NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. JOEL G. BEVANS Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 926 EDA 2013

Appeal from the Judgment of Sentence November 29, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-00001789-2012

BEFORE: BENDER, P.J.E., PANELLA, J., and LAZARUS, J.

MEMORANDUM BY PANELLA, J. **FILED JUNE 25, 2014**

Appellant, Joel G. Bevans, appeals from the judgment of sentence entered on November 29, 2012, by the Honorable Glenn B. Bronson, Court of Common Pleas of Philadelphia County. After careful review, we affirm.

At trial, through presentation of testimony of police officers and a firearms expert, viewed in the light most favorable to the Commonwealth as the verdict winner, the testimony established the following.

On July 9, 2011, around 1:30 a.m., police officers Culver and Rapone were patrolling the Kensington area of Philadelphia in a marked police cruiser. ***See*** N.T., Trial, 10/10/12 at 69, 107. At that time, the officers observed a vehicle with tinted windows, its taillight out, and a wire dangling from the back, which obscured the license plate. ***See id***., at 71, 107. Officer Culver then put his lights and siren on to signal the car to pull over for motor

vehicle violations. ***See id***., at 71-73, 107. At that time, the vehicle sped up, made a left turn through a red light and then a quick right onto another street. ***See id***., at 73-74, 107. A few seconds after, before the vehicle could come to a complete stop, a man, later identified as Bevans, jumped out the passenger side of the car with a gun in his right hand and ran down the street. ***See id***., at 74, 76, 107-08.

Officer Rapone left the police car and chased on foot, while Officer Culver pursued Bevans in the police car. ***See id***., at 79, 108. After running almost a block, Bevans turned towards Officer Culver in the police car and pointed the gun at him. ***See id***., at 79-80. Officer Culver then fired his gun at Bevans. ***See id***., at 88. Bevans sustained a graze wound to his left side and then fell to the ground, dropping the gun. ***See id***., at 65, 84-85. Officer Culver and Rapone then secured the gun and the scene and had Bevans transported to the hospital. ***See id***., at 89, 108. Examination of Bevans' firearm revealed an unfired cartridge in the chamber, which created a stoppage in the weapon. ***See id***., at 30, 187-190.

A jury convicted Bevans of aggravated assault on a protected class member,[1] possession of a firearm by a prohibited person,[2] carrying a firearm without a license,[3] carrying a firearm on a public street or public property in

---

[1] 18 Pa.C.S.A. § 2702(a)(2).
[2] 18 Pa.C.S.A. § 6105(a)(1).
[3] 18 Pa.C.S.A. § 6106(a)(1).

Philadelphia,[4] and possessing an instrument of crime.[5] At the sentencing hearing, Bevans received incarceration of 7½ to 15 years for the aggravated assault, 5 to 10 years for possession of a firearm by a prohibited person, 3½ to 7 years for carrying a firearm without a license, 1-2 years for carrying a firearm in Philadelphia, and 1-2 years for possession of an instrument of crime. ***See*** N.T., Sentencing Hearing, 11/29/12, at 17-18. In total, Bevans received 18-36 years' imprisonment. ***See id***., at 18. The trial court denied Bevans' post-sentence motions on 3/18/13. This timely appeal follows.

Bevans first claims the evidence presented at trial was insufficient to sustain his convictions of aggravated assault and possession of an instrument of crime. We disagree.

> Our standard of review for sufficiency is clear. We must determine whether the evidence admitted at trial, and all reasonable inferences derived therefrom, when viewed in the light most favorable to the Commonwealth as verdict winner, supports all of the elements of the offense beyond a reasonable doubt. In making this determination, we consider both direct and circumstantial evidence, cognizant that circumstantial evidence alone can be sufficient to prove every element of an offense. We may not substitute our own judgment for the jury's, as it is the fact finder's province to weigh the evidence, determine the credibility of witnesses, and believe all, part, or none of the evidence submitted.

Commonwealth v. Cooper, 941 A.2d 655, 662 (Pa. 2007).

---

[4] 18 Pa.C.S.A. § 6108.
[5] 18 Pa.C.S.A. § 907(a).

Bevans first claims the evidence was insufficient to support his conviction of aggravated assault because the commonwealth failed to establish he possessed the requisite *mens rea* and failed to establish the *actus rea* for the offense. Aggravated assault of a protected class member is defined as follows: where a person "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)," which includes police officers. 18 Pa.C.S.A. § 2702 (a)(2).

"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.A. § 2301. A person "attempts" aggravated assault when he or she acts, with the required specific intent, "in a manner which constitutes a substantial step toward perpetrating a serious bodily injury upon another." ***Commonwealth v. Gruff***, 822 A.2d 773, 776 (Pa. Super. 2003) (citing ***Commonwealth v. Galindes***, 786 A.2d 1004, 1009 (Pa. Super. 2001)).

"Where the intention of the actor is obvious from the act itself, the [fact-finder] is justified in assigning the intention that is suggested by the conduct." ***Commonwealth v. Matthew***, 909 A.2d 1254, 1259 (Pa. 2006) (citations omitted). Bevans' intentions are clear. He bolted from a moving vehicle in the middle of the night and aimed a loaded gun at a police officer.

See N.T., Trial, 10/10/12 at 74, 76, 79-80. An officer of the Crime Scene Unit testified the gun was found loaded at the scene, with the safety off, and with one bullet in the chamber. ***See id***., at 30, 34. He also testified that a stoppage or jam in the gun caused it to malfunction. ***See id***. "A gun is a lethal weapon; pointing it toward a person … speaks volumes as to one's intention." ***Commonwealth v. Hall***, 830 A.2d 537, 543 (Pa. 2003) (citations omitted).

Additionally, Bevans carried the firearm without a license, which suggests the intent to engage in unlawful acts. ***See id***., at 544, (noting "the obtaining of a license is tantamount to an acknowledgment that the possession is for lawful purposes; the failure to obtain a license suggests the opposite … a lack of required license is simply another piece of circumstantial evidence from which the true intent of the user of a firearm might be ascertained in a given situation"). The foregoing evidence clearly supports the jury's conclusion that Bevans attempted to cause serious bodily harm to a police officer.

Bevans next claims that the evidence was also insufficient to support his conviction of possession of an instrument of crime. "A person commits a misdemeanor of the first degree if he possesses any instrument of crime with intent to employ it criminally." 18 Pa.C.S.A. § 907. An instrument of crime is defined as "anything specially made or specially adapted for criminal use [or] anything used for criminal purposes and possessed by the actor

under circumstances not manifestly appropriate for lawful uses it may have." 18 Pa.C.S.A. § 907. Possession of an instrument of crime "does not require that a crime be completed; rather, the focus is on whether the defendant possesses the instrument for any criminal purpose." ***Commonwealth v. Naranjo***, 53 A.3d 66, 71 (Pa. Super. 2012). Bevans possessed a loaded handgun without a license. The evidence was clearly sufficient to sustain the conviction.

In his next issue, Bevans argues the guilty verdict is against the weight of the evidence. Our standard of review for a challenged to the weight of the evidence is well settled. The fact finder makes the sole determination on the weight of the evidence, and is free to believe all, part, or none of the evidence and to make determinations regarding witness credibility. ***See Commonwealth v. Champney,*** 832 A.2d 403, 408 (Pa. 2003). As an appellate court, we may not substitute our own judgment for that of the fact finder. ***See id***. Our review is "limited to whether the trial court palpably abused its discretion in ruling on the weight claim." ***Id***. (citations omitted). Thus, a reversal of the lower court's verdict is only appropriate if it is "so contrary to the evidence as to shock one's sense of justice." ***Id***.

The trial court found that the verdict did not shock its sense of justice. We find no abuse of discretion with this conclusion.

Lastly, Bevans claims the court abused its discretion by imposing an unreasonable sentence. Specifically, Bevans claims the trial court erred in the following ways: not considering all mitigating factors, such as age, family history, and rehabilitative needs; imposing consecutive sentences; and imposing an aggregate sentence of 18 to 36 years.

Bevans challenges the discretionary aspects of his sentence. Issues challenging the discretionary aspect of a sentence must first be raised by post sentence motion or by presentation to the trial court during the sentencing proceedings; otherwise, the challenge is waived. ***See Commonwealth v. Shugars***, 895 A.2d 1270, 1275 (Pa. Super. 2006). We find that Bevans timely filed post sentence motions, which preserved the claims now raised on appeal.

"When challenging the discretionary aspects of the sentence imposed, an appellant must present a substantial question as to the inappropriateness of the sentence." ***Id***., at 1274. ***See also*** Pa.R.A.P. 2119(f). Specifically, an appellant must articulate the manner in which the sentence is inconsistent with a provision of the sentencing code or is contrary to a fundamental norm of the sentencing process. ***See Commonwealth v. Austin***, 66 A.3d 798, 808 (Pa. Super. 2013).

Bevans first claims the trial court did not consider mitigating factors in its sentencing decision. A claim that the sentencing court failed to properly consider mitigating factors does not raise a substantial question.

Commonwealth v. Johnson, 961 A.2d 877, 880 (Pa. Super. 2008); ***Commonwealth v. Petaccio***, 764 A.2d 582, 587 (Pa. Super. 2000). Therefore, Bevans' first claim does not raise a substantial question.

We note that the sentencing court reviewed the presentence investigation report, ***see*** N.T., Sentencing, 11/29/12, at 14-19, and, as such, it is presumed the court was aware of all relevant information about Bevans and took that into consideration. ***See Commonwealth v. Tirado***, 870 A.2d 362, 368 (Pa. Super. 2005).

Bevans next claims the court erred in requiring him to serve his sentences consecutively. "Pennsylvania law 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." ***Austin***, 66 A.3d at 808. (citations omitted). Challenges to this exercise of discretion generally does not raise a substantial question. ***See id***. A challenge to consecutive sentences will *only* raise a substantial question in the *most extreme* cases, such as those where aggregate sentence is unduly harsh, considering nature of the crime and length of imprisonment. ***See id***. That is simply not the case here. Thus, Bevans' second claim does not raise a substantial question.

Lastly, Bevans challenges the trial court's decision to sentence him in the aggravated range. Bevans did not cite to any specific provision of the sentencing code that was violated, but just merely states that the sentence

as a whole was "unjust, improper, manifestly unreasonable, and irrational." This is simply a rehashing of his consecutive sentence claim; it is simply a bald allegation of excessiveness, which does not raise a substantial question. ***SeeCommonwealth v. Mouzon***, 812 A.2d 617, 627 (Pa. 2002).

In any event, this claim is refuted by the record. The sentencing court only imposed an aggravated range sentence for the aggravated assault conviction, while all other offenses were sentenced in the standard range[6] of the guidelines. ***See*** N.T., Sentencing, 11/29/12, at 16-18. The sentencing court has wide discretion, but must clearly state its reasons for imposing a sentence in the aggravated range. ***See Shugars***, 895 A.2d at 1275. Bevans bolted from a moving vehicle, down a public street, waving a gun, and aimed a loaded gun at a police officer. ***See*** N.T., Trial, 10/10/12, at 76, 79. As the sentencing court stated on record, this clearly created a gravely dangerous situation for both the police officers and members of the public. ***See*** N.T., Sentencing, 11/29/12, at 17.

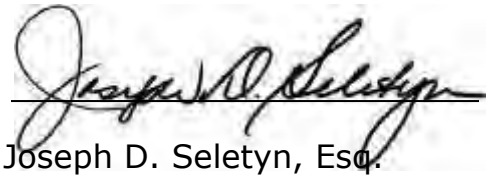
Under these circumstances, the sentencing court did not abuse its discretion in imposing the aggravated sentence for the assault.

Judgment of sentence affirmed. Jurisdiction relinquished.

---

[6] "Where a sentence is within the standard range of the guidelines, Pennsylvania law views the sentence as appropriate under the Sentencing Code." ***Commonwealth v. Moury***, 992 A.2d 162, 171 (Pa. Super. 2010).

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/25/2014