

**IMPORTANT NOTICE**  
**NOT TO BE PUBLISHED OPINION**

***THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.***

Supreme Court of Kentucky **FINAL**

2005-SC-0505-MR

DATE 5-18-06 EWA G. TOWH, D.C.

CHANNING HARDIN

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE THOMAS WINE, JUDGE  
04-CR-2003

V.

COMMONWEALTH OF KENTUCKY

APPELLEE

**MEMORANDUM OPINION OF THE COURT**

Affirming

A jury of the Jefferson Circuit Court convicted Appellant, Channing Hardin, of murder, first degree robbery, and tampering with physical evidence. For these crimes, Appellant was sentenced to life imprisonment. Appellant now appeals to this Court as a matter of right. Ky. Const. § 110(2)(b). For the reasons set forth herein, we affirm Appellant's convictions.

On June 15, 2004, Appellant shot Jeremy Gray<sup>1</sup> four times in the head. Appellant stated that he had arranged to meet the victim that day in order to buy cocaine from him. Before the meeting, Appellant called a friend, Theran Harwood, and asked him if he wanted to make some money. Appellant told Harwood that he intended

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<sup>1</sup> The victim's name is Jeremy Gray; however, the Commonwealth interchangeably refers to the victim as Jeremy Glass and Jeremy Gray.

to rob someone and that he would share some of the proceeds with Harwood if Appellant could borrow Harwood's vehicle and gun. Harwood agreed, and when Appellant met the victim, he was driving Harwood's vehicle and carrying Harwood's gun. Appellant later claimed that the story about robbing someone was a pretext for obtaining the vehicle and the gun from Harwood. He explained that he needed the vehicle for transportation and the gun for protection during his transaction with the victim.

Upon meeting, Appellant and the victim drove to McNeely Lake Park in Southern Jefferson County to conduct their business. Upon reaching a secluded spot, Appellant claimed that the victim suddenly yelled, "give me all the s--t." Then, the victim allegedly pulled out his gun and fired a shot at Appellant. Appellant explained that once the victim fired a shot at him, he pulled out the gun that he borrowed from Harwood and shot the victim four times in self defense. Appellant told police that both he and the victim fired an entire clip of ammunition at each other during their altercation. Appellant then emptied the victim's pockets, took some cocaine, and dragged the body off the trail. Appellant also said that he threw the victim's gun off a dock into McNeely Lake.

The Commonwealth presented evidence which contradicted Appellant's claim of self defense. Harwood testified that he received \$60 for his part in the robbery and that this was not the first time Appellant had talked about robbing someone. Also, an unrelated witness, who was flying a model airplane in the area at the time the victim was shot, testified that he heard a gunshot, followed by a long pause, and then three or four additional shots evenly spaced. The witness said that at least three shots were fired, but not as many as six or seven shots. The medical examiner testified that any one of the bullets found in the victim's head would have been immediately incapacitating and fatal, thus casting more doubt on the "shootout" scenario. Further, after exhaustive

searching, authorities could not find any spent shell casings which indicated that the victim shot at Appellant, nor could they find the victim's gun in McNeely Lake.

The jury rejected Appellant's self defense claim and convicted him of all charges.

Appellant's sole argument on appeal is the trial court erred to the substantial prejudice of Appellant when it refused to admit certain evidence regarding the victim. Appellant claims that this evidence indicated that the victim had intent and motive to rob Appellant during the drug transaction. The Commonwealth counters that the evidence was properly excluded as irrelevant and as hearsay.

Evidentiary questions concerning relevancy are reviewed for abuse of discretion, and the admissibility of statements as exceptions to hearsay are reviewed for clear error. See Love v. Commonwealth, 55 S.W.3d 816, 822 (Ky. 2001); Young v. Commonwealth, 50 S.W.3d 148, 167 (Ky. 2001). Appellant correctly notes that since he claimed self defense at trial, evidence indicating the victim's state of mind at the time of the altercation is relevant and admissible pursuant to KRE 803(3).<sup>2</sup> See Bray v. Commonwealth, 68 S.W.3d 375, 381-82 (Ky. 2002). In this case, Appellant claimed that the victim had a compelling financial motive to rob him during their meeting. The victim was a drug dealer, and it was alleged that he recently met a new buyer named "Rob." Avowal testimony indicated that this new buyer expressed a desire to buy all the drugs that the victim could supply. Accordingly, Appellant claims that the victim was anxious to acquire money and drugs for resale to his new buyer.

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<sup>2</sup> Appellant also cites KRE 804(b)(3) to support his argument, which permits certain statements against a declarant's penal interest to be admitted into evidence despite their classification as hearsay. Because we find all relevant statements by the victim to be admissible pursuant to KRE 803(3), we need not address the applicability of KRE 804(b)(3).

The Commonwealth concedes that statements by the victim indicating that he wanted to get money to buy more drugs for resale to his new buyer were relevant and admissible pursuant to KRE 803(3). However, the Commonwealth points out that the trial court specifically permitted such evidence to be admitted during a bench conference into the matter. What the trial court did not permit were details about the new buyer, including his name, physical description, and type of automobile he drove. Also, Appellant was not permitted to present testimony regarding an alleged drug transaction that occurred between the victim and the new buyer just prior to the victim's death. The trial court determined that physical descriptions of and transactions with the new buyer were not relevant to show the victim's state of mind at the time of the altercation. Furthermore, the Commonwealth argues that since the testimony reflected adversely upon the victim's character, it would have been unnecessarily prejudicial even if the testimony has some probative value.

In accordance with the trial court's ruling, Appellant was able to introduce to the jury, through cross-examination, statements by the victim indicating his desire to gather additional funds for the purpose of purchasing more drugs for a new buyer. After the Commonwealth rested its case, Appellant asked to present avowal testimony outside the presence of the jury. Appellant's avowal witnesses testified about the new buyer's name/physical description and the fact that the victim sold drugs to this person just prior to his death. One of the witnesses also testified that the victim quoted the buyer as saying he'd like to do as much business with the victim as possible.

Upon review, we find no abuse of discretion in the trial court's ruling which precluded details regarding a drug transaction the victim had with the alleged new buyer just prior to his death and the buyer's name/physical description. This information is not

indicative of the victim's state of mind at the time of his death and would have unnecessarily maligned the victim's character. While we agree with Appellant that it would likely have been helpful to clarify for the jury that this alleged new buyer was not Appellant, the record does not indicate that such a clarification was necessary or would have significantly impacted the verdict or Appellant's sentence. Accordingly, we find no error, and even if error may be perceived, such error would be harmless beyond a reasonable doubt.

For all of the foregoing reasons, the judgment and sentence of the Jefferson Circuit Court are affirmed.

All concur.

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