

RENDERED: MAY 13, 2005; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-0001842-MR

MICHAEL DWAYNE SPALDING

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE STEPHEN RYAN, JUDGE
ACTION NO. 01-CR-002217

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: McANULTY AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.¹

McANULTY, JUDGE: Appellant Michael Dwayne Spalding (Spalding) appeals his conviction in the Jefferson Circuit Court for assault in the third degree. Spalding was also convicted of resisting arrest and being a persistent felony offender in the second degree. Spalding contends on appeal that there was

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

insufficient evidence to convict him of the assault charge because the Commonwealth failed to establish the element of intent. We affirm.

Spalding believes the evidence was insufficient to establish under KRS 508.025(1)(a)1 that he intentionally caused or attempted to cause injury to Deputy Sergeant Brown. Pursuant to our appellate standard of review, if under the evidence as a whole it would not be clearly unreasonable for a jury to find the defendant guilty, denial of the directed verdict was proper. Commonwealth v. Sawhill, 660 S.W.2d 3, 5 (Ky. 1983).

Spalding argues that the facts adduced by the Commonwealth at trial showed only that he was trying to get away from the deputies, but established no intent to injure. In addition, Spalding notes that the jury found him guilty of assault in the third degree as to only one of the officers involved in the struggle, and not guilty as to the other three. He argues it was an inconsistent verdict for the jury to find intent with regard to Sergeant Brown and no intent as to the other three deputies.

The intentional mental state with respect to a result or to conduct consists of a conscious objective to cause that result or to engage in that conduct. Baker v. Commonwealth, 677 S.W.2d 876 (Ky. 1984); KRS 501.020(1). The intentions of an accused may be ascertained from the surrounding facts, and the

jury is allowed a reasonably wide range in which to infer intent from the circumstances. Rayburn v. Commonwealth, 476 S.W.2d 187, 189 (Ky. 1972); Simpson v. Commonwealth, 759 S.W.2d 224 (Ky. 1988).

The Commonwealth's evidence showed that while the deputies were attempting to handcuff Spalding, he began flailing and swinging his arm in an attempt to avoid being handcuffed. While the officers continued to try to arrest him, he kicked the officers, including Deputy Sergeant Brown, repeatedly. The jury could certainly infer from that fact of his repeated kicking of them that Spalding intended to cause physical injury to the deputies in his efforts to get away from them and avoid arrest. Thus, we believe it was not unreasonable for a jury to find Spalding's intent to injure was shown beyond a reasonable doubt.

Furthermore, when dealing with a question of inconsistent verdicts, the proper approach is to examine the sufficiency of the evidence to support each verdict. Commonwealth v. Harrell, 3 S.W.3d 349, 351 (Ky. 1999). As we have already stated, there was sufficient evidence to support the verdict of assault in the third degree as to Deputy Sergeant Brown. Thus, the fact that Spalding was acquitted of assaulting the other officers does not call into question this conviction.

For the foregoing reasons we affirm the verdict in the Jefferson Circuit Court.

ALL CONCUR.

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