

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
COURTNEY SMITH	:	
	:	
Appellant	:	No. 1777 EDA 2019

Appeal from the Judgment of Sentence Entered June 11, 2019
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0010235-2017

BEFORE: DUBOW, J., McLAUGHLIN, J., and MUSMANNNO, J.

MEMORANDUM BY DUBOW, J.:

FILED MAY 26, 2020

Appellant Courtney Smith appeals from the June 11, 2019 Judgment of Sentence entered in the Court of Common Pleas of Philadelphia County following her non-jury conviction for Aggravated Assault, Recklessly Endangering Another Person (“REAP”), Disarming a Law Enforcement Officer, Simple Assault, and Resisting Arrest.¹ Appellant challenges the sufficiency of the evidence to support the Aggravated Assault, REAP, and Disarming a Law Enforcement Officer convictions, and the imposition of a sentence for Simple Assault. After careful review, we affirm in part and vacate in part.

We derive the following relevant facts from the trial court’s Pa.R.A.P. 1925(a) Opinion and the certified record. On November 10, 2017, Philadelphia Police Officer Victor Rodriguez stopped a pickup truck after a drug surveillance

¹ 18 Pa.C.S. §§ 2702(a)(3), 2705, 5104.1, 2701, and 5104, respectively.

unit near West Russell Street in Philadelphia observed Appellant purchase street narcotics, and depart the area as a passenger in the vehicle. Officer Rodriguez placed Appellant in handcuffs and into his police car while he searched the vehicle.

When he returned to his car, Officer Rodriguez saw that one of Appellant's hands was free from the handcuffs. When Officer Rodriguez opened the door to replace the cuff, Appellant said "I'm not going to jail," and kicked him twice in the chest hard enough to move him out of the door frame. Appellant exited the car, and began tugging on Officer Rodriguez's service weapon with both hands, but was unable to remove it from the holster.

With her left hand still on Officer Rodriguez's weapon, Appellant attempted to punch him and reach for his groin with her right hand. She then took Officer Rodriguez's asp, a metal baton, from his belt with her right hand and raised it over her head. Officer Rodriguez grabbed Appellant's hand before being hit with the baton, and ordered her to the ground. Backup officers arrived, and assisted with placing Appellant in custody. Officer Rodriguez was not injured in the altercation.

The Commonwealth charged Appellant with the above crimes. At Appellant's waiver trial on January 29, 2019, Officer Rodriguez testified consistent with the above recitation of the facts. Appellant also testified, describing the incident quite differently. Appellant denied reaching for Officer Rodriguez's weapon or asp, and denied punching or kicking him. Rather,

Appellant asserted that Officer Rodriguez pulled her out of his police car, threw her to the ground, and straddled her until backup officers arrived.

The trial court convicted Appellant of all charged offenses. Relevant to our analysis, the trial court, sitting as fact-finder, expressed that it did not give weight to Appellant's testimony: "Ma'am (referring to Appellant), you told an outrageous story. This was a credibility issue, and I did not believe you ma'am. I therefore – and I found the officer showed a lot of restraint. I thought the officer was extremely credible." N.T., 1/29/19, at 67-68.

The court sentenced Appellant on June 11, 2019, to an aggregate sentence of 11½ to 23 months of incarceration with immediate parole and credit for time served, followed by one year of reporting probation to run concurrent with each charge. Most important to this appeal, the court ordered the sentence for Simple Assault to be served concurrently with all other imposed sentences.²

Appellant raises the following issues on appeal:

[1.] Was not the evidence insufficient to convict [A]ppellant of [A]ggravated [A]ssault as a felony of the second degree, where two kicks to the police officer's vest were no attempt to cause bodily injury and [A]ppellant had no intent to cause bodily injury but merely to avoid arrest?

² Specifically, the court sentenced Appellant to 11½ to 23 months of incarceration for Aggravated Assault, and an identical concurrent sentence for Disarming a Law Enforcement Officer. The court sentenced Appellant to concurrent terms of one year of probation for the remaining convictions.

[2.] Was not the evidence insufficient to convict [A]ppellant of [REAP] where [A]ppellant's actions at no time placed the officer in danger of death or serious bodily injury?

[3.] Was not the evidence insufficient to convict [A]ppellant of [D]isarming a [L]aw [E]nforcement [O]fficer where [A]ppellant's conduct amounted to no more than resisting arrest?

[4.] Where the trial court sentenced [A]ppellant to 11½ to 23 months [of] confinement followed by one year of probation for [A]ggravated [A]ssault, did not the court err in sentencing appellant to one year of concurrent probation for Simple Assault when the offenses merged at sentencing?

Appellant's Br. at 3.

Appellant's first three issues involve challenges to the sufficiency of the evidence. "A claim challenging the sufficiency of the evidence is a question of law." **Commonwealth v. Widmer**, 744 A.2d 745, 751 (Pa. 2000). "Our standard of review is *de novo*, and our scope of review is plenary." **Commonwealth v. Mikitiuk**, 213 A.3d 290, 300 (Pa. Super. 2019) (citation omitted). Further, we must determine:

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 finder 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. Reed, 216 A.3d 1114, 1119 (Pa. Super. 2019).

In her first issue, Appellant challenges the sufficiency of the evidence supporting her Aggravated Assault conviction. Appellant argues that she intended only to resist arrest, and, thus, lacked the specific intent to cause bodily injury to Officer Rodriguez. Appellant's Br. at 9. Appellant conflates motivation and intent, arguing in essence that her motivation to avoid arrest means that she did not possess an intent to commit bodily injury.

A person commits Aggravated Assault against a police officer if she "attempts to cause or intentionally or knowingly causes bodily injury to a police officer... in the performance of duty." ***Commonwealth v. Hewlett***, 189 A.3d 1004, 1008 (Pa. Super. 2018); 18 Pa.C.S. § 2702(a)(3). "[T]he Commonwealth has no obligation to establish that the officer actually suffered a bodily injury; rather, the Commonwealth must establish only an attempt to inflict bodily injury, and this intent may be shown by circumstances which reasonably suggest that a defendant intended to cause injury." ***Commonwealth v. Brown***, 23 A.3d 544, 560 (Pa. Super. 2011) (*en banc*) (citation and emphasis omitted). A defendant's alleged subjective motivation for her conduct does not preclude the finding of an intentional act. ***Commonwealth v. Richardson***, 636 A.2d 1195, 1197 (Pa. Super. 1994). Finally, the Crimes Code defines "bodily injury" as "[i]mpairment of physical condition or substantial pain." 18 Pa.C.S. § 2301.

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