

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001859-MR

DONATHAN SEAMON MASON

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
ACTION NO. 02-CR-00427

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: COMBS, McANULTY AND PAISLEY, JUDGES.

PAISLEY, JUDGE. This is an appeal from a judgment entered by the Fayette Circuit Court after a jury convicted appellant of first degree fleeing or evading police, first degree criminal mischief, falsely reporting an incident, leaving the scene of an accident, and failure to signal or improper signal. Appellant argues that there was insufficient evidence to convict him of these crimes, and that the court improperly instructed the jury. For the following reasons, we affirm.

On February 28, 2002, while patrolling the Georgetown Road area in Lexington, Officer Ronald Keaton observed a vehicle moving at a high rate of speed and in a reckless manner. Keaton gave pursuit but abandoned the chase for safety reasons. Shortly thereafter, Keaton encountered a cloud of dust and skid marks leading from the roadway to the vehicle that he had been chasing, which had struck a building and another automobile. Keaton also observed a tall, thin black man in a dark jacket and dark jeans running from the scene of the accident.

Less than an hour later, appellant reported that the same vehicle had been stolen from a nearby Waffle House restaurant. Keaton heard the dispatch announcement concerning the stolen vehicle and went to the restaurant to interview appellant whom he described as being a tall, thin black male who was wearing a jacket that was turned inside out so that its dark exterior was partially hidden. Appellant informed Keaton that the vehicle was stolen at approximately 9:45 that evening, which was at least half an hour after Keaton observed and reported the wreck. After appellant signed his statement, he was placed under arrest for falsely reporting an incident. In addition to this charge, appellant was later indicted for first degree fleeing or evading police, first degree criminal mischief, leaving the scene of an accident, and failure to signal or

improper signal. A jury convicted appellant on all counts, and he received a probated ten-year sentence. This appeal followed.

Appellant first argues that the trial court should have granted his motions for directed verdict because there was insufficient evidence to convict him. We disagree.

It is well settled 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."

Commonwealth v. Benham, Ky., 816 S.W.2d 186, 187 (1991).

Further, "[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. at 187.

Here, the evidence included testimony from Keaton, from a Waffle House employee, and from appellant's father. Keaton testified that he observed a person matching appellant's general description fleeing the accident scene, and that the car had already been wrecked at the time appellant claimed it was stolen. The Waffle House employee testified that appellant arrived at the restaurant after nine o'clock that evening, and she also disputed appellant's statement that he had placed a phone order prior to his arrival at the restaurant. Finally, appellant's father testified about certain recorded phone conversations which he and appellant had while appellant was incarcerated. These conversations included several

incriminating statements by appellant, such as, "they have no way of proving it," and "the jury won't be paying that much attention about the coat." Clearly, there was sufficient evidence upon which a reasonable juror could convict appellant, and the trial court did not err by denying his motions for a directed verdict.

Appellant next argues that the jury instructions pertaining to the charge of first degree fleeing or evading police were improper because the underlying statute is defective. Specifically, appellant argues that KRS 520.095 is void for vagueness because while "serious physical injury" of a person is statutorily defined, "serious physical injury" to property is not. This, he claims, creates an absurd result. Without resolving the contested matter of whether this issue was preserved for appeal, we affirm.

KRS 520.095 states in pertinent part that:

- (1) A person is guilty of fleeing or evading police in the first degree:
 - a. When, while operating a motor vehicle with intent to elude or flee, the person knowingly or wantonly disobeys a direction to stop his or her motor vehicle, given by a person recognized to be a police officer, and at least one (1) of the following conditions exists:

. . .

4. By fleeing or eluding, the person is the cause, or creates substantial risk, of serious physical injury or death to any person or property.

It is true that serious physical injury to property is not statutorily defined, however, as a general rule, the words used in a statute are to be given their plain meaning unless otherwise defined. Commonwealth v. Plowman, Ky., 86 S.W.3d 47, 49 (2002). In addition, “[t]he seminal duty of a court in construing a statute is to effectuate the intent of the legislature.” Id. at 49 (citation omitted).

KRS 520.095(1)(a)(4) clearly reflects the legislature’s intent that the crime of first degree fleeing or evading police include conduct which causes serious injury to property. Even if the statute could have been more artfully drafted, it clearly provides fair notice of the prohibited conduct, and it contains reasonably clear guidelines to prevent arbitrary or discriminatory enforcement. Commonwealth v. Kash, Ky. App., 967 S.W.2d 37, 42 (1997) (citing Smith v. Goguen, 415 U.S. 566, 572-73, 94 S.Ct. 1242, 1247, 39 L.Ed.2d 605, 611-12 (1974)). As such, KRS 520.095(1)(a)(4) is not defective, and the trial court’s jury instructions were clearly correct.

The judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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