

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000853-MR

RAMON ADAMS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE LISABETH HUGHES ABRAMSON, JUDGE
ACTION NO. 04-CR-001483

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

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

JOHNSON, JUDGE: Ramon Adams has appealed from the final judgment of the Jefferson Circuit Court entered on March 24, 2005, which sentenced him to four years' imprisonment pursuant to his conditional guilty plea to assault in the third degree.¹ Having concluded that Adams was properly prosecuted under sections (1)(a) and (b) of KRS 508.025, we affirm.

On May 19, 2004, Adams was indicted by a Jefferson County grand jury for assault in the third degree, terroristic

¹ Kentucky Revised Statutes (KRS) 508.025.

threatening in the third degree,² and for being a persistent felony offender in the first degree (PFO I).³ The charges arose from an incident that occurred while Adams was held at the Jefferson County Detention Center. Officers had removed Adams from his dorm after he had threatened another inmate. Because he was acting violently, Adams's hands were cuffed behind his back and his feet were shackled together. Adams was led onto an elevator by two officers so he could be transported to the Intake Bullpen. When one of the officers, who was leading Adams from behind, attempted to force Adams off the elevator and down the hallway, Adams thrust his hips into the officer's midsection and grabbed the officers' testicles. The officer pushed Adams against a wall and used a vascular restraint to subdue Adams, until he finally released his hold on the officer.

On November 23, 2004, Adams filed a motion to amend the first count of the indictment to include only section (1)(b) of KRS 508.025. He claimed that KRS 508.025 is ambiguous because it provides "two different and conflicting standards with respect to both the mental state and the criminal act." He further claimed that if the statute was not ambiguous then the plain meaning of the statute was that Adams, a person confined in a detention center, could only be charged with and convicted

² KRS 508.080.

³ KRS 532.080(3).

of assault in the third degree if he actually caused physical injury to the officer, under section (1)(b) of KRS 508.025. The trial court orally denied Adams's motion.

On November 30, 2004, Adams entered into a plea agreement with the Commonwealth and pled guilty to assault in the third degree and terroristic threatening. The charge of PFO I was dismissed. Adams reserved his right to appeal the trial court's denial of his motion to amend the indictment. The trial court entered an order on December 2, 2004, accepting Adam's guilty plea. The trial court then entered its final judgment on March 24, 2005, sentencing Adams to four years' imprisonment. This appeal followed.

The crux of Adams's argument concerns the interpretation of KRS 508.025. On review, it is the duty of this Court to construe the statute "so as to effectuate the plain meaning and unambiguous intent expressed in the law."⁴ Because the proper interpretation of KRS 508.025 is purely a legal issue, our review is de novo.⁵

KRS 508.025 states, in relevant part, as follows:

- (1) A person is guilty of assault in the third degree when the actor:

⁴ Bob Hook Chevrolet Isuzu v. Transportation Cabinet, 983 S.W.2d 488, 492 (Ky. 1998).

⁵ Floyd County Board of Education v. Ratliff, 955 S.W.2d 921, 925 (Ky. 1997); Bob Hook Chevrolet Isuzu, 983 S.W.2d at 490.

(a) Recklessly with a deadly weapon or dangerous instrument, or intentionally causes or attempts to cause physical injury⁶ to:

. . . .

2. An employee of a detention facility . . .

[or]

(b) Being a person confined in a detention facility . . . inflicts physical injury upon or throws or causes feces, or urine, or other bodily fluid to be thrown upon an employee of the facility.

Adams argues that because he was "a person confined in a detention facility" he could only be prosecuted under section (1)(b). A great portion of Adams's argument on appeal goes to how this Court should interpret KRS 508.025 based upon his belief that it is ambiguous and conflicting; and he cites the legislative history of KRS 508.025 as support for this position. However, we conclude that the statute is clear, based upon its plain meaning, and thus we do not have to look outside the statute for its interpretation.⁷

⁶ Statutes relating to assault do not provide a definition of physical injury. See Covington v. Commonwealth, 849 S.W.2d 560, 564 (Ky. 1992). However, KRS 500.080(13) defines physical injury as "substantial physical pain or any impairment of physical condition."

⁷ See Lamb v. Holmes, 162 S.W.3d 902, 909 (Ky. 2005) (stating that "[w]e have issued many decisions expressing the common rule that the 'plain meaning' of statutes controls when interpreting statutory language. . . . And the only time the 'plain meaning' rule is not to be applied is when doing so 'would constitute an absurd result'" [citations omitted]); see also Brown v. Commonwealth, 40 S.W.3d 873, 875 (Ky.App. 1999) (stating that "[w]hen

By reading the statute and acknowledging its plain meaning, we conclude that the Legislature intended for prisoners to be prosecuted for assault under either section of the statute. The words "employees of a detention facility" contained in section (1)(a)2 are clear. It was permissible for our Legislature to enact a section of a statute to specifically criminalize the conduct of an inmate who physically injures an employee of a detention center, even though that same statute also contains a general provision regarding prosecution for the same criminal conduct.⁸ When two statutes apply to criminalize the same conduct, it is constitutionally permissible for the Commonwealth to proceed under either statute, or both statutes if it so prefers.⁹

We reject Adams's contention that because section (1)(b) contains a requirement of proof that a physical injury occurred, whereas (1)(a) does not contain the same requirement, that the two sections of the statute are conflicting. Although only section (1)(a) expressly designates a culpable mental state, this Court has held that if the criminal conduct necessarily involves a culpable mental state, one of the four

interpreting a statute, we look to the statute's express language and overall purpose. . . . The task begins with the language of the statute itself. When a statute's language is plain, 'the sole function of the courts is to enforce it according to its terms'" [citations omitted]).

⁸ See Covington v. Commonwealth, 849 S.W.2d 560 (Ky. 1992).

⁹ See Commonwealth v. McKinney, 594 S.W.2d 884, 887 (Ky. 1979).

mental states is applicable to some or all of the material elements of the offense, even if the statute does not expressly so state.¹⁰

Thus, the trial court correctly ruled that the Legislature intended for both sections of KRS 508.025 to apply to inmates being housed in a detention facility, even though section (1)(b) provides for an occurrence of actual physical injury, whereas under section (1)(a) the inmate could be convicted even if he only attempted to inflict physical injury on an employee of a detention facility.

Accordingly, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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¹⁰ See, e.g., Covington, 849 S.W.2d at 562 (KRS 508.025(1)(b), when read in conjunction with KRS 501.040, has intentionally or wantonly as the culpable mental state).