

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
BRUCE LEE HAWK, JR.,	:	
	:	
Appellant	:	No. 2295 EDA 2012

Appeal from the Judgment of Sentence entered on July 24, 2012
in the Court of Common Pleas of Carbon County,
Criminal Division, No. CP-13-CR-0000300-2010

BEFORE: BOWES, GANTMAN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

FILED MAY 29, 2013

Bruce Lee Hawk, Jr. ("Hawk"), appeals from the judgment of sentence imposed following his convictions of aggravated assault and simple assault.

See 18 Pa.C.S.A. §§ 2702(a)(4), 2701(a)(2). We affirm.

The trial court has set forth the relevant underlying facts:

[John Flaim ("Flaim"), the victim in this case, stated that] on May 6, 2010[,] at approximately 10:00 a.m.[,] he was operating his maroon Volvo station wagon on Delaware Avenue in Palmerton, Pennsylvania when [Hawk], operating a light blue pickup truck in reverse gear, nearly struck [] Flaim's automobile. [Hawk] then accelerated his vehicle to drive alongside of [] Flaim, such that [] Flaim's vehicle was "pinned to the curb," while [Hawk] was screaming at [] Flaim and threatening physical harm to his person.

[Hawk] then followed [] Flaim in his automobile as [] Flaim proceeded onto Pennsylvania Route 248, driving approximately two to three feet behind the bumper of [] Flaim's vehicle. When [] Flaim pulled his vehicle to the side of the road to allow him to pass, [Hawk] stopped his vehicle behind [] Flaim's vehicle and approached it, whereupon [] Flaim advised [Hawk] to calm down

and drive away. [] Flaim then saw [Hawk] return to and remove something from the back of his truck, then approach the front driver's side of [] Flaim's vehicle, still screaming and making threats. [Hawk] then struck the front driver's side window with a metal object, which [] Flaim believed to be a pipe, shattering the window, striking [] Flaim in the arm and possibly the head and spraying glass fragments onto his arm and face. [] Flaim then observed [Hawk] returning to his truck and driving away onto the Bowmanstown exit ramp, making a left-hand turn onto Route 895.

* * *

Pennsylvania State Trooper Anthony Doblovasky testified [that] on May 6, 2010, he was dispatched to the scene of the subject incident on the north shoulder of westbound Route 248. When he arrived at the scene, he observed [] Flaim standing next to his vehicle, pulling glass shards off of his person; the trooper also observed that [] Flaim had sustained injuries and that his vehicle was missing a window. Upon learning that an individual believed to be the man in the blue and white truck who had committed the assault had been apprehended, Trooper Doblovasky led [] Flaim to the location where that individual was being held, whereupon [] Flaim identified [Hawk] as the man who had committed the assault. [] Flaim also identified the blue and white truck as the vehicle which [Hawk] had been operating.

Trial Court Opinion, 10/29/12, at 7-8, 10 (citations omitted).

On June 8, 2010, Hawk was charged with aggravated assault, simple assault, driving under the influence, criminal mischief, and harassment. The case proceeded to a jury trial in May 2012. The jury found Hawk guilty of aggravated assault and simple assault. Thereafter, Hawk's counsel made a Motion for judgment notwithstanding the verdict, which the trial court denied. On July 24, 2012, the trial court sentenced Hawk to twenty-three to sixty months in prison for the aggravated assault conviction. The trial court

stated that the simple assault conviction merged with the aggravated assault conviction for the purpose of sentencing.

Hawk filed a timely Notice of appeal. The trial court ordered Hawk to file a Pennsylvania Rule of Appellate Procedure 1925(b) concise statement. Hawk filed a timely Concise Statement and the trial court issued an Opinion.

On appeal, Hawk raises the following question for our review: "Whether the verdict for aggravated assault[-]attempted bodily injury with a deadly weapon was against the weight of the evidence?" Brief for Appellant at 6.

Initially, we note that any issues not raised in a Rule 1925(b) concise statement are waived on appeal. **See** Pa.R.A.P. 1925(b)(4)(vii); **Commonwealth v. Castillo**, 888 A.2d 775, 780 (Pa. 2005). Similarly, when an appellant's concise statement is so vague that the trial court is unable to identify the issues to be raised on appeal, those issues are deemed waived. **See Commonwealth v. Dowling**, 778 A.2d 683, 686-87 (Pa. Super. 2001) (stating that "a Concise Statement which is too vague to allow the [trial] court to identify the issues raised on appeal is the functional equivalent of no Concise Statement at all.").

Here, in his Concise Statement, Hawk raised the following claim: "Whether the [trial c]ourt erred in denying [Hawk's] Motion for Judgment

Notwithstanding the Verdict[?]"¹ Concise Statement, 9/7/12. Plainly, Hawk's claim on appeal is not the same claim that he raised in his Concise Statement; thus, the claim is waived on appeal. **See Castillo**, 888 A.2d at 780.² Furthermore, even if Hawk had properly preserved his weight of the evidence claim in the Concise Statement, Hawk failed to explicitly raise a weight of the evidence claim in the trial court, as required by Pennsylvania Rule of Criminal Procedure 607(a). **See Commonwealth v. Priest**, 18 A.3d 1235, 1239 (Pa. Super. 2011) (concluding that appellant's weight of the evidence claim was waived for failing to present the claim orally or in writing before sentencing or in a post-sentence motion).

Judgment of sentence affirmed.

¹ We note that the remedy of judgment notwithstanding the verdict does not apply in criminal prosecutions. **See Commonwealth v. Blassingale**, 581 A.2d 183, 191 (Pa. Super. 1991).

² In its Opinion, the trial court found that the Concise Statement was not "sufficiently specific to afford [the trial c]ourt or those reviewing the matter on appeal the opportunity to meaningfully address the alleged error." Trial Court Opinion, 10/29/12, at 4-5; **see generally Commonwealth v. Seibert**, 799 A.2d 54, 62 (Pa. Super. 2002) (stating that appellant's weight of the evidence claim in his Rule 1925(b) concise statement was too vague to permit review). Furthermore, the trial court found that even if Hawk had properly preserved a claim for appeal, Hawk had raised a sufficiency of the evidence claim and addressed this claim accordingly. **See** Trial Court Opinion, 10/29/12, at 5-13.

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Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambitt", written over a horizontal line.

Prothonotary

Date: 5/29/2013