

**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**NOT TO BE PUBLISHED OPINION**

**THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.**

**Supreme Court of Kentucky**  
2010-SC-000025-MR

ANTHONY WIDEMAN

APPELLANT

V. ON APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE IRVIN G. MAZE, JUDGE  
NOS. 05-CR-003393; 08-CR-002974

COMMONWEALTH OF KENTUCKY

APPELLEE

**MEMORANDUM OPINION OF THE COURT**

**AFFIRMING**

A Jefferson Circuit Court jury found Appellant, Anthony Wideman, guilty of first-degree assault, for which he received a thirty-year prison sentence. He now appeals as a matter of right, Ky. Const. § 110(2)(b), and alleges one assignment of error: the trial court's instruction of intentional first-degree assault.

**I. Background**

Appellant was indicted for first-degree assault and resisting arrest. KRS 508.010. At trial, the jury heard testimony from Stephen Hayden, who indicated that he struck Appellant with his vehicle while driving in downtown Louisville on October 8, 2005. Hayden immediately stopped, exited his vehicle, and saw Appellant lying on the asphalt ten to fifteen feet away.

Appellant then jumped to his feet and approached Hayden. Yelling that he was going to stab Hayden, Appellant punctured Hayden's leg with a knife in the ensuing scuffle. After Hayden pushed Appellant away, bystanders subdued Appellant.

Curtis Hendricks and Roselle Jefferson both witnessed the incident and testified at trial on behalf of the Commonwealth. Hendricks saw Appellant jump up and then stab Hayden before Hayden could reenter his truck. He further testified that Appellant was trying to get the driver, Hayden, on the ground and cut his throat. Jefferson saw Appellant first go to one door of the truck, then around to the other side, thereafter placing one arm around Hayden's neck.

Appellant offered his own narration at trial, testifying that he did not pull the knife to stab or kill. To the contrary, Appellant testified that he grabbed Hayden's leg and "stuck" it with a knife only after Hayden began kicking him. Appellant, though, admitted stabbing Hayden because he was angry at what had transpired.

Dr. William Smock testified as to Hayden's injury. Hayden suffered a single wound to the thigh that severed an artery, resulting in an "acute extravasation" so serious that if immediate surgical intervention had not been undertaken he could have lost blood flow to his leg, resulting in amputation or, possibly, death. Hayden underwent a lengthy hospitalization and a long recuperation involving surgical repairs necessitated by the emergency

measures taken to save his leg.

Appellant moved for directed verdict as to both offenses, although he did not elaborate on defects in the government's proof. Appellant also objected to giving any instructions to the jury and renewed his motion for directed verdict. Nonetheless, the trial court gave the jury three options as to assault, including intentional first-degree assault, and an instruction on self-defense.

The jury found Appellant guilty of first-degree assault and returned an enhanced sentence recommendation of thirty years' imprisonment after a combined PFO/Truth in Sentencing hearing. This appeal followed.

Appellant now assigns error to the trial court's instruction of intentional first-degree assault pursuant to KRS 508.010.<sup>1</sup> Specifically, Appellant argues that there was no evidence from which a reasonable juror could find, beyond reasonable doubt, that he intended to inflict a serious physical injury.<sup>2</sup> According to Appellant, a single stab wound does not permit a reasonable inference of intent to inflict serious injury. However, Appellant concedes that Hayden suffered a serious physical injury. He also concedes that the serious physical injury resulted by way of a dangerous instrument.

The Commonwealth responds that the jury could have inferred intent to cause a serious physical injury from the evidence. The Commonwealth relies

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<sup>1</sup> KRS 508.010(1) states that a person can be found guilty of assault in the first degree when "(a) [h]e intentionally causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument."

<sup>2</sup> Serious physical injury is defined in KRS 500.080(15) as "physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ."

on our language in *Harper v. Commonwealth* where we opined that “a person is presumed to intend the logical and probable consequences of his actions and, thus, ‘a person’s state of mind may be inferred from actions preceding and following the charged offense.’” 43 S.W.3d 261, 265 (Ky. 2001) (quoting *Parker v. Commonwealth*, 952 S.W.2d 209, 221 (Ky. 1997)). For the following reasons, we agree with the Commonwealth.

## **II. Analysis**

RCr 9.54(2) provides:

No party may assign as error the giving or the failure to give an instruction unless the party’s position has been fairly and adequately presented to the trial judge by an offered instruction or by motion, or unless the party makes objection before the court instructs the jury, stating specifically the matter which the party objects and the ground or grounds of the objection.

Appellant failed to specifically explain at trial why the instruction for intentional assault was not supported by the evidence and therefore concedes that this issue is unpreserved for appellate review. Appellant, though, requests palpable error review pursuant to RCr 10.26.<sup>3</sup> However, we need not apply RCr 10.26, as no error occurred in this case.

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<sup>3</sup> RCr 10.26 reads:

A palpable error which affects the substantial rights of a party may be considered by the court on motion for a new trial or by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.

Instructing a jury to consider an offense without sufficient supporting evidence constitutes error on the part of the trial court.<sup>4</sup> *Simpson v. Commonwealth*, 759 S.W.2d 224, 226 (Ky. 1988). In *Carrier v. Commonwealth*, the appellant argued that the injury itself, a half-inch deep wound in the arm, inhibited a jury from finding intent to inflict serious physical injury. No. 2005-SC-000440-MR, 2008 WL 199838, at \*1 (Ky. Jan. 24, 2008). We noted, however, that the appellant's view of the evidence was not the only inquiry; a comprehensive view of the evidence was required. *Id.* at \*2 (*discussing Simpson*, 759 S.W.2d at 226) (“We believe appellant’s view of the evidence is too restrictive”). Evidence was also presented that the appellant and the victim were involved in a physical altercation in which both parties struck each other and that the appellant grabbed a knife off of the kitchen counter and stabbed the victim. *Id.* We therefore affirmed the appellant’s conviction in *Carrier. Id.*

Turning to the present case, the prosecution presented ample evidence from which the jury could reasonably infer that Appellant intended to cause serious physical injury to Hayden. *Simpson*, 759 S.W.2d at 226 (*citing McClellan v. Commonwealth*, 715 S.W.2d 464 (Ky. 1986)). The evidence showed that Appellant and Hayden were involved in a physical altercation in which

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<sup>4</sup> We apply a similar analytical framework in the context of directed verdicts. For instance, in *Beaumont v. Commonwealth*, we stated that an evaluation of the sufficiency of evidence depends on “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” 295 S.W. 3d 60, 68 (2009) (*citing Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). And in *Commonwealth v. Benham*, we announced that, “[o]n 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.” 816 S.W.2d 186, 187 (Ky.1991).

Appellant stabbed Hayden. According to Appellant's own testimony, he grabbed Hayden's leg and "stuck" it with a knife. His intent was a disputed fact. As we have noted, "[t]he jury is allowed reasonable latitude in which to infer intent from the facts and circumstances surrounding the crime." *Id.* (citing *Peace v. Commonwealth*, 489 S.W.2d 519 (Ky.1972)). Although the jury could have believed Appellant's version of the story, it was not required to do so. *Id.* (citing *Nichols v. Commonwealth*, 657 S.W.2d 932 (Ky.1983)). In sum, the evidence was thus sufficient to justify instructing the jury on intentional first-degree assault.

### **III. Conclusion**

Because a juror could reasonably infer that Appellant intended to inflict a serious injury, we must affirm the trial court instruction of intentional first-degree assault.

All sitting. All concur.

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