which defense acknowledged at trial albeit during a bench conference. The fact that the blade initially failed to operate as Hines intended does not negate the fact that Hines did get it open and inflicted life-threatening injuries with it. The error in this regard, if any, was harmless. RCr 9.24. Yarnell v. Commonwealth, Ky., 833 S.W.2d 834 (1992).

The judgment of the McCracken Circuit Court is affirmed.

ALL CONCUR.

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