

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

ANTON JOHNSON

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1704 EDA 2012

Appeal from the Judgment of Sentence May 8, 2012
In the Court of Common Pleas of Delaware County
Criminal Division at No(s): CP-23-CR-0006415-2011

BEFORE: BENDER, J., LAZARUS, J., and COLVILLE, J.*

MEMORANDUM BY LAZARUS, J.

Filed: January 24, 2013

Anton Johnson appeals from his judgment of sentence, entered in the Court of Common Pleas of Delaware County, after a jury found him guilty of aggravated assault on Radnor Township Police Officer Steven Bannar.¹ Johnson was sentenced to 120-240 months' imprisonment as a result of his second strike under 42 Pa.C.S.A. § 9714 (sentences for second and subsequent offenses). After careful review, we affirm.

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S.A. § 2702(a)(2). Johnson was also charged with criminal attempt - murder of the first degree, recklessly endangering another person and resisting arrest. He was only tried on the assault and criminal attempt (homicide) charges; the remaining charges were withdrawn prior to trial. The jury acquitted Johnson of the attempted homicide charge.

On appeal, Johnson claims that the evidence is insufficient to support his conviction where the Commonwealth failed to establish that he acted with the requisite intent to prove that he attempted to cause bodily injury² to Officer Bannar. Because the evidence shows that Johnson drove his vehicle directly at the officer, forcing him to jump aside to avoid being struck, we affirm.

In reviewing a challenge to the sufficiency of the evidence, we must determine whether, viewing the evidence in the light most favorable to the Commonwealth as verdict winner, together with all reasonable inferences therefrom, the trier of fact could have found that each and every element of the crimes charged was established beyond a reasonable doubt.

Commonwealth v. Randall, 758 A.2d 669, 674 (Pa. Super. 2000).

The crime of aggravated assault on a police officer is defined as:

(a) *Offense defined.* --A person is guilty of aggravated assault if he:

* * *

(2) ***attempts to cause*** or intentionally, knowingly or recklessly causes ***serious bodily injury to any of the officers***, agents, employees or other persons ***enumerated in subsection (c)*** or to an employee of an agency, company or other entity engaged in public transportation, ***while in the performance of duty***;

* * *

² We note that Johnson was charged with aggravated assault on a police officer under section 2702(a), which requires the intent to commit *serious* bodily injury, not just bodily injury.

(c) Officers, employees, etc., enumerated. --The officers, agents, employees and other persons referred to in subsection (a) shall be as follows:

(1) Police officer.

18 Pa.C.S.A. § 2702(a)(2), (c)(1) (emphasis added). A person commits an attempt when, with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime. 18 Pa.C.S. § 901.

For purposes of section 2702, serious bodily injury is defined as “[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” 18 Pa.C.S.A. § 2701. Intent to cause serious bodily harm may be shown by circumstances surrounding the incident. *Commonwealth v. Polston*, 616 A.2d 669, 679 (Pa. Super. 1992).

Instantly, Johnson claims that because Officer Bannar was never struck by his vehicle or sustained any kind of injury from Johnson’s actions, there was insufficient evidence to show the requisite intent to cause serious bodily injury under section 2702(a)(2). Essentially, he asserts that his conviction is based on pure speculation that he intended to run the officer over with his car as he “maneuvered himself back into traffic in an effort to avoid arrest after being pulled over by multiple police units.” Appellant’s Brief, at 11.

First, as the statute clearly states, proof that serious bodily injury was inflicted upon Officer Bannar was not required in order for the Commonwealth to prove aggravated assault under section 2702(a)(2). ***Commonwealth v. Elrod***, 572 A.2d 1229, 1231 (Pa. Super. 1990). Rather, the Commonwealth need only prove that Johnson *attempted* to cause such injury. ***Id.***

The evidence at trial, in the light most favorable to the Commonwealth, shows that while he was in the process of investigating a silver Chevrolet Impala, Officer Bannar observed several police units from nearby Ridley Township pull the silver Impala over near a shopping center located on MacDade Boulevard. Johnson was ordered by the officers to put his hands over his head and get out of the car. N.T. Trial vol. I, 3/27/2012, at 178; N.T. Trial vol. II, 3/27/2012, at 316-18. Johnson placed his hands over his head, but did not exit the vehicle.

Officer Bannar's vehicle, an unmarked GMC Yukon, arrived on the scene shortly after the other officers. Bannar was a passenger in the SUV; his vehicle stopped perpendicular to and approximately 15-20 feet in front of Johnson's Impala. N.T. Trial vol. I, 3/27/2012, at 171. As he exited the SUV, wearing a black jacket with the word "POLICE" written on it and with his service weapon drawn, Officer Bannar testified that Johnson made eye contact with him, lowered his hands and:

accelerated his vehicle right towards me, at which time I jumped to the right and fired one round into his vehicle. . . . He had accelerated the gas. The vehicle, the wheels screeched and he

was headed directly towards me. . . . [Johnson drove d]irectly at me.

Id. at 179; N.T. Trial vol. II, 3/27/2012, at 183.

As a result of Johnson's actions, Officer Bannar had to jump to the right, while simultaneously firing his weapon in Johnson's direction, to avoid being hit. *Id.* at 184. Johnson's vehicle swerved to the right, heading out onto MacDade Boulevard. *Id.* at 188. Officer Bannar testified that Johnson's Impala came within feet of hitting his SUV in the process of speeding away from the scene. *Id.* He also testified that if he had not jumped out of the way, Johnson's vehicle would have struck him. *Id.* at 188.³

Although Officer Bannar had first indicated in the investigation that Johnson's actions could have resulted in him being "pinned" to his car, and then later testified at trial that he would have been "hit" by Johnson's vehicle had he not jumped out of the way, this alleged inconsistency does not make the officer's testimony infirm. The difference in meaning between the terms is slight, at best, where Officer Bannar testified that Johnson would have had to have hit him, in order for him to have been pinned against his SUV. *Id.* at 207.

Additionally, testimony from other police officers at the scene supports the fact that Johnson attempted to cause Officer Bannar serious bodily

³ Johnson ultimately collided with a police car on MacDade Boulevard in the City of Chester. *Id.* at 186-87.

injury. These officers testified that they observed Johnson accelerate his vehicle and drive directly at Officer Bannar, *id.* at 322; N.T. Trial, 3/28/2012, at 13, and, that if Officer Bannar had not jumped out of the way of Johnson's approaching vehicle, he would have been hit. N.T. Trial vol. II, 3/27/2012, at 322-23; N.T. Trial, 3/28/2012, at 13, 27.

Construing this evidence in the light most favorable to the Commonwealth, as verdict winner, we find that the evidence supports a finding of specific intent under section 2702(a)(2). *Randall, supra.* The Commonwealth presented sufficient circumstantial evidence to prove that Johnson attempted to inflict serious bodily injury on Officer Bannar by accelerating his Impala within feet of the officer and driving directly at him, causing him to jump out of the way to avoid being struck.

Judgment of sentence affirmed.