

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-002005-MR

KEITH MARIO REED

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MITCH PERRY, JUDGE
ACTION NOS. 16-CR-000837 AND 16-CR-000945

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; JONES AND L. THOMPSON,
JUDGES.

THOMPSON, L., JUDGE: Keith Reed appeals from a judgment of the Jefferson Circuit Court sentencing him to 15 years in prison after a jury found him guilty of reckless homicide and being a persistent felony offender in the first degree.

Appellant argues that he was entitled to a directed verdict of acquittal due to his claim of self-defense. Appellant also claims that the trial court erred in allowing

graphic autopsy photos to be shown to the jury. The Commonwealth argues that a directed verdict was not warranted and that the photos were not overly prejudicial. We find that the trial court did not err in this case and affirm.

Byron Knott, the victim, was living with Appellant on March 24, 2016. On that date, a number of people were gathered at Appellant's home socializing outside. Appellant, who was initially inside the residence, eventually exited and began complaining about the people outside. Appellant began arguing with Andrea Love, the mother of Mr. Knott's child. Mr. Knott got between Ms. Love and Appellant. Appellant and Mr. Knott began arguing and Mr. Knott punched Appellant. Mr. Knott and Appellant began fighting on the ground. Ms. Love and Appellant's paramour tried to break up the fight, with Ms. Love punching Appellant.

Eventually the fight ended, and Appellant went inside the house. Appellant returned outside with a baseball bat. Mr. Knott took the bat away from Appellant. Appellant then went back inside and retrieved a kitchen knife and a cell phone. He then went back outside. Appellant was on the porch of the residence with the knife in one hand and the phone in the other. Appellant called 911.

Mr. Knott, with the bat, then approached Appellant. After yelling at one another, Mr. Knott threw the bat away and stated that the two should "fight like men." Appellant did not drop the knife. Mr. Knott then punched Appellant

and Appellant stabbed Mr. Knott. Mr. Knott died from the stab wound. Appellant was found guilty by a jury of reckless homicide and being a persistent felony offender in the first degree. This appeal followed.

Appellant's first argument on appeal is that the trial court erred in denying his motion for a self-defense directed verdict. Generally, the standard of review for motions for directed verdict is as follows:

On motion for directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. If the evidence is sufficient to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty, a directed verdict should not be given. For the purpose of ruling on the motion, the trial court must assume that the evidence for the Commonwealth is true, but reserving to the jury questions as to the credibility and weight to be given to such testimony.

On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal.

Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky. 1991). "A reviewing court does not reevaluate the proof because its only function is to consider the decision of the trial judge in light of the proof presented." *Id.* "Circumstantial evidence is sufficient to support a criminal conviction as long as the evidence taken as a whole shows that it was not clearly unreasonable for the jury to find guilt." *Bussell v.*

Commonwealth, 882 S.W.2d 111, 114 (Ky. 1994) (citing *Trowel v. Commonwealth*, 550 S.W.2d 530 (Ky. 1977); *Benham*, 819 S.W.2d at 187).

When a motion for directed verdict concerns self-defense, the standard of review is a little different. “Rarely is a defendant relying upon self-defense entitled to a directed verdict.” *West v. Commonwealth*, 780 S.W.2d 600, 601 (Ky. 1989).

A defendant who admits killing or is shown to have killed a human being and who pleads justification is shouldered with the responsibility of convincing the jury of his position. If the testimony relied on to establish self-defense is contradicted in any way or if there is evidence of any fact or circumstance from which a jury could reasonably conclude that some element of self-defense was lacking, a directed verdict should not be given.

Wheeler v. Commonwealth, 472 S.W.2d 254, 256 (Ky. 1971) (citations omitted); *see also Stepp v. Commonwealth*, 608 S.W.2d 371, 373 (Ky. 1980) (“It is a question of fact as to whether movant used more force than necessary in his self-protection and, as such, the self-defense instruction was properly submitted to the jury on that issue.”).

Kentucky Revised Statute (KRS) 503.050 states:

(1) The use of physical force by a defendant upon another person is justifiable when the defendant believes that such force is necessary to protect himself against the use or imminent use of unlawful physical force by the other person.

(2) The use of deadly physical force by a defendant upon another person is justifiable under subsection (1) only when the defendant believes that such force is necessary to protect himself against death, serious physical injury, kidnapping, sexual intercourse compelled by force or threat, felony involving the use of force, or under those circumstances permitted pursuant to KRS 503.055.

We do not believe Appellant was entitled to a self-defense directed verdict. It is undisputed that Mr. Knott was the first physical aggressor in this case; however, Appellant escalated the situation by twice retrieving weapons from the house. Additionally, there was evidence that Appellant used more force than necessary upon Mr. Knott because Mr. Knott was unarmed at the time he was stabbed. These are issues that put the claim of self-defense in dispute and the case was properly given to the jury. *Smith v. Commonwealth*, 143 S.W.2d 859, 862-63 (Ky. 1940); *Thomas v. Commonwealth*, 145 S.W.2d 37, 38 (Ky. 1940). *See also Commonwealth v. Hasch*, 421 S.W.3d 349 (Ky. 2013), for a discussion of imperfect self-defense and reckless homicide.

Appellant's other argument on appeal is that the trial court abused its discretion in allowing three graphic autopsy photos to be shown to the jury. Appellant claims that these photos were overly prejudicial. The photos were of the heart, lungs, and ribs of the victim after they had been removed from the body during the autopsy. The photos of the heart and lungs demonstrated the direction of the wound. The photo of the ribs showed the entry wound.

The proper standard for review of evidentiary rulings is abuse of discretion. *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 577 (Ky. 2000). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

The general “inclusionary thrust” of our rules of evidence renders all relevant evidence admissible unless excluded by evidentiary rule. The most universally applicable and most important exclusionary rule is [Kentucky Rule of Evidence (KRE)] 403, which holds that evidence, although relevant, “may be excluded if its probative value is substantially outweighed by the danger of undue prejudice.”

Ross v. Commonwealth, 455 S.W.3d 899, 909 (Ky. 2015) (footnotes omitted). “The general rule is that a photograph, otherwise admissible, does not become inadmissible simply because it is gruesome and the crime is heinous.” *Dant v. Commonwealth*, 258 S.W.3d 12, 23 (Ky. 2008) (quotation marks and citation omitted).

Here, the photos were graphic, but they were properly admitted into evidence. They were relevant because they showed the trajectory of the stab wound and the extent of Mr. Knott’s internal injuries. Furthermore, they were only shown to the jury for about a minute and a half, which is not an overly prejudicial amount of time. The trial court did not abuse its discretion.

Based on the foregoing, we affirm the judgment of the Jefferson
Circuit Court.

ALL CONCUR.

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