

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ANTHONY DOUGLAS	:	
	:	
Appellant	:	No. 863 EDA 2018

Appeal from the Judgment of Sentence February 21, 2018  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-0004384-2017

BEFORE: GANTMAN, P.J.E., KUNSELMAN, J., and FORD ELLIOTT, P.J.E.

MEMORANDUM BY GANTMAN, P.J.E.: **FILED FEBRUARY 12, 2019**

Appellant, Anthony Douglas, appeals from the judgment of sentence entered in the Philadelphia County Court of Common Pleas, following his bench trial convictions of strangulation, simple assault, and contempt (related to a violation of a Protection From Abuse (“PFA”) order).<sup>1</sup>

The trial court opinion fully and correctly sets forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them. We add only that the court ordered Appellant on March 28, 2018, to file a concise statement of errors complained of on appeal, per Pa.R.A.P. 1925(b); Appellant timely complied.

Appellant raises the following issue for our review:

WAS NOT THE EVIDENCE INSUFFICIENT TO SUSTAIN THE

---

<sup>1</sup> 18 Pa.C.S.A. §§ 2718, 2701, and 23 Pa.C.S.A. § 6114, respectively.

VERDICT OF GUILT FOR THE OFFENSE OF STRANGULATION, 18 PA.C.S. § 2718 (A), IN VIOLATION OF APPELLANT'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS, INASMUCH AS THE COMMONWEALTH FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT THE COMPLAINANT'S BREATHING OR CIRCULATION OF BLOOD WAS IMPEDED?

(Appellant's Brief at 3).

A challenge to the sufficiency of the evidence implicates the following legal principles:

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, 120-21 (Pa.Super. 2005) (quoting

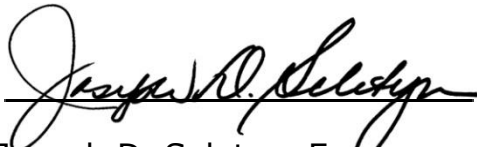
***Commonwealth v. Bullick***, 830 A.2d 998, 1000 (Pa.Super. 2003)).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Charles A. Ehrlich, we conclude Appellant's issue merits no relief. The trial court opinion

comprehensively discusses and properly disposes of the question presented. (**See** Trial Court Opinion, filed July 11, 2018, at 2-5) (finding: evidence was sufficient to convict Appellant of strangulation, where complainant testified at trial credibly that Appellant twice applied pressure to complainant's throat or neck which impeded her breathing or circulation). Accordingly, we affirm based on the trial court's opinion.

Judgment of sentence affirmed.

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: 2/12/19

**FILED**

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
2018 JUL 11 PM 4:34 TRIAL DIVISION - CRIMINAL SECTION

OFFICE OF JUDICIAL RECORDS  
CRIMINAL DIVISION  
FIRST JUDICIAL DISTRICT  
OF PENNSYLVANIA  
COMMONWEALTH OF PENNSYLVANIA : CP-51-CR-0004384-2017

v.  
CP-51-CR-0004384-2017 Comm. v. Douglas, Anthony  
Opinion

ANTHONY DOUGLAS



SUPERIOR COURT  
NO. 863 EDA 2018

OPINION

Ehrlich, J.

Anthony Douglas, hereinafter referred to as appellant, was found guilty on October 16, 2017 following a waiver trial of Strangulation, Contempt, and Simple Assault.<sup>1</sup> These charges stemmed from a report of a domestic dispute between Appellant and Tina Miller, hereinafter referred to as complainant, outside Sal's Produce Plus in Philadelphia on April 15, 2017. Appellant was sentenced by this trial court on February 21, 2018 to 11 ½ to 23 months of incarceration, with immediate parole to house arrest, plus five years of probation for strangulation; two concurrent years of probation for simple assault; and no further penalty for the contempt. A timely appeal followed.

On appeal, Defendant avers two points of error; which are set forth below verbatim:

I. THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN THE VERDICT OF GUILT FOR STRANGULATION IN VIOLATION OF APPELLANT'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS, INASMUCH AS THE COMMONWEALTH FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT, (1) THE COMPLAINANT'S BREATHING OR CIRCULATION OF BLOOD WAS IMPEDED, AND (2) THAT PRESSURE WAS APPLIED TO THE COMPLAINANT'S THROAT OR NECK.

<sup>1</sup> 18 Pa.C.S. § 2718, 23 Pa.C.S. § 6114, 18 Pa.C.S. § 2701, respectively.

II. THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN THE VERDICT OF GUILT FOR STRANGULATION AS A FELONY OF THE FIRST DEGREE, WHERE THE COMPLAINANT, OF HER OWN FREE WILL, VIOLATED THE TERMS OF HER PROTECTION FROM ABUSE ORDER AGAINST APPELLANT ON THE DAY IN QUESTION AND BY REGULARLY MAINTAINING CONTACT WITH THE APPELLANT, SUCH THAT THE FIRST DEGREE GRADATION IS INAPPLICABLE TO APPELLANT AND IN VIOLATION OF HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS.

As will be discussed below, Appellant's claims of error are without merit. Accordingly, no relief is due.

### The Evidence

At trial, the Commonwealth presented the testimony of complainant, Tina Miller. Appellant then testified on his own behalf.

#### Complainant, Tina Miller

The evidence admitted at trial established that on April 15, 2017, complainant, Tina Miller, drove to Sal's Seafood on 676 North Broad Street in Philadelphia, PA alone. N.T. 10/16/18 at pp. 12. There she met appellant in the restaurant so that he could buy her a seafood meal. *Id.* at 13. When complainant met appellant he was mildly hostile with her. *Id.* at 14. They exited the seafood restaurant and walked to Appellant's car. *Id.* at 14. While outside of the car, appellant became "upset" with complainant because she wanted to end their relationship. *Id.* at 17. Appellant entered the car and sat in the driver's seat and complainant entered the car and sat in the passenger's seat. *Id.* at 18. Complainant testified that she intended to take her food from appellant and leave in her own car. *Id.*

However, while in Appellant's car, appellant used one hand to grab complainant by her neck for a "couple of seconds." *Id.* at 20-23. Complainant testified that she passed out at that time

and went blank. *Id.* at 21, 23. Appellant then kicked and pushed complainant in an attempt to get her out of the car, but she held onto the passenger assist handle in the car. *Id.* at 23. Appellant then grabbed complainant by the head and bit her on her forehead. *Id.* at 25. Both then exited the car, and appellant kicked complainant into a gate and then placed one or both of his hands on complainant's neck, and began choking her, causing her to fall to her knees and she "passed out." *Id.* at 29-30, 69. Appellant was stopped from continuing to choke complainant by a bystander who came to her aid. *Id.* at 29. Complainant testified that following the incident she felt "lightheaded" and stated to the investigating officer that "I couldn't breathe..." *Id.* at 70. Further, there were red scratch marks on complainant's neck following the assault. *Id.* at 24.

Moreover, on the day of this assault, complainant had an active Protection From Abuse Order against appellant, which precluded him from having any contact with complainant. *Id.* at 10. Complainant acknowledged that her meeting with appellant on the day in question was consensual. *Id.* at 12-13.

### **Anthony Douglas**

Appellant initially testified that he did not put his hands around complainant's neck, nor did she pass out, while they were together on April 15, 2017. *Id.* at 91. However, when appellant was questioned about the red scratch marks that complainant had on her neck following their argument, appellant testified, "...I was trying to gesture [get] [sic] her outside of the car." *Id.* at 84. Appellant was then asked, "So you grabbed a woman by her neckline...to get her out of the car?" Appellant's response was "It happened like at that instant..." *Id.* at 93.

Discussion

**I. THE EVIDENCE WAS SUFFICIENT TO SUSTAIN THE COURT'S FINDING OF GUILT AS TO THE CHARGE OF STRANGULATION.**

Appellant challenges the sufficiency of the evidence as it relates to whether pressure was applied to complainant's throat or neck, and whether her breathing or circulation of blood was impeded, as required elements of the crime of strangulation. Strangulation is defined by the Pa. Crimes Code as follows:

**(a) A person commits the offense of strangulation if the person knowingly or intentionally *impedes the breathing* or circulation of the blood of another person by:**

**(1) *applying pressure to the throat or neck***

**(b) Infliction of a physical injury to a victim shall not be an element of the offense. The lack of physical injury to a victim shall not be a defense in a prosecution under this section.<sup>2</sup>**

At trial, complainant testified credibly that appellant placed one or two hands on her neck while they were inside the vehicle and again outside the vehicle. N.T. 10/16/18 at pp. 21, 23, 29 - 30. Complainant testified that appellant put his hand around her throat while he was in the car with complainant causing her to pass out and go "blank a little bit [for] a couple of seconds." *Id.* at 23. Further, complainant testified that while being "choked" by appellant outside the car she "passed out" again and "felt lightheaded and couldn't breathe." *Id.* at 20, 69-70. Photographs depicting scratches complainant sustained on her neck, as well as the police report indicating that complainant sustained scratches to her neck following the altercation with appellant, were both admitted into evidence without objection. *Id.* at 20, 73-74.

---

<sup>2</sup> P.a. 18 § 2718.

In the instant case, the totality of the evidence supported a finding of guilt as to the charge of strangulation. This finding was based upon the credible testimony of the complainant, who described in great detail being assaulted and strangled by the appellant, both inside and outside of appellant's vehicle, causing her lose her ability to breathe and to pass out twice. This Court found that the Commonwealth had met its burden of proving beyond all reasonable doubt that Appellant knowingly or intentionally impeded the breathing or circulation of the blood of the complainant by applying pressure to her throat or neck.

Therefore, this Court properly found Appellant guilty of the crime of strangulation.

**II. THE EVIDENCE WAS SUFFICIENT TO SUSTAIN THIS COURT'S FINDING OF GUILT AS TO THE CHARGE OF STRANGULATION AS A FELONY OF THE FIRST DEGREE.**

Appellant also challenges the sufficiency of the evidence as it relates to the grading of strangulation as a felony of the first degree. The grading of the crime of Strangulation is defined by the PA Crimes Code is as follows:

- (1) Except as provided in paragraph (2) or (3), a violation of this section shall constitute a misdemeanor of the second degree.**
- (3) A violation of this section shall constitute a felony of the first degree if:**
  - (i) *At the time of commission of the offense, the defendant is subject to an active Protection From Abuse Order under 23 Pa.C.S. Ch. 61 (relating to protection from abuse).***<sup>3</sup>

On the date of this assault, there was an active Protection From Abuse (PFA) Order<sup>4</sup> in effect which prohibited appellant from having any contact with complainant. Appellant conceded at trial and here on appeal that this was an active Order prohibiting appellant from having any

---

<sup>3</sup> P.a. 18 § 2718.

<sup>4</sup> Commonwealth Exhibit C-4



contact whatsoever with complainant. However, appellant contends that complainant violated the terms of this Protection From Abuse Order by regularly maintaining contact with him. Appellant further contends that by maintaining contact with the appellant, complainant violated the terms of the PFA Order herself and that this finding precludes the grading of strangulation as a felony of the first degree.

Although the Commonwealth concedes that complainant consented to meeting with appellant on the day in question, the terms of the PFA Order did not in any way prohibit complainant from having contact with appellant. Therefore, as the PFA Order only prohibits appellant from having any contact with the complainant, complainant cannot be found to have violated the terms of the PFA Order. Therefore, appellant's claim that complainant voluntarily violated the terms of her own PFA Order and that this vitiates the grading of strangulation as a first degree felony is without merit. See *Commonwealth v. Brumbaugh*, 932 A.2d 108, 110 (Pa. Super. 2007).

Accordingly, as appellant was found to have been in violation of this active PFA Order on the date of the incident, a finding of guilt as to the crime of strangulation constituted a felony of the first degree as defined by the above stated statute. Therefore, this court committed no error in grading the offense of strangulation as a felony of the first degree.

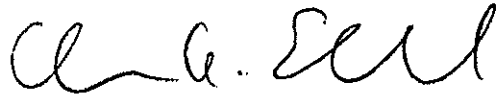
Conclusion

In summary, this court has carefully reviewed the entire record and finds no harmful, prejudicial, or reversible error and nothing to justify the granting of Defendant's request for relief. For the reasons set forth above, the judgment of this trial court should be affirmed.

By The Court:

7-11-18

Date



Honorable Charles A. Ehrlich