

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
HERMAN SHAVERS,		
Appellant		No. 192 EDA 2012

Appeal from the Judgment of Sentence entered November 18, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0013703-2009.

BEFORE: OLSON, WECHT and COLVILLE,* JJ.

MEMORANDUM BY OLSON, J.:

Filed: March 18, 2013

Appellant, Herman Shavers, appeals from the judgment of sentence entered on November 18, 2011 following his jury trial convictions for attempted murder, aggravated assault, recklessly endangering another person, and three related firearm offenses.¹ Contemporaneously with this appeal, counsel filed a motion to withdraw from representation pursuant to *Commonwealth v. McClendon*, 434 A.2d 1185 (Pa. 1981) and its federal precursor, *Anders v. California*, 386 U.S. 738 (1967). Upon careful

¹ 18 Pa.C.S.A. §§ 901, 2702, 2705, 6105, 6106, and 907.

*Retired Senior Judge assigned to the Superior Court.

consideration, we grant counsel leave to withdraw and affirm the judgment of sentence.

The facts and procedural history of this case may be summarized as follows. The victim, Appellant's ex-girlfriend and mother of his child, testified that on April 17, 2009, Appellant woke her up at 11:00 a.m. Appellant walked into the victim's unlocked home in Philadelphia and asked her where their son was. Appellant shot the victim in the head and stabbed her eleven times. The victim was able to call 911; police officers arrived on the scene and transported her to the University of Pennsylvania Hospital. The victim told police officers that her child's father, Appellant, was her attacker. She repeated that statement to an investigating detective later that evening. The victim recovered from the inflicted injuries. In November 2010, the victim contacted defense counsel to recant her statement that Appellant was the perpetrator. She reduced the recantation to a written statement. At trial, the victim admitted that she was under the influence of Xanax, cocaine, marijuana, and PCP at the time of the shooting. She positively identified Appellant in court as her assailant and testified that her recantation was the result of influence from Appellant's family.

Following the three-day trial, the jury convicted Appellant of the aforementioned crimes. On November 18, 2011, the court imposed Appellant to an aggregate term of 30-60 years of imprisonment that

included a mandatory third-strike minimum sentence. This timely appeal followed.²

Counsel filed an **Anders** brief in this Court and an accompanying application to withdraw as counsel. The **Anders** brief presents one issue for our review. Before we address that issue, however, we must address counsel's motion for leave to withdraw. **See Commonwealth v. Rojas**, 874 A.2d 638 (Pa. Super. 2005). In order for counsel to withdraw from an appeal pursuant to **Anders**, counsel is required to:

- (1) provide a summary of the procedural history and facts, with citations to the record;
- (2) refer to anything in the record that counsel believes arguably supports the appeal;
- (3) set forth counsel's conclusion that the appeal is frivolous; and
- (4) state counsel's reasons for concluding that the appeal is frivolous. Counsel should articulate the relevant facts of record, controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous.

² Appellant filed a notice of appeal on December 19, 2011. The notice was timely because the 30th day for filing fell on a Sunday. **See** 1 Pa.C.S.A. § 1908. On January 4, 2012, the trial court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant moved for an extension of time that the trial court granted. On February 17, 2012, counsel for Appellant filed a timely statement that he intended to file an **Anders** brief with this Court pursuant to Pa.R.A.P. 1925(c)(4). That same day, the trial court issued an order transmitting the record to this Court, because it was not required to file an opinion under Rule 1925(c)(4).

Commonwealth v. Santiago, 978 A.2d 349, 361 (Pa. 2009).

In this case, counsel has complied with the foregoing requirements. In addition, counsel furnished a copy of the ***Anders*** brief to Appellant, advised him of his right to retain new counsel, proceed *pro se* or raise any additional points that he deems worthy of the court's attention, and attached to the ***Anders*** brief a copy of the letter sent to the client as required pursuant to ***Commonwealth v. Millisock***, 873 A.2d 748, 751 (Pa. Super. 2005). We note that Appellant has not responded. We now turn to the issue presented in the ***Anders*** brief.

In the ***Anders*** brief, Appellant's appellate counsel has presented the following issue for our review:

- I. Was the evidence presented by the Commonwealth at trial sufficient to support the verdicts?

Anders Brief at 5.

More specifically, Appellant challenges the victim's identification of Appellant as her assailant. ***Id.*** at 9. He points to the victim's "significant prior inconsistent statements, including when she retracted her initial allegation that [A]ppellant was the perpetrator." ***Id.***

Our standard of review of sufficiency claims requires

that we evaluate the record in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Nevertheless, the

Commonwealth need not establish guilt to a mathematical certainty. Any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances.

Commonwealth v. Stays, 40 A.3d 160, 167 (Pa. Super. 2012). Moreover, “evidence of identification need not be positive and certain in order to convict, although indefiniteness and uncertainty go to its weight.”

Commonwealth v. Webster, 416 A.2d 491, 494 (Pa. 1980).

In this case, the victim positively identified Appellant at trial. N.T., 8/17/2011, at 41. However, she testified that she “was constantly getting phone calls” from Appellant’s family, asking her to reconsider her initial identification because the victim and Appellant have a son together. ***Id.*** at 52, 58-61. As a result, almost a year after the encounter, she told an investigator at defense counsel’s office Appellant was not the one who shot and stabbed her. ***Id.*** at 52. Officer Maribel Quiles responded to the scene; she testified that she sat in the back of the police car with the victim on the way to the hospital. ***Id.*** at 9. The victim told Officer Quiles that her ex-boyfriend, Appellant, whom she named specifically along with the spelling of his last name and his date of birth, had shot her in the head. ***Id.*** at 9-11, 16-17. Detective Stephen Hall testified that he conducted a bedside interview of the victim at the hospital on the day of the crime. ***Id.*** at 106. The victim gave Detective Hall a detailed statement that Appellant was her attacker. ***Id.*** at 106-109.

Based upon our independent review of the certified record and our standard of review, we conclude that there was sufficient evidence of Appellant's identity as the perpetrator of the convicted offenses. The victim unequivocally identified Appellant at trial. She also identified Appellant as her attacker to two different police officers close in time to the crimes. Although she retracted her identification to defense counsel much later, she explained Appellant's family pressured her to do so. The jury was free to assess the witness' credibility. Accordingly, Appellant's issue is frivolous.

Leave to withdraw granted. Judgment of sentence affirmed.