

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
TROY MARCUS ALLEN	:	
	:	
Appellant	:	No. 1107 MDA 2021

Appeal from the Judgment of Sentence Entered July 15, 2021,
in the Court of Common Pleas of Dauphin County,
Criminal Division at No(s): CP-22-CR-0006822-2018.

BEFORE: PANELLA, P.J., KUNSELMAN, J., and KING, J.

MEMORANDUM BY KUNSELMAN, J.: **FILED: JUNE 13, 2022**

Appellant Troy Marcus Allen appeals the judgment of sentence imposed after a jury convicted him of aggravated assault and simple assault.¹ Upon review, we affirm.

The following facts are adopted from the findings of the trial court. Allen and the victim, Allen’s girlfriend, resided together at an apartment in Susquehanna Township, Pennsylvania. At some point in the evening on September 14, 2018, the couple began arguing and Allen grabbed the victim’s hair, dragged her into a bathroom, and slammed her into the bathtub, causing her to hit her head. Allen then took her from the bathtub and dragged her into the living room where he put his knee on her chest and his hands around

¹ 18 Pa. C.S.A. §§ 2702(a)(1) and 2701(a)(1), respectively.

her neck. She was unable to breathe and lost consciousness. When she awoke, she noticed painful, fingerprint-sized abrasions on her neck.

Meanwhile, a neighbor in a nearby apartment heard the commotion, including the sound of someone hitting a bathtub and a female voice screaming and yelling for help. The neighbor later testified that she believed someone was trying to kill the woman. The neighbor went to call for the police but noticed officers had already arrived.

When officers entered the couple's apartment, they found the victim on the floor crying and the apartment in a state of disarray. The officer interviewing her at the scene also noticed that she had red marks and bruising on her neck, upper chest, and jawbone. Allen was subsequently charged with aggravated assault, strangulation, terroristic threats, and simple assault.

Allen received a directed verdict of acquittal for the terroristic threats charge, but the jury convicted him of aggravated assault, simple assault, and strangulation. The strangulation charge was *nolle prossed* at sentencing. The trial court sentenced Allen to 46 months to 10 years of incarceration for the aggravated assault conviction with no an additional penalty for the simple assault conviction. Allen filed post-trial motions, which were denied.

Allen filed this timely appeal. Both Allen and the trial court complied with Pennsylvania Rule of Appellate Procedure 1925(b).

In his appeal, Allen raises the following single error: "Was the evidence against [Allen] insufficient to convict him of Aggravated Assault, as the

Commonwealth did not demonstrate that [Allen] had the requisite intent to cause serious bodily injury, as evidence of strangulation is not sufficient to do so[?]" Allen's Brief at 10.

Our standard of review for sufficiency claims is as follows:

A claim challenging the sufficiency of the evidence is a question of law. 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. Where the evidence offered to support the verdict is in contradiction to the physical facts, in contravention to human experience and the laws of nature, then the evidence is insufficient as a matter of law. When reviewing a sufficiency claim[,] the court is required to view the evidence in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence.

Commonwealth v. Widmer, 744 A.2d 745, 751 (Pa. 2000) (internal citations omitted). The "inferences must flow from facts and circumstances proven in the record, and must be of such volume and quality as to overcome the presumption of innocence and satisfy the jury of the accused's guilt beyond a reasonable doubt." **Commonwealth v. Scott**, 597 A.2d 1220, 1221 (Pa. Super. 1991) (internal quotations omitted). "The trier of fact cannot base a conviction on conjecture and speculation and a verdict which is premised on suspicion will fail even under the limited scrutiny of appellate review." **Id.** "Because evidentiary sufficiency is a question of law, our standard of review is *de novo* and our scope of review is plenary." **Commonwealth v. Diamond**, 83 A.3d 119, 126 (Pa. 2013).

Allen asserts that the Commonwealth failed to prove that he intended to inflict serious bodily injury upon the victim because choking alone is insufficient proof of intent and the circumstances leading up to the choking do not support such an inference. Allen's Brief at 17-24.

A person commits aggravated assault when 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.A. § 2702(a)(1). "Serious bodily injury" is further defined as "[b]odily 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. To prove a charge of aggravated assault, the Commonwealth need not show that the victim sustained serious bodily injury, only that the defendant "acted with specific intent to cause serious bodily injury," which can be proven through circumstantial evidence and "inferred from acts or conduct or from the attendant circumstances." **Commonwealth v. Lewis**, 911 A.2d 558, 564 (Pa. Super. 2006) (citation omitted).

The trial court found, and we agree, that the Commonwealth presented more than sufficient evidence to support the jury's finding that Allen intended to inflict serious bodily injury upon the victim. The neighbor testified that she heard a woman's voice screaming for help from Allen's apartment, as well as banging and a "distinctive sound as if someone was hitting the bathtub." N.T.

Trial, 5/10/21, at 73. An officer who responded to the scene testified that he found the victim crying and disheveled, with bruises and red marks on her neck, upper chest, and lower jaw. **Id.** The victim also testified that Allen grabbed her by the hair and dragged and slammed her into the bathtub, causing her to hit her head and “scream in agony.” **Id.** at 59–60. Allen then dragged her into the living room and began choking her “with two hands around my neck and a knee on my chest.” **Id.** at 62. She was unable to breathe and remembered “waking up” when the police arrived. **Id.** at 63. The jury, if it accepted this testimony, could have easily inferred that Allen intended to cause serious bodily injury by choking the victim based upon the viciousness of the prior assault, Allen’s use of both hands to choke the victim while holding her down with his knee, and the severity of the choking, which caused her to lose consciousness and sustain bruises and red marks upon her neck.

Allen unsuccessfully attempts to distinguish these facts from those in other aggravated assault cases involving choking. He cites **Commonwealth v. Russell**, 460 A.2d 316 (Pa. Super. 1983) to suggest that choking alone is insufficient to establish an intent to inflict serious bodily injury. The court in **Russell** noted that aggravated assault can be proven by circumstantial evidence even if the alleged attack, viewed in isolation, does not suggest an intent to inflict serious bodily injury. 460 A.2d at 319–320. However, in this case, the Commonwealth introduced evidence of Allen’s violent conduct other

than the choking, specifically dragging the victim through the apartment by her hair and throwing her against the bathtub. N.T. Trial, 5/10/21, at 59–60.

Additionally, while Allen admits that circumstantial evidence can be proof of intent, Allen claims that his conduct immediately preceding the choking was insufficient to show an intent to commit serious bodily harm. He attempts to distinguish ***Commonwealth v. Cassidy***, 668 A.2d 1143 (Pa. Super. 1995). In ***Cassidy***, an intent to commit seriously bodily injury was inferred when the defendant threw his wife across the room with “such force that she bounced from one doorjamb to another,” was hospitalized, and the preceding events supported “a logical inference that appellant attacked his wife in a fit of rage.” ***Id.*** at 1146. Allen suggests that ***Cassidy***’s holding is limited to inferring intent when a victim is thrown or suffers major injuries. We disagree. Instead, ***Cassidy*** holds that an intent to inflict severe bodily injuries can be deduced from a defendant’s violent conduct and the surrounding circumstances.

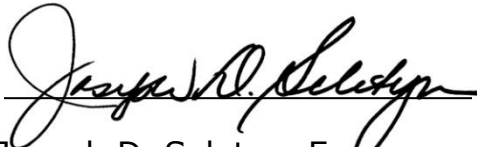
Here, Allen engaged in violent conduct by choking the victim, an act that could have potentially caused death or serious injury. ***See Commonwealth v. Watson***, 431 A.2d 949, 952 (Pa. 1981) (“[i]t is beyond question that manual strangulation can result in serious bodily injury, if not death.”) Allen also brutally attacked the victim in the moments leading up to the assault, throwing her against the bathtub so hard that a neighbor was able to identify the specific sound of the impact. Along with the Commonwealth’s evidence

of the victim's injuries and her testimony, these facts support a finding that Allen had the necessary intent to inflict serious bodily injury.

Accordingly, reviewing the evidence in the light most favorable to the Commonwealth as the verdict winner, we conclude that the evidence presented at trial was legally sufficient to sustain Allen's conviction for aggravated assault.

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: 06/13/2022