

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-002365-MR

JEFFERY LYNN ELAM

APPELLANT

v. APPEAL FROM WHITLEY CIRCUIT COURT
HONORABLE PAUL E. BRADEN, JUDGE
ACTION NO. 08-CR-00095

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE AND STUMBO, JUDGES; LAMBERT,¹ SENIOR JUDGE.

STUMBO, JUDGE: Jeffery Lynn Elam appeals from a Judgment of the Whitley Circuit Court reflecting a jury verdict of guilty on one count of first-degree rape.

Elam argues that the Whitley Circuit Court erred in denying his motion for a

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

directed verdict of acquittal. We are not persuaded by Elam's claim that the Commonwealth failed to prove the element of forcible compulsion, and accordingly affirm the Judgment on appeal.

On May 9, 2007, then 22-year-old female "J.H." was walking along U.S. 27 in McCreary County, Kentucky, when Elam stopped his vehicle and offered her a ride. J.H. did not know Elam. She would later testify that he was wearing a gold ring with a Christian cross on it which caused her to believe that he was "clean cut." J.H. got in the vehicle with Elam, who drove toward Whitley, Kentucky. Shortly thereafter, Elam drove the vehicle onto a side road. J.H. would later claim that Elam raped her. She would testify that after the rape, she was able to escape from Elam and make her way to a local business where Kentucky State Police and Emergency Medical Services were summoned. J.H. was transported to a local hospital, where a sexual assault kit was used to retrieve a DNA sample.²

J.H. provided a composite sketch of Elam, which was circulated in the local media along with a description of Elam's vehicle. On May 19, 2007, an individual approached the Kentucky State Police and stated that she recognized the individual in the composite sketch, and had observed J.H. getting into Elam's car on the day of the alleged rape.

Elam was subsequently arrested, and a search warrant was executed at his residence. Elam initially stated that he did not know J.H. and did not have sexual intercourse with her. He later acknowledged picking up J.H. on U.S. 27 and

² The Kentucky State Police Central Forensic Laboratory would later determine that the sample taken from the vaginal swab matched the DNA of Elam.

engaging in sexual intercourse with her. He maintained, though, that the intercourse was consensual and that she had requested money from him.

Investigating officers noted that Elam's vehicle matched the description given by J.H., and that he was wearing the gold ring she had described. Elam was charged with one count of first-degree rape.

After successfully moving for a change of venue, a jury trial was conducted on July 31, 2008, in Whitley Circuit Court. Elam moved for a directed verdict of acquittal at the conclusion of the Commonwealth's case in chief, and again at the conclusion of all of the evidence. As a basis for the motions, Elam argued that the Commonwealth failed to prove the element of forcible compulsion. The court denied each motion. After considering the evidence, the jury returned a guilty verdict, and Elam received a sentence of 12 years in prison. This appeal followed.

Elam now argues that the Whitley Circuit Court committed reversible error in denying his request for a directed verdict of acquittal. Elam's argument centers on his claim that the Commonwealth failed to prove that he committed the offense of first-degree rape because it offered no evidence of forcible compulsion occurring before the intercourse. Elam acknowledges the claim of J.H. that prior to the intercourse, he placed his hand over her mouth and told her that she was going to pay for the ride. J.H. also stated that she pushed him and told him no, after which he grabbed her legs and pulled on her pants. According to J.H., she was crying and screaming, and Elam asked her if she wanted to live or die. Elam

now argues that this testimony does not support a finding of forcible compulsion sufficient to sustain a guilty verdict on the charge of first-degree rape. He goes on to argue that “[i]ncidents of force occurred after the sex” when he stopped the intercourse after thinking of his wife and his Christian values, and got into an argument with J.H. He admits that J.H. received injuries during the incident, but maintains that they occurred after the intercourse. As such, Elam maintains that forcible compulsion occurred, if at all, only after the intercourse, and that as such the Commonwealth failed to prove that he committed the offense of first-degree rape. He seeks an Order reversing the Judgment on appeal and vacating his conviction.

We have closely studied the record and the law, and find no error in the circuit court’s denial of Elam’s motions for a directed verdict. KRS 510.040 states that,

- (1) A person is guilty of rape in the first degree when:
 - (a) He engages in sexual intercourse with another person by forcible compulsion; or
 - (b) He engages in sexual intercourse with another person who is incapable of consent because he:
 1. Is physically helpless; or
 2. Is less than twelve (12) years old.

The sole question for our consideration is whether the Commonwealth presented evidence sufficient to support the jury’s determination that Elam engaged in sexual

intercourse with J.H. by forcible compulsion. We must answer that question in the affirmative.

“Forcible compulsion” means physical force or threat of physical force, express or implied, which places a person in fear of immediate death, physical injury to self or another person, fear of the immediate kidnap of self or another person, or fear of any offense under this chapter. Physical resistance on the part of the victim shall not be necessary to meet this definition

KRS 510.010(2). The totality of the evidence supports the jury’s determination that Elam engaged in sexual intercourse with J.H. by forcible compulsion. When taken in the context of J.H. screaming, crying and saying no, Elam’s question to her as to whether she wanted to live or die meets the statutory definition of an implied threat sufficient to place J.H. in fear of a KRS Chapter 510 offense (i.e., rape). Additionally, evidence was adduced that Elam climbed over J.H., grabbed her legs and pulled her pants. This is sufficient for the jury to conclude that Elam used “physical force” as set out under KRS 510.010(2). In sum, we must conclude that the evidence was sufficient to support the jury’s determination that Elam engaged in sexual intercourse with J.H. by forcible compulsion.

On a motion for directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth, reserving to the jury all questions of credibility and weight of evidence. *See Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991); *Commonwealth v. Sawhill*, 660 S.W.2d 3, 4 (Ky. 1983). “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.”

Benham, 816 S.W.2d at 187.

In the matter at bar, under the evidence as a whole, it was not clearly unreasonable for the jury to find guilt. As such, Elam was not entitled to a directed verdict and the Whitley Circuit Court properly so found.

For the foregoing reasons, we affirm the Judgment of the Whitley Circuit Court.

ALL CONCUR.

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