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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-000577-MR

AARON A. WILSON APPELLANT

v.

APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE KAREN LYNN WILSON, JUDGE
ACTION NO. 07-CR-00035

COMMONWEALTH OF KENTUCKY APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; THOMPSON, JUDGE; HARRIS,[1] SENIOR JUDGE.

COMBS, CHIEF JUDGE: Aaron Wilson appeals his conviction for assault from the Henderson Circuit Court. After our review, we affirm.

On December 19, 2006, Wilson's mother asked him to retrieve her car keys from his brother, who had been taken to jail by police the night before. Wilson's neighbor, a seventy-eight-year-old woman, volunteered to give Wilson

[1] Senior Judge William R. Harris sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580

and his sister a ride to the jail. On the return trip from the jail, Wilson attacked his elderly neighbor and friend, beating and stabbing her. She sustained brutal injuries, including a cut jugular vein that required hospitalization in the intensive care unit.

Wilson is a schizophrenic, and he claims that the attack was induced by voices in his head that called him names. Hence, at trial, he presented an insanity defense. A jury found him guilty but mentally ill of first-degree assault. He received a sentence of seventeen years in prison. This appeal follows.

The principal issue before us on appeal is whether the trial court erred in excluding expert witness testimony concerning Wilson's state of mind at the time of the assault. Wilson had sought a verdict of not guilty by reason of insanity rather than a verdict of guilty but mentally ill.

Accordingly, his defense to the assault charge was that he was insane at the time that the assault occurred. Kentucky Revised Statutes (KRS) 504.060(5) defines *insanity* as the "lack of substantial capacity either to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law[.]" If this requirement is met, a person is not criminally culpable for crimes he commits. KRS 504.020(1).

During direct examination, Wilson asked Dr. Robert Sivley if, in his opinion, Wilson could conform his conduct to the law – a question that mirrored the statutory definition of *insanity* and thus amounted to an evaluation of Wilson's

sanity. The prosecution objected, and the court asked Wilson to rephrase his question. Wilson asked the question again, and he was asked to rephrase once more. The second time, however, Wilson did not rephrase the question and moved on to another line of questioning.

During redirect examination, Wilson pursued his original question as to insanity and asked the expert if Wilson had a mental illness. When Dr. Sivley answered in the affirmative, Wilson then asked, "And would that condition cause him to have any difficulty controlling his behavior?" The expert said, "I opine that it probably did. . . . My opinion is that he was acting on beliefs that were totally unreal based on his psychotic disorder." This answer conveyed the precise information that Wilson had tried to elicit in direct examination. Therefore, Wilson's argument that the testimony was erroneously excluded is moot, and we decline to address it further.

Wilson also argues that it was improper for the court to admit into evidence photographs of the crime scene and of the victim's injuries because he had offered to stipulate the severity of the injuries. He contends that the photographs were inflammatory and prejudicial. The contested photographs depicted the bloody vehicle and close-up views of the victim's injuries.

Stipulation is not a permissible means of circumventing admission of evidence to which a party objects. Our Supreme Court has made it clear that "the prosecution is permitted to prove its case by competent evidence of its own choosing, and the defendant may not stipulate away the parts of the case that he

does not want the jury to see." *Barnett v. Commonwealth*, 979 S.W.2d 98, 103 (Ky. 1998).

Kentucky's general rule is that photographs are not rendered *per se* inadmissible either by the heinous nature of the crime or by the gruesome nature of photographs. *Brown v. Commonwealth*, 558 S.W.2d 599, 605 (Ky. 1977). The only exception to the rule focuses on whether side effects involving causes other than the crime itself (such as animal mutilation, autopsy, or decomposition) have occurred so as to "arouse passion and appall the viewer." *Clark v. Commonwealth*, 833 S.W.2d 793, 794 (Ky. 1992), *as modified on denial of rehearing*.

In the case before us, the photos do not depict any visible alteration to the victim or the vehicle that would cause them to fall within the exception. They are relevant to prove the seriousness of the victim's injuries. As the Commonwealth points out, the images are portrayed in a clinical manner. We note that even video and audio recordings of *death* scenes have been held admissible at trial. *See Pollini v. Commonwealth*, 172 S.W.3d 418 (Ky. 2005); *Young v. Commonwealth*, 50 S.W.3d 148 (Ky. 2001). Under established precedent, we conclude that the trial court committed no error in admitting the photographs into evidence.

Accordingly, we confirm the conviction of Aaron Wilson by the Henderson Circuit Court.

ALL CONCUR.

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