

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

GEORGE CEPHAS

Appellant

No. 870 EDA 2012

Appeal from the Judgment of Sentence March 5, 2012  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-0013844-2008  
MC-51-CR-0051917-2008

BEFORE: GANTMAN, J., SHOGAN, J., and MUSMANNO, J.

MEMORANDUM BY GANTMAN, J.:

**FILED DECEMBER 23, 2013**

Appellant, George Cephas, appeals from the judgment of sentence entered in the Philadelphia County Court of Common Pleas, following his jury trial conviction of robbery and attempted kidnapping.<sup>1</sup> We affirm.

In its opinion, the trial court fully and correctly sets forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.

Appellant raises the following issues for our review:

WAS NOT THE EVIDENCE INSUFFICIENT TO SUSTAIN THE  
CONVICTION FOR ATTEMPTED KIDNAPPING WHERE  
APPELLANT SPOKE TO THE COMPLAINANT THROUGH HER  
CAR WINDOW AND LACKED THE SPECIFIC INTENT TO

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<sup>1</sup> 18 Pa.C.S.A. §§ 3701, 901(a) (2901 related), respectively.

REMOVE HER (1) A SUBSTANTIAL DISTANCE AND [(2)] FOR A PROHIBITED PURPOSE, THAT IS, TO FACILITATE COMMISSION OF A ROBBERY, THE PURPOSE OF THE ALLEGED REMOVAL AS CHARGED TO THE JURY?

WAS NOT THE EVIDENCE INSUFFICIENT TO SUSTAIN THE CONVICTION FOR ROBBERY AS A FELONY OF THE FIRST DEGREE WHERE APPELLANT LACKED THE SPECIFIC INTENT TO (1) PUT THE COMPLAINANT IN FEAR OF SERIOUS BODILY INJURY, AND (2) TO COMMIT A THEFT OF THE COMPLAINANT'S VEHICLE, THE ALLEGED OBJECT OF THE THEFT?

(Appellant's Brief at 3).

When examining a challenge to the sufficiency of evidence, our standard of review is as follows:

The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the [trier] of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

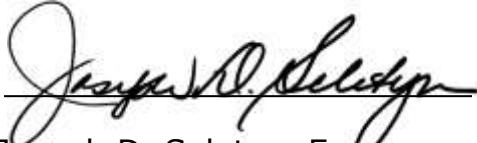
***Commonwealth v. Hansley***, 24 A.3d 410, 416 (Pa.Super. 2011), *appeal denied*, 613 Pa. 642, 32 A.3d 1275 (2011) (quoting ***Commonwealth v. Jones***, 874 A.2d 108, 120-21 (Pa.Super. 2005)).

After a thorough review of the record, Appellant's brief, the applicable law, and the well-reasoned opinion of the Honorable Linda Carpenter, we conclude Appellant's issues merit no relief. The trial court opinion comprehensively discusses and properly disposes of the questions presented. (**See** Trial Court Opinion, dated March 26, 2013, at 4-6) (finding: **(1)** Appellant physically pushed against vehicle door to prevent complainant from exiting her vehicle; Appellant's command to complainant to move over and give Appellant keys proved Appellant's intent to commit theft of complainant's vehicle; Appellant's posturing of his hand to appear like gun inside his coat, in conjunction with physical force exerted to prevent complainant from exiting vehicle, proved Appellant's intent to put complainant in fear of immediate serious bodily injury; evidence was sufficient for jury to find Appellant guilty of robbery; **(2)** Appellant unlawfully attempted to remove complainant substantial distance from area where complainant had parked her vehicle, with intent of facilitating robbery of her vehicle, by threatening complainant with perceived gun, ordering complainant to hand over her keys and move over, pushing against vehicle door to prevent complainant's exit, and struggling with complainant on opposing sides of door after she managed to open her door; evidence was

sufficient for jury to find Appellant guilty of attempted kidnapping). The record supports the trial court's decision; therefore, we see no reason to disturb it. Accordingly, we affirm on the basis of the trial court's opinion.

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: 12/23/2013

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
TRIAL DIVISION – CRIMINAL SECTION

FILED

MAR 26 2013

Criminal Appeals Unit  
First Judicial District of PA

COMMONWEALTH OF PENNSYLVANIA

v.

GEORGE CEPHAS

CP-51-CR-0013844-2008

OPINION

CARPENTER, J.

March 26, 2013

Defendant George Cephas ("Cephas") was charged with and found guilty of Robbery (F1) and Attempted Kidnapping (F1) on bill of information CP-51-CR-0013844-2008. These charges arose from an incident in Old City on April 5, 2008 in the City and County of Philadelphia. This court requests that the Superior Court uphold the convictions and affirm the sentence imposed in this matter.

PROCEDURAL HISTORY

On September 6, 2011, Cephas brought a motion to suppress his identification at trial, which this court denied, and on September 7, 2011, Cephas brought a motion to quash, which this court also denied. Following the motions, Cephas elected to exercise his right to a jury trial and pled not guilty to the above listed charges. At the conclusion of the Commonwealth's case, Cephas brought a motion for acquittal on the charge of attempted kidnapping, which this court denied. On September 8, 2011, the jury found

59

Cephas guilty of Robbery (F1) and Attempted Kidnapping (F1). At the conclusion of the trial, the case was continued to March 5, 2012 for sentencing. On March 5, 2012, this court sentenced Cephas to an aggregate sentence of 15–30 years followed by 10 years of probation.<sup>1</sup>

On March 12, 2012, this court received a Notice of Appeal and on August 6, 2012, upon completion of the notes of testimony, Cephas was served an Order directing him to file a concise statement of the matters complained on appeal pursuant to Pa.R.A.P.1925(b). On August 27, 2012, this court received Cephas' preliminary 1925(b) response as well as a Request for Extension of Time to File a Supplemental 1925(b) response, upon completion of additional transcripts, which this court granted. On March 6, 2013, after completion of the remaining transcripts, this court received a Supplemental 1925(b) response which rephrased the following issues on appeal:

1. The evidence was insufficient to sustain a conviction for Attempted Kidnapping, where appellant spoke to the complainant through her car window and (i) did not have the specific intent to remove the complainant a substantial distance and (ii) did not have the specific intent to remove the complainant for a prohibited purpose, specifically to facilitate the commission of a robbery, the purpose of the alleged removal as charged to the jury.
2. The evidence was insufficient to sustain a conviction for Robbery, a felony of the first degree, where appellant (i) did not have the specific intent to put the complainant in fear of serious bodily injury and (ii) did not have the specific intent to commit a theft of the complainant's vehicle, the alleged object of the theft.

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<sup>1</sup> Cephas was sentenced to 10-20 years of incarceration on the Robbery (F1) charge and 5-10 years of incarceration on the Attempted Kidnapping (F1) charge to run consecutively, followed by 10 years of probation.

## **FACTS**

At trial, the Commonwealth presented the testimony of Alexandria Rogers ("Rogers") who told the jury that on April 5, 2008, at approximately 9:40 p.m., she parked her car in the area of 2<sup>nd</sup> Street and Pine Street in the Old City/Society Hill area of Philadelphia. Upon straightening out her car in the space on the street, Cephas approached the car and knocked on the driver's side window. Acting as if he had a gun in his pocket, Cephas told Rogers to give him the keys and move over. However, after a verbal exchange, Cephas declined to take the car keys or her purse, and Rogers then attempted to leave the vehicle. Cephas told her not to get out and blocked the door, prohibiting Rogers from exiting the vehicle. After a few minutes of pushing against the door to get out, Rogers became upset and started to cry and scream. In response, Cephas raised his hands away from the car, revealing that he did not in fact have a gun, and told Rogers to calm down. Now knowing that Cephas was unarmed, Rogers tried to kick open the door and Cephas, again, blocked Rogers from exiting her vehicle. Rogers began to scream and Cephas ran away.

After Cephas ran off, Rogers drove away to find a police officer and soon encountered Officer Sprouls. Rogers informed the officer about the incident with Cephas, describing him as a bearded 5'10" black male wearing a long coat who was dirty looking, and Officer Sprouls completed an incident report. The officer took Rogers to Central Detectives, where she met with Detective Burke. Detective Burke interviewed Rogers and took a fingerprint from the driver's side window of her car. Officer Copeland, a latent print examiner, identified the print as Cephas' thumbprint, noting seventeen identifiable "hits" and no differences between the print taken from

Rogers' window and Cephas' thumbprint of record. After the identification of Cephas' thumbprint, Detective Burke showed Rogers a photo array, from which Rogers identified Cephas as the aggressor from the evening of April 5, 2008. Detective Burke then obtained an arrest warrant and arrested Cephas.

## **DISCUSSION**

### ***Sufficiency of the Evidence***

The standard applied when reviewing the sufficiency of evidence is whether, viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt.<sup>2</sup> In applying this test, the Superior Court may not weigh the evidence and substitute its judgment for that of the fact-finder. The facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless, the evidence is so weak and inconclusive that as a matter of law, no probability of fact may be drawn from the combined circumstance.<sup>3</sup> The Commonwealth may satisfy its burden of proving an element of the crime beyond a reasonable doubt through the use of wholly circumstantial evidence. In applying the test, the whole record must be evaluated and all evidence received must be considered.<sup>4</sup>

On appeal, Cephas asserts that the evidence was insufficient to sustain his convictions for Robbery (F1) and Attempted Kidnapping (F1). To convict a person of

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<sup>2</sup> *Com. v. Heberling*, 678 A.2d 794, 795 (Pa. Super. 1996) (citing *Com. v. Williams*, 650 A.2d 420 (Pa. 1994)).

<sup>3</sup> *Com. v. Cassidy*, 668 A.2d 1143, 1144 (Pa. Super. 1995).

<sup>4</sup> *Com. v. Valette*, 613 A.2d 548, 549 (Pa. 1992).



Robbery (F1), the Commonwealth must prove beyond a reasonable doubt that he, in the course of committing a theft, either inflicted serious bodily injury upon another; threatened another with or intentionally put him in fear of immediate serious bodily injury, or committed or threatened immediately to commit any felony of the first or second degree.<sup>5</sup> An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit theft or in flight after the attempt or commission.<sup>6</sup> In the instant case, Cephas came to Rogers's driver's side window and, while posturing his hand to make her believe he had a gun inside his coat, told her to give him her keys and move over. Cephas physically prevented Rogers from exiting her vehicle by pushing against the door and again insisted that she not get out. Cephas' words to Rogers in telling her to move over and give him her keys evidence Cephas' intent to commit a theft of her vehicle. Additionally, his posturing of his hand to appear like a gun inside his coat in conjunction with the physical force exerted to prevent Rogers from exiting the car evidence his intent to put her in fear of immediate serious bodily injury. This court, in viewing all the evidence admitted at trial in the light most favorable to the Commonwealth, determined that the evidence was sufficient to enable the jury to find Cephas guilty of Robbery.

To convict a person of Attempted Kidnapping (F1), the Commonwealth must prove two elements beyond a reasonable doubt: first, that he either attempted to unlawfully remove another a substantial distance under the circumstances from the place where the other person is found or he attempted to unlawfully confine another for a substantial period in a place of isolation; second, that he did this with any of the

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<sup>5</sup> 18 Pa.C.S. § 3701(a)(1)(i)-(iii).

<sup>6</sup> 18 Pa.C.S. § 3701(a)(2).

following intentions: (1) to hold for ransom or reward, or as a shield or hostage, or (2) to facilitate commission of any felony or flight thereafter, or (3) to inflict bodily injury on or to terrorize the victim or another, or (4) to interfere with the performance by public officials of any governmental or political function.<sup>7</sup> 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.<sup>8</sup> As provided by the statute, a removal or confinement is unlawful if it is accomplished by force, threat or deception.<sup>9</sup> In the instant case, Cephas attempted to unlawfully remove Rogers a substantial distance from the area of 2<sup>nd</sup> Street and Pine Street with the intent of facilitating a robbery of her vehicle. His attempt is evidenced by the posturing of his hand to make her believe he had a gun inside his coat and his telling her to give him her keys and move over. This conduct demonstrated his intent to commit the kidnapping and it constituted a substantial step toward the commission of the kidnapping. Cephas attempted the removal with the threat of the perceived gun inside his coat as well as the physical force related to the struggle between Cephas and Rogers on opposing sides of the door, thereby making it unlawful. Finally, Cephas attempted to unlawfully remove Rogers with the intent to facilitate the commission of the robbery of her vehicle, as evidenced by his insistence that she hand him the keys and move over. Having reviewed all of the evidence admitted at trial, this court found that the evidence was sufficient to enable the jury to find Cephas guilty of Attempted Kidnapping.

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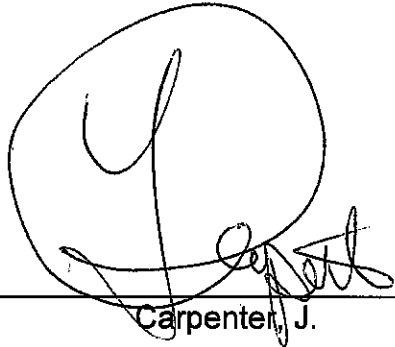
<sup>7</sup> 18 Pa.C.S. § 2901(a); 18 Pa.C.S. § 901.

<sup>8</sup> 18 Pa.C.S. § 901.

<sup>9</sup> 18 Pa.C.S. § 2901(b)(1).

**CONCLUSION**

For the reasons set forth in this Opinion, the Superior Court should affirm the jury's finding of guilt and the sentence imposed in this matter.



Carpenter, J.