NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. JOVON JAVAR DESHIELDS, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1545 MDA 2012

Appeal from the Judgment of Sentence entered June 20, 2012, in the Court of Common Pleas of York County, Criminal Division, at No(s): CP-67-CR-0006613-2010.

BEFORE: DONOHUE, ALLEN, and PLATT,* JJ.

MEMORANDUM BY ALLEN, J.: Filed: April 19, 2013

Jovon Javar Deshields ("Appellant") appeals from the judgment of sentence imposed after he was convicted of attempted murder, two counts of aggravated assault, possession of a firearm by a minor, and carrying a firearm without a license.[1]

On August 21, 2010, the victim, Rose Bosley, arrived at the York City Police Station with a gunshot wound to her abdomen, and was transported to York City Hospital for treatment. Affidavit of Probable Cause, 9/28/10. Ms. Bosley informed the police that she had arranged to buy crack cocaine in York City, and met her supplier in the area of 17 West Maple Street. N.T., 5/7-10/12, at 166-187. Ms. Bosley had previously been involved in two

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[1] 18 Pa.C.S.A. §§ 901(a) and 2502(a); 2702(a)(1) and (4); 6110.1(a); and 6106(a)(1).

*Retired Senior Judge assigned to the Superior Court.

hostile encounters with Appellant in the area of West Maple Street. *Id.* After meeting with her supplier, Ms. Bosley was preparing to leave the area when Appellant approached her car. *Id.* Ms. Bosley, who recognized Appellant from her previous encounters with him, saw Appellant reach for his waistband, and heard Appellant say "remember me" before he pointed a gun at her and fired. *Id.* Ms. Bosley managed to drive away from the scene to the police station. *Id.* Ms. Bosley was shot once in the stomach, and her car was shot approximately two more times as she drove away. Affidavit of Probable Cause, 9/28/10. Based on information provided by Ms. Bosley, York City Police Detective Anthony Fetrow prepared a photographic lineup, and Ms. Bosley identified Appellant as the shooter. Appellant was subsequently arrested and charged with the aforementioned crimes.

Appellant was fifteen years old at the time of the shooting. On April 13, 2011, he filed a petition to transfer the case from the jurisdiction of criminal court to juvenile court. On September 15, 2011, the trial court denied Appellant's petition. A jury trial commenced on May 7, 2012. The jury rendered their verdicts on May 10, 2012. On June 20, 2012, the trial court sentenced Appellant to twelve to twenty-four years of imprisonment.

Appellant filed a post-sentence motion on June 29, 2012, which the trial court denied on July 26, 2012. Appellant filed a timely notice of appeal. Both Appellant and the trial court have complied with Pa.R.A.P. 1925.

Appellant raises the following issues for our review:

> 1. Whether the trial court improperly found there [was] sufficient evidence to support the attempted [murder] charge?
>
> 2. Whether the [attempted murder] verdict was against the weight of the evidence?

Appellant's Brief at 4.

In his first issue, Appellant argues that the evidence was insufficient to support his conviction for attempted murder. Appellant's Brief at 9-11. When reviewing a challenge to the sufficiency of the evidence, we are bound by the following principles:

> We must determine whether the evidence admitted at trial, and all reasonable inferences drawn therefrom, when viewed in a light most favorable to the Commonwealth as verdict winner, support the conviction beyond a reasonable doubt. Where there is sufficient evidence to enable the trier of fact to find every element of the crime has been established beyond a reasonable doubt, the sufficiency of the evidence claim must fail.
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> The evidence established at trial need not preclude every possibility of innocence and the fact-finder is free to believe all, part, or none of the evidence presented. It is not within the province of this Court to re-weigh the evidence and substitute our judgment for that of the fact-finder. The Commonwealth's burden may be met by wholly circumstantial evidence and any doubt about the defendant's guilt is to be resolved by the fact finder 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. Tarrach, 42 A.3d 342, 345 (Pa. Super. 2012).

"Attempted murder is defined by reading the attempt statute, 18 Pa.C.S.A. § 901(a), in conjunction with the murder statute, 18 Pa.C.S.A. § 2502(a) (murder of the first degree). Accordingly, the elements of

attempted murder are (1) the taking of a substantial step, (2) towards an intentional killing." ***Commonwealth v. Johnson***, 874 A.2d 66, 71 (Pa. Super. 2005).

Within his brief, Appellant seemingly argues that he did not take a substantial step toward the intentional killing of Ms. Bosley because:

> The medical testimony herein from Dr. Mpinga was that there was little blood, it was only a bullet fragment, the bullet fragment was below the skin and in the fatty tissue and that it would work its way out of the skin to the surface. No surgery was necessary to remove the fragment.

Appellant's Brief at 10. This argument is not persuasive.

Rose Bosley testified that Appellant, with whom she had an acrimonious history, approached her vehicle, said "remember me," shot her in the stomach, and continued to shoot at her as she fled in her vehicle. N.T., 5/7-10/12, at 185-187. Three bullet casings were retrieved from the scene, and a bullet was retrieved from the rearview mirror of Ms. Bosley's vehicle. *Id*. at 119-121, 249. The York City ShotSpotter gunshot detection system recorded three gunshots fired in the area where Ms. Bosley was shot. *Id*. at 124. Dr. Ebondo Mpinga, the Commonwealth's expert in the area of trauma and critical care surgery, testified that Ms. Bosley was shot in the abdomen underneath the ribcage, an area near vital organs as well as critical arteries and veins. *Id*. at 144-149.

We conclude that the record evidence was sufficient for the jury to find that Appellant took a substantial step toward the intentional killing of Ms.

Bosley. Appellant's sufficiency challenge to his attempted murder conviction is therefore without merit. ***See Commonwealth v. Manley***, 985 A.2d 256 (Pa. Super. 2009) ***quoting Commonwealth v. Padgett****, 465 Pa. 1, 5, 348 A.2d 87, 88 (1975)* ("The firing of a bullet in the general area in which vital organs are located can in and of itself be sufficient to prove specific intent to kill beyond a reasonable doubt."); ***Commonwealth v. Jackson***, 955 A.2d 441 (Pa. Super. 2008) (where a detective chased a defendant who was armed with a gun and shooting at a third person, and defendant turned, looked at the detective, and raised his arm toward the detective, the fact finder could have reasonably found that defendant took a substantial step toward intentionally killing the detective, even though defendant did not fire the gun); ***Commonwealth v. Wesley,*** 860 A.2d 585 (Pa. Super. 2004) (where defendant initially shot the victim in the back, causing serious bodily injury to the victim with a gun, defendant committed aggravated assault; after the victim turned around and grabbed defendant's gun, defendant then fired the gun, blowing off the victim's finger, then immediately shot the victim five more times; this second series of gunshots clearly demonstrated a substantial step by Appellant toward the intentional killing of the victim, and thus constituted attempted murder).

Appellant next argues that his conviction for attempted murder was against the weight of the evidence and essentially asks this Court to reweigh the evidence presented at trial. Appellant asserts that Ms. Bosley was not a credible witness. Appellant's Brief at 11-12. Appellant also suggests that he

could not be convicted of attempted murder, ie., taking a substantial step toward the intentional killing of Ms. Bosely, based on Dr. Mpinga's testimony that Ms. Bosley was not "pierced" in a vital organ, but rather that the bullet lodged in her subcutaneous "fatty tissue," resulting in an injury that was not life-threatening and did not require surgery. See N.T., 5/7-10/12, 144-154; Appellant's Brief at 11-12.

It is well settled that the finding of the trial court as to whether the verdict is against the weight of evidence may not be disturbed absent an abuse of discretion. ***Commonwealth v. Marks***, 704 A.2d 1095, 1098 (Pa. Super. 1997) (internal quotations and citations omitted). "This determination requires the court to assess the credibility of the testimony offered by the Commonwealth. However, generally [t]he weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. As such, this Court may not reverse the verdict unless it is so contrary to the evidence as to shock one's sense of justice." ***Id***.

Here, the jury was free to credit the testimony of Ms. Bosley. Although Appellant correctly asserts that Dr. Ebondo Mpinga, the Commonwealth's trauma and critical care surgery expert, testified that the bullet lodged in Ms. Bosley's subcutaneous tissue, resulting in a non-life threatening injury, N.T., 5/7-10/12, 144-154, Dr. Mpinga also testified that the bullet entered an area of the body which was close to vital organs, arteries, and veins, and that various factors, including Ms. Bosley's obesity,

acted in her favor to prevent her death. *Id.* It is within the province of the jury to ascribe weight to the expert's testimony. ***See Commonwealth v. Begley***, 780 A.2d 605, 621 (Pa. 2001) ("Where a witness has a reasonable pretension to specialized knowledge on a subject matter under investigation, the witness may testify as an expert and the weight to be given such testimony is for the jury to decide."). Given the foregoing, Appellant's conviction for attempted murder was not against the weight of the evidence.

Judgment of sentence affirmed.