NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. HAROLD DAVIS, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 3182 EDA 2011

Appeal from the Judgment of Sentence August 8, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0004447-2011

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

MEMORANDUM BY OLSON, J.: Filed: January 16, 2013

Appellant, Harold Davis, appeals from the judgment of sentence entered on August 8, 2011 in the Criminal Division of the Court of Common Pleas of Philadelphia County. We affirm.

At the conclusion of a bench trial on August 8, 2011, the trial court found Appellant guilty of robbery as a felony in the second degree, terroristic threats as a misdemeanor of the first degree, simple assault, and retail theft.[1] Immediately thereafter, the trial court sentenced Appellant to two to four years' incarceration for the robbery conviction and no further penalty on the other offenses.

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[1] 18 Pa.C.S.A. §§ 3701(a)(1)(iv), 2706(a)(1), 2701(a), and 3929(a)(1), respectively.

* Former Justice assigned to the Superior Court.

** Justice Fitzgerald did not participate in the consideration of this decision.

The trial court summarized the relevant facts as follows:

> On March 14, 2011, at approximately 10:00 a.m., [Appellant] was at a Save-A-Lot store located on 56th and Vine Street. [Appellant] was seen on surveillance video by the store manager, Mr. Evan Madwid, stuffing meat into a black duffel bag. Mr. Madwid went down to the meat department and personally witnessed [Appellant] putting more meat in the bag. Mr. Madwid immediately called for assistance from other store employees in order to stop [Appellant]. Afterwards, [Appellant] proceeded to walk towards the exit.
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> When [Appellant] was ten feet away from the exit, Mr. Madwid cut him off and asked to speak with him. As [Appellant] and Mr. Madwid walked towards the office, [Appellant] grabbed Mr. Madwid with both hands, pushed off, and began to flee. Mr. Madwid stumbled backwards but was able to tackle [Appellant] [o]nto the ground. After falling to the ground, both individuals popped back up to their feet. [Appellant] immediately began flailing and tried to push and elbow Mr. Madwid off. [Appellant] subsequently told Mr. Madwid to let him go and that he had a knife. Moments later, another manager came to help and [Appellant] tried to kick her off. Eventually, with the help of two other employees, [Appellant] was taken down to the ground. Five minutes later, the police came into the store. Mr. Madwid testified that during the struggle, he believed that [Appellant] had a knife. Further, Mr. Madwid testified that the meat that was taken was recovered inside [Appellant's] bag and on [Appellant's] person [. Other stolen items were recovered from Appellant's] pants and socks.
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> At around 10:30 a.m., Officer Raymond Lacey arrived at the scene in response to a radio call for a theft in progress. When Officer Lacey arrived, [Appellant] was flat on his stomach with several employees on top of him. Officer Lacey ordered the employees to get off [Appellant] and [then] took [Appellant] into custody.

Trial Court Opinion, 4/24/12, at 2-3 (record citations omitted).

In his brief, Appellant asks us to consider the following issue:

> Was not the evidence insufficient to sustain [A]ppellant's conviction for robbery of the second degree (18 Pa.C.S.A.

> § 3701(a)(1)(iv)) where the Commonwealth failed to establish that [A]ppellant inflicted bodily injury upon another or threatened another with or intentionally put another in fear of immediate bodily injury while in the course of committing a theft?

Appellant's Brief at 3.

Appellant challenges the sufficiency of the Commonwealth's evidence offered in support of his robbery conviction. Specifically, Appellant claims that the Commonwealth failed to prove beyond a reasonable doubt that he inflicted bodily injury upon another during the course of a theft or, alternatively, that he threatened another with bodily injury while committing a theft. We disagree.

> Our standard for evaluating sufficiency of the evidence is whether the evidence, viewed in the light most favorable to the Commonwealth [as verdict winner], is sufficient to enable a reasonable [factfinder] to find every element of the crime beyond a reasonable doubt. [T]he entire trial record must be evaluated and all evidence actually received must be considered, whether or not the trial court's rulings thereon were correct. Moreover, [t]he Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Finally, the trier of fact, while passing upon the credibility of witnesses and the weight to be afforded the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Bryant, 2012 WL 5897735, *4 (Pa. Super. 2012) (case citations and quotation marks omitted).

A person is guilty of robbery as a felony of the second degree "if, in the course of committing a theft, he: (iv) inflicts bodily injury upon another or threatens another with or intentionally puts [the victim] in fear of immediate bodily injury." 18 Pa.C.S.A. § 3701(a)(1)(iv). When reviewing a

robbery conviction, this Court looks to the nature of the defendant's threat to determine whether the defendant intended to put the victim in fear of immediate bodily injury. ***See Commonwealth v. Kubis***, 978 A.2d 391, 398 (Pa. Super. 2009).

In support of his contention that the evidence was insufficient to sustain his robbery conviction, Appellant points out that he did not make a specific threat to use a knife, that he did not make any motion as if he was going to use a knife, and that no knife was recovered from his person. ***See*** Appellant's Brief at 12. As the trial court found, however, Appellant told Mr. Madwid that he had a knife during the struggle that took place at the grocery store. Trial Court Opinion, 4/24/12, at 5. Moreover, the trial court found that Mr. Madwid believed Appellant's statement. ***Id.*** We conclude that Appellant's statement, within the context of the March 14, 2011 incident, was sufficient to place Mr. Mawid in reasonable fear of immediate bodily injury. Accordingly, there was sufficient evidence for the trial court to find Appellant guilty of robbery under § 3701(a)(1)(iv), as he threatened another with immediate bodily injury. Appellant's sufficiency challenge fails.

Judgment of sentence affirmed.