NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. JAKHAN WILLIAMS, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 179 EDA 2012

Appeal from the Judgment of Sentence April 5, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0005561-2009

BEFORE: STEVENS, P.J., BOWES, and FITZGERALD,* JJ.

MEMORANDUM BY BOWES, J.: Filed: March 5, 2013

Jakhan Williams appeals from the judgment of sentence of eight to sixteen years imprisonment followed by seven years probation imposed after he was convicted at a bench trial of aggravated assault, conspiracy to commit aggravated assault, and possession of an instrument of crime. We affirm.

While Appellant failed to order the transcription of the notes of testimony of his November 15 to 17, 2010 nonjury trial, we have been able to garner the following from the documents of record. On February 1, 2008, Appellant was arrested and charged with attempted murder, aggravated assault, criminal conspiracy, possession of a firearm by a prohibited person,

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* Former Justice specially assigned to the Superior Court.

possession of an unlicensed firearm, possession of a firearm by a minor, possession of a firearm in public in Philadelphia, possession of an instrument of crime, simple assault, and reckless endangerment. The charges were filed after Appellant and Nuri Murray attempted to rob Rafael Teet on November 21, 2007.[1] The victim was located on the driveway of 5626 Litchfield Street, Philadelphia, and had just completed a conversation with an eyewitness who was located in a car. Mr. Teet was holding his one-year-old son, who was unharmed, during the incident. Appellant and Murray, both of whom possessed guns, approached Mr. Teet to rob him. Mr. Teet told the two assailants to leave him alone while his son was present. Appellant then opened fire and struck the victim, who was protecting the baby, multiple times in the leg and chest. In the hospital, Mr. Teets positively identified Appellant and Murray as the two men who attempted to rob him. Appellant was convicted of the above-described offenses, but he was acquitted of the remaining charges. Sentence was imposed on April 5, 2011. Appellant did not file a post-sentence motion, but did initiate this timely appeal on May 4, 2011.

Appellant presents a single contention, "That there was not sufficient evidence presented at trial of this matter to prove that the petitioner

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[1] After he was not tried within the time constraints of Pa.R.Crim.P. 600, Appellant was released on nominal bail to house arrest with electronic monitoring.

Jahkan Williams was the participant in the aggravated assault for which he was convicted." Appellant's brief at 5. While Appellant purports to present what he characterizes as a sufficiency claim, it is clear that he is challenging the trial court's decision to credit the testimony of the Commonwealth witnesses, which is actually a weight-of-the-evidence claim.

Specifically, Appellant suggests he was "found guilty on the compromised and spurious testimony of a group of witnesses who were manipulated by the District Attorney's office to give just enough tainted evidence to have the fact finder find Jahkan Williams guilty." ***Id***. at 8. He maintains that Latasha Williams, who identified him at trial as the shooter, was a polluted source and unbelievable. Appellant's brief at 8-9. Appellant levels the identical allegation against Murray, who testified against Appellant at trial. ***Id***. at 9-10. Appellant then raises accusations that the remaining Commonwealth witnesses, one of whom testified about an inculpatory remark made by Appellant, were not worthy of belief. ***Id***. at 10-11.

As we noted in ***Commonwealth v. Wilson***, 825 A.2d 710, 713-14 (Pa.Super. 2003) (citations omitted), a "sufficiency of the evidence review . . . does not include an assessment of the credibility of the testimony offered by the Commonwealth. Such a claim is more properly characterized as a weight of the evidence challenge." ***See also Commonwealth v. Lewis***, 45 A.3d 405, 409 (Pa.Super. 2012) (defendant's averment that his version, rather than that of the Commonwealth, of the criminal episode was more credible "goes to the weight of the evidence, not

its sufficiency"); ***Commonwealth v. Gibbs***, 981 A.2d 274 281-82 (Pa.Super. 2009) ("An argument that the finder of fact should have credited one witness'[s] testimony over that of another witness goes to the weight of the evidence, not the sufficiency of the evidence.").

Herein, Appellant unquestionably is assailing the fact that the trial court believed the Commonwealth witnesses; he does not maintain that its evidence did not establish any element of any crime for which he was convicted. Hence, Appellant presents a challenge to the weight of the evidence rather than its sufficiency. Appellant did not file a written motion raising his weight claim and did not order the sentencing transcript, so there is no indication it was raised at sentencing. He therefore has waived any challenge to the weight of the evidence due to his failure to establish that he preserved it by presenting it, in the first instance, to the trial court. Pa.R.Crim.P. 607; ***Wilson***, ***supra***; ***Lewis***, ***supra***.

Appellant has waived his contention on appeal for an additional reason. There is no indication in the record that Appellant ordered a transcription of the trial proceedings. The trial court, the Commonwealth, and Appellant fail to reference the notes of testimony, and, in its brief, the Commonwealth indicates that they were not ordered and are unavailable. The notes of testimony of trial are critical to our ability to a sufficiency claim. Appellant's neglect to ensure that the trial transcript was made part of the record is fatal to his attempt to gain review of his averment on appeal. ***Commonwealth v. Little***, 879 A.2d 293, 301 (Pa.Super. 2005) (appellant

is responsible for ensuring that reviewing court has complete record; if appellate review of an argument is dependent upon examination of materials not present in certified record, averment is raised); ***see also Commonwealth v. Lassen***, 659 A.2d 999 (Pa.Super. 1995) (same).

Judgment of sentence affirmed.