IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

DECEMBER SESSION, 1995

FILED

February 13, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	)	**C.C.A. NO. 03C01-9408-CR-00298**
	)	
Appellee,	)	
	)	
	)	**MONROE COUNTY**
VS.	)	
	)	**HON. MAYO L. MASHBURN**
JAMES BRADLEY,	)	**JUDGE**
	)	
Appellant.	)	**(Assault - 2 Counts)**

ON APPEAL FROM THE JUDGMENT OF THE
CRIMINAL COURT OF MONROE COUNTY

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OPINION FILED _____

AFFIRMED

JERRY L. SMITH, JUDGE

OPINION

At a bench trial the Appellant, James Bradley, was convicted in the Monroe County Criminal Court of two counts of assault. He received concurrent sentences of eleven months and twenty-nine days and a $250 fine on each count. Following service of sixty days incarceration, the balance of the sentences were suspended. In this direct appeal, the Appellant maintains that the trial judge erroneously rejected the theory the Appellant acted in self-defense. We find no such error and affirm the conviction.

The question of whether a criminal defendant has engaged in justifiable self-defense is a question for the trier of fact to determine. State v. Clifton, 880 S.W.2d 737, 743 (Tenn. Crim. App. 1994); Arterburn v. State, 391 S.W.2d 648, 653 (Tenn. 1965). The credibility of witnesses, the weight to be given their testimony, and the reconciliation of conflicts in that testimony are matters entrusted exclusively to the trier of fact. State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978). In this case the trier of fact was the trial judge. On appeal, this court must presume that the trier of fact accredited the state's version of events unless the record demonstrates conclusively the physical impossibility of that version. See State v. Hornsby, 858 S.W.2d 892, 895 (Tenn. 1993). Thus, a recitation of the relevant testimony in this case is appropriate.

The testimony of three law enforcement officers taken together was to the effect that on September 26, 1993, the officers, along with several of their colleagues, went to the L&S Club in Sweetwater, Tennessee. Police had gone there in response to a problem the club was experiencing with crowds gathering on the premises after hours. One officer observed Mr. Bradley sitting in the passenger side of a truck drinking a

beer. The officer asked the Appellant to pour out his beer pursuant to a city open-container ordinance. Mr. Bradley's response was to simply grin at the policeman and drink some more beer. The officer then asked Mr. Bradley to exit his vehicle; however, he refused and stated he was "not gonna do no such fucking thing." When this officer opened the truck door and attempted to get Bradley out, he began kicking the policeman.

A second officer approached to assist in removing Bradley from his vehicle, but the Appellant persisted in his resistance. Bradley kicked the second officer injuring the policeman's finger. The police sprayed Bradley with a stun solution and were able to subdue him and place him under arrest. The third policeman who participated in Mr. Bradley's arrest corroborated the testimony of his fellow officers.

All of the arresting officers testified they believed the Appellant was intoxicated. The policemen testified that physical force was used to remove Bradley from the vehicle only after he refused an order to exit the truck. At least one policeman stated the officers never did anything to cause Bradley to fear for his own safety.

The Appellant, Mr. Bradley, testified that when officers approached him, he repeatedly told them he had an injured back and was trying to get a sick nephew home. He admitted he resisted the police direction to exit the truck, but stated he did not feel the officers were justified in requiring him to get out. Bradley stated he only resisted the officers with kicking when they attempted to physically remove him from the truck.

A friend of Mr. Bradley's, who was present during the incident in question, testified he informed the police officers of the Appellant's back condition. However, this witness admitted Bradley had been dancing all night long, although the witness stated the Appellant only slow danced.

In this appeal the Appellant argues that he was not in violation of Sweetwater's open-container ordinance and thus officers lacked probable cause to arrest him. This alleged lack of probable cause along with the Appellant's back problems and his desire to protect himself from further injury is posited as justification for Bradley's use of force in resisting the officers. We must reject this argument for the reasons stated below.

With regard to self-defense, the pertinent part of the Tennessee Code provides as follows:

> (e) The threat or use of force against another is not justified to resist a halt at a roadblock, arrest, search, or stop and frisk that the person knows is being made by a law enforcement officer, unless:
> (1) The law enforcement officer uses or attempts to use greater force than necessary to make the arrest, search, stop and frisk, or halt; and
> (2) The person reasonably believes that the force is immediately necessary to protect against the law enforcement officer's use or attempted use of greater force than necessary.

Tenn. Code Ann. § 39-11-611 (e) (1991).

The comments of the Tennessee Sentencing Commission pertaining to § 39-11-611(e) are instructive as to the Appellant's argument that he was justified in using force to resist what he perceived to be an unlawful arrest:

> Subsection (e) represents a policy decision by the Commission that the street is not the proper forum for determining the legality of an arrest. To a large extent, the rule is designed to protect citizens from being harmed by law enforcement officers. Research has shown that citizens who resist arrest frequently are injured by trained officers who use their skills and weapons to protect themselves and effectuate the arrest. If the defendant knows it is a law enforcement officer who has stopped or arrested him or her, respect for the rule of law requires the defendant to submit to apparent authority. The justification is restored if the law enforcement officer uses greater force than necessary under the circumstances and the defendant acts under reasonable belief that his or her acts are necessary for self-protection.

This policy decision that the illegality of an arrest alone will not justify an assault against officers attempting the arrest is mirrored in Tenn. Code Ann. § 39-16-602(b).

That section of the code specifically negates the defense of illegal arrest to a charge of resisting arrest. Thus, the legality of police action in initially confronting the Appellant over the open-container ordinance is irrelevant to the question of whether he was justified in an assault to resist the arrest. Mr. Bradley should have acquiesced to the apparent authority of the officers and contested the matter in a court of law if he felt he had been wronged.

Finally, the question of whether the Appellant's use of force in resisting arrest was justified under Tenn. Code Ann. §39-11-611(e) is a matter entrusted to the trier of fact. Clifton, 880 S.W.2d at 743; Arterburn, 391 S.W.2d at 653. The record amply supports the trial judge's decision that the Appellant's actions were not justified. The convictions are therefore affirmed.

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JERRY L. SMITH, JUDGE

CONCUR:

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DAVID G. HAYES, JUDGE

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WILLIAM M. BARKER, JUDGE