NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

LAWRENCE LAWS

Appellant

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 1637 EDA 2012

Appeal from the Judgment Entered May 10, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0014052-2011

BEFORE: LAZARUS, J., OLSON, J., and FITZGERALD, J.*

MEMORANDUM BY LAZARUS, J. **FILED MAY 03, 2013**

Lawrence Laws appeals from his judgment of sentence imposed in the Court of Common Pleas of Philadelphia County following his convictions for robbery (F3);[1] theft by unlawful taking (M1);[2] receiving stolen property (M1);[3] simple assault (M2);[4] and recklessly endangering another person ("REAP") (M2).[5] Upon review, we affirm in part and vacate in part.

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* Former Justice specially assigned to the Superior Court.

[1] 18 Pa.C.S. § 3701.

[2] 18 Pa.C.S. § 3921.

[3] 18 Pa.C.S. § 3925.

[4] 18 Pa.C.S. § 2701(a).

[5] 18 Pa.C.S. § 2705.

The facts of this case are as follows. On November 27, 2011, at about 6:40 p.m., when it was still "not completely dark outside," Wendy Catrona was waiting for her bus at the corner of Germantown and Mt. Airy Avenues in Philadelphia. N.T. Suppression Hearing, Volume I, 5/10/12, at 9. She looked around, and noticed a man standing to her right. She presumed he was also waiting for the bus. He was an African-American male, looked 17 to 19 years old, was of medium complexion, and approximately five feet five inches to five feet seven inches tall. Catrona observed that the man, later identified as Laws, was wearing blue jeans and a dark - black or blue spring jacket.

Catrona then began checking e-mail on her iPhone. While she was reading her e-mail, Laws snatched the iPhone out of her hand, "knock[ing] [her other] possessions" to the ground. ***Id.*** at 6. Laws then ran in the westbound direction. Catrona chased Laws for approximately two and a half blocks but then she "ran out of breath" and had to stop. ***Id.*** She saw two women getting into their car, asked permission to use their cellphone, and called 911. Catrona gave Laws' description to the dispatcher and waited at her location until police officers met her there approximately fifteen minutes after the robbery and took her to 6900 Mower Street, about six blocks away, where she identified Laws.

At about 6:53 p.m., Officer Robert Bowdren and his partner responded to a radio flash report of a robbery in progress on the 7200 block of Germantown Avenue. The description of the robber in the flash report was

that he was "a black male, [between] 17 and 19 years old, approximately 5'7", 140 pounds, wearing blue jeans and a dark springlike jacket" and that he "fled westbound on foot." ***Id.*** at 22-23. Officer Bowdren and his partner searched the area in their marked patrol car. About five to ten minutes after receiving the flash, they observed a male closely matching the description on the 6900 block of Mower Street, which was about "three to four blocks" from Germantown Avenue. ***Id.*** at 23.

Officer Bowdren and his partner got out of the patrol car, ordered Laws to stop, and patted him down "for [their] safety." ***Id.*** at 27. Officer Bowdren felt a hard bulge in each of Laws' front jacket pockets. He testified that he personally owned firearms "that fit in your front pocket and feel like a wallet or a bulge and you can't tell what they were." ***Id.*** at 24. Concerned that Laws might be armed, Officer Bowdren removed the two objects from Laws' pockets. Both of the items were cell phones, of which "[o]ne was an iPhone." ***Id.*** at 27. Officer Bowdren and his partner then placed the cell phones on the hood of the police car and had Laws sit in the back seat of the patrol car until Catrona's arrival.

When the police brought Catrona to the 6900 block of Mower Street, she "positively ID'd" Laws as the person who stole her iPhone. ***Id.*** at 25. Catrona also identified Laws in court "as the person she ID'd at the scene." ***Id.*** at 36.

At the time of the incident, Officer Bowdren had 12 years of service with the Philadelphia police department.

On May 4, 2012, Laws moved to suppress Catrona's iPhone found in his pocket and Catrona's positive identification of him as the robber, as "fruits of [an] unlawful search and seizure," pursuant to the Fourth and Fourteenth Amendments of the U.S. Constitution, as well as Article I, Section 8 of the Pennsylvania Constitution. ***Id.*** at 4-5. At the suppression hearing on May 10, 2012, through his counsel, Laws also moved to suppress his stop after a "radio call that he fit a flash description." ***Id.*** at 4.

Both Catrona and Officer Bowdren testified at the suppression hearing. The trial court found the witnesses to be credible and the facts consistent with their testimony. The court also determined that, based on the totality of the circumstances, Officer Bowdren "had a reasonable suspicion to stop [Laws]," and that the search of Laws prior to identification by Catrona was also "reasonable under the circumstances." ***Id.*** at 37. The court denied Laws' motion to suppress the physical evidence and identification evidence, and his stop.

Immediately following the suppression hearing on May 10, 2012, Laws waived his right to a jury trial. The trial record incorporated the relevant non-hearsay testimony from the suppression motion. The Commonwealth introduced by stipulation the fact that the iPhone Laws stole from Catrona had a fair market value of $449.

Also on May 10, 2012, Laws was convicted of the aforementioned offenses, and proceeded immediately to sentencing. The Honorable Angelo J. Foglietta sentenced him to time-served to 23 months' incarceration, with

eligibility for immediate parole for the robbery conviction. The court also imposed sentences of two years of reporting probation for the simple assault conviction, and one year of reporting probation for the REAP conviction, to run consecutively. No further penalty was imposed for theft by unlawful taking. The receiving stolen property conviction merged for purposes of sentencing.

On May 23, 2012, Laws filed a timely notice of appeal. On May 29, 2012, he was ordered to file a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b); however, the order was misplaced by the Defender Association. On June 26, 2012, the trial court issued an opinion, stating that Laws' appellate rights were deemed waived by operation of law for failure to timely file a Rule 1925(b) statement of errors.

The trial court granted Laws' request for *nunc pro tunc* relief and allowed him to file a Rule 1925(b) statement. The trial court filed its Rule 1925(a) supplemental opinion on September 20, 2012.

On appeal, Laws raises the following issues for our review:

> I. Did not the lower court err in denying [Laws'] motion to suppress physical evidence and out-of-court identification evidence because the police lacked reasonable suspicion when they conducted a ***Terry*** stop of [Laws] on the basis of an anonymous radio call without corroboration?
>
> II. Was not the evidence insufficient as to the offense of simple assault because the complainant had no bodily injury; nor was there any attempt to cause bodily injury or to put the complainant in fear of imminent serious bodily injury when a cell phone was taken from her hand?

> III. Was not the evidence insufficient as to the offense of recklessly endangering another person as the complainant was not placed in danger of death or serious bodily injury when a cell phone was taken from her hand?

Brief of Appellant, at 3.

Our standard of review when considering the propriety of a suppression ruling is well established:

> Our standard of review in addressing a challenge to a trial court's denial of a suppression motion is whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. When reviewing rulings of a suppression court, we must consider only the evidence of the prosecution and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the record supports the findings of the suppression court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error.

In the Interest of D.M., 727 A.2d 556, 557 (Pa. 1999) (citation omitted).

Laws argues that Officer Bowdren and his partner lacked reasonable suspicion to stop him under the Fourth Amendment to the United States Constitution and under Article I, Section 8 of the Pennsylvania Constitution, which protect individuals from unreasonable searches and seizures. U.S. CONST. amend. IV; XIV; Pa. CONST. Art. I, § 8.

Laws claims, *inter alia*, that his stop was "an illegal ***Terry*** stop," because the police did not corroborate an "anonymous radio call that a phone had been taken in a robbery,"[6] and that Laws "happened to be 'in the

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[6] Laws did not raise the claim that the flash report was "anonymous" before the suppression court and it is, therefore, waived. ***See*** Pa.R.A.P. 302(a)
(Footnote Continued Next Page)

area' and fit the description." Brief of Appellant, at 11. He therefore demands suppression of the "fruits of that stop." ***Id.***

The Supreme Court of the United States has noted that the "central inquiry" of any search and seizure analysis is "the reasonableness . . . of the particular governmental invasion of a citizen's personal security." ***Terry v. Ohio***, 392 U.S. 1, 19 (1968). Reasonableness depends on a balance between the public interest and the accused's right to be free from arbitrary intrusion by police. ***Id.*** at 20-21.

This Court has recognized that "we must examine the investigating officers' actions at two levels of inquiry: the legality of the initial stop, and the propriety of the officers' actions subsequent to the stop." ***Commonwealth v. Jackson***, 519 A.2d 427, 429 (Pa. Super. 1986) (citations omitted). The initial stop of a person is legitimate if the police officers "[c]an point to specific and articulable facts which in conjunction with rational inferences deriving therefrom reasonably warrant the intrusion." ***Id.*** at 429-30 (citation and quotation omitted).

(Footnote Continued)

("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.") Instead, Laws argued at the suppression hearing that Catrona's description of him was too "generic" to warrant reasonable suspicion and that "[l]ots of people [were] going to fit that flash." N.T. Suppression Hearing, Volume I, 5/10/12, at 28.

The factors to consider in justifying the stop and subsequent frisk involve "the specificity of the description of the suspect in conjunction with how well the suspect fits the given description, the proximity of the crime to the sighting of the suspect, the time and place of the confrontation, and the nature of the offense reported to have been committed." ***Id.*** (citation omitted). ***But see Commonwealth v. Hicks***, 253 A.2d 276, 279-80 (Pa. Super. 1969) (finding no reasonable suspicion to conduct stop where suspect did not match description); ***Commonwealth v. Berrios***, 263 A.2d 338, 342 (1970) (overly general description of perpetrator did not support ***Terry*** stop and frisk).

As a general matter, police are justified in conducting an investigatory stop "when relying on information transmitted by a valid police bulletin." ***D.M.***, ***supra***, at 558 (citation omitted). ***See also Jackson***, ***supra***, at 430 (police officer may rely on police radio flash information to justify investigatory stop).

Whether reasonable suspicion existed at the time of an investigatory stop must be addressed by "examining the totality of the circumstances to determine whether there was a particularized and objective basis for suspecting the individual stopped of criminal activity." ***D.M.***, ***supra***, at 557 (citation omitted).

To justify a frisk of a suspect incident to an investigatory stop, "the police need to point to specific and articulable facts indicating that the person they intend to frisk may be armed and dangerous." ***Jackson***,

supra, at 431. For example, the police may reasonably believe themselves to be in danger "when the crime reported to have been committed is a violent crime." ***Id.*** (citation omitted). The police may perform a frisk "to protect innocent bystanders within the vicinity of an encounter." ***Id.*** (citation omitted). An expectation of danger may also arise when the police note "suspicious bulges in a suspect's clothing." ***Commonwealth v. Carter***, 483 A.2d 495, 497 (Pa. Super. 1984).

Here, Officer Bowdren was on a routine patrol when he received a police flash report that a robbery had just occurred involving a black male, of medium complexion, 17 to 19 years old, approximately 5'7", weighing about 140 pounds, wearing blue jeans and a dark spring jacket. Within five to ten minutes, Officer Bowdren saw Laws on the 6900 block of Mower Street. Officer Bowdren testified that Laws closely matched the specific description in the flash report: he appeared to be 17 to 19 years old, he was also about 5'7", and of medium complexion. His clothes - blue jeans and a "[d]ark or black springlike jacket" – were also a close match. N.T. Suppression Hearing, Volume I, 5/10/12, at 23. Moreover, there was close spatial proximity as Officer Bowdren spotted Laws within "[t]hree to four blocks" from the crime scene. ***Id.*** at 23. There was also temporal proximity as Officer Bowdren stopped Laws about five to ten minutes after the reported robbery occurred. ***See Commonwealth v. Whelton***, 465 A.2d 1043, 1048 (Pa. Super. 1983) (stop and frisk of robbery suspect within

minutes and in vicinity of reported crime scene justified where suspect matches description as to physical features and attire).

Furthermore, Catrona, the crime victim, was an identified caller known to the police, ***Commonwealth v. Cruz***, 21 A.3d 1247, 1251 (Pa. Super. 2011), which made it unnecessary for Officer Bowdren to perform an independent corroboration of Laws' involvement in the robbery before briefly detaining him.[7] ***See D.M.***, ***supra***, at 558 ("the fact that the police radio report came from the crime victim herself, not an anonymous source, imparted a high degree of reliability to the report").

Officer Bowdren concluded, based on the totality of the circumstances, that there was sufficient basis for him to have reasonable suspicion to conduct an investigatory stop of Laws. We agree.

Following the investigatory stop, Officer Bowdren conducted a frisk of Laws, and he felt two suspicious bulges in Laws' front pockets. Officer Bowdren's expectation of danger arose because, as per his testimony, he owned a handgun that fit in a front pocket and felt like a wallet or a bulge. He inferred that the bulges could have been firearms. The trial court determined that the Commonwealth met its "burden to produce evidence of

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[7] Laws argues that the police had to conduct a further investigation to justify the stop. He claims that his case is similar to ***Commonwealth v. Wiley***, 858 A.2d 1191, 1193 (Pa. Super. 2004), in which the anonymous informant came forward and identified himself to the police only following the arrest of the suspect. ***See Cruz***, ***supra***, at 1250-51 (distinguishing ***Wiley***).

what the officer conducting the pat-down actually perceived during the frisk itself." Trial Court Opinion, 9/20/2012, at 8. ***See Pennsylvania v. Mimms**,* 434 U.S. 106, 112 (noting that "[t]he bulge in the [suspect's] jacket permitted the officer to conclude that [the suspect] was armed and thus posed a serious and present danger to the safety of the officer"). ***See also Carter**, **supra**.*

Officer Bowdren limited his search to what he believed was necessary to learn whether Laws was armed based on the bulges in his pockets. He removed the items from Laws' front pockets for his own safety and for the safety of his partner, to ascertain whether the items were weapons or guns.

After careful review, we conclude that, in the light of the specific and articulable facts and circumstances of the encounter between Laws and Officer Bowdren, it was reasonable for Officer Bowdren to conduct an investigatory stop and subsequent frisk of Laws.

Laws next argues that the evidence is insufficient to prove that he committed a simple assault or that he recklessly endangered another person.

This Court's standard of review of sufficiency of the evidence claims is well established:

> The standard we apply in 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 [this] 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.

Commonwealth v. Chine, 40 A.3d 1239, 1242 (Pa. Super. 2012) (citations omitted).

Simple assault is defined as follows:

> **§ 2701. Simple assault.**
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> **(a) Offense defined.** --A person is guilty of assault if he:
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> (1) attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another;
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> (2) negligently causes bodily injury to another with a deadly weapon;
>
> (3) attempts by physical menace to put another in fear of imminent serious bodily injury;. . .

18 Pa.C.S. § 2701(a).

A person commits criminal attempt when he intentionally does any act which constitutes a substantial step toward commission of a specific crime. 18 Pa.C.S. §901(a). In order to prove simple assault, the Commonwealth need not establish that the victim actually suffered bodily injury; it is sufficient to show an attempt to inflict bodily injury. ***Commonwealth v. Richardson***, 636 A.2d 1195, 1196 (Pa. Super. 1994). The intent for

attempt may be inferred from circumstances, which reasonably suggest the defendant's intent to cause injury. ***Id.*** ***See, e.g., Commonwealth v. Repko***, 817 A.2d 549, 557 (Pa. Super. 2003), overruled in part on other grounds, ***Commonwealth v. Matthews****,* 870 A.2d 924 (Pa. Super. 2005) (evidence sufficient to establish simple assault under subsection (a)(1) where defendant pointed gun at victim as she was struggling to free herself from defendant's headlock).

At trial, Catrona testified as follows regarding Laws' snatching of the iPhone from her hand:

> Q: At approximately 6:40, can you describe for His Honor what occurred?
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> A.: It was a little bit after 6:40. The bus normally comes [at] about 6:35 or so, I missed the bus by about two minutes. I was standing on the corner right in front of the bus stop[,] it's at Germantown & Mount Airy Avenue[,] waiting for the bus.
>
> I was stupidly checking [e]-mail on my iPhone. There was – normally, when I stand on the bus stop, I look around to see who is around. A young man grabbed my cell phone and knocked my possessions out of my hand.
>
> I chased him for two and a half blocks. I would have chased him further, but I'm a smoker and I ran out of breath."

N.T. Suppression Hearing, Volume I, 5/10/12, at 6.

When asked about the incident on cross-examination, Catrona testified: "[Laws] snatched my cell phone and knocked the stuff out of my hand and I chased after him." ***Id.*** at 13. She also demonstrated, "by swipe of the hand," how "the phone was taken from her person." ***Id.*** at 14.

Laws asserts that the evidence was insufficient for establishing simple assault under section 2701(a)(1). 18 Pa.C.S. § 2701(a)(1). He argues that he did not cause Catrona any bodily injury, made no attempt to inflict it, and had no intent to cause it. He states that his intent was to "take a cell phone out of [Catrona's] hand." Brief of Appellant, at 20.

Here, the record indicates that Laws grabbed the phone by a swiping motion from Catrona's hand, as she was checking her email at the bus stop, "knock[ing] [her other] possessions" to the ground. ***Id.*** at 6. Laws then ran away, and she chased after him for two and a half blocks before running out of breath.

The Commonwealth asserts that the fact that the defendant was taller than the victim (Laws was about five feet seven inches tall, and Cartona was five feet one inch tall) is a "relevant circumstance proving his intent to cause bodily injury when he physically swiped the phone" under 18 Pa.C.S. § 2701(a)(1). Brief of Commonwealth, at 15. The Commonwealth contends that because Laws' act was criminal, "the intent to cause bodily injury is more easily inferred." ***Id.*** at 16. The Commonwealth further argues that physicality of grabbing the phone and knocking possessions to the ground, which resulted in Catrona's pursuit of Laws, is sufficient to prove Laws' intent to cause bodily injury as well as substantial step towards causing bodily injury.

While the Commonwealth is entitled to have reasonable inferences drawn in its favor, we find that the circumstances of this case do not support

the conclusion that Laws attempted to cause bodily injury to Catrona when he lifted her phone from her hand and ran away with it. We do not find sufficient evidence that Laws had specific intent to cause bodily injury to Catrona or that he attempted to inflict it by the act of snatching the phone from her hand. ***See Commonwealth v. Scott***, 369 A.2d 809, 813 (Pa. Super 1976) (defendant's snatching of complainant's purse did not establish simple assault).

Laws further claims that the evidence was insufficient for establishing simple assault under section 2701(a)(3). 18 Pa.C.S. § 2701(a)(3). He claims that he did not make any threats against her and did not use any weapons, and that she "was not in fear at all" based on her chase after Laws to recover her iPhone. Brief of Appellant, at 22.

Serious bodily injury is defined in our Crimes Code 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 of organ." 18 Pa.C.S. § 2301. This Court has held that, to show simple assault by physical menace, "[t]he elements which must be proven are intentionally placing another in fear of imminent serious bodily injury through the use of menacing or frightening activity." ***Repko***, ***supra***, at 554 (citation omitted). In ***Repko***, the court found that there was sufficient evidence to establish simple assault by physical menace where defendant raised his weapon and pointed it directly at the police officer. ***Id.*** at 554-55. ***See also In re Maloney***, 431 636 A.2d 671, 675 (Pa. Super. 1994)

(evidence sufficient to establish simple assault by physical menace where driver pointed gun at another driver and shouted obscenities); ***Commonwealth v. Little***, 614 A.2d 1146 (Pa. Super. 1992) (evidence sufficient under section 2701(a)(3) where defendant emerged from her home with a shotgun, was shouting obscenities and advancing toward sheriff from her porch).

Here, there was no evidence that Laws attempted to put Catrona in fear of imminent serious bodily injury when he removed the phone from her "by force however slight." 18 Pa.C.S. § 3701(a)(1)(v). Catrona demonstrated how Laws took the phone from her by a swiping motion. She did not testify that he used menacing words or gestures against her, or that he physically harmed her. There is no indication that she felt threatened; on the contrary, she ran after him in an attempt to get her phone back. Furthermore, she stated that, but for running out of breath, she "would have chased him further." N.T. Suppression Hearing, Volume I, 5/10/12, at 6.

Based on the foregoing, we conclude that, even viewed in the light most favorable to the Commonwealth as the verdict winner, the record does not support a finding beyond a reasonable doubt that Laws committed a simple assault by attempting to cause bodily injury, or by attempting, by physical menace, to put victim in fear of imminent serious bodily injury. Accordingly, we vacate Laws' conviction as to simple assault.

Finally, Laws argues that the evidence was insufficient as to the offense of REAP. Laws claims that he did not place Catrona in danger of

death or serious bodily injury when he removed the phone from her hand. He argues that the trial court erred in supporting his REAP conviction by contending that "[Laws] fled from the scene and [Catrona] chased him for several blocks, thereby placing her in danger as a result of his actions." Trial Court Opinion, 9/20/2012, at 7.

REAP is defined as follows:

> **§ 2705. Recklessly endangering another person.**
>
> 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. § 2705.

Serious bodily injury is an "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. § 2301. This Court has found that to support a REAP conviction, defendant's conduct must actually create a danger of death or serious bodily injury. ***Commonwealth v. Trowbridge***, 395 A.2d 1337, 1340 (Pa. Super. 1978) (*en banc*) ("[M]ere apparent ability to inflict harm is not sufficient. Danger, and not merely the apprehension of danger, must be created."). ***See also Commonwealth v. Moody***, 441 A.2d 371, 374 (Pa. Super. 1982) (evidence for recklessly endangering another person insufficient where defendant forced complainant into basement, struck her and "touch[ed] her body in a vulgar and offensive manner"); ***Commonwealth v. Smith***, 437 A.2d 757, 759 (Pa. Super. 1981) (evidence insufficient where "defendant pointed a

black object which was concealed under her coat, said that she had a gun and that she would blow the clerk's head off in five seconds") (emphasis omitted); ***Commonwealth v. Baker***, 429 A.2d 709, 711 (Pa. Super 1981) (REAP conviction reversed where risk of serious bodily harm or death was "remote" though circumstances appeared dangerous).

Here, Catrona chased Laws for two and a half blocks in an attempt to retrieve her phone. Laws claims that Catrona's risk of death or serious bodily injury during her chase was "remote" and "a matter of speculation only." Brief of Appellant, at 23.

The Commonwealth, through its brief, illustrated the potential danger of death or serious bodily injury in this case:

> [Laws'] sneak attack could have easily caused [Catrona] to be slammed into a hard city pavement had she not relinquished control over the cell phone when he swiped across her body, knocking her other possessions to the ground. This could have caused serious bodily injury or death. ***Commonwealth v. MacArthur***, 629 A.2d 166, 169 (Pa. Super 1993) (even though defendant acted without malice when he shoved the much larger victim, he suffered a fatal fall backwards). Plainly [Laws] acted at least recklessly, disregarding a clear risk of serious injury to his much smaller victim. The reckless endangerment statute "was directed against reckless conduct entailing a serious risk to life or limb **out of proportion to any utility the conduct might have"** had. ***Commonwealth v. Emler***, 903 A.2d 1273, 1278 (Pa. Super. 2006) (emphasis supplied by this Court in quotation from ***Commonwealth v. Reynolds***, 835 A.2d 720, 727 (Pa. Super. 2003)). Plainly, there was no utility to defendant's recklessly criminal conduct, attacking someone to steal her phone. In addition, as the trial court notes, it was foreseeable that [Catrona] could have been seriously injured during the foot pursuit when [Laws] failed to return the item he stole. [Trial Court] Opinion, Foglieta [sic], at 7.). Because [Laws] acted in a reckless manner that provoked a foot pursuit

> that could have led to serious bodily injury, he was guilty of reckless endangerment.

Brief of Commonwealth, at 18 (emphasis in original).

The Commonwealth's explanations of how the circumstances could have possibly created a threat of actual harm are not such that Laws should have reasonably foreseen that they would occur. ***See Baker***, ***supra***, at 711 ("the remote nature of the potential sequence of events that Commonwealth asserted in the present case, indicates the unreasonableness of requiring an actor to foresee such unusual results."). ***See also Commonwealth v. Robinson***, 817 A.2d 1153, 1158 (Pa. Super. 2003) ("[t]he trier of fact cannot base a conviction on conjecture and speculation").

We conclude that the record does not support the factual findings, beyond a reasonable doubt, that Laws recklessly endangered Catrona. Accordingly, we vacate Laws' reckless endangerment conviction.

Upon review of the briefs, the record, and the relevant law, we conclude that it was reasonable for Officer Bowdren to conduct an investigatory stop and subsequent frisk of Laws. However, convictions for simple assault and reckless endangerment are not supported by the record.

Our disposition vacating the sentences for simple assault and REAP may upset the trial court's sentencing scheme. ***See Commonwealth v. Serrano***, 61 A.3d 279 (Pa. Super. 2013) (where defendant convicted of several crimes successfully challenges judgment of sentence on appeal, remand for resentencing may be appropriate to further sentencing court's plans for protection of society and rehabilitation of defendant).

Judgment of sentence affirmed in part and vacated in part. Case remanded for resentencing. Jurisdiction relinquished.

Judgment Entered.

Prothonotary

Date: 5/3/2013