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Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-001759-MR

ENOCH DONNELL HUFF

APPELLANT

v. APPEAL FROM BELL CIRCUIT COURT
HONORABLE JAMES L. BOWLING, JR., JUDGE
ACTION NO. 05-CR-00030

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING IN PART,
REVERSING IN PART AND REMANDING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; ACREE AND JOHNSON, JUDGES.

ACREE, JUDGE: Enoch Donnell Huff appeals from a judgment of the Bell Circuit Court finding him guilty of fleeing or evading police in the first degree, operating a motor vehicle on a license suspended for DUI, and disregarding a stop sign. Huff argues that the Commonwealth failed to prove that he intended to flee or elude when he drove a short distance to his home before stopping in response to an order from a police officer. He does not appeal from the portions of the judgment convicting him of misdemeanor offenses. We agree with Huff's contention that the

trial court should have granted his directed verdict motion on the first-degree fleeing or evading charge. Thus, we affirm in part, reverse in part, and remand the order of the trial court for entry of a new judgment consistent with this opinion.

On the evening of November 26, 2004, Huff was driving home from his brother's house in Middlesboro when he failed to stop at an intersection with a stop sign. Officer Joshua Burchett, who was driving a marked police cruiser, activated his emergency lights and siren, and directed Huff to pull over at the next intersection. Instead, Huff continued to drive slowly until he reached his residence on Ironwood Road. Burchett approached Huff's vehicle with his gun drawn. Huff never attempted to exit the vehicle until he was placed under arrest. He was charged with first-degree fleeing or evading, operating a motor vehicle on a DUI suspended license, disregarding a stop sign and other offenses related to his vehicle's insurance and registration status which were later dismissed.

After his indictment was returned, Huff filed a suppression motion, arguing that he was arrested without probable cause. The trial court denied the motion, and the case was scheduled for entry of a guilty plea. During his plea colloquy, Huff refused to acknowledge he was, in fact, guilty of the fleeing or evading charge; consequently, the trial court did not accept his guilty plea. Huff was tried by a jury on June

21, 2005, and convicted of all charges. The trial court imposed a four-year sentence for first-degree fleeing or evading, a \$250.00 fine and 180 days to serve for driving on a DUI suspended license, and a \$50.00 fine and 180 days to serve for disregarding a stop sign. The misdemeanor sentences were run concurrently with the four-year sentence of imprisonment. This appeal followed.

On appeal, Huff argues that the trial court abused its discretion when it denied his motion for a directed verdict on the first-degree fleeing or evading charge and, further, that the Commonwealth was allowed to present improper opinion testimony from Officer Tom Buesic. Since the first issue is dispositive of this case, we will not consider the merits of Huff's argument regarding Buesic's opinion testimony. The law of our Commonwealth clearly sets out the standard for granting a directed verdict, as well as the standard appellate courts must follow in evaluating a trial court's refusal to do so.

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.

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

Burchett testified that he was driving a marked police cruiser when he saw Huff drive through an intersection without stopping at a stop sign. He activated his emergency lights and siren and signaled Huff to pull over at the next intersection, but Huff continued to drive for about a mile. According to Burchett, he pursued Huff's car down seven different streets for three to seven minutes before Huff stopped at his own home. Burchett observed numerous places where Huff could have safely stopped his car during the time he was being directed to pull over. He estimated Huff's speed as between fifteen and twenty-five miles per hour during the entire incident and agreed with Huff's testimony that he stopped at every stop sign until he reached his residence on Ironwood.

Officer Buesic testified that he responded to Burchett's call for assistance, arriving at Huff's residence almost as soon as Burchett did. He estimated the distance of Burchett's pursuit of Huff to be between seven and nine blocks and stated that it would take about one and one-half minutes to drive that route. Over Huff's objection, Officer Buesic was

allowed to testify that officers prefer not to arrest suspects at home because of the possibility of other people becoming involved and the potential availability of weapons. Buesic, a five-year police veteran, expressed the opinion that some people believe they cannot be arrested on their own property.

Consequently, according to Officer Buesic, suspects who are fleeing from the police often will try to reach their home.

Huff testified in his own defense. Burchett had described the route along which he followed Huff as being from 24th Street to Dorchester, from Dorchester to Englewood, from Englewood to Wildwood, from Wildwood to Greenwood, and from Greenwood to Ironwood. On cross-examination, Burchett testified that he activated his lights and siren on Dorchester Avenue. Huff stated he did not notice Burchett's lights until he was at the end of Englewood. He claimed the driveways along the streets where he drove were too narrow to allow him to safely stop his large vehicle. Since Huff could not find a place to stop, he stuck his arm out the window and motioned Burchett to follow him as he continued toward his home. Huff maintained that his speed never exceeded ten miles per hour. He denied that he had any intention of fleeing from the police, and claimed that he was merely trying to find a place to stop safely.

The trial court is directed, under *Benham*, to consider all of this evidence in the light most favorable to the Commonwealth in determining whether to grant a directed verdict.

Huff argues that the Commonwealth failed to prove all of the statutory elements of first-degree fleeing or evading. Kentucky Revised Statute (KRS) 520.095 reads, in relevant part, as follows:

- (1) A person is guilty of fleeing or evading police in the first degree:
 - (a) When, while operating a motor vehicle **with intent to elude or flee**, the person knowingly or wantonly disobeys a direction to stop his or her motor vehicle, given by a person recognized to be a police officer, and at least one (1) of the following conditions exists:
 - . . .
 3. The person is driving while his or her driver's license is suspended for violating KRS 189A.010. . .

(Emphasis added). The issue in this instance is whether the evidence submitted was enough to allow a jury to reasonably find that Huff intended to elude or flee from the police when he drove home before stopping his vehicle in response to Officer Burchett turning on his lights and siren. "It is well settled that the interpretation of a statute is a matter of law. Accordingly, a reviewing court is not required to adopt the decisions of the trial court as to a matter of law, but must interpret the statute according to the plain meaning of the act

and in accordance with the legislative intent." *Commonwealth v. Plowman*, 86 S.W.3d 47, 49 (Ky. 2002).

The terms "elude" and "flee" are not defined by statute. In the absence of such definition, we are required to construe "[a]ll words and phrases [in Kentucky statutes] according to the common and approved usage of language" KRS 446.080(4). Webster defines elude as "to avoid adroitly" and flee as "to hurry toward a place of security." Merriam Webster's Collegiate Dictionary 375, 445 (9th ed. 1993). Random House defines elude as "to avoid or escape by speed, cleverness, trickery, etc." and flee as "to move swiftly." Random House Dictionary of the English Language 634, 732 (2nd ed. 1987). In each of these definitions is the element of speed or avoidance.

Viewed in the light most favorable to the Commonwealth, the evidence in this case established that Huff was directed to stop by a police officer and that, instead of stopping immediately, he proceeded to drive until he reached his residence. The distance and duration of Officer Burchett's pursuit of Huff were short. Both Burchett and Huff testified that Huff drove slowly and observed all stop signs after Burchett signaled him to pull over. Further, Huff made no effort to get away from Burchett once he reached his residence, nor did he offer any resistance when he was arrested.

KRS 520.095 clearly requires the Commonwealth to establish that Huff intended to elude or flee from police when he disregarded Officer Burchett's order to stop. As a matter of law, we find the evidence produced at trial did not satisfy the statutory requirement that Huff intended to flee or evade as those words are commonly used. Nor do we believe the legislature intended to impose a felony conviction on someone in Huff's position whose actions posed no danger to others and who demonstrated no intent to avoid being under police control. Had the legislature intended to punish such conduct, they could have drafted the statute to punish any person who failed to immediately stop their vehicle when directed to do so by a police officer, regardless of the suspect's intent.

For the foregoing reasons, the judgment of the Bell Circuit Court is affirmed in part, reversed in part, and remanded with instructions to amend the judgment to reflect that Huff is guilty only of driving on a DUI suspended license and disregarding a stop sign.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Angela Johnson
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Gregory D. Stumbo
Attorney General of Kentucky

Louis F. Mathias, Jr.
Assistant Attorney General
Frankfort, Kentucky