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RENDERED: MARCH 18, 2010

NOT TO BE PUBLISHED

Supreme Court of Kentucky

2009-SC-000054-MR

DATE 4/8/10 Kelly Klabski
APPELLANT

STEVEN BRYANT

V. ON APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFREY P. MORRIS, JUDGE
NO. 07-CR-003651

COMMONWEALTH OF KENTUCKY

APPELLEE

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Steven W. Bryant appeals as a matter of right¹ from a circuit court judgment convicting him of murder, first-degree robbery, first-degree wanton endangerment, and tampering with physical evidence and sentencing him to life without parole for twenty-five years. He urges this Court to reverse the trial court's judgment "with an order directing a verdict of acquittal on the conviction of robbery in the first degree." He claims that the trial court erred in denying his motion for a directed verdict on the robbery charge² because of an alleged lack of evidence that he took or attempted to take anything from the

¹ Ky. Const. § 110(2)(b).

² Bryant alleges no error regarding his convictions for murder, wanton endangerment, or tampering with physical evidence.

victim. We conclude that the trial court properly denied the motion for a directed verdict on the robbery charge, and we affirm the judgment.

I. FACTS.

Bryant was charged with and convicted of the murder and first-degree robbery of LaTour White, wanton endangerment of Mark Masden, and tampering with physical evidence. Although he apparently does not dispute his other convictions, Bryant contends that there was insufficient evidence to support his robbery conviction based on a lack of direct evidence that he took or attempted to take anything from White. In particular, he notes that no witness testified to observing him take or attempt to take anything from the victim.

After smoking a whole stash of crack cocaine with his wife and some friends at the Ryan apartment,³ Bryant left to meet LaTour White to get more. No one testified to seeing Bryant carrying any type of weapon when he left.

According to the later trial testimony of Charlotte Nation, who was one of the friends smoking with Bryant at the apartment, Bryant made some phone calls before he left the apartment attempting to convince someone to front him some cocaine, meaning give him cocaine based on a promise to pay for it later. At trial, Bryant denied trying to get fronted cocaine; but he admitted that he

³ Mary Ryan was a friend of the Bryants. She lived with her mother in the apartment where the crack smoking took place, but the apartment was held in her mother's (Mrs. Ryan's) name.

was after cocaine when he left to meet White. He also admitted that he left with no money, although he claimed that he had money at home.

At trial, Bryant admitted to stabbing White once; but he claimed that he did so in self-defense. According to Bryant's testimony, as the two men met in a car lot, White sped toward him on a moped and pulled a knife. Bryant testified that he grabbed the knife after White stumbled and dropped it. He stated he feared for his life, so he stabbed White once. He testified that he did not remember any events that happened between the stabbing and his arrest a short time later back at the Ryan apartment.

Mark Masden testified that as he drove near the car lot on his way to meet Jeff Wilbur,⁴ he saw a Caucasian man (Bryant) chasing an African-American man (White) around a van. He exited his car and asked the men, "What's going on?" Looking through a chain-link fence separating them, Masden saw White run toward Masden. It appeared to him that White looked like he had been stabbed once or twice. Masden recalled seeing White try to jump the fence before falling to the ground. He then recalled that Bryant, whom he remembered looking "out of it" and possibly on drugs, walked up to White and stabbed him several times with a butcher knife. According to Masden, Bryant then began walking toward an opening in the fence that separated them. Bryant had the knife raised in his hand.

⁴ Masden and Wilbur had a business together selling firewood. They were meeting to cut firewood for their business.

Fearing for his life, Masden jumped into his car, locked the doors, and called Wilbur. He told Wilbur what he had seen. He called 911. He saw Bryant disappear behind some apartment buildings.

Wilbur soon arrived at the location of Masden's car. The two men watched Bryant cross a street with a knife shoved up his sleeve. They followed Bryant in their vehicles and saw him enter an apartment. Wilbur then watched the apartment from his car while Masden returned to the scene of the stabbing to check on the victim. The victim was dead. According to medical testimony presented at trial, the cause of death was multiple stab wounds. When police arrived, Wilbur directed them to the apartment Bryant had entered.

Mary Ryan and Charlotte Nation had been in the Ryan apartment when Bryant returned. But neither reported seeing him carrying any drugs. Ryan recalled Bryant going into the bathroom, but she testified that she did not hear anything unusual. She did not recall hearing the toilet flush. Nation told police interviewing her on the day of the incident that Bryant had thrown a bloody knife under the bed. Ryan testified that she did not see Bryant carrying a knife upon his return to the apartment.

After Bryant was arrested and secured in a police car and White's body was removed from the car lot, Detective Danny Alpiger entered the Ryan apartment where he found under a bed a knife, which was later determined to be the knife used to stab White. Nation apparently told police shortly after the

incident that she thought she had seen a similar knife before at the Ryan apartment. Police also found a twenty-dollar bill on the ground at the scene of the stabbing. Although Masden and Wilbur had told police that Bryant was wearing blue jeans, Bryant was wearing sweatpants when arrested. No blue jeans were found in the area.

The grand jury indicted Bryant for first-degree murder, first-degree robbery, first-degree wanton endangerment, and tampering with physical evidence. The Commonwealth filed a Notice of Aggravating Circumstances, stating that it would prosecute the case as a capital offense because the proof at trial would show that Bryant killed the victim by stabbing him to death during the course of a robbery. The case proceeded to trial; and the jury found Bryant guilty of intentional murder,⁵ first-degree robbery, first-degree wanton endangerment, and tampering with physical evidence. Bryant waived jury sentencing, and the trial court sentenced him to life without parole for twenty-five years for the murder offense to run concurrently with a twenty years' imprisonment term for first-degree robbery, five years' imprisonment term for wanton endangerment, and five years' imprisonment term for tampering with physical evidence. This appeal followed.

II. ANALYSIS.

Despite the lack of direct eyewitness testimony of Bryant taking or attempting to take anything from White, we conclude that the trial court

⁵ The jury was also instructed on lesser included homicide offenses.

properly denied the motion for a directed verdict on the first-degree robbery charge. Accepting all evidence presented for the Commonwealth as true and drawing all fair, reasonable inferences in favor of the Commonwealth, we cannot conclude that the jurors were clearly unreasonable in finding guilt beyond a reasonable doubt on the robbery charge; and, thus, we must affirm.⁶

To obtain a proper conviction of first-degree robbery, the Commonwealth must prove that:

- (1) the defendant used or threatened the use of force in the course of committing theft and with the intent to accomplish the theft; and
- (2) either the defendant caused physical injury to someone not participating in the crime, or the defendant was armed with a deadly weapon, or the defendant used or threatened the use of a dangerous instrument on someone not participating in the crime.⁷

Obviously, White's stab wounds from the knife abandoned by Bryant at the Ryan apartment directly show that force was used and that the victim was injured. Obviously, there is no such direct evidence that Bryant used the knife *in the course of committing theft or with the specific intent to accomplish the*

⁶ *Commonwealth v. Benham*, 816 S.W.2d 186, 187 (Ky. 1991) ("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. . . . 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.").

⁷ KRS 515.020(1).

theft. Nonetheless, the lack of direct evidence of taking or attempting to take something from the victim did not entitle Bryant to a directed verdict on the first-degree robbery charge.

Bryant did not admit to taking or attempting to take anything from White in his testimony, and others did not recall directly observing him taking or attempting to take anything from White in their testimony. But circumstantial evidence was presented that could support a reasonable inference that Bryant was taking or attempting to take something from White by force. So the trial court properly denied the directed verdict.⁸

Charlotte Nation testified that Bryant had been seeking someone to front him cocaine; and Bryant and others admitted in their testimony that Bryant was trying to obtain cocaine, even though Bryant denied trying to get a front. Bryant admitted to not having any money with him when he met White to obtain cocaine. Masden testified to observing Bryant chasing White around a van and brandishing a knife. Ryan testified to Bryant's going into her bathroom after returning to the apartment. Even though she testified to not hearing anything unusual while Bryant was in the bathroom and to not recalling hearing the toilet flush, the jury might have reasonably inferred that

⁸ Circumstantial evidence of an actual or attempted taking can be sufficient to sustain a robbery conviction as recognized in *Wade v. Commonwealth*, 724 S.W.2d 207, 208 (Ky. 1986) (rejecting appellant's argument that directed verdict should have been granted on robbery charge due to "no direct testimony that any witness had seen the appellant remove any money from the wallet or person of the victim" as even though scavengers, rather than the appellant, may have actually succeeded in taking the wallet after the appellant shot the victim, robbery does not require a completed theft as recognized in the 1974 commentary to KRS 515.020 and *Lamb v. Commonwealth*, 599 S.W.2d 462 (Ky.App. 1979.)).

he could have disposed of contraband in the bathroom. The twenty-dollar bill left at the crime scene could have been reasonably interpreted by the jury as evidence that Bryant might have gone through the victim's pockets for drugs or other property, despite Bryant's argument that this abandoned bill proves that he was not seeking to take anything. There was ample circumstantial evidence from which a jury might reasonably have inferred that Bryant took or attempted to take something from White by force, especially because the jury was free to determine which witness's testimony was most credible.⁹

Although Bryant is correct that no witness testified to seeing him with a knife or other weapon when he left to meet White, this would not preclude an inference that he used a knife to take or attempt to take something because his guilt on a robbery charge would not depend on his having a weapon when he left to meet White. Rather, it would be sufficient that Bryant used a knife to take or attempt to take something from White whether he already had a knife in his possession, picked up a knife on his way to meet White, or even took a knife from White in order to use or threaten to use it to take or attempt to take property from White.

Despite Bryant's arguments that no "evidence of substance" was presented regarding the first-degree robbery charge, we conclude that the evidence presented, even if circumstantial, was more than a mere scintilla and

⁹ *Commonwealth v. Sawhill*, 660 S.W.2d 3, 5 (Ky. 1983) ("The credibility and the weight to be given the testimony are questions for the jury exclusively.").

sufficient to withstand his directed verdict motion on this charge.¹⁰ In sum, we find no error in the trial court's denying Bryant's motion for a directed verdict on the first-degree robbery charge.

III. CONCLUSION.

For the foregoing reasons, the judgment of the Jefferson Circuit Court is affirmed.

All sitting. All concur.

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¹⁰ See *id.* (“It should be remembered that the trial court is certainly authorized to direct a verdict for the defendant if the prosecution produces no more than a mere scintilla of evidence. Obviously, there must be evidence of substance.”) See also *id.* at 4 (rejecting argument “that a different standard is to be used in a circumstantial evidence case” in ruling upon a motion for a directed verdict.).