COURT OF APPEALS OF VIRGINIA

Present: Judges Benton, Elder and Bumgardner
Argued at Salem, Virginia

WILLIAM LEE RHODES

v. Record No. 0301-01-3

COMMONWEALTH OF VIRGINIA

MEMORANDUM OPINION* BY
JUDGE LARRY G. ELDER
DECEMBER 4, 2001

FROM THE CIRCUIT COURT OF ROCKBRIDGE COUNTY
George E. Honts, III, Judge

H. David Natkin for appellant.

Linwood T. Wells, Jr., Assistant Attorney General (Randolph A. Beales, Attorney General, on brief), for appellee.

William Lee Rhodes (appellant) appeals from his bench trial conviction for assault on a law enforcement officer pursuant to Code § 18.2-57(C), an offense which requires a mandatory minimum sentence of six months. On appeal, appellant contends the evidence was insufficient to support his conviction because it failed to establish an imminent threat or danger to the officer. We hold the evidence was sufficient to support appellant's assault conviction, and we affirm.

When considering the sufficiency of the evidence on appeal of a criminal conviction, we view the evidence in the light most favorable to the Commonwealth, granting to its evidence all

* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

reasonable inferences fairly deducible therefrom. See Higginbotham v. Commonwealth, 216 Va. 349, 352, 218 S.E.2d 534, 537 (1975). The fact finder is not required to believe all aspects of a witness' testimony; it may accept some parts as believable and reject other parts as implausible. See Pugliese v. Commonwealth, 16 Va. App. 82, 92, 428 S.E.2d 16, 24 (1993). Further, any element of a crime may be proved by circumstantial evidence, Servis v. Commonwealth, 6 Va. App. 507, 524, 371 S.E.2d 156, 165 (1988), such as a person's conduct and statements, Long v. Commonwealth, 8 Va. App. 194, 198, 379 S.E.2d 473, 476 (1989). "Circumstantial evidence is as competent and is entitled to as much weight as direct evidence, provided it is sufficiently convincing to exclude every reasonable hypothesis except that of guilt." Coleman v. Commonwealth, 226 Va. 31, 53, 307 S.E.2d 864, 876 (1983).

Code § 18.2-57(C) provides that "if any person commits an assault . . . against another knowing or having reason to know that such other person is a law enforcement officer . . . engaged in the performance of his public duties as such, such person shall be guilty of a Class 6 felony . . . ." A conviction for assault requires proof of

> an overt act or an attempt, or the unequivocal appearance of an attempt, with force and violence, to do physical injury to the person of another . . . as by striking at him in a threatening or insulting manner, or with such other circumstances as denote at the time an intention, coupled with a

> present ability, of actual violence against his person, as by pointing a weapon at him when he is within reach of it.

Merritt v. Commonwealth, 164 Va. 653, 658-59, 180 S.E. 395, 397-98 (1935) (emphasis added) (citations and internal quotation marks omitted).

Here, although the evidence established that appellant was already carrying a knife when he first saw Officer Jonathan Shenk, it also proved that, after looking directly at Officer Shenk, who was standing only ten to fifteen feet away, appellant unsheathed the knife and brandished it at Officer Shenk for a period of "minutes." Shenk demonstrated repeatedly for the trial court how appellant held the knife, and the trial court found as a fact that appellant "very clearly [had] drawn" the "substantial sized knife." During that time, appellant looked at Officer Shenk, looked back down at the knife, "looked right back at [Officer Shenk]" and "stood there" as if "he was thinking about it." Finally, appellant continued to brandish the knife despite the fact that Officer Shenk repeatedly "holler[ed]" at appellant to put the knife down and started to draw and aim his firearm in order to defend himself. Officer Shenk testified he had learned while training to be a police officer that a person standing within fifteen feet of him with a knife could lunge at and injure him in less time than it would take him to fire his gun in self-defense. Thus, the only reasonable hypothesis flowing from the evidence, viewed in the

light most favorable to the Commonwealth, was that appellant assaulted Officer Shenk by placing him in reasonable fear of immediate personal harm. See id. at 658, 180 S.E. at 397.

For these reasons, we hold the evidence was sufficient to support appellant's conviction, and we affirm.

Affirmed.