

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

|                               |   |                          |
|-------------------------------|---|--------------------------|
| COMMONWEALTH OF PENNSYLVANIA, | : | IN THE SUPERIOR COURT OF |
|                               | : | PENNSYLVANIA             |
| Appellee                      | : |                          |
|                               | : |                          |
| v.                            | : |                          |
|                               | : |                          |
| DANIEL GLEDHILL,              | : |                          |
|                               | : |                          |
| Appellant                     | : | No. 2533 EDA 2012        |

Appeal from the Judgment of Sentence entered on July 11, 2012  
in the Court of Common Pleas of Delaware County,  
Criminal Division, No. CP-23-CR-687-2011

BEFORE: BENDER, P.J., DONOHUE and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.: **FILED DECEMBER 04, 2013**

Daniel Gledhill (“Gledhill”) appeals from the judgment of sentence entered following his conviction of simple assault, 18 Pa.C.S.A. § 2701(a)(1). We reverse.

The trial court summarized the relevant history underlying the instant appeal as follows:

The underlying incident occurred in the morning hours of October 3, 2010. On the evening of October 2, 2010, several young women gathered for a 21<sup>st</sup> birthday party for a mutual friend. The party occurred at a bar known as Johnny B’s and was located on Burmont Road in Upper Darby Township, Pennsylvania. Among the women who attended the party at Johnny B’s were Michelle Sousa [“Sousa”], Bridgette McCall [“McCall”], Bridgette McCoy [“McCoy”], Theresa Bodine [“Bodine”], Erin Flanagan [“Flanagan”], Katie Eric [“Eric”] and Dana Egan [“Egan”]. All were adults and all admitted to having consumed more than a few drinks at Johnny B’s.

By the testimony, it appears that the group left Johnny B’s at or near the closing time of the bar, at 2:00 am. The initial

plan was to walk to [] Sousa's home, but the plans were altered when the group was invited to another party at an apartment located above a pizzeria. The apartment shared a parking lot with the Rite Aid store on Burmont Avenue.

As the group of five women began to walk to the apartment, they encountered [Gledhill] and his brother, who were driving a Chevy Blazer. [Gledhill] and his brother stopped the vehicle and spoke with the women and offered to give them a ride to the party at the apartment. Once the parties arrived at the Rite Aid parking lot, there was a confrontation that apparently arose from the fact that [Gledhill] and his brother, having been under the impression that they were also to attend the party, discovered that they were, in fact, not permitted to enter the apartment and the party. Once this became known, there was an argument and multiple physical confrontations ensued among the parties[,] which resulted in at least four individuals being injured. Two women sought medical treatment for bruising and broken teeth; [Gledhill] was bloodied and ultimately refused treatment; [Gledhill's] brother was treated for a broken nose.

Trial Court Opinion, 1/8/13, at 2-3 (unnumbered).

Following a bench trial, the trial court convicted Gledhill of the simple assault of Egan, after which the court sentenced Gledhill to a one-year term of probation and 40 hours of community service. Gledhill filed a post-sentence Motion, which the trial court denied. Thereafter, Gledhill filed the instant timely appeal, followed by a court-ordered Pa.R.A.P. 1925(b) Concise Statement of matters complained of on appeal.

Gledhill presents the following claims for our review:

1. Was insufficient evidence provided at trial to convict [Gledhill] of Simple Assault upon [] Egan in the manner stated by the Trial Court?

2. Was the weight of the evidence provided at trial insufficient to convict [Gledhill] of Simple Assault upon [] Egan in the manner stated by the Trial Court?

Brief of the Appellant at 4 (issues renumbered).

Gledhill first claims that the evidence presented at trial was insufficient to sustain his conviction of simple assault. *Id.* at 24. Citing ***Commonwealth v. Clark***, 895 A.2d at 633 (Pa. Super. 2005), Gledhill argues that the trial court only found that the Commonwealth's witnesses were "more credible" than the witnesses presented by Gledhill. Brief for Appellant at 25. Gledhill argues that the trial court used a preponderance of the evidence standard, rather than determining whether the evidence met the more rigorous standard of proof beyond a reasonable doubt. *Id.*

In reviewing a challenge to the sufficiency of the evidence, we evaluate the record "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. Bibbs***, 970 A.2d 440, 445 (Pa. Super. 2009) (citation omitted).

Evidence will be deemed sufficient to support the verdict when it established each element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Nevertheless, the Commonwealth need not establish guilt to a mathematical certainty, and may sustain its burden by means of wholly circumstantial evidence. Significantly, [we] may not substitute [our] judgment for that of the factfinder; if the record contains support for the convictions they may not be disturbed.

*Id.* (citation and quotation marks omitted). "Any doubt about the defendant's guilt is to be resolved by the factfinder unless the evidence is so

weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances.” **Commonwealth v. Scott**, 967 A.2d 995, 998 (Pa. Super. 2009). “[W]henver a jury verdict is based on evidence so unreliable that it renders the verdict a product of surmise and conjecture, the evidence is insufficient, as a matter of law, to sustain the verdict.” **Commonwealth v. Brown**, 52 A.3d 1139, 1156 n.18 (Pa. 2012).

A person is guilty of simple assault if he “attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another[.]” 18 Pa.C.S.A. § 2701(a)(1).

Applying the above-stated standard, our review discloses that the Commonwealth presented conflicting testimony regarding the events underlying Gledhill’s conviction. In trying to resolve the conflicting testimony, the trial court, as fact-finder, found that “[u]ltimately, the testimony of the victim, [Egan], and that of the other Commonwealth witnesses was more credible and more persuasive to the court.” Trial Court Opinion, 1/8/13, at 3 (unnumbered). The trial court resolved the conflicts in the testimony as follows:

The testimony of [Sousa], [Egan] and [McCoy] support a narrative that suggests that [Gledhill] and his brother became angry after they had driven the women to the party and were now informed that they were not invited to the party. As a result of this disappointment, [Gledhill] and his brother became angry and [Gledhill] either throws or pushes [Egan] out of the vehicle from the rear passenger seat with such violence and force that her head hits the door of an adjacent vehicle[,] which is parked alongside of [Gledhill’s] vehicle. There is further indication that [Gledhill] then punches [Egan] and the

combination of events is sufficient that [Egan] claims to be unconscious until the police arrive. [Egan] is treated for these injuries and released from the hospital.

**Id.** at 3-4 (unnumbered).

Contrary to the trial court's "narrative," our review of the record discloses that the testimony of the Commonwealth's witnesses was so inconsistent as to render the testimony insufficient to sustain the verdict.

Viewing the evidence in a light most favorable to the Commonwealth, our review of the record discloses the following. At trial, Upper Darby Township Police Officer John Donahue ("Officer Donahue") testified that on October 3, 2010, at about 2:18 a.m., he was dispatched to the scene of a fight in a parking lot. N.T., 4/25/12, at 9-10. Upon arriving at the scene, Officer Donahue observed a "chaotic scene as far as people in the lot. It looked like a fight was either just breaking up or was still occurring." **Id.** at 12. Officer Donahue testified that he approached a group of girls "that appeared injured and they were screaming, and yelling and pointing to a male subject." **Id.** at 13. In the courtroom, Officer Donahue identified the subject as Gledhill. **Id.**

When Officer Donahue approached Gledhill, Gledhill appeared to be highly intoxicated. **Id.** at 14. According to Officer Donahue, Gledhill also appeared to be injured, and did not respond to the officer's questions. **Id.** Officer Donahue testified that the girls at the scene also appeared to be injured. **Id.** at 15.

Gledhill was eventually transported to the hospital. **Id.** at 21. At the hospital, Gledhill told Officer Donahue that there was a fight, and he was injured during the fight. **Id.** at 22. While Officer Donahue was at the hospital, he was advised that Gledhill's brother, Richard Gledhill ("Richard"), was also in the emergency room with a broken nose. **Id.** at 23. Richard told Officer Donahue that he was "jumped" by two males. **Id.** at 23-24. Richard appeared sober at that time. **Id.** at 24.

Officer Donahue testified that one woman involved in the fight had missing front teeth, while another had a cut to her forehead. **Id.** at 25. Finally, Officer Donahue testified that upon questioning the women at the scene, he was informed that they did not know if Gledhill was the aggressor or whether he caused their injuries. **Id.** at 31-32.

Sousa testified that she had visited a bar on October 2, 2010 for a birthday party with her friends. **Id.** at 51. At around 2:00 a.m., Sousa and four of her friends left the bar with the intention of going to the home of another friend named "Deuce." **Id.** at 54, 55. As they left the bar, a car pulled up and they were offered a ride. **Id.** at 56. Sousa identified Gledhill as a passenger in the vehicle. **Id.** at 57. When the vehicle entered the parking lot of a Rite Aid store, Sousa and her friends thanked Gledhill and the driver, but stated that the two men could not go into Deuce's house. **Id.** at 59. At that point, Sousa stated,

I just remember getting out of the car and then seeing [Egan] getting thrown out of the back. She was right behind me getting thrown out of the door behind me.

**Id.** at 59-60. Sousa believed that Gledhill was sitting in the middle of the back seat at that time. **Id.** at 60. Although Sousa saw Egan “fly” out of the back seat, she did not see Gledhill do anything to Egan. **Id.** at 60-61, 71. On cross-examination, Sousa testified that she did not see Gledhill use his arms or feet to push Egan. **Id.** at 71. Sousa further admitted that she did not see which part of Egan’s body struck the vehicle beside them. **Id.** at 72.

Sousa testified that her friend, McCoy, and a man named Joe arrived at the parking lot in another vehicle. **Id.** at 73-74. According to Sousa, Joe and McCoy got out of their vehicle after Egan was down on the ground. **Id.** at 73. While Egan was on the ground, McCoy ran over and began hitting Gledhill. **Id.** at 75. According to Sousa,

I saw them punching [Gledhill] because we were all screaming that [Egan] got hit and Erin’s teeth were missing. So that was their first instinct.

**Id.** at 76. Although Sousa never saw Gledhill strike Joe, Joe struck Gledhill. **Id.** at 77, 99. While Gledhill lay on the ground, Sousa saw McCoy and others punching Gledhill. **Id.** at 79, 88.

Egan, the victim, testified that at the time she left the bar, she was intoxicated to the point where she would not have driven. **Id.** at 108. Egan stated that she and her friends originally intended to go home, but then were invited to have a drink at Deuce’s house. **Id.** at 109. After the women

left the bar, Gledhill and another man then drove up and offered the women a ride. **Id.** Egan testified that she sat on the passenger side in the back seat, and that Gledhill sat in the middle seat. **Id.** at 112.

According to Egan, Gledhill and the other man became annoyed upon being informed that they could not go into Deuce's apartment. **Id.** at 114. At that time, they got into a "verbal confrontation" with Gledhill and the other man. **Id.** Egan testified that she was pushed out of the car by Gledhill. **Id.** at 115. She further stated that she and Gledhill were arguing, "[a]nd then I remember being picked up and thrown head-first into the driver's side." **Id.** at 115. After falling to the ground, Egan testified that Gledhill struck her with a closed fist, while she was on the ground, rendering her unconscious. **Id.** at 116-17.

On cross-examination, however, Egan testified that she could not see who pushed her out of the vehicle, but felt it. **Id.** at 130. Egan testified that after being pushed out of the vehicle, she walked around to the driver's side of Gledhill's vehicle. **Id.** at 132. Egan stated that she did not go into Deuce's apartment upon exiting the vehicle because everyone was mad. **Id.** at 134. Egan recalled a lot of "commotion" and people arguing. **Id.** at 135-36. Egan then stated that Gledhill picked her up and threw her headfirst into the driver's side of Gledhill's vehicle. **Id.** at 37. However, Egan then testified as follows:

Q. [Defense counsel]: And how do you know it was [] Gledhill that hit you?



A. [Egan]: Because I have witnesses who say he did.

Q. I'm asking how you know. Because other people told you or you know he hit you?

A. I don't -I couldn't identify him in pictures.

**Q. At the time of this incident ... do you personally recall  
[] Gledhill hitting you?**

**A. No I do not.**

**Id.** at 141 (emphasis added). When asked who had told Egan what had taken place, she identified McCoy and Sousa. **Id.** at 142. Egan again testified that she did not know, personally, who had thrown her into the car. **Id.** at 143. Rather, Egan's knowledge was based upon what others had told her. **Id.**

On re-direct, the prosecutor asked Egan who had pushed her out of the vehicle, at which point defense counsel objected. **Id.** at 155. The trial court did not rule on the objection, but stated, "I think it's pretty clear that she said the person next to her pushed her out of the car. Correct?" **Id.** Egan responded, "Yes." **Id.** Egan then identified the person next to her as Gledhill. **Id.**

McCoy testified that upon leaving the bar, she got into a car with a man named "Joe", a man named "Kerry", and McCall. **Id.** at 167. After stopping for food, they drove to an apartment shared by Kerry and Deuce. **Id.** at 166. As they approached the parking lot, McCoy testified that she saw "[Egan] getting hit." **Id.** at 169. McCoy testified that Egan was

standing at the passenger's side of the Gledhill vehicle when she was struck. **Id.** at 170. McCoy stated that "I seen [*sic*] her platinum blonde hair flying and she was getting hit and she fell to the floor." **Id.** at 170. McCoy identified Gledhill as Egan's attacker. **Id.** McCoy testified Gledhill struck Egan as she stood at the front passenger door, and that Gledhill was beside Egan, standing closest to the car. **Id.** at 174.

Michael Pursell ("Pursell") testified that on October 3, 2010, he called police about louder than normal activity in the Rite Aid parking lot across the street from his home. N.T., 3/26/12, at 6-7. Pursell saw about six to ten people in the parking lot. **Id.** at 8. Pursell observed men and women pushing and shoving. **Id.** at 11.

We cannot conclude that the above evidence, even when viewed in a light most favorable to the Commonwealth, was sufficient to sustain Gledhill's conviction. Although we recognize that any doubt about Gledhill's guilt must be resolved by the fact-finder, the evidence presented at trial was so weak and inconclusive that, as a matter of law, no probability of fact could be drawn from the combined circumstances.

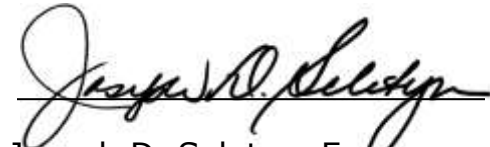
Sousa testified that Egan was pushed out of the passenger side of the vehicle and hit the vehicle parked beside the Gledhill vehicle, at which time Sousa attended to Egan while she was on the ground. Sousa did not see Gledhill push Egan. Egan testified that she did not recall who hit her, but that she had walked around the vehicle to the driver's side prior to being

picked up and thrown into the driver's side of the Gledhill vehicle. Contrary to the testimony of the victim, Egan, McCoy testified that she saw Gledhill punch Egan, while the two were standing at the passenger side of the vehicle, after which Egan fell to the ground. The only consistent fact testified to by the Commonwealth's witnesses was that Egan eventually ended up on the ground.

Based upon the foregoing, we conclude that the evidence that Gledhill committed the crime of simple assault was so weak and inconclusive as to be insufficient as a matter of law. Accordingly, we are constrained to reverse Gledhill's judgment of sentence. Because we reverse Gledhill's judgment of sentence, we need not address his challenge that the verdict is against the weight of the evidence.

Judgment of sentence reversed; defendant is discharged.

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: 12/4/2013