

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO: 99-11,055

VS :

ANWAR AMOS :

OPINION IN SUPPORT OF ORDER
IN COMPLIANCE WITH RULE 1925(A)
OF THE RULES OF APPELLATE PROCEDURE

Defendant appeals from the sentence imposed by this Court on March 23, 2000 after he was found guilty following a non-jury trial of two counts of aggravated assault of a police officer, resisting arrest and related offenses. For the convictions of aggravated assault, the Defendant was placed under the supervision of the Adult Probation Office in the Intermediate Punishment Program for an aggregate period of twenty-four (24) months, with the first six (6) months to be served at the Pre-Release Center. For the resisting arrest conviction, the Defendant was placed under the supervision of the Adult Probation Office for one (1) year, consecutive to the Intermediate Punishment sentence. The following is a summary of the evidence presented at the trial.

Officer Eric Delker, a Patrol Officer with the Williamsport Bureau of Police, testified that on May 29, 1999, at approximately 2:00 a.m., he and his partner, Officer Tim Miller, responded to the parking lot of the Jersey Shore State Bank for a report of a fight. (N.T. 1/21/00, p.3) He testified that there were approximately one hundred to one hundred twenty-five people on the scene. Officer Brian Womer, also of the Williamsport Bureau of Police, had already arrived in his marked police unit. The people were dispersing from a bar across the street from the bank. Officer Delker testified that his attention was immediately focused on a white female being escorted by a black male

behind Jersey Shore State Bank. He testified that the female seemed to be “very animated.” (Id., p. 4) He testified that the male “had his arm around her pretty firm and kind of leading her along, it looked like she wanted to turn to come back so our attention—or at least my attention was drawn that way.” (Ibid.)

Officer Miller exited the vehicle and attempted to address the couple, but the couple turned away from him. After Officer Miller made three or four unsuccessful attempts to stop the couple, Officer Delker backed the police vehicle around in an attempt to block their path. Officer Delker testified that he got out of the vehicle and addressed them himself. (Id., p. 6) At that point, he noticed that the female had a torn shirt, a bloody lip, and had blood on her face. He informed the male that he had to let her go, and that they wanted to talk to the female. When the male refused, Officer Delker grabbed him by the arm and pulled him away from the female. (Id., p. 6) Officer Delker testified that when he grabbed his arm, the male resisted. The male pulled his arm away, and used some profanity. The male was finally restrained with the aid of Officer William Lynn.

Before they were able to restrain the male, however, Officer Delker saw the Defendant coming toward them. Officer Delker, alarmed at the Defendant’s approach with his fists clenched, directed him to back off. Officer Miller, also alarmed by the Defendant’s approach, held out his arm and flashlight in an attempt to stop the Defendant. (Id., p. 41) Officer Miller also yelled for the Defendant to stop (Ibid.) At that point the Defendant raised his arm around and struck Officer Miller’s forearm, causing the flashlight to fall to the ground. (Id., pp. 41-42) Officer Miller testified that after his flashlight hit the ground, he grabbed hold of the Defendant’s arm, and told the

Defendant that he was being arrested for disorderly conduct. (Id., p. 48) The Defendant then swung at Officer Miller's head with a closed fist. (Id., p. 43) Officer Delker testified that it was "a lot of roundhouse, like I didn't see anything come back here and forward, but it was just kind of just trying to get a lucky shot in kind of a deal. (Id., p. 20) At some point, Officer Womer came to aid Officer Miller.

Officer Womer testified that he saw the Defendant swat at Officer Miller's outstretched arm. (Id., p. 29) Officer Womer testified that when he saw a struggle ensue, he went over and took the Defendant by his left arm in an escort position in an attempt to take him into custody. Officer Womer testified that he ordered the Defendant to stop resisting, and ordered him to get onto the ground. They struggled, but were finally able to get the Defendant onto the ground. Once on the ground, the Defendant refused to put his hands behind his back to be handcuffed, and he struggled to get back up. At that point, Officer Miller attempted to use pepper spray on the Defendant to gain compliance. (Id., p. 45) The spray went over the Defendant, however, and hit Officer Womer in the eyes. (Id., p. 32)

Officer Womer testified that as he walked several steps away, he could see the Defendant "wound up and just swung with all his might right in the direction of my head." (Id., p. 33) Officer Womer, who was not completely blinded by the pepper spray at that point, ducked before the Defendant made contact with his head. Eventually, Officer Miller was able to get a direct shot of the pepper spray at the Defendant. Officer Miller testified that the Defendant still resisted, but the pepper spray did take "some of the steam out of him." (Id., p. 47)

The Defendant called Ron Branham to testify on his behalf. Mr. Branham testified that he witnessed the incident that evening from his car. He testified that he did not see the Defendant swinging his arms at the officers, or attempting to punch anyone. (Id., p. 53) He admitted, however, that he did miss approximately two minutes of the altercation when he changed a cassette in his car stereo. He further testified that after being sprayed with the pepper spray, the Defendant was tackled to the ground by Officer Womer. (Id., p. 56)

The Defendant testified on his own behalf. He testified that he was at the bar with his brother and some friends. (Id., p. 58) As they were leaving the bar, at approximately quarter to two, his brother's girlfriend was involved in a fight. As they were walking away from the bar, the Defendant saw the officers confront his brother. The Defendant testified that the officers were yelling in his brother's face. (Id., p. 60) When he started walking toward them, the Defendant asked what they were doing with his brother. The Defendant testified that he heard somebody say something, then he felt a flashlight hit him in the chest, so he smacked the flashlight down. (Ibid.) The Defendant testified that within seconds of smacking the flashlight down, he was being sprayed with pepper spray, and Officer Womer was tackling him. (Ibid.) He testified that he was not swinging at the officers at the time, he testified that he was in shock, and that he did not know what hit him.

The Defendant argues that the evidence was insufficient to prove the offenses of aggravated assault or the obstruction of the administration of law. Instantly, when viewing the evidence in the light most favorable to the Commonwealth as the verdict winner, there was sufficient evidence for the Court to have found all of the elements of

the crimes charged beyond a reasonable doubt. Under 18 Pa.C.S.A. § 2702(a)(3) a person is guilty of aggravated assault if he attempts to cause or intentionally or knowingly causes bodily injury to any of the officers, agents, employees or other persons enumerated in subsection (c), in the performance of duty. Police Officers are enumerated in subsection (c) of the statute.

The Commonwealth need not have proven that the officers actually sustained bodily injury; it is sufficient if the Commonwealth establishes that the Defendant *attempted* to inflict bodily injury. Commonwealth v. Richardson, 431 Pa. Super. 496, 636 A.2d 1195 (1994). “This intent may be shown by circumstances which reasonably suggest that a defendant intended to cause injury.” Id., at 1196. Under 18 Pa.C.S.A. § 302(b)(1)(i), a person acts intentionally with respect to a material element of an offense when “if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result”

The Court finds that the Defendant attempted to cause bodily injury to Officers Miller and Womer when he flailed his arms and flung his fists with full force at the officers in an attempt to strike them. Although the officers ducked and avoided the contact with the Defendant’s fists, the Court would find the evidence sufficient to have established that the Defendant intended to strike the officers with full force in the face. The Court therefore finds that the Commonwealth established the elements of aggravated assault beyond a reasonable doubt. The Defendant argued that this type of behavior does not seem consistent with the offense of aggravated assault. See Commonwealth v. Wertelet, 696 A.2d 206 (1997). This Court found, however, that the attempted injuries in this case—caused by a defendant swinging at an officer with full

strength and closed fists—were not relatively harmless physical contacts of such a common or everyday nature that one would find them merely “unpleasant and somewhat painful.” See Wertelet, supra. To find otherwise results in a conclusion that confrontational and assaultive behavior toward an officer of the law may, under certain circumstances, be excused.

The Defendant next alleges that the evidence was insufficient to establish the offense of obstruction of administration of law. Under [18 Pa.C.S.A. § 5101](#), a person obstructs the administration of law if he intentionally obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions. In the instant case, the Court finds that the Defendant’s intentional and forceful attempts to interfere with the questioning and restraint of his brother satisfy the elements of the crime of obstruction of the administration of law. The Court therefore finds Defendants argument without merit.

Defendant last argues that the verdict was against the weight of the evidence. The test for determining whether the verdict is against the weight of the evidence, is whether the verdict is so contrary to the evidence as to make the award of a new trial imperative so that right may be given another opportunity to prevail. Commonwealth v. Whiteman, 336 Pa.Super. 120, 485 A.2d 459 (1984). Instantly, for the reasons stated in the foregoing paragraphs, the Court cannot conclude that the verdict was so contrary to

the evidence that the award of a new trial is imperative so that justice may have another opportunity to prevail. The Court finds this intentional and assaultive behavior toward an officer of the law should not be excused.

Dated:

By The Court,

Nancy L. Butts, Judge

xc: Kenneth Osokow, Esquire, DA
Nicole Spring, Esquire, PD
Honorable Nancy L. Butts
Law Clerk
Gary Weber, Esquire
Judges