

RENDERED: SEPTEMBER 29, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000491-MR

AARON HART

APPELLANT

v. APPEAL FROM HOPKINS CIRCUIT COURT
HONORABLE CHARLES W. BOTELEER, JR., JUDGE
ACTION NO. 04-CR-00207

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; ACREE AND JOHNSON, JUDGES.

ACREE, JUDGE: Aaron Hart appeals from a judgment of the Hopkins Circuit Court finding him guilty of assault in the third degree and sentencing him to five years. He argues that he was entitled to a directed verdict because the Commonwealth failed to prove all of the elements of the offense beyond a reasonable doubt. We disagree and affirm the trial court.

The charge against Hart stemmed from an incident involving Detective Justin Jones, a member of the Madisonville Police Department. On the evening of May 8, 2004, Detective Jones and his wife were traveling along a country road heading

back to Madisonville from rural Hopkins County. The detective was driving his personal vehicle and not wearing any type of police uniform. A pickup truck approached from behind and passed Detective Jones' vehicle. As it passed by, Detective Jones heard someone screaming and saw Hart hanging out of the front window on the passenger side. Detective Jones saw a beer bottle tossed from the passenger side of the truck which hit his car.

Detective Jones called the police dispatcher from his cell phone to ask for assistance and followed the truck into Madisonville where it turned into a driveway. Detective Jones parked on the street, partially blocking the driveway. He got out of his vehicle, displayed his badge and said, "I'm Detective Jones of the Madisonville Police Department and I need to talk to you for a minute."

After the detective identified himself, the driver of the truck ran into his house and closed the door. Hart got out of the passenger side of the truck and ran toward Detective Jones claiming by use of profane language also to be a police officer. Hart then punched Detective Jones, knocking his hat off his head and his badge out of his hand.

Twice more Detective Jones identified himself as a police officer and Hart punched him after each statement. The detective grabbed Hart and they fell to the ground where Hart

started to choke Detective Jones. The detective's wife witnessed and testified to the entire incident.

By this time, Officer Runyon, an on-duty and uniformed police officer, arrived. He witnessed the struggle on the ground and yelled to Hart, "He's a police officer! Let him go!" Hart did not stop choking Detective Jones. Officer Runyon was unable to extricate Detective Jones from the fight except by spraying Hart with pepper spray. Officer Runyon then handcuffed Hart who continued to struggle.

Hart denies Detective Jones identified himself as a police officer until they were already involved in the struggle on the ground and Hart had Jones in a chokehold. He states at that point he released the detective and the altercation ended. The driver of the truck and two passengers also deny hearing Jones identify himself as a police officer when he first arrived.

On July 20, 2004, Hart was indicted on this conflicting evidence for assault in the third degree, disorderly conduct, public intoxication, resisting arrest, and criminal mischief in the third degree. He was found guilty on all counts and sentenced to serve five years. This appeal followed.

Hart argues that the trial court should have granted his motion for a directed verdict. He contends that the Commonwealth failed to prove all elements of the charge beyond a

reasonable doubt. Kentucky Revised Statutes (KRS) 508.025 (1), in relevant part, defines assault in the third degree as follows:

1. A person is guilty of assault in the third degree when the actor:
 - (a.) Recklessly, with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury to:
 1. A state, county, city, or federal peace officer. . . .

A defendant can only be found guilty of third-degree assault against a police officer if at the time of the assault the defendant knew the victim was a police officer. *Love v. Commonwealth*, 55 S.W.3d 816 (Ky. 2001). Hart contends that the Commonwealth failed to prove beyond a reasonable doubt that he knew Detective Jones was a police officer when he assaulted him. We disagree.

In *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991), the court stated the standard for a directed verdict as follows:

On a motion for a 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.

On appeal, the standard of review is whether it was clearly unreasonable for the fact finder to find guilt.

Commonwealth v. Sawhill, 660 S.W.2d 3 (Ky. 1983). Hart denies hearing Detective Jones identify himself as a Madisonville police officer until after they had wrestled to the ground and Hart had him in a chokehold. He testified that as soon as he heard Detective Jones say he was a police officer, he released the detective and the assault ended. There were three additional defense witnesses who testified that they either never heard Detective Jones identify himself as a police officer or that they did not hear him state this until after the struggle between Hart and Detective Jones had already begun. Based on this evidence, Hart argues that he was entitled to a directed verdict of acquittal; however, this ignores other evidence which was placed before the jury.

Detective Jones testified that he identified himself as a police officer and displayed his badge before Hart punched him. He testified that twice more he identified himself as a police officer and that Hart punched him each time he made this statement. Detective Jones' wife presented the same testimony. Officer Runyon testified that when he arrived at the scene of the assault, he saw Hart choking Detective Jones. The officer twice told Hart that Detective Jones was a police officer and warned him to release the detective. Hart did not cease in his assault and Officer Runyon finally had to use pepper spray against Hart in order to disable him.

Based on the evidence presented at trial, it clearly was not unreasonable for the jury to find that Hart knew Detective Jones was a police officer at the time of the assault. As such, Hart was not entitled to a directed verdict.

For the foregoing reasons, the judgment of the Hopkins Circuit Court is affirmed.

ALL CONCUR.

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