

RENDERED: February 18, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-000621-MR
AND
NO. 2004-CA-000806-MR

RODNEY SIMMONS

APPELLANT

APPEAL FROM BRECKINRIDGE CIRCUIT COURT
v. HONORABLE SAM H. MONARCH, JUDGE
INDICTMENT NOS. 03-CR-00070 AND 03-CR-00090

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DYCHE, KNOPF, AND TACKETT, JUDGES.

DYCHE, JUDGE: Immediately following her filing of a dissolution action against appellant, Rodney Simmons, Rachel Simmons began to experience a series of unfortunate events, mostly dealing with damage to her property. Cars, which were marital property and which had been assigned by the domestic court to her for her use, were damaged; an apartment which she rented was

burglarized, vandalized, and items removed therefrom; she received telephone calls from an unidentified caller accusing her of being a whore.

Police investigations led to Rodney. Items stolen from Rachel's vandalized apartment were found in his possession; police found white paint in his apartment similar to that used to deface one of the cars. Taillight fragments matching those on Rodney's car were found near another car assigned to Rachel after it had been rammed by another car, while parked, in the middle of the night. Auto parts house employees described Rodney as the person who bought a taillight to replace a broken unit in his car immediately following the ramming of that car and the finding of the fragments.

As a result of this investigation, Rodney was charged with various offenses relating to these things which had befallen Rachel; he was convicted by a jury of burglary, third degree, two counts of criminal mischief, first degree, and retaliating against a participant in the legal process. He now appeals, claiming that the evidence was insufficient to support his convictions. We affirm.

This Court fully endorses the principles enunciated in [Commonwealth v. Sawhill [660 S.W.2d 3 (Ky. 1983)], and in Trowel v. Commonwealth, Ky., 550 S.W.2d 530 (1977). They represent the law in Kentucky. Cf. Hodges v. Commonwealth, Ky., 473 S.W.2d 811 (1971).

Despite the long-standing nature of the directed verdict rule found in Sawhill and Trowel, supra, some have difficulty in its application. In an effort to simplify the rule and make it abundantly clear, we restate the rule as follows:

On motion for directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. If the evidence is sufficient to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty, a directed verdict should not be given. For the purpose of ruling on the motion, the trial court must assume that the evidence for the Commonwealth is true, but reserving to the jury questions as to the credibility and weight to be given to such testimony.

On 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. Sawhill.

As stated in Sawhill, there must be evidence of substance, and the trial court is expressly authorized to direct a verdict for the defendant if the prosecution produces no more than a mere scintilla of evidence.

Commonwealth v. Benham, 816 S.W.2d 186, 187-188 (Ky. 1991).

Examining the evidence in that light, we find it sufficient to withstand Rodney's motion for directed verdict¹ and to support the convictions.

¹ The Commonwealth argues that no proper motion for directed verdict was made on Rodney's behalf. We find an unexplained gap in the videotape of the trial

Rodney first argues that the evidence was insufficient to prove first degree criminal mischief or retaliation against a participant in the legal process in the "car paint incident." He argues that the Commonwealth failed to prove that he was the perpetrator. We disagree. The finding of paint, paint-stained clothes, and a hammer in his possession immediately after the car used by Rachel had been splattered with paint, the windshield and side window broken out, and the tape/radio jerked from the vehicle, when accompanied by the other circumstances immediately following the filing of the divorce, was sufficient to support his conviction.

He also complains that there was no proof that the damage was more than \$1000.00. Rachel testified that the damages were more than the threshold figure. Common sense also instructs us the same. Rodney raises an argument that the car was not proven not to be non-marital property, and that he had the right to believe he could destroy his own car. No matter to whom the car was titled, it had been placed in Rachel's possession pending final resolution of property issues in the divorce. It was for her use. Rodney had no right to believe that he could destroy it, thereby depriving her of the use of it, and frustrating the order of the domestic court.

at this point, but the court's judgment recites that such motions were made and denied. We will accept that statement as preserving the alleged error.

Rodney also maintains that the evidence did not prove that the damage to the car occurred because of her participation as a witness in the legal process. The jury is entitled to make rational inferences from the evidence. Dishman v. Commonwealth, 906 S.W.2d 335, 340-1 (Ky. 1995). From the facts herein, especially that these incidents began immediately following the initiation of divorce proceedings, which would necessarily involve Rachel's participation as a witness and party, the jury was entitled to infer that was the cause.

As to the burglary and criminal mischief charges arising from the illegal entry into, and destruction of property within, the apartment of Rachel, Rodney makes two arguments. He first argues that the Commonwealth failed to prove damages of at least \$1,000.00. The door was forced open. Bleach was spread and splattered on the carpet. The couch and chair had been slashed and stabbed with a sharp instrument multiple times. The mattress had been similarly slashed. The Freon line in the refrigerator had been crimped, causing it to malfunction and destroying the food stored therein. Rachel and Chief McKinney testified that the damage was more than \$1,000.00. The evidence was sufficient. As far as the burglary charge, the surrounding circumstances coupled with the fact that photographs stolen from the apartment at the time of the vandalism were found in Rodney's possession is sufficient to support the conviction.

The judgment of the Breckinridge Circuit Court is affirmed.

ALL CONCUR.

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