

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000229-DG

S.E., A CHILD UNDER EIGHTEEN

APPELLANT

ON DISCRETIONARY REVIEW FROM FAYETTE CIRCUIT COURT
v. HONORABLE THOMAS L. CLARK, JUDGE
ACTION NO. 08-XX-00021

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON AND VANMETER, JUDGES; LAMBERT,¹ SENIOR JUDGE.

LAMBERT, SENIOR JUDGE: S.E. was granted discretionary review of the

Fayette Circuit Court's January 7, 2009, opinion and order. That judgment

affirmed the Fayette District Court's verdict which found appellant guilty of

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.

complicity to assault, first-degree. Because we hold that the circuit court did not err by affirming the district court, we affirm.

The events which led to appellant's charge, and eventual conviction, took place on February 16, 2008, when Appellant was attending a party at the Loudon Avenue YMCA. Officer Aaron Adams was dispatched to the location at approximately 2:45 a.m., due to a disturbance in the building's parking lot. At approximately 3:11 a.m., Officer Adams was again dispatched to the location, this time for an assault. Upon arriving at the YMCA, Officer Adams discovered Tamisha Ingram, another guest at the party, inside with a severe laceration on her face and multiple cuts on her head and arm.

Ingram testified that, following the disturbance in the parking lot, she went to the bathroom where she was confronted by Kayla Allen, Senicqua Burton, and a third party whom she believed to be the Appellant. Ingram further testified that when she attempted to leave the bathroom, Burton pulled her back by her hair while Allen attacked her, cutting her several times with what was later identified as a disposable razor blade. Ingram indicated that she recalled seeing Appellant standing in the doorway of the bathroom, with half of her body in the bathroom and half of her body out, and that it seemed as though Appellant was guarding the door. Ingram testified that after her face had been cut by Allen, that Allen, Burton, and Appellant ran out of the bathroom.

Two witnesses, Cherokee Brown and Dannell Porter identified Allen, Burton, and Appellant as the three girls who followed Ingram into the bathroom.

Brown testified that she witnessed Appellant standing in the bathroom doorway, half-in and half-out, and decided to find an adult for help because she was afraid to enter the bathroom alone. Before finding help, Brown witnessed the three girls run out of the bathroom, leave the YMCA, and enter a dark-colored SUV that proceeded to transport the girls from the premises. Brown also testified that she witnessed the Appellant carrying a knife pushed open in her hand.

Allen, Burton, and Appellant were later located at Burton's residence, where Officer Adams witnessed a black Ford Explorer parked in front. It was later confirmed that the Ford Explorer was the same SUV in which Brown had witnessed the girls leaving the YMCA. Appellant claimed that she had followed Allen and Burton into the bathroom because she did not want to be in the lobby alone. She further stated that she was unaware that Ingram was in the bathroom, that she had no prior knowledge of the attack, and that she was unaware that Allen was carrying a razor blade. Appellant also testified that she was unaware that Ingram had been hurt until Burton woke her in the middle of the night to inform her that Allen was crying because she had cut Ingram.

Appellant was arraigned on March 3, 2008, on one count of complicity to assault, first-degree, and plead not guilty. On April 22, 2008, Appellant was found guilty of the charge and was subsequently placed on probation, phase II, with fifteen-days' detention suspended on several conditions.

On appeal, Appellant argues that there was insufficient evidence to prove guilt of the crime of which she was found guilty. In support of this

argument, Appellant challenges the credibility of Brown's testimony and argues that the Commonwealth failed to prove her guilt beyond a reasonable doubt.

“When a juvenile challenges the sufficiency of the evidence . . . we apply the directed verdict standard of review.” *W.D.B. v. Commonwealth*, 246 S.W.3d 448, 453 (Ky. 2007).

Thus, in the case of a juvenile adjudication, a reviewing court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth and determine if, under the evidence as a whole, it would be clearly unreasonable for the trial court to find guilt, only then the juvenile is entitled to a directed verdict of acquittal.

Id.

Complicity, the crime of which the Appellant was convicted, is as follows:

A person is guilty of an offense committed by another person when, with the intention of promoting or facilitating the commission of the offense, he:

- (a) Solicits, commands, or engages in a conspiracy with such other person to commit the offense; or
- (b) Aids, counsels, or attempts to aid such person in planning or committing the offense; or
- (c) Having a legal duty to prevent the commission of the offense, fails to make a proper effort to do so.

KRS 502.020(1).

The testimony indicated that the Appellant had been blocking and/or guarding the bathroom door at the time of the assault. The testimony also

indicated that Appellant was holding a knife at the time that she, Allen, and Burton fled the restroom where the assault occurred. Allowing all reasonable inferences from this testimony in favor of the Commonwealth, it was not clearly unreasonable for the trial court to find that Appellant was guilty of complicity to assault. *See W.D.B., supra.*

In support of its decision to affirm the district court, the circuit court stated:

In regards to the reasonableness of the District Court's finding of guilt, as the Commonwealth noted in its Response to the Statement of Appeal, the Honorable Judge Bell as the trier of fact was in the best position to observe and evaluate the intangibles of a witness's testimony, such as demeanor and body language. It is reasonable to conclude that Judge Bell simply did not believe the Appellant's testimony and instead found the testimony of the Commonwealth's witness to be a more realistic and reasonable version of the assault. For that reason, the District Court's finding of guilt was not clearly unreasonable and should not be overturned.

We agree with the circuit court's analysis. It is well established in this Commonwealth that the fact-finder is best arranged to determine the credibility of witnesses and their testimony. *See, e.g. Commonwealth v. Smith*, 5 S.W.3d 126 (Ky. 1999). In this case, Appellant has failed to show that the trial court exceeded allowable inferences from the evidence or that it was clearly unreasonable for the judge to find Appellant guilty.

Accordingly, the Fayette Circuit Court's January 7, 2009, opinion and order is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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