

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
MARKEA GOLPHIN,	:	No. 2101 EDA 2012
	:	
Appellant	:	

Appeal from the Judgment of Sentence, February 23, 2012,
in the Court of Common Pleas of Philadelphia County
Criminal Division at No. CP-51-CR-0009763-2010

BEFORE: FORD ELLIOTT, P.J.E., OLSON AND STABLE, JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED JULY 15, 2014**

Appellant, Markea Golphin, appeals from the judgment of sentence imposed after a jury convicted her of first-degree aggravated assault, simple assault, recklessly endangering another person ("REAP"), and possessing an instrument of crime ("PIC"). The trial court imposed an aggregate sentence of ten to twenty-five years. Upon review, we affirm on the trial court opinion.

On appeal, appellant challenges only the sufficiency of the evidence to sustain her aggravated assault conviction. Our standard of review in challenges to the sufficiency of the evidence is well settled:

The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime

beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the [finder] of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

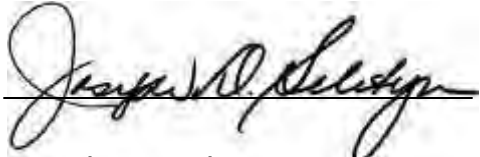
Commonwealth v. Jones, 874 A.2d 108, 120 (Pa.Super. 2005).

We have reviewed the record in this case and conclude that the jury, as fact-finder, had sufficient evidence on which to base appellant's conviction of aggravated assault. There is sufficient evidence of record that appellant possessed the intent necessary to sustain this conviction. In conducting our review, we find that the Honorable Glenn B. Bronson has ably and thoroughly addressed and analyzed appellant's sufficiency argument in his Pa.R.A.P. 1925(a) opinion. We, therefore, adopt and incorporate Judge Bronson's October 5, 2012 opinion as our own.

Accordingly, we affirm appellant's judgment of sentence.

J. S33005/14

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/15/2014

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH OF
PENNSYLVANIA

v.

MARKEA GOLPHIN

CP-51-CR-0009763-2010

FILED

OCT 05 2012

Criminal Appeals Unit
First Judicial District of PA

OPINION

BRONSON, J.

October 5, 2012

On July 1, 2011, following a jury trial before this Court, defendant Markea Golphin was convicted of one count of first-degree aggravated assault (18 Pa.C.S. § 2702(a)), one count of simple assault (18 Pa.C.S. § 2701(a)), one count of recklessly endangering another person (18 Pa.C.S. § 2705) ("REAP"), and one count of possessing an instrument of crime (18 Pa.C.S. § 907(a)).¹ On February 23, 2012, the Court imposed a sentence of nine to twenty years incarceration for the charge of aggravated assault and one to five years for the charge of possessing an instrument of crime, to run consecutive to the aggravated assault sentence, for an aggregate sentence of ten to twenty-five years. Due to merger, no judgment was entered on the REAP and simple assault charges. Defendant filed post-sentence motions, which the Court denied on June 22, 2012.

Defendant has now appealed from the judgment of sentence entered by the Court on the grounds that: 1) the evidence was insufficient to support the verdict on the charge of aggravated assault; 2) the verdict was against the weight of the evidence on the charge of aggravated assault;

¹ Defendant was acquitted of one count of attempted murder (18 Pa.C.S. §§ 901(a) & 2502) and one count of conspiracy to commit aggravated assault (18 Pa.C.S. §§ 903 & 2702(a)). Co-defendant Ayisha Palmer was acquitted of all charges.

and 3) the court abused its discretion at sentencing. Statement of Errors Complained of on Appeal Pursuant to Rule 1925(b), Pa.R.App.P. (“Statement of Errors”).² For the reasons set forth below, defendant’s claims are without merit and the judgment of sentence should be affirmed.

I. FACTUAL BACKGROUND

At trial, the Commonwealth presented the testimony of Samuel McCoy, Philadelphia Police Lieutenant Jonathan Josey, Philadelphia Police Detective Kenneth Rossiter, Philadelphia Correctional Officer Monique Jones, and Philadelphia Police Officers Charles Waters, Clyde Frazier, Tiony Baldwin, Christopher Livingston, and Benjamin Mauro. Defendant testified on her own behalf. Ayisha Palmer presented the testimony of Barbara Yancey and Shaileeya Yancey, and testified on her own behalf. Viewed in the light most favorable to the Commonwealth as the verdict winner, the evidence established the following.

On July 4, 2010, at approximately 1 a.m., Philadelphia Police Lieutenant Jonathan Josey and Philadelphia Police Officer Charles Waters left Scooter’s Bar, located at 38th Street and Lancaster Avenue. N.T. 6/28/2011 at 6-7. Both men were off duty at the time. N.T. 6/28/2011 at 6, 90. As they walked southbound on 38th Street, Officer Waters and Lt. Josey saw a black SUV parked on the street with two women, later identified as defendant and Ayisha Palmer, standing next to the SUV and arguing with a third woman. N.T. 6/28/2011 at 92. Officer Waters and Lt. Josey approached the SUV and realized that the third woman was Philadelphia Police Officer Tiony Baldwin, with whom both men were acquainted. N.T. 6/28/2011 at 10, 92. Lt. Josey then approached the women and told Officer Baldwin to get in her car and go home. N.T. 6/28/2011 at 10-12. Officer Baldwin said, “[y]ou’re right,” got into the SUV, and drove down

² Defendant’s Statement of Errors does not contain paragraph numbers or page numbers.

38th Street, stopping at a red light. N.T. 6/28/2011 at 12, 188-189. As Lt. Josey and Officer Waters walked away from defendant and Ms. Palmer, defendant ran down the street to Officer Baldwin's car and began punching her through the open window. N.T. 6/28/2011 at 13, 94, 189. At the time of this altercation, defendant, who was wearing a dress and was not carrying a purse, had no visible weapons. N.T. 6/29/2011 at 108-110. Officer Baldwin got out of her car and swung back at defendant. N.T. 6/28/2011 at 14-15, 189. Lt. Josey approached the SUV, picked Officer Baldwin up and put her back in the car, and told her again to go home. N.T. 6/28/2011 at 16, 97, 189-190. Officer Baldwin complied. N.T. 6/28/2011 at 14-16, 191.

After Officer Baldwin drove away, both defendant and Ms. Palmer began yelling and cursing at Lt. Josey and Officer Waters, saying, "[w]e know you're all cops. We're going to fuck you all up." N.T. 6/28/2011 at 17-18, 21, 101. Lt. Josey and Officer Waters began walking away from defendant and Ms. Palmer, towards their cars. N.T. 6/28/2011 at 17, 102. Ms. Palmer and defendant each went to their own cars before returning to 38th Street and following Lt. Josey and Officer Waters. N.T. 6/28/2011 at 17-18; 6/29/2011 at 114, 121. After they approached the two men, Ms. Palmer hit Officer Waters with her handbag, and defendant swung at Lt. Josey, grazing his ear before falling to the ground. N.T. 6/28/2011 at 18-19. As Lt. Josey continued to walk away from the defendant, she got up off the ground and stabbed him in the back with a six-inch knife. N.T. 6/28/2011 at 19-20, 105-108. She and Ms. Palmer then turned and began walking in the opposite direction. N.T. 6/28/2011 at 103. Lt. Josey, believing that defendant had only punched him, continued walking until he felt blood on his back and realized he had been stabbed. N.T. 6/28/2011 at 19-20, 102-105. He told Officer Waters to go after defendant, and collapsed to the ground. N.T. 6/28/2011 at 20.

Officer Waters ran down 38th Street and caught up with defendant and Ms. Palmer. N.T. 6/28/2011 at 103, 106. When Officer Waters pushed the defendant to the ground, the knife fell

out of her hand. N.T. 6/28/2011 at 107-108. Ms. Palmer then yelled that “[defendant] didn’t stab anybody,” and kicked the knife down a sewer drain. N.T. 6/28/2011 at 107-108. Defendant and Ms. Palmer were arrested. N.T. 6/28/2011 at 109-110.

When police arrived, they transported Lt. Josey to the Hospital of the University of Pennsylvania. N.T. 6/28/2011 at 28-29. The stab wound, which was three inches to the right of Lt. Josey’s spine, hit a blood vessel and caused substantial blood loss. N.T. 6/28/2011 at 28-29, 31. Lt. Josey remained in the hospital overnight. N.T. 6/28/2011 at 29-30. The wound was too deep to be stitched, and was instead packed with gauze two to three times per day for eight weeks. Lt. Josey was out of work and bedridden for 12 weeks and has a three-inch scar on his back. N.T. 2/23/2011 at 33.

II. DISCUSSION

A. *Sufficiency of the Evidence*

Defendant claims that “[t]he Commonwealth failed to provide sufficient evidence to meet its burden of proof beyond a reasonable that [*sic*] the defendant attempted to cause serious bodily injury to another, or causes [*sic*] such injury intentionally, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life; specifically that the complainant suffered bodily 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.” Statement of Errors. This claim is without merit.

In considering a challenge to the sufficiency of the evidence, the Court must decide whether the evidence at trial, viewed in the light most favorable to the Commonwealth, together with all reasonable inferences therefrom, could enable the fact-finder to find every element of the crimes charged beyond a reasonable doubt. *Commonwealth v. Walsh*, 36 A.3d 613, 618 (Pa.

Super. 2012). In making this assessment, a reviewing court may not weigh the evidence and substitute its own judgment for that of the fact-finder, who is free to believe all, part, or none of the evidence. *Commonwealth v. Ramtahal*, 33 A.3d 602, 607 (Pa 2011). “[A] mere conflict in the testimony of the witnesses does not render the evidence insufficient.” *Commonwealth v. Rabold*, 920 A.2d 857, 859 (Pa. Super. 2007). The Commonwealth may satisfy its burden of proof entirely by circumstantial evidence. *Ramtahal*, 33 A.3d at 607. “If the record contains support for the verdict, it may not be disturbed.” *Commonwealth v. Adams*, 882 A.2d 496, 499 (Pa. Super. 2005).

A person is guilty of first-degree 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.” 18 Pa.C.S. § 2702(a)(1). “Serious bodily injury” is defined as “bodily 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. § 2301. Whether the evidence is legally sufficient to establish intent to cause serious bodily injury is determined on a case-by-case basis, and turns on the totality of the circumstances. *Commonwealth v. Matthew*, 909 A.2d 1254, 1257 (Pa. 2006).

While defendant’s Statement of Errors is difficult to decipher, it appears that defendant’s only specific ground for challenging the sufficiency of the evidence is that the Commonwealth failed to prove that the victim sustained serious bodily injury. This claim is frivolous because the single count of aggravated assault alleged two distinct theories of culpability: (1) that defendant was guilty of aggravated assault by attempting to cause serious bodily injury to the victim; and (2) that defendant was guilty of aggravated assault by causing serious bodily injury to the victim. Both theories were submitted to the jury, and the jury found defendant guilty of

each. For the first theory of aggravated assault, which requires proof that defendant intentionally attempted to inflict serious bodily injury on the victim, it is not necessary that the victim sustain any injury at all as a result of the attempt. *See, e.g., Matthew*, 909 A.2d at 1257.

Accordingly, even if defendant were correct in her allegation that the evidence failed to establish serious bodily injury, that would not undermine the aggravated assault conviction. In any event, defendant's abstruse attack on the sufficiency of the evidence is without merit since the evidence clearly supported her conviction under both theories of aggravated assault.

First, there was compelling evidence adduced at trial to support the jury's conclusion that defendant intended to cause serious bodily injury to Lieutenant Josey. Lt. Josey testified that, as he was walking away from breaking up a confrontation between defendant and another woman, defendant approached him from behind and stabbed him in the lower back. N.T. 6/28/2012 at 16-20. Officer Frazier testified that the blade of the knife that defendant used to stab Lt. Josey was two and one half inches in length, and Lt. Josey testified that the knife went into his back "down to the hilt." N.T. 6/28/2012 at 169, 179. Moreover, Ms. Palmer testified that defendant "definitely didn't have [a] knife" during the original altercation, but that after that altercation, defendant walked to her car before returning to 38th Street, where she pursued Lt. Josey and stabbed him in the back. N.T. 6/29/2011 at 109, 113-114, 121-122. This was persuasive evidence that defendant went to her car to retrieve a knife for the purpose of stabbing Lt. Josey. All of this evidence compelled the conclusion that defendant knowingly, willfully and deliberately attempted to inflict serious bodily injury on the victim.³

³ Although defendant asserted a claim of self-defense at trial, she makes no mention in the Statement of Errors of any claimed infirmity in the Commonwealth's evidence that was offered to refute that defense. In any event, the evidence described above plainly demonstrated that defendant was not acting in self-defense when she stabbed Lt. Josey in the back while he was attempting to leave the scene of the incident.

The evidence also established that defendant did, in fact, cause serious bodily injury to Lieutenant Josey. Lt. Josey testified that the stab wound was only three inches to the right of his spine, and three inches below his kidney. N.T. 6/28/2012 at 31. He testified that the stab wound hit a blood vessel and caused substantial blood loss, that the wound was too deep to be stitched, and that the wound had to be packed with gauze two to three times per day for eight weeks, which was extremely painful. N.T. 6/28/2012 at 29-32. Lt. Josey also testified that he was out of work for 12 weeks, during which time he was essentially bedridden, and that he has a permanent scar on his back that is three inches long. N.T. 6/28/2011 at 33. The extent of his injuries was confirmed by the medical records, which were admitted into evidence. N.T. 6/28/2011 at 257; Commonwealth Exh. 28 (certified medical records). This evidence plainly established that, when defendant stabbed Lt. Josey, she caused him serious bodily injury.

Accordingly, defendant's sufficiency of the evidence claim is refuted by the record and should be rejected.

B. Weight of the Evidence

Defendant next claims that the Commonwealth "failed to provide evidence of sufficient weight meet [*sic*] its burden of proof beyond a reasonable that [*sic*] the defendant attempted to cause serious bodily injury to another, or causes [*sic*] such injury intentionally, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life; specifically that the complainant suffered bodily 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." Statement of Errors. This claim is without merit.

It is well-established that a new trial may only be granted by the trial court where the verdict was so contrary to the weight of the evidence as to "shock one's sense of justice." *Commonwealth v. Rossetti*, 863 A.2d 1185, 1191 (Pa. Super. 2004). Moreover, credibility

determinations are solely within the province of the fact-finder, and “an appellate court may not reweigh the evidence and substitute its judgment for that of the finder of fact.” *Commonwealth v. Hanible*, 30 A.3d 426, 443 n. 11 (Pa. 2011). In considering a claim that the trial court erred in refusing to find that a verdict was against the weight of the evidence, “appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.”

Commonwealth v. Champney, 832 A.2d 403, 408 (Pa. 2003), *cert denied*, 542 U.S. 939 (2004).

The evidence outlined above plainly established that defendant was guilty of first-degree aggravated assault. Because the evidence fully supported the verdict, the Court did not abuse its discretion in denying defendant’s motion for a new trial.

C. Abuse of Discretion at Sentencing

Defendant claims that “the court erred in sentencing the defendant in the it [*sic*] failed to impose upon the defendant and individualized [*sic*] sentence consistent with the requirements of the Sentencing Code; specifically, the court failed to fully consider the rehabilitative needs of the defendant and to give sufficient weight to the mitigating factors presented at the disposition of the matter.” Statement of Errors. This claim is without merit.

“Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of that discretion.”

Commonwealth v. Anderson, 552 A.2d 1064, 1071 (Pa. Super. 1998); *see Commonwealth v.*

Walls, 926 A.2d 957 (Pa. 2007). The sentencing court must consider the need to protect the public, the gravity of the offense in relation to the impact upon the victim, the rehabilitative needs of the defendant, and the Sentencing Guidelines. 42 Pa.C.S. § 9721(b); *see*

Commonwealth v. Hyland, 875 A.2d 1175, 1184 (Pa. Super. 2005) (quoting *Commonwealth v.*

Monahan, 860 A.2d 180, 184 (Pa. Super. 2004)). Where a sentencing court has reviewed a pre-sentence report, it shall be assumed that the court appropriately considered defendant’s character

and any relevant evidence of mitigation. *Commonwealth v. Fullin*, 892 A.2d 843, 849-50 (Pa. Super. 2006). A sentence within the guidelines may be vacated only if “the case involves circumstances where the application of the Sentencing Guidelines would be clearly unreasonable.” 42 Pa.C.S. § 9781(c)(2). Otherwise, the sentence should be affirmed on appeal. 42 Pa.C.S. § 9781(c).

As to consecutive sentences, “[l]ong standing precedent of [the Superior] Court recognizes that [the Sentencing Code] affords the sentencing court discretion to impose its sentence concurrently or consecutively to other sentences being imposed at the same time or to sentences already imposed.” *Commonwealth v. Marts*, 889 A.2d 608, 612-13 (Pa. Super. 2005). Accordingly, the decision to sentence consecutively fails even to raise a substantial question on appeal unless that decision “raises the aggregate sentence to, what appears upon its face to be, an excessive level in light of the criminal conduct at issue in the case.” *Commonwealth v. Mastromarino*, 2 A.3d 581, 587 (Pa. Super. 2010) (quoting *Commonwealth v. Gonzalez-Dejusus*, 994 A.2d 595, 596 (Pa. Super. 2010)). Therefore, an appellate court will not disturb consecutive sentences unless the aggregate sentence is “grossly disparate” to the defendant’s conduct, or “viscerally appear[s] as patently ‘unreasonable.’” *Id.* at 587-588.

Here, there is no support in the record for defendant’s contention that the Court failed to consider defendant’s rehabilitative needs and the mitigating evidence presented on her behalf. The Court explicitly stated that it considered defendant’s rehabilitative needs in fashioning her sentence, noting that “[t]his is not someone that we don’t have hope will be able to rehabilitate herself and be a productive member of society.” N.T. 2/23/2011 at 38-39. As to mitigation, since the Court explicitly considered the pre-sentence report in crafting a sentence, it is presumed that any relevant evidence of mitigation was appropriately considered. *See Fullin*, 892 A.2d at 847 n.2; *see also* N.T. 2/23/2011 at 34. Moreover, the Court specifically noted that in fashioning

defendant's sentence, it had taken into consideration defendant's "accomplished" work and educational history, an "extraordinary" showing of family support, her acceptance of responsibility for her conduct, and her diagnosed mental illness. N.T. 2/23/2011 at 37.

Furthermore, each sentence imposed by the Court fell within the standard range of the Guidelines, and there is no indication from the record that the application of the Guidelines was in any way unreasonable.⁴ Therefore, the sentence should be affirmed on appeal. *See* 42 Pa.C.S. § 9781(c); *see also Fiascki*, 886 A.2d at 264.

III. CONCLUSION

For all of the foregoing reasons, the Court's judgment of sentence should be affirmed.

BY THE COURT:


GLENN B. BRONSON, J.

⁴ Applying the Sixth Edition Revised of the Sentencing Guidelines, the parties agreed that defendant's prior record score was a five. N.T. 2/23/2011 at 15. The parties also agreed that using the Deadly Weapon\Used Matrix, the charge of aggravated assault was assigned a standard range of 90 to 108 months, plus or minus 12 months for the aggravated and mitigated ranges, respectively. N.T. 2/23/2011 at 15-16. The parties also agreed that using the Basic Sentencing Matrix, the charge of possessing an instrument of crime was assigned a standard range of six to 16 months, plus or minus three months for the aggravated and mitigated ranges, respectively. N.T. 2/23/2011 at 15-16.