

RENDERED: MARCH 14, 2003; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000020-MR

GARY WAYNE SWARTS

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE SHEILA R. ISAAC, JUDGE
INDICTMENT NOS. 01-CR-00060 & 01-CR-00060-2

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: DYCHE AND McANULTY, JUDGES; AND JOHN WOODS POTTER,
SPECIAL JUDGE.¹

DYCHE, JUDGE. Gary Wayne Swarts was convicted by jury of second degree robbery (Kentucky Revised Statute [KRS] 515.030) and second degree wanton endangerment (KRS 508.070). He then waived

¹ Senior Status Judge John Woods Potter sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution.

jury sentencing and entered a plea of guilty to the status offense of persistent felony offender (PFO) in the first degree (KRS 532.080[3]). Swarts received the minimum sentence of ten years' imprisonment.

Swarts's sole argument on appeal is that he was entitled to a directed verdict of acquittal on the robbery charge. Swarts concedes that he used force on the victim but denies that the Commonwealth presented any evidence that appellant's assaultive behavior was indicative of his intent to commit a theft. Swarts urges reversal on the robbery conviction which would in turn negate the PFO conviction.

We disagree that there was no evidence of intent to commit a theft. The jury was presented with sufficient evidence from which to infer that Swarts had attacked the victim with the intent to complete the theft that was in progress. See Mills v. Commonwealth, Ky., 996 S.W.2d 473, 490 (1999). It was not clearly unreasonable for the jury to find Swarts guilty under the evidence as a whole. Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991).

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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