

IN THE COURT OF APPEALS 05/07/96
OF THE
STATE OF MISSISSIPPI
NO. 94-KA-01185 COA

JEROME BENBOW A/K/A JEROME L. BENBOW

APPELLANT

v.

STATE OF MISSISSIPPI

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. HENRY L. LACKEY

COURT FROM WHICH APPEALED: LAFAYETTE COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

TIMOTHY BALDUCCI

ATTORNEY FOR APPELLEE:

OFFICE OF THE ATTORNEY GENERAL BY: CHARLES W. MARIS, JR.

DISTRICT ATTORNEY: LARRY LITTLE

NATURE OF THE CASE: CRIMINAL- AGGRAVATED ASSAULT ON A LAW OFFICER

TRIAL COURT DISPOSITION: SENTENCED TO SERVE 20 YEARS IN THE MDOC WITH 8
YEARS SUSPENDED AND 12 YEARS TO SERVE

BEFORE THOMAS, P.J., BARBER, AND SOUTHWICK, JJ.

BARBER, J., FOR THE COURT:

Jerome Benbow was convicted of aggravated assault in the Circuit Court of Lafayette County. He was sentenced to a term of twenty years imprisonment with eight years of the sentence suspended and twelve years to serve in the custody of the Mississippi Department of Corrections. Feeling aggrieved by the judgment against him, Benbow appeals, raising the following issue:

WHETHER THE TRIAL COURT ERRED BY FINDING AS A MATTER OF LAW THAT JANICE BENBOW BEARLY WAS A LAW ENFORCEMENT OFFICER UNDER THE MEANING OF THE STATUTE THAT ENHANCES THE PENALTY FOR AGGRAVATED ASSAULT AGAINST A LAW ENFORCEMENT OFFICER.

FACTS

On November 21, 1988, Janice Benbow Bearly was shot twice on the campus of the University of Mississippi while performing her duties as a traffic officer. Jerome Benbow, the victim's ex-husband, was subsequently indicted for aggravated assault upon a law enforcement officer.

During the trial, the judge found as a matter of law that the victim was a "law enforcement officer." After a jury trial, Benbow was found guilty of aggravated assault on a law enforcement officer.

ANALYSIS

Benbow argues that the trial court committed reversible error when it instructed the jury that the victim was a law enforcement officer as a matter of law so as to require an enhanced penalty from that of aggravated assault. Benbow proceeds by making a strong argument in support of his position that the victim was not a "law enforcement officer" within the meaning of section 97-3-7(2) of the Mississippi Code.

The issue of whether or not his victim was a law enforcement officer acting within the scope of her official duties is relevant only to sentencing. After stating the elements of the crime of aggravated assault and the possible sentences upon conviction thereof, *viz.*, "imprisonment in the county jail for not more than one (1) year, or in the penitentiary for not more than twenty (20) years," section 97-3-7(2) then declares that a "person convicted of aggravated assault" upon those in certain named classes "shall be punished by a fine of not more than Five Thousand Dollars (\$5,000.00) or by imprisonment for not more than thirty (30) years, or both." Miss. Code Ann. § 97-3-7(2) (1972).

The trial court found that Janice Benbow Bearly was a law enforcement officer acting within the scope of her duties when assaulted. A law enforcement officer is just one of several categories of individuals whose assault will under this statute expose the perpetrator to a higher sentence. Teachers, emergency medical personnel, school bus drivers, firemen, and most of the others listed in the statute provide an important public service that by its nature may subject them to verbal abuse, physical threats and actual assault from those who rebel against their exercise of authority. Benbow argues that since Bearly was not carrying a firearm, she was not the kind of officer intended by the

statute. However, few of the categories listed in the statute are of people who carry firearms.

To support her argument, Benbow only cites a statute establishing the Law Enforcement Officers Training Program, which contains a definition of an officer for purposes of that program. *See Id.* § 45-6-3 (1972). Whether Bearly is entitled to attend that program is irrelevant to whether her duties are such as to include an assault on her within the purpose of the enhanced sentencing provisions of the assault statute. Teachers, school bus drivers and emergency medical personnel cannot attend the program either, but the legislature still saw fit to apply the increased sentencing range to those convicted of assaulting them.

The implementation of university traffic regulations is authorized by statute. *See Id.* § 37-105-1 (1972). Officers may be appointed to "perform all duties incident to enforcing such rules and regulations . . . , including the arrest of violators." *Id.* § 37-105-3 (1972). The campus police also have the authority to arrest anyone who commits an offense on campus under state criminal law. *Id.* § 37-101-15(c) (1972). Campus police are officers whose duties require them to enforce the law. Quite simply, the language and purpose of the aggravated assault statute requires finding that campus police are "law enforcement officers".

THE JUDGMENT OF THE LAFAYETTE COUNTY CIRCUIT COURT OF CONVICTION OF AGGRAVATED ASSAULT ON A LAW ENFORCEMENT OFFICER AND SENTENCE OF TWENTY (20) YEARS IN THE CUSTODY OF THE MISSISSIPPI DEPARTMENT OF CORRECTIONS WITH EIGHT (8) YEARS SUSPENDED AND TWELVE (12) YEARS TO SERVE IS AFFIRMED. SENTENCE TO RUN CONSECUTIVELY WITH PREVIOUS SENTENCE FROM YALOBUSHA COUNTY. COSTS ARE ASSESSED AGAINST LAFAYETTE COUNTY.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.