NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. CARL STEFFEN Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2252 EDA 2011

Appeal from the Judgment of Sentence March 21, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0004453-2007;
CP-51-CR-0004454-2007

BEFORE: GANTMAN, J., OLSON, J., and PLATT, J.*

MEMORANDUM BY GANTMAN, J.: Filed: April 3, 2013

Appellant, Carl Steffen, appeals from the judgment of sentence entered in the Philadelphia County Court of Common Pleas, following his jury trial convictions for recklessly endangering another person ("REAP") and violations of the Uniform Firearms Act.[1] We affirm.

The relevant facts and procedural history of this case are as follows. Around 8:00 p.m. on February 10, 2007, police officers Matthew Quinn and Richard Bowes responded to a 911 call for a suspected theft in progress at a Dollar Tree store on Cottman Avenue in Northeast Philadelphia. Officers Quinn and Bowes were on undercover duty and wearing plain clothes. At

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[1] 18 Pa.C.S.A. §§ 2705, 6106, 6108, respectively.

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*Retired Senior Judge assigned to the Superior Court.

the Dollar Tree store, the officers encountered Eileen McCloskey, Appellant's girlfriend, and inspected her purse. Ms. McCloskey did not have any stolen items but officers became suspicious of possible narcotics use when they saw a large wad of cash and Brillo pads inside Ms. McCloskey's handbag.[2] In an unmarked vehicle, the officers followed Ms. McCloskey's car until she stopped outside a house on Lynford Street. The officers parked on the street approximately two car lengths behind Ms. McCloskey's vehicle. There, officers witnessed Appellant come out of the house, lean into the window of the car, and have an agitated conversation with Ms. McCloskey. Two neighbors witnessed Appellant screaming at Ms. McCloskey while simultaneously pointing to the area where Officers Quinn and Bowes had parked their vehicle.

Ms. McCloskey drove off, and the officers continued to follow her down the block. As they drove past Appellant, the officers observed Appellant reach into his back pocket. Seconds later, the officers heard a gunshot. Neighbors stated Appellant waited for the vehicle to pass, walked into the middle of the street with a handgun, and fired a single shot directly at the car. Officers exited their vehicle, pulled out their police badges, and identified themselves. A struggle ensued before police subdued Appellant.

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[2] Brillo pads are commonly used as filters for smoking crack cocaine.

Officers recovered two guns—one black revolver with four live rounds and one silver Colt semi-automatic with six live rounds.

The Commonwealth charged Appellant with attempted murder, aggravated assault, REAP, and violations of the Uniform Firearms Act. The jury found Appellant guilty of REAP and firearms offenses but not guilty of attempted murder and aggravated assault. On March 21, 2011, the court sentenced Appellant to an aggregate term of seven (7) years' probation. On March 24, 2011, Appellant timely filed post-sentence motions, which were denied by operation of law on July 25, 2011. On August 18, 2011, Appellant timely filed a notice of appeal. The court ordered Appellant to file a concise statement of errors complained on appeal pursuant to Pa.R.A.P. 1925(b); Appellant timely complied.

Appellant raises two issues for our review:

> IS [APPELLANT] ENTITLED TO AN ARREST OF JUDGMENT ON TWO COUNTS OF REAP [WHEN] THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN THE VERDICT?
>
> IS [APPELLANT] ENTITLED TO A NEW TRIAL WHERE THE VERDICT ON TWO COUNTS OF REAP WAS AGAINST THE GREATER WEIGHT OF THE EVIDENCE?

(Appellant's Brief at 3).

When reviewing a challenge to the sufficiency of the evidence, we must regard all the evidence in the light most favorable to the verdict winner, giving that party the benefit of all reasonable inferences. ***Commonwealth v. Torres***, 564 Pa. 219, 223, 766 A.2d 342, 344 (2001).

Additionally, it is not the role of an appellate court to weigh the evidence or to substitute our judgment for that of the fact-finder. ***Commonwealth v. Flamer***, 848 A.2d 951, 953 (Pa.Super. 2004), *appeal denied*, 580 Pa. 711, 862 A.2d 1253 (2004).

Appellant argues he did not possess the necessary mental state for REAP (recklessness) because his weapon merely "went off" as he was uncocking the gun. Appellant strongly relies on the absence of any testimony directly establishing Appellant purposely fired his weapon at the police officers. Instead, Appellant characterizes his actions as somehow laudable, based on Appellant's belief that the undercover officers were potential criminals who were planning to harm his girlfriend. Viewed in that light, Appellant submits he was acting either responsibly or merely negligently; and the officers were the ones behaving recklessly because they followed Ms. McCroskey in an unmarked police vehicle wearing plain clothes. Appellant concludes he should receive an arrest of judgment on the REAP charge. We disagree.

The Pennsylvania Crimes Code defines the offense of REAP as follows: "A person commits a misdemeanor of the second degree if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury." 18 Pa.C.S.A. § 2705. "Serious bodily injury" is defined as, "[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or

impairment of the function of any bodily member or organ." 18 Pa.C.S.A. § 2301.

A person is guilty of REAP when that person: (1) possessed a mental state of recklessness; (2) committed a wrongful act; and (3) created the danger of death or serious bodily injury in the performance of the wrongful act. ***Commonwealth v. Emler***, 903 A.2d 1273, 1278 (Pa.Super. 2006).

> This statutory provision was directed against reckless conduct entailing a serious risk to life or limb out of proportion to any utility the conduct might have. The crime of REAP is a crime of assault which requires the creation of danger. As such, …there must be an actual present ability to inflict harm.

Commonwealth v. Reynolds, 835 A.2d 720, 727-28 (Pa.Super. 2003). "The *mens rea* for recklessly endangering another person is 'a conscious disregard of a known risk of death or great bodily harm to another person.'" ***Commonwealth v. Martuscelli***, 54 A.3d 940, 949 (Pa.Super. 2012).

Instantly, Appellant fired a gun directly at an occupied, moving vehicle on a residential street. The incident took place while several neighbors were outside in close proximity. Appellant waited until the undercover police vehicle passed him by before walking into the middle of the street with a firearm and firing a single shot directly at the vehicle. These facts alone were sufficient to allow the jury to conclude Appellant acted with a conscious disregard of a known risk of death or great bodily harm to another person. ***See id.*** at 950 (affirming REAP conviction where defendant fired weapons right at police officers). Despite his position that his true intent was to save

his girlfriend from potential attackers, Appellant cannot avoid the record evidence showing he shot a gun at an occupied, moving vehicle.

In addition, Appellant did not relent when the officers identified themselves. While in possession of loaded firearms, Appellant struggled with the officers as they attempted to restrain him. Both aspects of Appellant's conduct created a foreseeable risk of death or serious bodily injury in the performance of a wrongful act. ***See Emler, supra***. Regarding all the trial evidence in the light most favorable to the Commonwealth as the verdict winner, and giving the Commonwealth the benefit of all reasonable inferences, we conclude Appellant's sufficiency issue is meritless. ***See Torres, supra***.

In Appellant's second issue, he argues the REAP conviction was against the weight of the evidence. Specifically, Appellant claims the officers were undercover and did not identify themselves while trailing Ms. McCroskey's car from the Dollar Tree store. Appellant states he had a justifiable belief that the undercover officers were following Ms. McCroskey's car to engage in some criminal act. Appellant concludes the greater weight of the evidence only supports the proposition that, while he could have acted more carefully, he did not act recklessly, and should be awarded a new trial. We disagree.

Where a trial court directs a defendant to file a concise statement of errors complained of on appeal, any issues not raised in that statement shall be waived. ***Commonwealth v. Bullock***, 948 A.2d 818, 823 (Pa.Super.

2008), *appeal denied*, 600 Pa. 773, 968 A.2d 1280 (2009). Instantly, Appellant raised another wholly distinct weight issue in his Rule 1925(b) statement, averring he should receive a new trial on all charges as a result of prosecutorial misconduct in closing argument. (***See*** Appellant's Rule 1925(b) Statement at 2.) As such, the issue Appellant now raises on appeal is waived. ***See Bullock, supra***.

Moreover, Appellant would not be entitled to relief on his appellate claim even if he had properly preserved it. Appellant's weight issue on appeal strongly resembles his sufficiency challenge in that it relies heavily on Appellant's alleged intent to save his girlfriend from potential attackers. Three eyewitnesses testified for the Commonwealth and stated Appellant walked right into the middle of the street and fired a gun at the vehicle. The jury was under no obligation to accept Appellant's self-serving version of events. As the finder of fact, the jury was free to assess the credibility of the witnesses and to give their testimony the appropriate weight. ***See Commonwealth v. Champney***, 574 Pa. 435, 444, 832 A.2d 403, 408 (2003), *cert. denied*, 542 U.S. 939, 124 S.Ct. 2906, 159 L.Ed.2d 816 (2004) (stating: "The 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."). Nothing in the record supports Appellant's unpreserved weight claim. Accordingly, we affirm the judgment of sentence.

Judgment of sentence affirmed.