

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

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| STATE OF OHIO | : | |
| | : | Appellate Case No. 23805 |
| Plaintiff-Appellee | : | |
| | : | Trial Court Case No. 09-CR-1449/2 |
| v. | : | |
| | : | (Criminal Appeal from |
| CAREN CORNETTE | : | Common Pleas Court) |
| | : | |
| Defendant-Appellant | : | |
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OPINION

Rendered on the 6th day of August, 2010.

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FAIN, J.

{¶ 1} Defendant-appellant Caren Cornette appeals from her conviction and sentence for Assault Upon a Peace Officer, in violation of R.C. 2903.13(A) and (C)(3), following a bench trial. She contends that the evidence is insufficient to support a finding that she knowingly caused harm to the police officer. We conclude

that there is credible evidence in the record to support the trial court's finding that Cornette knew, when she shoved her residence window closed for the purpose of locking it, that Dayton Police Officer James Hardin's cupped hand was underneath the window, holding it open, so that her closing the window forcefully would probably cause injury to Hardin's hand. Accordingly, the judgment of the trial court is Affirmed.

I

{¶ 2} Jennifer Arriaga testified that at about 11:00 p.m. one evening in early May, 2009, she was assaulted by Dustin Sellers and Cornette. Before she could call the police, Dayton Police Officer Rodriguez pulled up in his cruiser, and asked her what had happened. She told him that she had been assaulted, and that the pair who had assaulted her had run into a house at 43 Bierce. By this time, Hardin arrived at the scene.

{¶ 3} Hardin and Rodriguez walked with Arriaga to the house at 43 Bierce, and Arriaga identified Sellers, through an open window, as one of her assailants. Sellers and Cornette were in the house, along with a number of children, two of whom were children of Sellers and Cornette. Another child, Austin, who testified, was Sellers's son.

{¶ 4} Hardin testified that as soon as Sellers heard himself identified, he "took off through the house through the back." Hardin and Rodriguez went around to the back, thinking that Sellers was going to run out the back door. Actually, he had gone upstairs. After a while, Hardin returned to the front of the house, while

Rodriguez remained guarding the back door.

{¶ 5} Hardin knocked on the front door, identifying himself as a police officer. The lights were then turned off in the house, and Hardin heard someone telling everybody to be quiet. Hardin said, “Look guys, I can see you in the house. I know you’re there. Just turn the lights back on.”

{¶ 6} The lights were turned back on, and Hardin saw Sellers through the window. Hardin explained that a complaint had been made against him for assault. Sellers denied it. Hardin wanted Sellers to come outside to discuss it. Initially, Sellers indicated that he did not intend to leave the house.

{¶ 7} During this conversation through the window, Dayton Police Officer Joseph Setty arrived on the scene, and took up a position just behind Hardin’s left shoulder. Setty testified that he is a foot and a half taller than Hardin, and could see everything that transpired after he arrived at the scene.

{¶ 8} The window was half-open, supported by a sign. Cornette, who by this time was with Sellers, told Hardin, “He’s not coming out. He’s not going to jail.” Sellers and Cornette removed the sign. All the witnesses agreed that without the sign to support it, the window would fall shut.

{¶ 9} Hardin testified that when Cornette and Sellers removed the sign, Hardin grabbed the window, told them, “I have your window,” and attempted to continue his dialogue with Sellers through the open window. Hardin testified that he “grabbed the window like this.” We have reviewed the video transcript of the trial, and Hardin demonstrated at this point that he was cupping his left hand under the window, with his curled fingers extending up on the inside of the window.

{¶ 10} Hardin testified that his dialogue with Sellers, trying to persuade Sellers to come outside and talk with Hardin, continued for another minute after Hardin began holding the window open with his hand. Hardin's testimony continues:

{¶ 11} "Q. All right. What happened then?

{¶ 12} "A. Again, she said he wasn't going to jail. This time both of them stood up, grabbed the top of the window, and slammed it shut.

{¶ 13} "Q. She – she said what?

{¶ 14} "A. He wasn't going to jail.

{¶ 15} "Q. Okay. And then –

{¶ 16} "A. And both of them stood up, grabbed the top of the window with both hands, and slammed it completely shut."

{¶ 17} According to Hardin, his palm was directly underneath the bottom of the window when Sellers and Cornette began slamming it shut. He attempted to remove his hand from underneath the window, but had only managed to extricate it as far as the second finger-joints from the tips of his fingers when the window slammed down on his hand. He testified that Sellers and Cornette continued to hold it shut for about ten seconds before he was able to pull his hand out.

{¶ 18} Sellers testified that it was Cornette who closed the window. Cornette testified that she was not aware that Hardin's hand was under the window. She testified that once the sign was removed, the window was being kept open by Hardin's flashlight. Hardin admitted to having used the flashlight to look inside the window when the lights were turned off, but denied having penetrated the plane of the open window with his flashlight, and testified that once the lights were turned

back on, he put his flashlight away.

{¶ 19} Cornette testified that she pushed the flashlight out of the window in order to close the window, and that she assumed that Hardin, realizing that she and Sellers were attempting to close the window, would not keep his hand underneath it. She testified that she was trying to lock the window when she heard the police saying that Hardin's fingers were caught in the window. She testified that she then raised the window a little so that Hardin could remove his fingers.

{¶ 20} On cross-examination, Cornette testified that Hardin's attempt to keep the window open was what was preventing her from locking it. When she was asked how Hardin was trying to open the window, she could not remember. She testified that she was not looking where his hands were.

{¶ 21} Setty, who was standing just behind Hardin's left shoulder, corroborated Hardin's testimony in all essential respects. Setty testified that the closing of the window "happened really quick."

{¶ 22} Sellers testified for Cornette. He testified that Cornette shut the window, without his participation. He testified that he did not "have any notion" that Hardin's fingers would still be in the window when Cornette shut it.

{¶ 23} Sellers and Cornette testified that there was a wire-mesh screen in the window, which Hardin removed at one point. Hardin and Setty denied that there had been any screen in the window.

{¶ 24} Hardin testified that he suffered pain and lacerations to his fingers as a result of the window being slammed shut on his hand.

{¶ 25} Shortly after Hardin managed to extricate himself from the window, the

officers broke through both the front and back doors. Cornette and Sellers were both arrested and charged with Assault Upon a Peace Officer. By the time of Cornette's trial, Sellers had pled guilty.

{¶ 26} Cornette waived a jury trial. Following a bench trial, she was found guilty. She was later sentenced to community control sanctions. From her conviction and sentence, Cornette appeals.

II

{¶ 27} Cornette's sole assignment of error is as follows:

{¶ 28} "THE CONVICTION OF FELONIOUS ASSAULT ON A POLICE OFFICER, A FELONY OF THE FOURTH DEGREE, MUST BE VACATED SINCE IT IS NOT SUPPORTED BY SUFFICIENT EVIDENCE AS TO EACH ELEMENT OF THE CRIME CHARGED, SPECIFICALLY THE *MENS REA* OF 'KNOWINGLY,' AND THE CONVICTION VIOLATES DUE PROCESS OF LAW."

{¶ 29} Cornette admits that she caused physical harm to a peace officer, but argues that there is insufficient evidence that she did so knowingly. Under R.C. 2901.22(B): "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware such circumstances probably exist."

{¶ 30} Cornette contends that she was not aware that Hardin's hand was positioned under the window, so that his hand would likely be injured as a result of her forcefully shutting the window.

{¶ 31} The trial court explained the reasons for its verdict on the record in open court. In the course of its explanation, the court reasoned:

{¶ 32} “The Prosecutor has recited numerous facts that establish some of the things that are not really in dispute: The physical injury or physical harm; that others saw Ms. Cornette close the window, whether it was or wasn’t with Dustin [Sellers] I think is immaterial for purposes of this trial. But the basic conclusion I think that’s inescapable comes primarily from the – the own admission or statements of Ms. Cornette.

{¶ 33} “Ms. Cor – here we have this window being propped open by the use of a, you know, what you might call an artificial device as it relates to this window, a sign, so this was not part of the normal window assembly. They keep the window open, that is Dustin and Ms. Cornette, by virtue of a sign. So we know without that sign what happens. That sash is going to fall. The undisputed evidence is the sign was gone, so there’s – so that window had to fall. Well, what kept it open? Officer Hardin’s flashlight.

{¶ 34} “But what did Ms. Cornette, herself, say she did? She pushed the flashlight out, out from underneath the sash. So if there’s no sign, which is the standard device used to keep that window from falling, and the flashlight is not there to prevent the window from falling and yet it didn’t fall, there’s only one reasonable explanation for that. The testimony clearly demonstrates that Officer Hardin was at that window for some significant period of time engaged in this conversation with Dustin Sellers and with Ms. Cornette. The only thing that keeps that window – he – she knows he’s there. The window hasn’t fallen. The only things that prevent it

from falling are gone. What's holding it up? She has to know. Officer Hardin wants Dustin – wants in or wants him out. His hand is there. She knows that. She has every factual circumstance to conclude that. She has awareness of the circumstances.

{¶ 35} “And the testimony is that – and I think it's credible testimony. She, herself, admits she closed the window, so she engaged in a physical, affirmative act to get that window closed. There's credible testimony that it was done with some vigor, or some force. To do that, to use that force, is an indication that she knows that the officer is there holding it open, or keeping it open. The fact he used his flashlight was – is undisputed in the evidence, and she knows, indicated that he wants that window to remain open. So if he doesn't have his flashlight, which she forced that out, he'll use something else, and that's his hand. I think it's beyond a reasonable doubt that, concerning all the circumstances, Ms. Cornette knew that the officer's hand was there.”

{¶ 36} In our view, there is credible evidence in the record to support the trial court's finding of fact. Indeed, the trial court seems to have accepted all of Cornette's testimony at face value, except her statement that she did not know Hardin's hand was under the window when she slammed it shut, and concluded, from all of those circumstances, beyond reasonable doubt, that Cornette did, in fact, know Hardin's hand was there. This was the key factual issue in dispute.

{¶ 37} At the oral argument of this appeal, Cornette directed our attention to the trial court's remarks immediately following the above-quoted passage:

{¶ 38} “Now maybe she – in her goal, in her focus, on getting that window

closed, that helping out her boyfriend, she did not consider that she might hurt the officer. But that's the very essence of it. She doesn't have to have a purpose to hurt the officer. The law doesn't require that. The Court doesn't necessarily find that she intended to hurt Officer Hardin, but she wanted that window closed. She – she may have assumed that Officer, as counsel has referred to a bit here, would see what was coming. If he had a fast enough reaction under these difficult circumstances, would pull his hands back so as not to be hurt. That could've been. But I just think it's one of those things that was snap emotion. She knew it was there, and she was going to get that window closed, and she didn't care necessarily what happened to the officer, and maybe some other ancillary type of consequences that would fall from it or would flow from it.”

{¶ 39} Cornette argues that this passage demonstrates that the trial court mistakenly applied a test of recklessness, rather than knowledge, for the required mens rea for this offense. If the trial court did apply the wrong mens rea, that could be an error of law requiring reversal, albeit a different error from the assigned error of convicting a defendant on insufficient evidence. We have already concluded that there is evidence in this record to support a finding that Cornette knew that Hardin's hand was holding up the window, so that she knew that hurting Hardin's hand was a likely consequence of her slamming the window shut – a finding the trial court expressly made.

{¶ 40} The trial court is presumed to have followed the law, unless the record clearly demonstrates otherwise. We are not persuaded in this case that the trial court misapplied the law. The trial court's discussion in the final passage quoted

above revolved mainly around whether it was required to find, not only that Cornette slammed the window shut knowing that Hardin's hand was underneath the window, supporting it, but was required further to find that in slamming the window shut, Cornette intended to injure Hardin. The trial court correctly stated that it was not required to find a specific intent to injure. Although the last sentence of the last quotation from the trial court's discussion of its verdict can be read to be consistent with an analysis of recklessness, we conclude that it falls short of establishing that the trial court mistakenly believed that it was only required to find recklessness on Cornette's part. The earlier discussion plainly stated the trial court's conclusion that Cornette knew that Hardin's hand was underneath the window, supporting it, when she slammed it shut. This finding is directed toward the issue of whether Cornette knew that injury to Hardin's hand was the probable result of her act. The trial court's suggestion that Cornette's act may also have been reckless, appears to us to be surplusage. The trial court had already found that her act was knowing. Each culpable mental state set forth in the statute subsumes the ones that follow. R.C. 2901.22(E). In other words, if a person acts knowingly, then the person perforce also acts recklessly.

{¶ 41} We conclude that the evidence in this record is sufficient to support Cornette's conviction. Her sole assignment of error is overruled.

III

{¶ 42} Cornette's sole assignment of error having been overruled, the judgment of the trial court is Affirmed.

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BROGAN and FROELICH, JJ., concur.

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