

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2005-CA-000177-MR

ROBERT B. HARROD

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT  
v. HONORABLE JAMES M. SHAKE, JUDGE  
INDICTMENT NOS. 03-CR-000086 & 04-CR-001668

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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

DYCHE, JUDGE: On January 6, 2003, Ed Lewis, part owner of the Louisville night club "Connections," fell down a flight of stairs and was relieved of over \$20,000 cash. Lewis claimed that Robert B. Harrod robbed him of the money at gunpoint, using a stun gun on him, which precipitated the fall. Harrod insists that he merely witnessed Lewis's fall and seized the opportunity to grab such a large amount of cash. Harrod fled the building, bumped into a man in the alley, got into a stolen pickup truck,

and drove away. He later purchased a one way ticket to Miami, Florida, and was arrested at a layover in Atlanta, Georgia.

Harrod was initially indicted for first degree robbery. His first trial resulted in a hung jury. The Commonwealth sought a further indictment, adding charges of first degree burglary and unauthorized use of a motor vehicle. The jury found Harrod guilty of all three offenses. Harrod was sentenced to terms of ten years each for the first degree robbery and burglary convictions and an agreed six months for the unauthorized use of a motor vehicle. All sentences were ordered to run concurrently for a total of ten years' imprisonment. Harrod appeals.

Harrod first argues that he was unduly prejudiced by the Commonwealth's repeated attacks on his veracity. Namely, he cries foul that the prosecutor asked him to characterize as liars those witnesses (including Harrod's mother and brother) that gave incriminating testimony against him.

Harrod concedes that this issue is not preserved for appellate review. He urges this Court to review it under the palpable error standard found in Kentucky Rule of Criminal Procedure 10.26. Harrod cites several cases where this type of question was deemed improper. However, as the Commonwealth points out, in no instance was the alleged error held to have affected the outcome of the trial. See, e.g., Ernst v.

Commonwealth, 160 S.W.3d 744, 764 (Ky. 2005). "Appellant's failure to object and our failure to regard this as palpable error precludes relief." Moss v. Commonwealth, 949 S.W.2d 579, 583 (Ky. 1997).

Harrod secondly argues that the trial court erred in excluding his proffered testimony about the victim's alleged involvement in drug trafficking. Harrod maintains that Lewis was laundering drug money through the nightclub. He contends that the evidence was relevant to show the victim's motive for claiming that appellant committed robbery rather than simple theft by unlawful taking.

The Commonwealth counters that, even if relevant, evidence may be excluded "if its probative value is substantially outweighed by the danger of undue prejudice, confusion of the issues, or misleading the jury." Kentucky Rule of Evidence 403. Here the trial court, after hearing Harrod's avowal testimony, found it to be an improper attack on the victim's character; the trial court further found that Harrod failed to demonstrate a link between the alleged nightclub activities and Lewis's claim of robbery.

An appellate court should reverse a trial court's ruling under KRE 403 only if there has been an abuse of discretion. Barnett v. Commonwealth, 979 S.W.2d 98, 103 (Ky. 1998). Harrod fails to demonstrate that the trial court abused

its discretion in precluding the testimony. See Barth v. Commonwealth, 80 S.W.3d 390, 401-402 (Ky. 2001). There was no error.

The judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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