

[J-30-2006]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CAPPY, C.J., CASTILLE, NEWMAN, SAYLOR, EAKIN, BAER, BALDWIN, JJ.

COMMONWEALTH OF PENNSYLVANIA,	:	No. 39 EAP 2005
	:	:
Appellee	:	Appeal from the Judgment of the Superior
	:	Court entered on 03/14/2005 at No. 2651
	:	EDA 2002 affirming in part, vacating in
v.	:	part the Judgment of Sentence entered on
	:	06/17/2002 in the Court of Common Pleas
	:	of Philadelphia County, Criminal Division
CHAKA MATTHEW,	:	at No. 0112-0407 1/1
	:	:
Appellant	:	860 A.2d 924 (Pa. Super. Ct. 2002)
	:	:
	:	ARGUED: April 3, 2006

DISSENTING OPINION

MADAME JUSTICE BALDWIN

DECIDED: November 22, 2006

I agree with the majority that the totality of the circumstances test, as set forth in Commonwealth v. Alexander, 477 Pa. 190, 383 A.2d 887 (1978), is to be applied in this Commonwealth to determine whether a “substantial step,” as required in 18 Pa.C.S. § 901(a) to find a defendant is guilty of an attempt, has occurred. The essence of my departure from the majority opinion is the determination of what constitutes such a substantial step, such that the intent to cause “**fear** of imminent serious bodily injury or death” (simple assault, 18 Pa.C.S. § 2701(a)(3)) can be distinguished from the intent to “**cause** serious bodily injury to another,” (aggravated assault 18 Pa.C.S. § 2702(a)(1)) beyond a reasonable doubt.

Where a finder of fact is presented with evidence that could support two reasonable conclusions, one of which leads to a finding of guilty and the other to a finding of not guilty, it is improper for the fact finder, in the absence of additional evidence, to choose the one that implies guilt. Rather, it is the Commonwealth's burden to provide sufficient evidence to support the conviction of the defendant beyond a reasonable doubt. The Appellant claims that the Commonwealth did not provide sufficient evidence to meet its burden, and I agree. See Commonwealth v. Hall, 574 Pa. 233, 241, 830 A.2d 537, 541 (2003) ("Viewing the evidence in the light most favorable to the [C]ommonwealth as the verdict winner, and taking all reasonable inferences in favor of the [C]ommonwealth, the reviewing court must determine whether the evidence supports the fact-finder's determination of all of the elements of the crime beyond a reasonable doubt.").

The victim Wachter's testimony in this case was uncontested, thus we review that testimony as true, in order to take the evidence in the light most favorable to the Commonwealth as verdict winner. I am concerned that the fact that the victim in this case was a good Samaritan weighed in the determination of whether the assault committed was more egregious than it would have been had the victim been other than a good Samaritan.¹ At the trial, the victim testified that he witnessed Matthews have a "complete head-on collision with the right side of the guardrail." R. 37. The scene was smoke filled and the car was severely damaged. R. 37-38. The Appellant, Matthews, was unconscious. R. 38. Matthews regained consciousness and pushed a revolver into the victim's throat while

¹ While there are some types of individuals to whom the aggravated assault statute provides additional protections in the form of higher grades of the offense, good Samaritans are not included in that list. 18 Pa.C.S. § 2702(c). The list includes: police officers, firefighters, probation or parole officers, sheriffs and deputy sheriffs, liquor control enforcement agents, prison employees, judges, members of the attorney generals office, members of the district attorneys office, public defenders, federal, state or local law enforcement officials, emergency medical services personnel, parking enforcement officers, district justices, and public school employees, among others.

asking whether the victim was a police officer. R. 39-40. Appellant searched through the car several times and around areas where the car had been. R. 41-43. Periodically, the Appellant would point the gun at the defendant. R. 41-43. When a third car pulled up, Matthews starting yelling “you’re f___ing dead. I’m going to f___ing kill you.” and then ran away. R. 43. Matthews never fired the gun, nor did he attempt to fire the gun. Although his conduct was far from that accepted in polite society, according to the victim, Appellant’s verbal threats to kill him were far spaced from pushing the gun to the victim’s throat and actually came just as the defendant ran away.

The legislature has adopted two separate statutes to punish two different assault-based illegal activities. The first, simple assault, is defined in 18 Pa.C.S. § 2701(a)(3), which provides that “[a] person is guilty of assault if he attempts by physical menace to put another in fear of imminent serious bodily injury.” The official comments to that section indicate that “[s]ubsection (a)(3) covers the situation when the actor intends to frighten even though he does not intend, or lacks ability, to commit a battery.” The second, aggravated assault, graded as a first degree felony (the type of aggravated assault for which the Appellant was convicted with regard to Wachter, the victim) is defined in 18 Pa.C.S. § 2702(a)(1), which provides that “[a] person is guilty of aggravated assault if he attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life.”

As the majority pointed out, “[a]n attempt under § 2702(a)(1) requires a showing of some act, albeit not one causing serious bodily injury, accompanied by an intent to inflict serious bodily injury.” Slip Op. at 4 (citing Alexander). The majority also correctly cited 18 Pa.C.S. § 302(b)(1)(i) for the proposition that “[a] person acts intentionally with respect to a material element of an offense when . . . it is his conscious object to engage in conduct of that nature or to cause such a result” However, after this, the majority goes on to find

that the fact that Appellant pressed the gun into the victim's throat, while asking if the victim was a police officer, and several minutes later threatened to kill the victim before running away is sufficient to infer an intent to cause serious bodily injury. To the contrary, these facts are not sufficient to find that Matthews' conscious object was to inflict serious bodily injury, rather than to cause fear in his victim. The majority notes that Wachter feared for his life. This is exactly the fear that is addressed by the simple assault statute. However, I would note that Wachter's fear is not at issue, as it is the mens rea of Matthews that is required to turn simple assault into aggravated assault, not the mental state of the victim.

For the foregoing reasons, I would reverse the Superior Court to the extent that it affirmed the trial court's conviction of attempted first degree aggravated assault in relation to Appellant Matthews' threats against Wachter. In all other respects, I would affirm the Superior Court.