

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
ALYSSA ASHLEY EDWARDS	:	
	:	
Appellant	:	No. 478 MDA 2023

Appeal from the Judgment of Sentence Entered March 1, 2023
In the Court of Common Pleas of Dauphin County Criminal Division at
No(s): CP-22-CR-0001220-2022

BEFORE: DUBOW, J., McLAUGHLIN, J., and McCAFFERY, J.

MEMORANDUM BY McLAUGHLIN, J.:

FILED: JANUARY 18, 2024

Alyssa Ashley Edwards appeals the judgment of sentence following her convictions for robbery and simple assault.¹ She challenges the sufficiency of evidence to support her robbery conviction and the legality of her sentence. We vacate the judgment of sentence and remand for resentencing.

Edwards' convictions stem from an incident that occurred on December 27, 2021. We briefly restate the facts presented at the bench trial and aptly summarized by the trial court.

On December 28, 2021, Officer Collin Ware of the Harrisburg City Police Department filed a criminal complaint charging [Edwards] with one (1) count of robbery, one (1) count of simple assault, one (1) count of disorderly conduct, and one (1) count of public drunkenness.

¹ 18 Pa.C.S.A. §§ 3701(a)(1)(v) and 2701(a)(1), respectively.

Maryama Labrane testified that on December 27, 2021 she was returning home from work to 2400 Market Street in Harrisburg at around 11:00 p.m. when a woman approached her on the sidewalk. ([N.T.] at 24). The woman asked her if she had any food and while Ms. Labrane did not have any food, she informed the woman she had some in her house and could get some for her if she wanted to wait for it. (**Id.** at 26). She described the woman as 'talking weird' so she did not feel comfortable taking her into her apartment. (**Id.**). Ms. Labrane noticed the woman had blood on her face and thought she might need help. So she pulled her phone out to call her brother. (**Id.**)

The woman attempted to 'snatch' the phone from Ms. Labrane and the two women broke into a 'kind of wrestling.' (**Id.**). The woman ultimately got the phone from Ms. Labrane, along with her keys. (**Id.**). Ms. Labrane had pepper spray and she told the woman that she would use it if she did not return her things; however, the woman began running and although Ms. Labrane attempted to chase her, she could not catch up to her. (**Id.**). Ms. Labrane then called the police. (**Id.**). . . . She identified the woman who took her phone and keys as [Edwards]. (**Id.** at 30).

[Edwards] testified that she was diagnosed bipolar in 2016 but did not take the medication she was prescribed at the time. (**Id.** at 49-51). [Edwards] further explained that she had not been taking her medication 'for a while' prior to the events of December 27, 2021. (**Id.** at 51).

[Edwards] recalled asking Ms. Labrane to use her phone; however, when she handed her the phone, she did not know anyone's number to call, so Ms. Labrane 'snatched' the phone back. (**Id.** at 57). [Edwards] testified that she was triggered by this action, and she began to fight Ms. Labrane. (**Id.**). During the incident, Ms. Labrane dropped the items that she had in her hands. (**Id.**) [Edwards] stated that when she attempted to give Ms. Labrane a set of keys that were on the ground, Ms. Labrane pepper sprayed [Edwards], so she ran away (**Id.**).

Trial Court Rule 1925(a) Opinion ("1925(a) Op."), filed 5/26/23, at 1, 4, 5, 6 (footnotes omitted). The court found Edwards guilty of robbery as a felony of the first degree and simple assault as a misdemeanor of the second degree. It sentenced Edwards to a concurrent term of three months' probation for each conviction. This timely appeal followed.

Edwards raises the following claims:

1. Whether the trial court erred when it found Ms. Edwards guilty of robbery when the evidence failed to show that she acted with the felonious intent to commit theft of the phone in order to deprive the complainant of her property permanently, during which time she was in the midst of a mental health episode where she was incoherent and rambling.
2. Whether the grading of the offense on the criminal information reflects an illegal sentence because Ms. Edwards was convicted for violating 18 Pa.C.S. § 3701(a)(1)(v) which is a felony of the third degree and not a felony of the first degree?

Edwards' Br. at 5 (suggested answers omitted).

Edwards claims that there was insufficient evidence supporting her conviction for robbery considering her "muddled mental state[.]" ***Id.*** at 13. She maintains that the Commonwealth had to prove that Edwards "intended to deprive the complainant of her property permanently or use it in such a manner as to convert it to her own property." ***Id.*** at 16. She argues that because "the intent required for theft is an intentional culpability, it had to be Ms. Edwards's 'conscious object to engage in' theft" and she must have been aware that she was depriving the victim permanently. ***Id.*** at 18 (quoting 18 Pa.C.S.A. § 302).

Our standard of review for challenges to the sufficiency of the evidence is settled:

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 the above test, we may not weigh the evidence and substitute our judgment for a 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 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. Williams, 255 A.3d 565, 578-79 (Pa.Super. 2021) (citation omitted).

Robbery occurs when a person “in the course of committing a theft . . . physically takes or removes property from the person of another by force however slight[.]” 18 Pa.C.S.A. § 3701(a)(1)(v). “In the course of committing a theft” is defined as “if it occurs in an attempt to commit theft or in flight after the attempt or commission.” ***Id.*** at § 3701(a)(2).

The only evidence presented that Edwards may have been “unaware” that she was depriving the victim of her phone was Edwards’ self-serving

testimony. However, the court was free to believe, all, part, or none of this testimony. **Williams**, 255 A.3d at 578-79. In this case, the court found the testimony of the victim credible, that Edwards snatched her phone. **See** 1925(a) Op. at 7. Additionally, the victim testified that Edwards ran away with her phone. Viewing the evidence in a light favoring the Commonwealth as verdict winner, the evidence was sufficient to prove that Edwards committed a robbery.

Edwards also claims that the grading of her robbery offense on the criminal information is “without statutory authority” because it is graded as a felony of the first degree instead of a felony of the third degree. Edwards’ Br. at 19; **see also id.** at 12 (“the offense is graded incorrectly on the criminal information”). She maintains that while the “sentence is clearly legal in terms of numbers,” the grading is not and therefore must be corrected. **Id.** at 19.

“A claim that the court improperly graded an offense for sentencing purposes implicates the legality of a sentence.” **Commonwealth v. Pantalio**, 957 A.2d 1267, 1271 (Pa.Super. 2008). Such a claim is nonwaivable. **Commonwealth v. Hoffman**, 198 A.3d 1112, 1123 (Pa.Super. 2018). When reviewing a challenge to the legality of a sentence, our standard of review is *de novo* and our scope plenary. **See Commonwealth v. Mendozajr**, 71 A.3d 1023, 1027 (Pa.Super. 2013). Furthermore, “[a]n illegal sentence must be vacated.” **Id.** (citation omitted).

We acknowledge that Edwards has fully served the sentence the court imposed. Nevertheless, because the grading of her offense could have

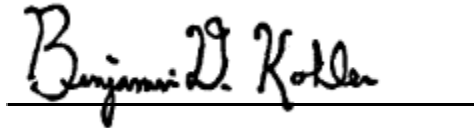
potential criminal consequences if she were convicted and sentenced for another offense, we decline to find this issue moot. **See *Commonwealth v. Carter***, 523 A.2d 779, 780-781 (Pa.Super. 1987) (declining to find claim challenging revocation of probation moot where appellant had fully served sentence of imprisonment and parole period had expired).

The court found Edwards guilty of robbery under Section 3701(a)(1)(v), which is as a felony of the third degree ("F3"). **See** 18 Pa.C.S.A. § 3701(b)(1). Yet it appears that the court improperly graded the offense as a felony of the first degree ("F1"). Though the amended criminal information correctly lists the offense as an F3, the Sentencing Order and criminal docket list the offense as an F1. **See** Amended Information, filed 5/24/22 at 3 (unpaginated); Sentencing Order, docketed 3/2/23, at 3 (unpaginated); Criminal Docket at 4, Disposition Sentencing/Penalties. Therefore, although we affirm Edwards' convictions, we vacate the judgment of sentence and remand for the trial court to grade Edwards' robbery conviction as a felony of the third degree and resentence Edwards accordingly.

Judgment of sentence vacated. Case remanded for resentencing.
Jurisdiction relinquished.

Judge McCaffery did not participate in the consideration or decision of this case.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 1/18/2024