

Kentucky Trial Court Review

The Most Current and Complete Summary of Kentucky Jury Verdicts

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Comprehensive Statewide Jury Verdict Coverage

Civil Jury Verdicts

Complete and timely coverage of civil jury verdicts including circuit, division, presiding judge, parties, case number, attorneys and results.

Negligent Security - A college student died after falling after being head-butted in a fight at an apartment complex near the UK campus the student's estate alleged his death was directly linked to the failure of the apartment complex to provide appropriate security, it instead encouraging an environment of out-of-control parties and underage drinking

Holmes v. Royal Lexington Apartments, 05-0075

Plaintiff: Richard A. Getty and Joe F. Childers, *Getty & Childers*, Lexington and Robert F. Ristaneo, Lexington
Defense: K. Gregory Haynes, Louisville and Mickey T. Webster, Lexington, both of *Wyatt Tarrant & Combs*

Verdict: \$44,214 for plaintiff assessed 40% to the defendant

Circuit: **Fayette**, J. Goodwine, 2-5-08

Nicholas Holmes, age 19 and a student at the University of Dayton (he was from the St. Louis area) visited his girlfriend and other friends at the University of Kentucky on 1-18-04. They gathered near midnight at the Royal Lexington Apartments. The complex on Virginia Avenue near the campus has 94 units and is commonly filled by UK students.

On this evening, Holmes and other friends had gathered in a public area just before midnight. They were planning to attend another party. At the same time another group of young men had also gathered. They included Aaron Roth from Louisville. They too were drinking and looking for the next party.

Words were exchanged between the two groups of men. A fight began to break out. Holmes stepped in to help his friend. Roth, whether an aggressor or acting in self-defense, head-butted Holmes. Holmes fell to the ground and struck his head on the concrete curb.

Holmes sustained a significant skull

fracture. Taken to UK Medical Center, Holmes died later the same day of complications from the fall.

Roth had returned to Louisville and heard about the fatal implications of the incident. He turned himself in and later pled guilty to a misdemeanor assault. He was sentenced to 60 days in jail.

In his civil lawsuit, the Holmes estate sued Royal Lexington and alleged a negligent security theory. That is the apartment complex was the frequent host of out-of-control parties that featured underage drinking. Despite the numerous police runs to the complex, its security consisted of a single guard that worked from midnight to four in the morning. Rather than clamp down on the parties and the illegal drinking, there was proof the complex encouraged it and at the very least, turned a blind eye to this dangerous conduct. Plaintiff's security expert was Thomas Davis, Dublin, OH.

If the estate prevailed it sought the medicals and funeral bill, as well as the decedent's destruction. An economist from Cleveland, Harvey Rosen, estimated the destruction at between \$6.1 and \$11.2 million. There was proof that Holmes was a good student with a remarkable entrepreneurial drive for a person so young. The estate also sued Roth the attacker settled before trial, but his duties remained in issue for purposes of apportionment.

Royal Lexington defended the case and focused on several themes, (1) Roth was the primary tortfeasor in striking Holmes (plaintiff's duties were also in question), (2) that this attack was neither foreseeable nor preventable, and (3) it tended to downplay the apartment complex's party reputation, noting that while it was sometimes boisterous at Royal Lexington, this incident remains its only fatal event since it opened in 1994. To have protected Holmes, Royal Lexington pointed out, it would have needed an army of security guards and that response was simply not reasonable. Damages were also diminished, Rosen's numbers being described as exaggerated.

The verdict was mixed on liability. It

found fault with both Royal Lexington and Roth (on a negligence standard for each defendant). The fault was then apportioned 60% to Roth, remainder to the apartment complex. The decedent was exonerated.

Then to damages, the estate took the medical bills of \$33,795, plus \$10,418 for the funeral. His destruction was valued at zero. The raw verdict totaled \$44,214 less 60% comparative fault.

Before a judgment was entered, the estate filed a motion to enter an interlocutory judgment and for JNOV. It argued that in a death case there **must** be some award for destruction. In this case there was abundant proof that Holmes would have earned wages, the estate citing his start-up business selling flip flops and that age 15, he had filed a tax return with income of \$13,000 from door-to-door sales in the summer. Royal Lexington replied that the motion was not yet ripe as no judgment had been entered. The motion is pending and the court has since established a briefing schedule.

Assault - The plaintiff's ex-husband came to her home and brutally beat her in front of their children a Louisville jury assessed punitives of \$750,000

Epperson v. Epperson, 05-2784

Plaintiff: Thomas E. Clay, Louisville
Defense: Bruce A. Brightwell,

Louisville

Verdict: \$1,000,000 for plaintiff

Circuit: **Jefferson**, J. McDonald-Burkman, 10-31-07

The marriage of Debra and Reggie Epperson ended in July of 1999. They had two children together. Thereafter there was acrimony between the pair. On 10-22-04, Reggie came to Debra's home. Without provocation, he brutally beat Debra in front of one of her children. Reggie was apparently upset about the handling of visitation regarding the children.

Debra, then age 46 and an administrative employee at the VA, was so badly hurt she couldn't even call 911,

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