

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-001841-MR

WILLIAM SHANNON BALDRIDGE

APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE LEWIS D. NICHOLLS, JUDGE
ACTION NO. 02-CR-00137

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND KNOPF, JUDGES.

DYCHE, JUDGE: On July 17, 2003, William Shannon Baldrige struck Stephanie Moore, fracturing her right mandible and causing her to suffer a concussion. Baldrige was indicted for, tried for, and convicted of assault in the second degree. He was sentenced to five years' imprisonment. Baldrige was also ordered to make restitution to the victim in the amount of \$8,107.15. He appeals.

Baldrige first argues that the trial court erred in allowing the introduction of the portion of the medical records

which contained the victim's version of events. Baldrige insists that he suffered reversible prejudice by the admission of those statements.

We disagree. Although the medical records did contain certain incriminating statements made by the victim when she sought treatment for the injuries inflicted by Baldrige, admitting them into the trial record did not constitute reversible error. Testimonial evidence (to which there was no contemporaneous objection by the defense) included nearly the same facts. Baldrige was not prejudiced by this evidence; he was simply unable to explain to the jury's satisfaction his decision to twice strike Moore in the face as she sat in a car eating her lunch.

Baldrige's second argument concerns the rebuttal testimony of Elizabeth Carroll and Robin Hale. Appellant complains that both witnesses testified to matters beyond the scope of proper rebuttal evidence. Again we cannot agree. Baldrige's defense consisted of evidence that Moore instead had pursued him. He offered no reasonable explanation for the assault; rather he attempted to downplay the severity of Moore's injuries. He also claimed to have acted under extreme emotional disturbance at the time he assaulted Moore. Both Carroll and Hale offered proof that rebutted Baldrige's assertions (elicited during cross-examination of the Commonwealth's

witnesses and during the defense case) that Moore was pursuing him. The admission of such did not exceed the scope of rebuttal evidence nor of the trial court's discretion in admitting same. See Stopher v. Commonwealth, 57 S.W.3d 787, 799 (Ky. 2001).

Baldrige next asserts that there was insufficient evidence that Moore sustained serious physical injury. Although there are no Kentucky cases directly on point, we hold that there was sufficient evidence that Moore's shattered jaw (which required surgery and having her mouth wired shut for over three months) coupled with a concussion constituted a jury question. Commonwealth v. Benham, 816 S.W.2d 186 (1991); see also Walker v. State, 742 P.2d 790 (Alaska App. 1987).

The last issue before us is whether the trial court erred in allowing the victim's maxillofacial surgeon to offer his opinion on the question of "prolonged impairment of health." KRS 508.020(1)(a). Baldrige insists that the testimony of Dr. Winfield John on that matter invaded the province of the jury. However, expert testimony regarding an ultimate issue of fact is admissible so long as the expert is qualified to testify, the evidence is relevant and will assist the fact-finder, and the prejudicial effect of the evidence does not outweigh its probative value. Stringer v. Commonwealth, 956 S.W.2d 883, 891 (Ky. 1997). Baldrige does not suggest that the surgeon's testimony would have been inadmissible under this standard.

Furthermore, we have examined the record and hold that the error, if any, was harmless given the other evidence in the case. RCr 9.24.

The judgment of the Greenup Circuit Court is affirmed.

ALL CONCUR.

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