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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001004-MR

ROSALYN WINKFIELD

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NO. 10-CR-01149

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: KELLER, TAYLOR AND VANMETER, JUDGES.

KELLER, JUDGE: Rosalyn Winkfield (Winkfield) appeals from a judgment of the Fayette Circuit Court convicting her of one count of third-degree assault. For the following reasons, we affirm.

FACTS

On September 13, 2010, a Fayette County Grand Jury indicted Winkfield for one count of third-degree assault. A jury trial was subsequently held on April 13, 2011. We summarize the relevant testimony from the trial below.

It is undisputed that, on May 26, 2010, Winkfield's daughter, Tinola Winkfield (Tinola), was being evicted from an apartment located at the Walnut Hill Apartments in Fayette County, Kentucky. Dannie Pendencygraft (Pendencygraft), a Fayette County Deputy Constable, went to Tinola's apartment to assist with the eviction. When Pendencygraft arrived at the apartment, Winkfield was the only person there. During the eviction process, there were three separate incidents that led to the police being called.

1. First Incident

Pendencygraft and Winkfield gave conflicting accounts of the first incident. Pendencygraft testified that when he got to the apartment, he taped the eviction notice to the door and then knocked. When no one answered, Pendencygraft had a maintenance man open the door. When he entered the apartment, Winkfield came out of the bedroom yelling at him and asked why he was in the apartment. Pendencygraft showed Winkfield his badge, told her he was a constable, and told her that he was there to assist the landlord with the eviction. Winkfield stated that he was not a real policeman and that she was going to call the "real police." Because he assumed the police would be there shortly, he instructed the maintenance men who were assisting with the eviction to start moving the items out of the apartment.

Winkfield continued to yell at him and struck him in the shoulder a couple of times. Pendency testified that he told Winkfield to calm down and that he never touched her. Two police officers arrived shortly thereafter, escorted Winkfield out of the apartment, and left.

Winkfield testified that while she was in the living room of Tinola's apartment, Pendency charged in and told her she had to leave. When she told Pendency that someone was getting boxes, he accused her of "loafing" and kept telling her she had to leave. When she said she needed to get a few items first, Pendency grabbed her arm. Winkfield testified that she then told Pendency not to touch her, and she went to the bedroom to grab a purse and a bag. As she tried to leave the bedroom, Pendency blocked her in the room, and Winkfield called the police. When the police arrived, Winkfield went outside to talk to them and then called someone to see if they could help Tinola move her belongings.

2. Second Incident

The underlying facts of the second incident are not in dispute. Shortly after the police left, the maintenance men were moving Tinola's belongings from the apartment to a truck so that they could drive it to the nearest public curb. At this point, Tinola had come back to the apartment, along with some family members. Tinola and her family members started taking her belongings off the truck and setting them down in the parking lot. Pendency called the police. The police arrived and asked them to move down to the public curb where Tinola's

belongings were going to be taken. A police officer stayed for approximately an hour.

3. Third Incident

The third incident, which led to the third-degree assault charge, also involved conflicting testimony. Pendygraft testified that after the police left the second time, Winkfield asked to go back into the apartment. Pendygraft told her she was not allowed inside, and he blocked her from entering the apartment. According to Pendygraft, he did not touch Winkfield. Pendygraft further testified that, after one of the maintenance men locked the door, Winkfield went toward the door, and Pendygraft stepped in front of her. Winkfield then swung at him, scratching his face and knocking off his glasses. Pendygraft testified that he raised his arms to defend himself, Winkfield scratched his arms, and he became slightly “dazed.” At this point, Pendygraft decided he needed to detain Winkfield, so he chased her for approximately fifty feet.

Pendygraft further testified that once he secured Winkfield, he noticed seven or eight people running toward them. Pendygraft yelled at them to stop and to not come any closer. Pendygraft testified that the individuals continued to yell and come toward him. At this point, Pendygraft drew his weapon and pointed it at the individuals. The police arrived two or three minutes later and arrested Winkfield.

Richard Zanjan (Zanjan), testified that he was one of several maintenance men who assisted with the eviction. Consistent with Pendygraft’s

testimony, Zanjan testified that when Winkfield kept trying to get back into the apartment, Pendencygraft blocked her way but never touched her. Zanjan further testified that Winkfield hit Pendencygraft, and Pendencygraft's glasses flew off. Zanjan then called 911.

Winkfield testified that after the police left the second time, someone closed and locked the apartment door. Winkfield testified that Pendencygraft asked her to get the television out of the apartment. Winkfield then told him that she would need a dolly and started walking toward the apartment. At this point, Pendencygraft grabbed her arm and would not let go. Winkfield testified that, as she tried to pull away from him, Pendencygraft's glasses fell off. Winkfield further testified that she did not see any marks or scratches on Pendencygraft's face.

Winkfield further testified that when she started to walk away from Pendencygraft, he came after her and swung at her. She then raised her hands to block him and kept asking Pendencygraft why he was "doing this to her." Her family members then came over to intervene. Winkfield further testified that she did not know how Pendencygraft's arms got scratched.

Tinola testified that while she was loading her belongings into a U-Haul truck, her friend told her that "they were putting hands on" her mother. Tinola and her cousin ran to Winkfield and told Pendencygraft not to touch Winkfield. Pendencygraft then drew his gun and pointed it at them. Winkfield then jumped in front of Tinola and Tinola's cousin. Tinola testified that she and Winkfield then walked down to the public curb, and the police arrived a few minutes later.

Winkfield made a motion for directed verdict at the close of the Commonwealth's case and again at the close of all proof arguing that there was insufficient evidence that Pendygraft suffered a physical injury. The trial court denied both motions.

The jury convicted Winkfield of third-degree assault and recommended a sentence of one year imprisonment. On May 17, 2011, the trial court entered a final judgment and sentenced Winkfield to one year imprisonment probated for five years. This appeal followed.

STANDARD OF REVIEW

In *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991), the Supreme Court of Kentucky outlined the standard by which a trial court should evaluate a motion for a directed verdict:

[T]he 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.

For our purposes, “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 *Id.* (citing *Commonwealth v. Sawhill*, 660 S.W.2d 3 (Ky.1983)). Thus, “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.” *Id.* at 187-88.

ANALYSIS

On appeal, Winkfield contends that the trial court erred by denying her motions for directed verdict. Specifically, she argues that there was insufficient evidence that Pendygraft had suffered an injury or that she had intended to physically injure Pendygraft. We disagree.

Under Kentucky Revised Statute (KRS) 508.025(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[.]

(Emphasis added). “Physical injury” is defined in KRS 500.080(13) as “substantial physical pain or any impairment of physical condition[.]” Further, “impairment of physical condition” has been defined simply to mean “injury.” *Meredith v. Commonwealth*, 628 S.W.2d 887, 888 (Ky. App. 1982).

As noted above, Pendygraft testified that Winkfield hit him causing scratches to his face and his arms. Consistent with Pendygraft’s testimony, Zanja testified that he observed Winkfield hit Pendygraft. Additionally, pictures showing scratches on Pendygraft’s face and arms were admitted into evidence as exhibits. Although Winkfield presented evidence to the contrary, a reasonable juror could

believe Pendygraft's and Zanzan's testimony that Winkfield hit Pendygraft and scratched his arms and face. Therefore, we believe there was sufficient proof to establish a "physical injury." See *Covington v. Commonwealth*, 849 S.W.2d 560, 564 (Ky. App. 1992) (concluding that a bruise on the face and a scratch below the eye constituted a physical injury). We also believe there was sufficient evidence to establish that Winkfield intended to physically injure Pendygraft. Accordingly, a directed verdict was not warranted.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the Fayette Circuit Court.

VANMETER, JUDGE, CONCURS.

TAYLOR, JUDGE, DISSENTS WITHOUT SEPARATE OPINION.

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