

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
DAVID RILEY	:	
	:	
	:	
Appellant	:	No. 265 EDA 2019

Appeal from the Judgment of Sentence Entered August 24, 2018
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0007669-2017,
CP-51-CR-0007670-2017

BEFORE: LAZARUS, J., NICHOLS, J., and McLAUGHLIN, J.

MEMORANDUM BY NICHOLS, J.:

FILED: JANUARY 22, 2021

Appellant David Riley appeals from the judgment of sentence imposed following his convictions for aggravated assault and violations of the Uniform Firearms Act (VUFA). Appellant challenges the sufficiency and the weight of the evidence. Following our review of the record, we affirm on the basis of the trial court's opinion.

We adopt the trial court's summary of the facts underlying this matter. **See** Trial Ct. Op., 5/24/19, at 1-2. Briefly, Appellant was charged with aggravated assault, VUFA, and related offenses at two docket numbers for a May 2017 shooting that injured two people. **See** CP-51-CR-0007669-2017, CP-51-CR-0007670-2017 (Docket Nos. 7669-2017, 7670-2017). On April 27, 2018, following a multi-day jury trial, Appellant was convicted of both counts of aggravated assault and one count each of possession of a firearm

prohibited, carrying a firearm without a license, and carrying a firearm in public in Philadelphia.^{1,2}

On August 24, 2018, the trial court sentenced Appellant to an aggregate term of ten to twenty years' incarceration and five years' probation. At Docket No. 7669-2017, the trial court imposed concurrent terms of eight to sixteen years' incarceration for aggravated assault and eight to sixteen years' incarceration for carrying a firearm without a license. At Docket No. 7670-2017, the trial court imposed a consecutive term of two to four years' incarceration followed by five years' probation for aggravated assault.

Appellant filed timely post-sentence motions challenging the weight of the evidence supporting his convictions, which the trial court denied. Appellant timely filed separate notices of appeal at each docket number and subsequently filed a court-ordered Pa.R.A.P. 1925(b) statement.³ The trial court issued a Rule 1925(a) opinion addressing Appellant's claims.

¹ 18 Pa.C.S. §§ 2702(a)(1), 6105(a)(1), 6106(a)(1), and 6108, respectively.

² The Commonwealth withdrew the VUFA charges against Appellant at Docket No. 7670-2017.

³ Appellant was charged at two docket numbers that were consolidated for trial. The record confirms counsel's representation that he filed separate notices of appeal at each trial court docket number in compliance with ***Commonwealth v. Walker***, 185 A.3d 969, 977 (Pa. 2018) (stating that "the proper practice under Rule 341(a) is to file separate appeals from an order that resolves issues arising on more than one docket. The failure to do so requires the appellate court to quash the appeal"). The fact that Appellant listed both docket numbers on each notice of appeal does not affect our conclusion. ***See Commonwealth v. Johnson*** 236 A.3d 1141, 1148 (Pa.

On appeal, Appellant raises the following issues:

1. Were the guilty verdicts against the weight of the evidence for aggravated assault, as there was no evidence that Appellant attempted to cause serious bodily injury to either complainants, T.L. or M.B., and the forensic evidence was tied to three other people having made contact with a sweatshirt allegedly worn by one of the shooters?
2. Were the guilty verdicts against the weight of the evidence for all of the charges as the Appellant was not identified by either T.L. or M.B. as one of the shooters, and there was no identification by Officer Troccoli of Appellant with a firearm in his hand?
3. Was the evidence insufficient to sustain the guilty verdicts for aggravated assault as there was no evidence that Appellant attempted to cause serious bodily injury to either complainant, T.L. or M.B.?
4. Was the evidence insufficient to sustain the guilty verdicts for any of the charges as there was no identification of the Appellant with any firearm in his possession or shooting any firearm?

Appellant's Brief at 7.

Following our review of the record, the parties' briefs, and the well-reasoned conclusions of the trial court, we affirm on the basis of the trial court's opinion. Specifically, we find no abuse of discretion by the trial court in rejecting Appellant's weight claims. **See** Trial Ct. Op. at 3-9. Further, we agree with the trial court that there was sufficient evidence to support

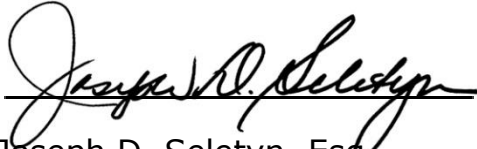
Super. 2020) (*en banc*) (partially overruling ***Commonwealth v. Creese***, 216 A.3d 1142 (Pa. Super. 2019), and declining to "invalidate an otherwise timely appeal based on the inclusion of multiple docket numbers").

Appellant's convictions for aggravated assault and VUFA. **See id.** at 9-13.

Accordingly, we affirm.

Judgment of sentence affirmed. Application for relief denied.

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: 1/22/21

FILED

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IN THE COURT OF COMMON PLEAS
FOR THE COUNTY OF PHILADELPHIA

COMMONWEALTH OF PENNSYLVANIA	:	TRIAL DIVISION
	:	
V.	:	CP-51-CR-0007669-2017
	:	CP-51-CR-0007670-2017
DAVID RILEY, APPELLANT	:	
	:	265 EDA 2019

OPINION

This opinion addresses the issues Appellant David Riley raises in his appeal. The Appellant’s claims lack merit for the following reasons.

CASE HISTORY

On June 6, 2017, police arrested the Appellant for Attempted Murder, Aggravated Assault, and Violations of the Uniform Firearms Act.¹ A complaint was filed the following day. On September 11, 2017, the Appellant was held for court on two counts each of Attempted Murder (F1), Aggravated Assault (F1), Prohibited Possession of a Firearm (F1), Carrying a Firearm without a License (F3), Carrying a Firearm in Public in Philadelphia (M1), Possession of an Instrument of Crime (PIC) (M1), Simple Assault (M2), and Recklessly Endangering Another Person (REAP) (M2).² On April 27, 2018, a jury found the Appellant guilty of two counts of Aggravated Assault³ and one count each of Prohibited Possession of a Firearm,⁴ Carrying a Firearm without a License,⁵ and Carrying a Firearm in Public in Philadelphia.⁶ On August 24, 2018, the Court sentenced the Appellant to an aggregated 10 to 20 years consecutive incarceration and 5 years probation for both Aggravated Assault convictions, 8 to 16 years incarceration for the

¹ See Philadelphia Police Arrest Report.

² Docket Sheets for CP-51-CR-0007669-2017 and CP-51-CR0007670-2017.

³ 18 Pa.C.S. § 2702(a).

⁴ 18 Pa.C.S. § 6105(a)(1).

⁵ 18 Pa.C.S. § 6106(a)(1).

⁶ 18 Pa.C.S. § 6108.

DA

Prohibited Possession of a Firearm offense,⁷ and no further penalty on the remaining VUFA convictions.

On January 22, 2019, the Appellant filed a Notice of Appeal.⁸ On January 23, 2019, the Court issued an Order pursuant to Pa.R.A.P. 1925(b). On January 28, 2019, the Appellant filed a Statement of Errors Complained of on Appeal raising the following issues⁹:

- A. The guilty verdicts were against the weight of the evidence for aggravated assault, as there was no evidence that Appellant attempted to cause serious bodily injury to either complainants T.L. or M.B., and the forensic evidence was tied to three other people having made contact with a sweatshirt allegedly worn by one of the shooters.
- B. The guilty verdicts were against the weight of the evidence for all of the charges as the Appellant was not identified by either T.L. or M.B. as one of the shooters, and there was no identification by Officer Troccoli of Appellant with a firearm in his hand.
- C. The evidence was insufficient to sustain the guilty verdict for aggravated assault as there was no evidence that Appellant attempted to cause serious bodily injury to either complainant, T.L. or M.B.
- D. The evidence was insufficient to sustain the guilty verdicts for any of the charges as there was no identification of the Appellant with any firearm in his possession or shooting any firearm.

FACTS

On May 22, 2017, around 7:35 p.m., Marquan Byers and an unidentified male were walking east on the north side of the 1900 block of Snyder Avenue when the Appellant fired a handgun at them at least eight times.¹⁰ Byers and the unidentified male returned fire towards the Appellant.¹¹ The Complainant, Thi Lee, was gardening on the south side of the 1900 block of Snyder at the time of the shootout.¹² Lee was struck by a bullet in her upper thigh during the incident.¹³

⁷ The Prohibited Possession sentence was set to run concurrently with the Aggravated Assault sentences.

⁸ Docket Sheets for CP-51-CR-0007669-2017 and CP-51-CR-0007670-2017.

⁹ Copied *verbatim* from the Appellant's 1925(b) Statement.

¹⁰ Notes of Testimony 4/25/2018 pg. 13-15, 79-93, 144-145, 150-151.

¹¹ N.T. 4/24/2018 pg. 104-108; N.T. 4/25/18 pg. 90-95.

¹² N.T. 4/24/2018 pg. 84, 102-107; N.T. 4/25/2018 pg. 94.

¹³ N.T. 4/24/2018 pg. 84, 109-112; N.T. 4/25/2018 pg. 94-95.

DISCUSSION

I. THE VERDICT WAS NOT AGAINST THE WEIGHT OF THE EVIDENCE.

The Appellant claims that his convictions were against the weight of the evidence because a.) “there was no evidence that Appellant attempted to cause serious bodily injury” to either Thi Lee or Marquan Byers, as there were multiple traces of DNA found on the hoody, and b.) the Appellant was not identified as the shooter by either Lee or Byers, nor was he identified by Officer Troccoli with a firearm in his hand. The Court disagrees.

It is well-established that “[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.” Commonwealth v. Champney, 832 A.2d 403, 408; 574 Pa. 435, 444 (2003) [citing Commonwealth v. Johnson, 668 A.2d 97, 101 (Pa. 1995)]. The appellate court may not “substitute its judgement for that of the finder of fact.” Id. [citing Commonwealth v. Pronkoskie, 445 A.2d 1203, 1206; 542 Pa. 384, 394 (1982)]. Hence, an appellate court may reverse the lower court’s verdict based on the weight of the evidence **only** if “[the verdict] is so contrary to the evidence as to shock one’s sense of justice.” Id. [citing Commonwealth v. Hawkins, 701 A.2d 492, 500; 549 Pa. 352, 368 (1997)]. With these principles in mind, we will now review whether the evidence supported the verdict.

Before assessing the validity of the Appellant’s claims, it would be helpful to review the evidence the Commonwealth presented at the trial. In support of its case, the Commonwealth presented a plethora of evidence. The Commonwealth’s witnesses included Officer Daniel Rippert, the Complainant (Thi Lee), Officer Jason Troccoli, Detective Michael Policella, Detective Andrew Gallagher, Officer Mark Wilusz, Detective Christopher Maitland, and experts Gamal

Emira and Ruifen Kubiak. In addition, the Commonwealth showed a video depicting the events that occurred. We will now briefly review this evidence.

The Commonwealth first called Officer Daniel Rippert. Officer Rippert testified that he was on patrol on May 22, 2017 at around 7:35 p.m. when he received a radio call about a shooting on the 1900 block of Snyder Avenue.¹⁴ Rippert testified that he arrived at the scene at about 7:47 p.m., and found the victim, Thi Lee, who had been shot in her upper thigh.¹⁵ Rippert observed eight firearm shell casings on the street and sidewalk after securing the crime scene.¹⁶

The second witness the Commonwealth called was Thi Lee. Lee confirmed that she had been shot during the incident.¹⁷ Lee testified that she was tending her garden on the south side of the 1900 block of Snyder Avenue on the evening of May 22, 2017.¹⁸ Lee heard a loud noise she initially mistook for a firework before seeing a man on the south side of the street firing a handgun at two men across the street.¹⁹ Lee further stated that the two men across the street were returning fire and that bullets were striking near her.²⁰ Lee panicked and ran toward her house before realizing that she had been shot in the leg.²¹ Lee later sat on her neighbor's porch while he called the police.²²

The third witness was Officer Jason Troccoli. Officer Troccoli testified that he **identified the Appellant as the man in a blue and gray hoody in a video taken from the interior of the Fu Xin Chinese Restaurant** at the corner of 20th Street and Snyder Avenue.²³ Troccoli testified

¹⁴ N.T. 4/24/2018 pg. 81-84.

¹⁵ Id. at 84.

¹⁶ Id. at 85-86.

¹⁷ Id. at 102.

¹⁸ Id. at 102-104.

¹⁹ Id. at 104-108.

²⁰ Id.

²¹ Id. at 109-110.

²² Id. at 110.

²³ N.T. 4/25/2018 pg. 8, 13-15.

that he had been assigned to bicycle patrol in the area nearly every day for the past ten years.²⁴ He also confirmed that he had known the Appellant for five years and interacted with him throughout his career.²⁵

The fourth witness was Detective Michael Policella. Policella explained how he investigated the crime scene.²⁶ Policella confirmed that he recovered eight .40 caliber fire cartridge casings from the scene of the crime.²⁷

Detective Andrew Gallagher testified next. Gallagher recovered surveillance videos from seven cameras in the vicinity of the 1900 block of Snyder Ave.²⁸ Gallagher explained that he compiled the videos into a montage showing how the shooting occurred from multiple angles.²⁹

The Commonwealth also presented Detective Gallagher's video montage to the jury. The montage showed scenes from seven cameras around the area where the shooting occurred.³⁰ It showed: 1.) the Appellant, **identified by Officer Troccoli as the man in the blue and gray hoodie**, leaving the Fu Xin Chinese Restaurant and walking north on 20th Street,³¹ 2.) the Appellant encountering several males and walking back towards his home on Opal with several males following him,³² 3.) Marquan Byers walking south on 20th, across Snyder and looking south on Opal St., towards the Appellant's house,³³ 4.) the Complainant (Thi Lee) gardening on the south side of Snyder,³⁴ 5.) multiple vantage points of the males (including Marquan Byers) congregating

²⁴ Id. at 8-10.

²⁵ Id. at 10-11.

²⁶ Id. at 25.

²⁷ Id. at 26-32.

²⁸ Id. at 56, 59.

²⁹ Id. at 68-69.

³⁰ N.T. 4/25/2018 pg. 61-64, 71-105. The video was marked as exhibit Commonwealth-13.

³¹ Id. at 75-79.

³² Id. The Appellant lived at 2112 Opal St. a short distance south of Snyder Ave. Id. at 11, 21, 83.

³³ Id. at 74-78, 81-84. The video showed Byers wearing a green jacket and tan pants, which were recovered after executing a search warrant on his residence.

³⁴ Id. at 80, 86.

on the corner of 20th and Snyder,³⁵ 6.) Marquan Byers and an unidentified male later walking east on the north side of Snyder towards Opal St,³⁶ 7.) **the Appellant walking across Snyder Avenue and firing a handgun towards Byers,**³⁷ and 8.) the Complainant grabbing her thigh (where she was shot) after the shootout.³⁸

The sixth witness was Officer Mark Wilusz. Wilusz is an expert in firearms identification and ammunition comparison.³⁹ Wilusz explained how he analyzed the shell casings and bullet fragments recovered from the scene.⁴⁰ He concluded within a reasonable degree of scientific certainty that each of the shell casings were fired and ejected from the same .40 caliber semiautomatic handgun.⁴¹

The next witness was Detective Christopher Maitland. Maitland served a search warrant on the Appellant's home at 2112 South Opal Street.⁴² According to Maitland, after serving the warrant, officers recovered a blue and gray hooded sweatshirt hanging from the bannister near the bottom of the stairs.⁴³ He documented this evidence on a property receipt and requested that it be tested for gunshot residue.⁴⁴

Gamal Emira also testified. Emira is an expert in touch and transfer forensics at the Philadelphia crime lab.⁴⁵ Emira testified that numerous areas on the blue and gray hoodie the police took from the bannister of the Appellant's home (including the inside pocket) tested positive

³⁵ Id. at 85-90.

³⁶ Id. at 90.

³⁷ Id. at 90-91.

³⁸ Id. at 94.

³⁹ Id. at 133.

⁴⁰ Id. at 133.

⁴¹ Id. at 142-145.

⁴² N.T. 4/26/2018 pg. 4, 6-7.

⁴³ Id. at 12-13.

⁴⁴ Id. at 18.

⁴⁵ Id. at 28.

for gunshot residue.⁴⁶ Emira explained that **gunshot residue testing yielded positive results verifying that either the area tested was in close proximity to someone firing a gun, or had contact with a surface that had gunshot residue.**⁴⁷

The final witness was Ruifen Kubiak. Kubiak is an expert in forensic DNA testing analysis from the Philadelphia Office of Forensic Science.⁴⁸ Kubiak compared DNA he took from the hoodie the police obtained from the Appellant's home with DNA taken from the Appellant's buccal swab.⁴⁹ He found traces of DNA on the hoodie from four individuals, but **the "major component" of DNA matched the Appellant's DNA.**⁵⁰

Having reviewed the Commonwealth's evidence, we will now consider the Appellant's evidentiary weight claims relating to his Aggravated Assault and Violations of the Uniform Firearms Act convictions.

A. The Appellant's Aggravated Assault Convictions Were Not Against the Weight of the Evidence.

The Appellant's first claim is that his convictions for Aggravated Assault were against the weight of the evidence because 1.) there was "no evidence that Appellant attempted to cause serious bodily injury," and 2.) there were multiple traces of DNA on the hoodie worn during the shootout. The Court disagrees.

The Appellant's first claim that there was "no evidence that [he] attempted to cause serious bodily injury to either complainant" is unsubstantiated. "An 'attempt' is found where the accused, with the required specific intent, acts in a manner which constitutes a substantial step toward perpetrating a serious bodily injury upon another." Commonwealth v. Gruff, 822 A.2d 773, 776

⁴⁶ Id. at 41-43.

⁴⁷ Id.

⁴⁸ Id. at 49-50.

⁴⁹ Id. at 53.

⁵⁰ Id. at 59-60.

(Pa. Super. 2003). Whether specific intent exists depends on the “totality of the circumstances.” Commonwealth v. Matthew, 909 A.2d 1254, 1257 (Pa. 2006). The Commonwealth’s video shows the Appellant firing a gun at two people, evidencing his criminal intent. See Commonwealth v. Daniels, 354 A.2d 538 (Pa. 1976) (sufficient evidence to convict of aggravated assault where the defendant fired a number of shots into a barroom full of people). **More specifically, the video shows the Appellant firing a gun at Marquan Byers, evidencing his intent to cause serious bodily injury to Byers.**

Going one step further, the Commonwealth need not prove that the Appellant had a specific intent to cause serious bodily injury to Thi Lee. “Where serious bodily injury is inflicted, the Commonwealth is not required to prove specific intent; this is because aggravated assault may be proven if the defendant acted recklessly.” Commonwealth v. Hlatky, 626 A.2d 575, 581 (Pa. Super. 1993). Moreover, under the Transferred Intent Doctrine, the Appellant’s specific intent to cause serious bodily injury to Marquan Byers was also applicable to Thi Lee. Commonwealth v. Thompson, 739 A.2d 1023 (Pa. 1999) (transferred intent doctrine applicable to victim of aggravated assault). More specifically, the intent element is established when the result of an action “involves the same kind of injury or harm as that designed or contemplated and is not too remote or accidental in its occurrence.” 18 Pa.C.S.A. § 303(b)(2). The result of Thi Lee’s being stricken by a bullet in the shootout involved the “same kind of injury” intended by the Appellant and was not “too remote or accidental” to make him not liable. Therefore, the Appellant’s claim that the verdict was against the weight of the evidence since there was “no evidence” that he intended to harm Thi Lee is unconvincing.

On a separate note, the Appellant’s other claim that his Aggravated Assault convictions were against the weight of the evidence since DNA traces from other individuals were found on

the hoodie is also unpersuasive. Although the Commonwealth's DNA expert (Ruifen Kubiak) testified that a test swab from the hoodie detected DNA from four different individuals, he also confirmed that **the "major component" of the detected DNA was from the Appellant.**⁵¹ Given the evidence, the fact that three other people may have previously touched or worn the hoodie should not undercut the jury's verdict. Therefore, the Appellant's first claim should be dismissed.

B. The Appellant's VUFA Convictions Were Not Against the Weight of the Evidence.

The Appellant's second claim is that his VUFA convictions were against the weight of the evidence because the Appellant was not identified by either Thi Lee or Marquan Byers as one of the shooters. He also argues that Officer Troccoli never identified the Appellant when he had a firearm in his hand. The Court disagrees.

As previously stated, **Officer Troccoli identified the Appellant as the person in the video wearing a blue and gray hoodie at the Fu Xin Chinese Restaurant.**⁵² The video later showed what occurred before and during the shootout. With all of the video footage displaying the entire event, it was not necessary for Troccoli to identify the Appellant at the specific moment he held a firearm. **The reason is that the jury could see, and decide for themselves, whether the person Troccoli identified as the Appellant was the perpetrator who fired a gun at Marquan Byers.** For the same reasons, it was not necessary that Lee or Byers identify the Appellant. Overall, there was sufficient direct and circumstantial evidence establishing that the Appellant possessed a firearm in violation of the Uniform Firearms Act. Consequently, the Appellant's second claim should be dismissed.

II. THE EVIDENCE WAS SUFFICIENT TO FIND THE APPELLANT GUILTY OF AGGRAVATED ASSAULT AND VUFA.

⁵¹ N.T. 4/26/2018 pg. 59.

⁵² N.T. 4/25/2018 pg. 13-15, 64.

For his next claim, the Appellant also alleges that there was insufficient evidence to sustain guilty verdicts for Aggravated Assault and VUFA. More specifically, the Appellant alleges that there was insufficient evidence that he attempted to cause serious bodily injury and that no one identified him with a firearm. The Court disagrees.

It is well settled that “[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.” Commonwealth v. Hawkins, 701 A.2d 492 (Pa. 1997) [citing Commonwealth v. Jackson, 485 A.2d 1102, 1104 (Pa. 1984)]. Furthermore, “when reviewing a sufficiency claim[,] the court is required to view the evidence in the light most favorable to the verdict winner[,] giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence.” Commonwealth v. Widmer, 744 A.2d 745, 751 (Pa. 2000); see also Commonwealth v. Torres, 766 A.2d 342, 344 (Pa. 2001). Therefore, for there to be sufficient evidence to convict the Appellant, the Commonwealth must establish that each element of the crimes was met. We will now consider whether there was sufficient evidence to establish these crimes.

A. The Evidence Was Sufficient To Convict the Appellant on Both Counts of Aggravated Assault.

The Appellant was convicted on two counts of Aggravated Assault. In Pennsylvania, a person is guilty of Aggravated assault if he “attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life.” 18 Pa.C.S.A. § 2702(a)(1).

As to the first count of Aggravated Assault, the evidence clearly demonstrated that the Appellant attempted to cause serious bodily injury to Marquan Byers. **Officer Troccoli identified the Appellant as the person in the video wearing a blue and gray hoodie inside the Fu Xin**

Chinese Restaurant.⁵³ Detective Gallagher later identified Byers in a video from the Green Ocean liquor store camera as one of the men walking west on Snyder.⁵⁴ **This same video showed the Appellant later firing a gun at Marquan Byers.**⁵⁵ Since one's firing a gun directly at another is evidence of his specific intent to cause serious bodily injury, such evidence alone is sufficient to sustain the Appellant's first Aggravated Assault conviction relating to Byers. See Commonwealth v. Daniels, 354 A.2d 538 (Pa. 1976) (sufficient evidence to convict of aggravated assault where the defendant fired a number of shots into a barroom full of people).

As to the second Aggravated Assault count relating to Thi Lee, the evidence was also sufficient to sustain the Appellant's conviction through the **Doctrine of Transferred Intent**. As previously stated, the Commonwealth's video showing the Appellant firing a gun at Marquan Byers evidenced his specific intent to cause serious bodily injury. Unfortunately, during the shootout, **Lee was struck by a bullet in her upper thigh.**⁵⁶ However, under the **Transferred Intent Doctrine**, the Appellant's specific intent to cause serious bodily injury to Byers was transferred to Lee. Commonwealth v. Thompson, 739 A.2d 1023 (Pa. 1999) (transferred intent doctrine applicable to victim of aggravated assault). Under the doctrine, the mens rea element is established when the result of the Appellant's action "involves the same kind of injury or harm as that designed or contemplated and is not too remote or accidental in its occurrence." 18 Pa.C.S.A. § 303(b)(2). In our case, the injury Lee sustained during the shootout was both foreseeable and "the same kind of injury" intended by the Appellant. In short, as there was sufficient evidence to support the second Aggravated Assault count, this claim also fails.

⁵³ Id.

⁵⁴ Id. at 88-90.

⁵⁵ Id. at 90-91. See Commonwealth Exhibit CW-13.

⁵⁶ N.T. 4/24/2018 pg. 84, 109-111; N.T. 4/25/18 pg. 94-95.

B. The Evidence Was Sufficient To Convict the Appellant of VUFA.

The Appellant was also convicted of multiple violations of the Uniform Firearms Act. These included Prohibited Possession of a Firearm, Carrying a Firearm without a License, and Carrying a Firearm in Public in Philadelphia. We will briefly address each of these crimes.

There was sufficient evidence to convict the Appellant of Prohibited Possession of a Firearm. A person is guilty of Prohibited Possession of a Firearm if he possesses or uses a firearm after having been convicted certain offenses, including burglary. 18 Pa.C.S. § 6105(a)(1), (b). The Appellant was convicted of burglary on May 22, 2012, after entering a negotiated guilty plea.⁵⁷ Officer Troccoli identified the Appellant as the person wearing a blue and gray hoodie in video the police acquired from the Fu Xin Chinese Restaurant on 20th and Snyder on May 22, 2017.⁵⁸ Another video showing footage from the Green Ocean liquor store showed the Appellant firing a gun shortly thereafter.⁵⁹ In addition, the blue and grey hoodie the police later recovered from the Appellant's home **tested positive for both gunshot residue as well as the Appellant's DNA.**⁶⁰ Since this evidence established that the Appellant possessed and used a gun after he had previously been convicted of burglary, it was sufficient to convict him of Prohibited Possession of a Firearm.

There was also sufficient evidence to convict the Appellant of Carrying a Firearm without a License. A person is guilty of Carrying a Firearm without a License if he carries a firearm concealed on or about his person outside his home or place of business without a valid license. 18 Pa.C.S. § 6106(a)(1). Counsel stipulated at trial that the Appellant did not have a license to carry firearms.⁶¹ As previously stated, the video clearly showed the Appellant firing a handgun at

⁵⁷ See Pre-Sentence Investigation Report. See also Docket Sheet for CP-23-CR-0006732-2011.

⁵⁸ N.T. 4/25/2018 pg. 13-15, 64.

⁵⁹ Id at 88-91.

⁶⁰ N.T. 4/26/2018 pg. 41, 59.

⁶¹ N.T. 4/26/2018 pg. 64-65.

Marquan Byers in the vicinity of the 1900 block of Snyder Ave. Since the Appellant carried the firearm without a license outside his home or business, the evidence was sufficient to convict him of Carrying a Firearm without a License.

Finally, the evidence was sufficient to convict the Appellant of Carrying a Firearm in Public in Philadelphia. A person is guilty of Carrying a Firearm in Public in Philadelphia if he carries a firearm at any time on a public street.⁶² 18 Pa.C.S. § 6108. As established, the video showed the Appellant firing a gun while on Snyder Ave. Since he carried that firearm on a public street in Philadelphia, the evidence was sufficient to convict him. Given the evidence, his final claim also fails.

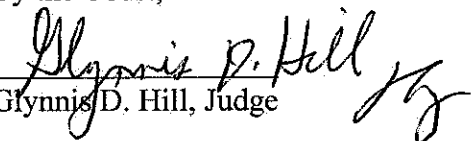
⁶² The statute makes exemptions for persons licensed to carry firearms or persons exempt from licensing under Section 6106. The Appellant meets neither of these exemptions.

CONCLUSION

The Appellant's claims should be dismissed for two reasons. First, the verdict was not against the weight of the evidence. The Appellant claims that the verdict was against the weight because 1.) there was "no evidence" that he intended to cause serious bodily injury and forensics found DNA from multiple sources on the hoodie, 2.) because the Appellant was not identified by either complainant, nor was he identified by Officer Troccoli with a gun in his hand. However, video evidence clearly showed the Appellant firing a gun at Marquan Byers. Moreover, the Transferred Intent Doctrine satisfies the intent element for the Appellant's Aggravated Assault charge relating to Thi Lee. Moreover, the fact that DNA from several other individuals was found on the hoodie does not support the Appellant's weight of the evidence claim, since his DNA made up the "major component" found on the hoodie. Lastly, although the Appellant was not identified by either complainant, Officer Troccoli identified him in the Commonwealth's video exhibit, which later showed the Appellant firing a gun.

Second, the evidence was sufficient to sustain the Appellant's convictions. Although the Appellant reiterates that the evidence was insufficient for the reasons previously stated, the video the Commonwealth presented at trial showed that the Appellant attempted to cause serious bodily injury to Marquan Byers. The Transferred Intent Doctrine also conferred liability on the Appellant for Thi Lee's gunshot injury. In closing, the evidence was sufficient to convict the Appellant of each VUFA conviction, since he had previously been convicted of burglary and can be seen on video firing a gun on a public street. For these reasons, the Appellant's claims should be denied.

By the Court,


Glynnis D. Hill, Judge