

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

STACEY LAWSON

Appellant

No. 2564 EDA 2011

Appeal from the Judgment of Sentence September 15, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0012056-2009

BEFORE: PANELLA, J., OLSON, J., and FITZGERALD, J.*

MEMORANDUM BY PANELLA, J.

Filed: January 3, 2013

Appellant, Stacey Lawson, appeals from the judgment of sentence entered September 15, 2011, by the Honorable Linda A. Carpenter, Court of Common Pleas of Philadelphia County. After review, we vacate and remand.

The trial court summarized the pertinent facts as follows:

On July 19, 2009[,] at approximately 3:40 a.m., Officer Steven Williams was off duty in his personal vehicle with his friend Carey-Ann Ruth in the area of 800 Poplar Drive in Fairmount Park in the City of Philadelphia. Defendant Lawson approached Williams' vehicle and pulled on the driver's side door handle, which was locked. Williams told Lawson to go away at which point Lawson left and began to pull on the door handles of other vehicles nearby. Lawson then returned to Williams' vehicle and Williams partially exited the vehicle and identified himself as a police officer. Lawson opened the door and got inside the vehicle. Williams grabbed Lawson by his shoulders, and pulled

* Former Justice specially assigned to the Superior Court.

him out of the vehicle. Lawson fell to the ground, got back up, and departed.

Williams called 911 to report the incident and returned to his vehicle to follow Lawson. Williams encountered Officer Leriche, an on-duty police officer in uniform, who had proceeded to the area in response to a radio call. When Williams pointed Officer Leriche in Lawson's direction, Officer Leriche pulled up to Lawson, exited his vehicle, and began to pursue him on foot. Williams followed behind in his vehicle. As Officer Leriche caught up to Lawson and attempted to arrest him, a struggle occurred. Lawson refused to comply with the officer and was exerting such force that Williams tried to help restrain him while Officer Leriche placed him in handcuffs. Following the arrest, Officer Leriche recovered a white glass jar with wet leaves with stems on it, alleged PCP, from Lawson's person. Lawson was taken to the hospital, where he indicated that he had smoked PCP and that he was hallucinating. While Lawson has a history of mental illness and previously experienced auditory hallucinations, he had not experienced visual hallucinations prior to this incident.

Trial Court Opinion, 4/17/12 at 2-3 (footnote omitted).

Following a non-jury trial, Lawson was convicted of attempted theft by unlawful taking¹ and simple assault.² On September 15, 2011, the trial court sentenced Lawson to nine to 23 months' incarceration with immediate parole, to be followed by three year' probation. No further penalty was imposed for simple assault. This timely appeal followed.

On appeal, Lawson challenges the sufficiency of the evidence in support of his convictions of attempted theft and simple assault. Our standard when reviewing a challenge to the sufficiency of the evidence is well settled:

¹ 18 PA.CON.S.TAT.ANN. § 3921(a).

² 18 PA.CON.S.TAT.ANN. § 2701.

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. Kendricks, 30 A.3d 499, 508 (Pa. Super. 2011) (citation omitted).

We proceed to evaluate the sufficiency of the evidence to support Lawson's conviction of attempted theft, which was graded as a felony of the third degree. Section 901 of the Crimes Code provides, in relevant part, that "[a] person commits an attempt when, with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime." 18 PA.CON.S.TAT.ANN. § 901(a). Section 3921 provides, in relevant part, that "[a] person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof." 18 PA.CON.S.TAT.ANN. § 3921(a).

At the non-jury trial, Williams testified that a scuffle occurred when Lawson attempted to enter his vehicle, during which Lawson purportedly attempted to "engage" the vehicle by putting his hand on the shift, placing his feet on the pedals and turning the keys. N.T., Waiver Trial, 6/13/11 at 25. Ultimately, however, the trial court had "concerns that Officer Williams

wasn't a hundred percent credible on what happened in the beginning" of the encounter. *Id.* at 169-170. Nevertheless, the court determined that:

[i]n the wake of smoking PCP, Lawson was experiencing hallucinations, fearing that he was going to be shot and killed by drug dealers with brain scanners and in response to these hallucinations, he was trying to open the vehicle doors to hide and be covered. Although this court did not find Lawson had the intent to *steal* the vehicle permanently, but rather to use the car temporarily, the circumstances support this court's determination that, even in Lawson's own misplaced belief that he was in fear of drug dealers with brain scanners, he had the requisite statutory intent for depriving Williams the use of his vehicle by attempted to exercise unlawful control over it.

Trial Court Opinion, 4/17/12 at 6.

Our review of the testimony adduced at trial does not support the trial court's determination that Lawson possessed the requisite intent to control or operate Williams' vehicle or that he attempted to exercise unlawful control over it. The trial court admitted that it did not fully credit Williams' testimony regarding the scuffle at the vehicle and thus it "could not make a finding of any alleged events occurring outside of Williams' vehicle upon Lawson's return." *Id.* at 3 n.1. Without Williams' testimony that Lawson attempted to engage or exercise control of the vehicle, we are left only with evidence that Lawson attempted to enter Williams' vehicle to hide. This alone is insufficient to support a finding that Lawson attempted to exercise unlawful control over or intended to deprive Williams' of the vehicle. Accordingly, we are constrained to reverse Lawson's conviction for attempted theft.

Because this finding affects the trial court's sentencing scheme, we therefore vacate the judgment of sentence for both convictions and remand for resentencing so that the trial court has the opportunity to restructure its entire sentencing scheme. ***Commonwealth v. McHale***, 924 A.2d 664, 668 (Pa. Super. 2007) (citation omitted), ***disapproved of on other grounds by Commonwealth v. Robinson***, 931 A.2d 15 (Pa. Super. 2007).

We do find, however, that the evidence was sufficient to support Lawson's conviction of simple assault. Simple assault is defined in the Crimes Code as follows:

Simple assault

(a) Offense defined.--A person is guilty of assault if he:

(1) attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another[.]

18 PA.CON.S.STAT.ANN. § 2701(a)(1). Bodily injury is further defined as "impairment of physical condition or substantial pain." 18 PA.CON.S.STAT.ANN. § 2301. However, intent to inflict bodily injury may be adduced from the circumstances surrounding the attack. ***Commonwealth v. Rosado***, 684 A.2d 605, 608 (Pa. Super. 1996). In determining whether intent was proven from such circumstances, the fact finder is free to conclude the accused intended the natural and probable consequences of his actions to result therefrom. ***Id.***

Herein, Officer Leriche testified that Lawson refused to comply when he attempted to effectuate an arrest. N.T., Waiver Trial, 6/13/11 at 72.

Officer Leriche stated that Lawson exerted such force during the struggle that another officer had to restrain Lawson so that Officer Leriche was able to cuff him. *Id.* at 73. Although neither officer sustained any injury, the trial court “inferred Lawson’s intent to cause bodily injury from the circumstances of his struggle against the two men in which he exerted significant force against them.” Trial Court Opinion, 4/17/12 at 6. We agree, and find that the circumstances surrounding Lawson’s struggle during the arrest support a finding that Lawson intended the natural and probable consequences to result in bodily injury. Accordingly, we find the evidence sufficient to support Lawson’s simple assault conviction, and remand for resentencing on that count.

Conviction for simple assault affirmed. Conviction for attempted theft reversed. Judgment of sentence vacated. Case remanded for resentencing consistent with this memorandum.