

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

ROBERT MAYNES

Appellant

No. 3220 EDA 2013

Appeal from the Judgment of Sentence October 31, 2013  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-0001883-2012

BEFORE: GANTMAN, P.J., PANELLA, J., and OLSON, J.

MEMORANDUM BY PANELLA, J.

**FILED AUGUST 03, 2015**

Appellant, Robert Maynes, appeals from the judgment of sentence entered October 31, 2013, in the Court of Common Pleas of Philadelphia County. No relief is due.

We take the underlying history of this case from the trial court's opinion.

On November 9, 2011, at approximately 9:00 p.m., Matthew Milc[a]rsky and Alec Cespedes were in Pennypack Park in the City and County of Philadelphia. The two boys were sitting on a set of train tracks throwing rocks into a creek when they noticed a green laser light shining above their heads. Appellant, later identified as Robert Ma[y]nes, approached the boys and accused them of throwing rocks at his house. Mr. Milc[a]rsky testified that Appellant was irate and that Mr. Cespedes began "mouthing off" and arguing. At that point, Appellant grabbed Mr. Cespedes by the shoulder and pointed what Mr. Milc[a]rsky believed was a gun at his chin stating, "Don't get smart with me boy or I'll blow you away." Mr. Milc[a]rsky separated the two and the boys left the area. Mr.

Cespedes then text messaged his uncle, a Philadelphia Police Officer about what [had] happened.

Officer Cespedes met the boys at the tracks where the incident occurred. Officer Cespedes saw an individual, later identified as the Appellant, walking towards them and pointing a green laser light at them. Officer Cespedes shined his flashlight on Appellant, whom both boys identified as the man they had seen earlier. Officer Cespedes identified himself as a police officer and asked to see Appellant's hands. Appellant was irate and screaming. Officer showed Appellant his credentials and badge, but Appellant continued to be irate and claimed it was a fake badge. Officer Cespedes asked Appellant if he had any weapons, and Appellant lifted up his shirt to show his [waistband]. Officer Cespedes noticed a brown object protruding from Appellant's pocket. Appellant pulled the object out of his pocket and Officer Cespedes saw that it was a silver knife. Appellant remained irate and the knife was pointed at Officer Cespedes, causing the Officer to draw his weapon. Mr. Milc[a]rsky testified that he saw Appellant drop his knife and begin to run away. Appellant walked away northbound on the train tracks and then began to run. Officer Cespedes called 911 and gave a description of Appellant. Officer Cespedes and the two boys pursued Appellant through the woods until they arrived at Longford Street. Appellant entered his home at 10 Longford Street, at which point several Philadelphia Police cars arrived at the scene. After searching Appellant's home, officers recovered a green laser pointer. A search of Appellant's yard and the train track area revealed no weapons.

Trial Court Opinion, 9/25/14 at 2-3 (citations to record omitted).

Maynes was subsequently arrested and charged with possession of an instrument of crime<sup>1</sup> ("PIC"), simple assault<sup>2</sup> and terroristic threats.<sup>3</sup> Following a bench trial, the court convicted Maynes of PIC and simple

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<sup>1</sup> 18 Pa.C.S.A. § 907(a).

<sup>2</sup> 18 Pa.C.S.A. § 2701(a).

<sup>3</sup> 18 Pa.C.S.A. § 2706(a)(1).

assault. On October 31, 2013, the trial court sentenced Maynes to two concurrent terms of two years' probation. This timely appeal followed.

Maynes challenges the sufficiency of the evidence in support of his convictions.

The standard we apply when 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. Furthermore, when reviewing a sufficiency claim, our Court is required to give the prosecution the benefit of all reasonable inferences to be drawn from the evidence.

However, the inferences must flow from facts and circumstances proven in the record, and must be of such volume and quality as to overcome the presumption of innocence and satisfy the jury of an accused's guilt beyond a reasonable doubt. The trier of fact cannot base a conviction on conjecture and speculation and a verdict which is premised on suspicion will fail even under the limited scrutiny of appellate review.

***Commonwealth v. Slocum***, 86 A.3d 272, 275-276 (Pa. Super. 2014)

(citation omitted).

A person commits the offense of possessing instruments of crime “if he possesses any instrument of crime with intent to employ it criminally.” 18 Pa.C.S.A. § 907(a). An instrument of crime is defined as “anything used for criminal purposes and possessed by the actor under circumstances not manifestly appropriate for lawful uses it may have.” 18 Pa.C.S.A. § 907(d).

A person is guilty of simple assault if, among other things, he “attempts by physical menace to put another in fear of serious bodily injury.” 18 Pa.C.S.A. § 2701(a)(3).

“Bodily injury” is defined as “[i]mpairment of physical condition or substantial pain.” 18 Pa.C.S. § 2301. The Commonwealth need not establish that the victim actually suffered bodily injury; rather, it is sufficient to support a conviction if the Commonwealth establishes an attempt to inflict bodily injury. This intent may be shown by circumstances which reasonably suggest that a defendant intended to cause injury. **Commonwealth v. Polston**, 420 Pa.Super. 233, 616 A.2d 669 (1992), *alloc. den.*, 534 Pa. 638, 626 A.2d 1157 (1993).

**Commonwealth v. Eckrote**, 12 A.3d 383, 386 (Pa. Super. 2010) (citation omitted).

Here, Milcarsky and Officer Cespedes both testified that when Officer Cespedes asked Maynes if he had any concealed weapons on him, Maynes pulled out a six-inch knife. **See** N.T., Trial, 9/5/13 at 19, 46. Officer Cespedes testified that Maynes was “irate” and pacing back and forth. **Id.** at 46. When Maynes pulled out the knife, the blade was facing towards Officer Cespedes. **See id.** When Officer Cespedes thought Maynes was coming towards him with an open knife, he took a defensive post and drew

his service weapon. **See id.** at 46-47. At that point, Maynes ran away and Officer Cespedes dialed 911 for backup. **See id.** at 47.

Based upon this evidence, the court could easily infer that Maynes's conduct in walking towards Officer Cespedes in an irate manner and brandishing a six-inch knife in the officer's direction was to create in him a fear of imminent serious bodily injury. We further find that this evidence was sufficient to show that Maynes possessed the knife, undoubtedly an instrument of crime, with the intent to employ it criminally. Even though no knife was discovered at the scene, the trial court found the testimony of both Officer Cespedes and Milcarsky regarding Maynes's possession of the knife to be credible. **See** Trial Court Opinion, 9/25/14 at 4.<sup>4</sup> As we are required to evaluate the record in the light most favorable to the verdict winner, giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence, we may not usurp that credibility determination.

Accordingly, we find the evidence was sufficient to sustain Maynes's convictions. **See Slocum, supra** ("Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence.").

Judgment of sentence affirmed.

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<sup>4</sup> The trial court was not convinced that Maynes possessed a gun at the time of the incident. **See** Trial Court Opinion, 9/25/14 at 4. Therefore, we may not consider this testimony.

J-S43016-15

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: 8/3/2015