

IMPORTANT NOTICE **NOT TO BE PUBLISHED OPINION**

THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: JANUARY 21, 2010

NOT TO BE PUBLISHED

Supreme Court of Kentucky

2008-SC-000598-MR

DATE 2/11/10 Kelly Klaber P.C.
APPELLANT

STANLEY STANDER

V. ON APPEAL FROM SCOTT CIRCUIT COURT
HONORABLE ROBERT G. JOHNSON, JUDGE
NO. 07-CR-00146

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Following trial, a Scott Circuit Court jury found Appellant, Stanley Stander, guilty of first-degree burglary, first-degree robbery, first-degree assault, two counts of first-degree unlawful imprisonment, fourth-degree assault, and found him to be a second-degree persistent felony offender. The trial court accepted the jury's sentencing recommendation and, on August 7, 2008, entered a final judgment sentencing Appellant to a total of thirty (30) years imprisonment. Appellant now appeals his conviction as a matter of right. Ky. Const. § 110(2)(b).

I. Background

On the evening of May 29, 2007, Appellant went to the home of his friend, Joey Scott. From there, the two went to a restaurant where Scott was to meet a friend. Scott testified at trial that Appellant drank a fifth of whiskey,

smoked crack cocaine, and took seven or eight Xanax pills during the short drive, before consuming several beers at the restaurant. Thereafter, the two got into an altercation which culminated when Scott drove away and left Appellant around 9:40 p.m.

The same day, Ralph and Mattie Michaels had returned from vacation to their home in Georgetown. Sometime after 9:30 p.m., Mr. Michaels' sister called and the two spoke for a while on the telephone. When the call was complete, Mr. Michaels, who was seventy-four (74) at the time and suffered from Parkinson's Disease, heard an intruder in the room. While the intruder had his face concealed, Mr. Michaels recognized the voice that instructed him to "give me all your money or I'll kill you" as belonging to a man who had done some work in the house and to whom he had given a swimming pool.¹ Mr. Michaels heard only one intruder in his home that night.

The intruder knocked Mr. Michaels down, tied him up, took his car keys, and hit him again, this time rendering him unconscious. Upon awakening, Mr. Michaels went to a neighbor's home and called 911. Mr. Michaels, whose arm was saturated with blood from elbow to wrist, was interviewed by police before being transported to the hospital for treatment. When police entered the Michaels' home, they found Mrs. Michaels, seventy-six (76) at the time, in the kitchen floor with her hands and feet bound. One of the officers, Sgt. Garrison, testified that he believed Mrs. Michaels to be dead. Once ascertaining that she

¹ Mrs. Michaels would later testify that the man to whom they had given the pool was named "Stan" or "Stanley."

was still alive, he radioed for an ambulance. A knife was found on the kitchen table close to Mrs. Michaels with the blade separated from the handle.

Due to the life-threatening injuries Mrs. Michaels received, she could remember nothing about the night of her attack. She suffered from bleeding inside her skull due to head trauma, severe facial swelling which closed her airway, a fractured clavicle, a plexus injury to the nerves running down her underarm, and air in her abdominal cavity. Mrs. Michaels' jaw bone was also fractured in three places and punctured through the skin, requiring surgical repair. She remained in the intensive care unit for almost two weeks of her thirty-six day hospital stay. After leaving the hospital, she spent twenty-two days in the traumatic brain injury unit at Cardinal Hill Rehabilitation Hospital where she had to relearn basic life skills.

In the meantime, Williamstown Police Officer Robert Reed pulled Appellant over around 12:30 a.m., suspecting him of driving under the influence. While Reed was speaking to Appellant, he drove away in the car he had stolen from the Michaelses. A chase ensued, ending only when another officer ran his police car into the car driven by Appellant. Appellant resisted the officers' attempts at arrest until subdued by a Taser Gun. When asked about his conduct, Appellant informed the officers that he had drunk alcohol and taken pills earlier in the evening. Upon searching Appellant's person, Officer Reed found several items belonging to the Michaelses, including cards with Mrs. Michaels' name on them.

Detective Bell of the Georgetown Police Department questioned Appellant concerning the events of the previous night, with Appellant responding “[w]hat the hell did I do to myself” before invoking his right to counsel. The next day, Appellant insisted on talking to Detective Bell, who reminded him that he had requested representation, but agreed to listen to what Appellant had to say without asking questions. There, Appellant stated that “I hit the old man. I didn’t hit the old lady.” Rather, Appellant claimed that he had an accomplice, whose name he did not know, but had met after Scott left him at the restaurant. The two immediately began looking for a place to burglarize. Appellant admitted that it was his idea to rob the Michaelses, as he had previously done work in their house, but contended that it was his accomplice who had assaulted Mrs. Michaels.

At trial, Appellant’s counsel admitted that Appellant was in the Michaelses’ home on the night in question, possessed a knife, struck Mr. Michaels, and was in possession of their car and personal items. However, his defense was that he was too intoxicated by the drugs and alcohol he had consumed to be able to form the requisite intent to commit the crimes.

On appeal, Appellant’s sole allegation of error is that the trial court erred in denying his motion for directed verdict on the charge of assault in the first degree. Finding no cause for reversal, we affirm Appellant’s convictions.

II. Analysis

Appellant argues that he was entitled to a directed verdict on the count of first-degree assault because no evidence was introduced at trial that proved the identity of the person who assaulted Mrs. Michaels. In particular, Appellant claims that substantial evidence did not support his conviction due to the fact that neither Mrs. Michaels nor her husband could identify him as her attacker. We decline to reverse Appellant's convictions and conclude that the trial court did not abuse its discretion by denying his motion for a directed verdict based upon insufficiency of the evidence.

"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."

Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky. 1991) (citing Commonwealth v. Sawhill, 660 S.W.2d 3 (Ky. 1983)). We restated the long-held standards under which we review a motion for a directed verdict in Benham, 816 S.W.2d at 187:

On motion for 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. 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.

(citing Sawhill, 660 S.W.2d at 3; Trowel v. Commonwealth, 550 S.W.2d 530 (Ky. 1977)). In the case at bar, the dispositive question is whether there was any evidence presented that Appellant was the individual who assaulted Mrs.

Michaels. We find that there was.

Although neither of the Michaelses could identify Appellant as the individual who assaulted Mrs. Michaels, we hold that the Commonwealth introduced sufficient evidence to “induce a reasonable juror to believe beyond a reasonable doubt” that Appellant assaulted Mrs. Michaels. Id. Mr. Michaels identified the voice of the only person he heard in his home on the night in question as belonging to a man who had worked in his home and to whom he and his wife had given a swimming pool; Mrs. Michaels, while she could remember nothing that occurred that night due to her extensive injuries, testified that this man’s name was “Stan” or “Stanley.” When the blood on Appellant’s shoes was tested, the DNA matched both that of Mr. Michaels and Mrs. Michaels. Furthermore, pictures of wounds found on Appellant’s person the night of the attack were admitted into evidence. These wounds were consistent with stab wounds, and a broken knife was found near Mrs. Michaels in the kitchen. Appellant was also carrying cards bearing Mrs. Michaels’ name when apprehended by the police.

Even though neither of the victims could identify Appellant as the individual who attacked Mrs. Michaels (as Mr. Michaels was unconscious by the time his wife was attacked, and Mrs. Michaels has no recollection of the night), we believe that the other evidence presented against Appellant was sufficient. Viewing the evidence as a whole, it was not clearly unreasonable for the jury to convict Appellant of assaulting Mrs. Michaels.

III. Conclusion

Therefore, for the aforementioned reasons, we hereby affirm Appellant's sentence and convictions.

All sitting. All concur.

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