NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
ALLAN RICHARDSON	:	
Appellant	:	No. 2058 EDA 2025

Appeal from the Judgment of Sentence Entered April 11, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0000140-2024

BEFORE: LAZARUS, P.J., DUBOW, J., and KUNSELMAN, J.

MEMORANDUM BY LAZARUS, P.J.: **FILED NOVEMBER 18, 2026**

Allan Richardson appeals from the judgment of sentence, entered in the Court of Common Pleas of Philadelphia County, following his convictions of one count each of attempted murder,[1] aggravated assault,[2] carrying a firearm without a license,[3] and publicly carrying a firearm on public streets or public property in Philadelphia.[4] After review, we affirm Richardson's convictions, vacate his judgment of sentence for aggravated assault, and affirm Richardson's judgment of sentence in all other respects.

The trial court summarized the factual history of this case as follows:

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[1] 18 Pa.C.S.A. § 901(a).

[2] ***Id.*** at § 2702(a)(1).

[3] ***Id.*** at § 6106(a)(1).

[4] ***Id.*** at § 6108.

Philadelphia Police Officer Mark Renzi[] testified that while he was on patrol in South Philadelphia in the early evening of October 12, 2023, he heard gunshots. People on the street directed him to the 2700 block of Winton Terrace, where he found Eugene Calhoun standing on the front step of a house. Calhoun was bleeding heavily from his stomach . . ., moaning, and saying that he had been shot. Officer Renzi "scooped" Calhoun—that is, he put [Calhoun] in the back of his patrol car and drove him to a hospital emergency room. In the car, Officer Renzi asked Calhoun who had shot him, and Calhoun responded that it was his neighbor's boyfriend[, later identified as Richardson]. The Commonwealth played portions of Officer Renzi's body-worn camera for the jury; this video showed Calhoun's condition and captured his cries of pain and his identification of his neighbor's boyfriend as the shooter. Officer Renzi did not find a firearm on Calhoun or at the scene.

The Commonwealth then presented the testimony of Calhoun; Calhoun's daughter, Ebony Cypress; and Cypress's neighbor, Crystal Miles. These three witnesses gave materially consistent testimony about the events leading up to the shooting. Cypress and her children lived in the 2700 block of Winton Terrace, a few doors down from Miles and her children[.] Cypress and Miles were friends. Calhoun frequently visited Cypress and her children. [Richardson] was Miles's boyfriend and, because she used a wheelchair, her caretaker. Calhoun testified that he knew Richardson by sight but had had only one brief conversation with him before the shooting. In early October 2023, Miles needed a large Halloween decoration put up, but [Richardson] was injured and unable to do the task for her. [Richardson] gave the box containing the decoration to Calhoun and Calhoun put it up. On the afternoon of October 12, [2023,] Miles and [Richardson] had an argument, and [Richardson] tossed Miles's phone over her roof. Cypress and Calhoun went to Miles's house and, with other neighbors, helped her search for the phone.

The shooting took place a short time later at 6:00 p.m. on October 12. Calhoun gave the following account: He was sitting in a folding chair outside Cypress's house, having a beer and talking to Cypress, when they heard Miles, [Richardson], and another man arguing outside Miles's house. [Richardson] came down the street to Calhoun and said something about "sweeties" to Calhoun, slurring his words. Calhoun stood up, and [Richardson]

started shooting. The first shots hit Calhoun in the wrist[, and Calhoun] scooped up his small granddaughter and ducked between two parked cars. [Richardson] fired more shots, then got into a white truck and drove away. Calhoun testified that he did not get into a physical fight with [Richardson] and that Calhoun did not have a gun.

Cypress's account was consistent with Calhoun's[;] she said that while she and Calhoun were talking outside, [Richardson] walked down the street to where Calhoun was sitting and, slurring[his words], said "something, like, help your sweetie find her phone." Then, Calhoun stood up, [and Richardson] backed away and started shooting[.] Calhoun ran between two parked cars[and Richardson] fired more shots[before Richardson] got into a truck and drove away. The only notable inconsistency between Cypress's account and Calhoun's was that Calhoun said he did not go into Cypress's house after he was shot, but Cypress said that [Calhoun] went inside [and] she made him go back to the doorway because he was dripping blood. Cypress testified that Calhoun did not strike [Richardson] and did not have a gun.

Miles testified that [Richardson] was present at the shooting, but her account of what he and Calhoun did differed from Cypress's and Calhoun's. [Miles] said that first, Calhoun tried to intervene in a fight between her and [Richardson], that he then ran briefly into Cypress's house, and that Miles then heard gunshots. [Miles] claimed on direct examination that she did not see who was shooting; on cross examination, she said that Calhoun had the gun and Calhoun and [Richardson] struggled. The Commonwealth impeached [Miles's cross examination] testimony with a video of her statement immediately after the shooting, in which she did not mention a struggle, did not mention that Calhoun had gone into his house before the shooting, did not say that Calhoun had a gun, and said that she had seen [Richardson] with a gun. Miles also testified that she had dated [Richardson] for about two years before the shooting, that she had one child with him[,] and was pregnant with a second at the time of trial[. Miles also testified that Richardson] was her home health aide. Miles confirmed Calhoun's and Cypress's accounts that [Richardson] had driven away from the scene immediately after the shooting.

* * *

> [Ultimately,] Calhoun was hit three times[: once] in the leg, wrist, and stomach[, respectively.] His internal injuries were severe[and] he was hospitalized and tube fed until January 2024. At the time of trial, [Calhoun] was still disabled from his injuries.
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> After Calhoun was taken to the hospital, officers held the scene of the shooting until detectives arrived to conduct a forensic examination. [Detectives] found two fired cartridge casings (FCCs) on the sidewalk and five in the street. Testing showed that all the FCCs were from the same firearm. There was blood on the sidewalk next to Calhoun's folding chair, in the street, on Cypress's front step, and just inside the front doorway of Cypress's house. All [of] this evidence was consistent with Calhoun's and Cypress's accounts of the shooting.
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> Police detectives procured a warrant and searched [Richardson]'s home. [Detectives] found no firearms or ammunition. On December 21, 2023, more than two months after the shooting, police arrested [Richardson] at Miles's house. Detectives conducted a post-***Miranda***[5] interview, in which [Richardson] claimed that he was not at the shooting and didn't know anything about it.

Trial Court Opinion, 3/3/26, at 2-5 (citations omitted).

On December 4, 2024, Richardson proceeded to a two-day jury trial. On December 6, 2024, the jury found Richardson guilty of the above-mentioned offenses. On April 11, 2025, the trial court conducted a sentencing hearing at which Richardson made an oral motion for a new trial, claiming that the jury verdict was against the weight of the evidence. The trial court denied Richardson's oral motion and proceeded to sentence Richardson to 15 to 40 years' incarceration for his attempted murder conviction. The trial court then imposed a concurrent sentence of 3 to 6 years' incarceration for Richardson's conviction of carrying a firearm without a license. Finally, the trial court

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[5] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

imposed sentences of "no further penalty" for Richardson's convictions of publicly carrying a firearm on public streets or public property in Philadelphia and aggravated assault.

Richardson filed a timely post-sentence motion, in which he again raised his challenge to the weight of the evidence, which the trial court denied. Richardson filed a timely notice of appeal and a court-ordered Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal.

Richardson now raises the following claims for our review:

> 1. Did the trial court abuse its discretion by denying Richardson's motion for a new trial where the verdict of guilt was so contrary to the weight of the evidence as to shock one's conscience, as the court relied on the testimony of two biased witnesses who were impeached at trial and did not consider the unrebutted evidence of Richardson's reputation for peacefulness in the community?
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> 2. Did the court err by sentencing Richardson to no further penalty on the aggravated assault conviction, when that conviction should have merged with the attempted murder conviction for sentencing purposes?

Brief for Appellant, at 3.

In his first claim, Richardson argues that the verdict was against the weight of the evidence because he was "convicted on the word of two deeply compromised witnesses." ***Id.*** at 11-12. Richardson claims that Calhoun was an unreliable witness where he "was on parole for multiple robberies, did 31 years in prison for armed robberies, was absconding [from his parole], and understood that if he was caught with a firearm or committed another crime, his parole would be revoked." ***Id.*** at 12. Richardson points out that, despite

Calhoun's record and current absconder status, Calhoun lied under oath when he testified that he was reporting to his parole officer. ***Id.*** Additionally, Richardson contends that Cypress was similarly unreliable because she "knew that [Calhoun] was absconding [from parole], permitted him to stay at her home, and acknowledged that she did not want him to return to prison." ***Id.*** Richardson emphasizes that Cypress, on direct examination, testified she saw Richardson shoot Calhoun, but on cross examination Cypress was "confronted with her preliminary hearing testimony that she did not see the shooting." ***Id.*** Richardson posits that the trial court did not address "Calhoun's and Cypress's biases, their provably false testimony, [or] Calhoun's *crimen falsi* [convictions]." ***Id.*** at 12-13. Richardson claims that the trial court's error was further compounded when it failed to consider the "undisputed evidence of Richardson's reputation for peacefulness in his community." ***Id.*** at 14. Upon review, we disagree.

The jury is responsible for passing upon the credibility of witnesses, resolving contradictory testimony, and weighing the evidence. ***See Commonwealth v. Bright***, 234 A.3d 744, 749 (Pa. Super. 2020). In so doing, the jury "is free to believe all, part[,] or none" of the evidence presented. ***Commonwealth v. Roane***, 204 A.3d 998, 1001 (Pa. Super. 2019). Thus, a trial court may only grant a new trial on a weight claim if the verdict "is so contrary to the evidence as to shock one's sense of justice." ***Commonwealth v. Clemens***, 242 A.3d 659, 667 (Pa. Super. 2020) (citation omitted). "[A] defendant will only prevail on a challenge to the weight of the

evidence when the evidence is so tenuous, vague[,] and uncertain that the verdict shocks the conscience of the court." ***Commonwealth v. Cramer***, 195 A.3d 594, 601 (Pa. Super. 2018).

We review the trial court's ruling on a weight claim solely for an abuse of discretion:

> Appellate review of a weight claim is a review of the exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence. Because the trial judge has had the opportunity to hear and see the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court's determination that the verdict is against the weight of the evidence. One of the least assailable reasons for granting or denying a new trial is the [trial] court's conviction that the verdict was or was not against the weight of the evidence and that a new trial should be granted in the interest of justice.

Bright, 234 A.3d at 749 (cleaned up).

Instantly, the trial court made the following credibility determinations and addressed Richardson's weight claim as follows:

> Although Calhoun was somewhat belligerent on the stand, this [c]ourt found his testimony credible and believes that the jury could reasonably have reached the same conclusion. He seemed forthright; he freely acknowledged that he had a criminal history and a history of absconding from parole[. T]he details of his testimony were plausible and consistent with the physical evidence. Given how badly [Calhoun] was injured, it was entirely understandable that he did not remember that he ran into Cypress's house immediately after the shooting. Cypress also testified credibly. Miles, on the other hand, told one story on the day of the incident, a different story on direct examination, and yet another story on cross examination. [Miles] had a strong motive to lie to protect [Richardson]. The jury could easily have concluded that Miles spoke truthfully on the day of the shooting but lied on the stand at trial.

* * *

> The evidence of [Richardson]'s guilt was overwhelming. Three witnesses, including [Richardson's] girlfriend, placed him at the scene. Two credible witnesses testified that he shot an unarmed Calhoun at close range; [Miles] initially agreed, although she later changed her testimony. All the physical evidence, including FCCs, a blood trail, and the wounds on Calhoun's body, confirmed the credible witnesses' testimony. Other than Miles's impeached, contradictory, and implausible testimony that Calhoun picked a fight with a man he hardly knew and was then somehow shot three times with his own gun, there was no evidence to support a justification defense. . . . Here, it was the evidence of self-defense that was incredible and uncertain, while the evidence of [Richardson]'s guilt was solid and substantial.

Trial Court Opinion, 3/3/26, at 4-5, 10-11.

The trial court did not abuse its discretion. The jury was free to believe all, part, or none of any of the evidence, including, but not limited to, the testimony from Calhoun, Cypress, Miles, and the police, as well as Richardson's own character evidence. ***See Bright***, ***supra***; ***Roane***, ***supra***. The jury was free to credit Calhoun's and Cypress's testimony over other testimony, including any inconsistencies that were present in their own testimonies. ***See Bright***, ***supra***. Thus, the trial court was well within its discretion to reject Richardson's weight claim. ***See Cramer***, 195 A.3d at 601 (affirming denial of weight claim where appellant argued victim's testimony was unreliable). Accordingly, Richardson is entitled to no relief on this claim.

In his second claim, Richardson argues that the trial court erred in sentencing him to "no further penalty" for his conviction of aggravated assault. ***See*** Brief for Appellant, at 14-16. Richardson contends that his convictions for attempted murder and aggravated assault arose from the same act and all

of the "statutory elements of one of the offenses are included in the elements of the other offense," which required that the trial court merge the convictions for the purposes of sentencing. ***Id.*** at 15. Specifically, Richardson argues that all of the elements of aggravated assault are included in the elements of attempted murder. ***See id.*** (citing ***Commonwealth v. Anderson***, 650 A.2d 20, 24 (Pa. 1994) (attempted murder and aggravated assault merge for sentencing purposes)). Richardson notes that our Supreme Court found that a sentence of "no further penalty" constitutes a sentence in ***Commonwealth v. Hill***, 238 A.3d 399, 411 (Pa. 2020). ***See*** Brief for Appellant, at 15.

Notably, Richardson, the Commonwealth, and the trial court all agree that the court erred by imposing a sentence of "no further penalty" for Richardson's aggravated assault conviction. ***See*** Brief for Appellant, at 14-16; Commonwealth's Brief, at 12-14; Trial Court Opinion, 3/3/26, at 14. Upon review, we agree with their conclusion.

A claim of merger implicates the legality of the sentence, for which our standard of review is *de novo* and our scope of review is plenary. ***See Commonwealth v. Westlake***, 295 A.3d 1281, 1288 (Pa. Super. 2023); ***see also Commonwealth v. Tucker***, 143 A.3d 955, 960 (Pa. Super. 2016) ("An illegal sentence must be vacated.").

Section 9765 of the Sentencing Code provides as follows:

> No crimes shall merge for sentencing purposes unless the crimes arise from a single criminal act and all of the statutory elements of one offense are included in the statutory elements of the other offense. Where crimes merge for sentencing purposes, the court may sentence the defendant only on the higher graded offense.

42 Pa.C.S.A. § 9765.

It is well-settled that aggravated assault under 18 Pa.C.S.A. § 2702(a)(1) merges with attempted murder. ***See Anderson***, 650 A.2d at 24 ("It is clear that the offense of aggravated assault is necessarily included within the offense of attempted murder; every element of aggravated assault is subsumed in the elements of attempted murder."). Further, "a sentence of 'no further penalty' constitutes a sentence." ***Westlake***, 295 A.3d at 1289.

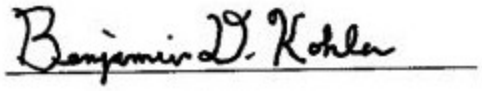
As is evident from the record, Richardson's aggravated assault and attempted murder convictions stemmed from the same criminal episode and event: the shooting of Calhoun. Consequently, Richardson's aggravated assault conviction should have merged, for sentencing purposes, with his attempted murder conviction. ***See Anderson***, ***supra***. Thus, the trial court's imposition of a "no further penalty" sentence in lieu of merging Richardson's convictions constitutes an illegal sentence, and we are compelled to vacate Richardson's sentence for his aggravated assault conviction. ***See id.***; ***Westlake***, ***supra***. Nevertheless, we observe that our conclusion does not upset the trial court's sentencing scheme and, accordingly, we need not remand for resentencing. ***See Commonwealth v. Robinson***, 817 A.2d 1153, 1163 n.14 (Pa. Super. 2003).[6]

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[6] We observe that this Court has found section 6108, carrying a firearm on the streets of Philadelphia, unconstitutional. ***See Commonwealth v. Sumpter***, 340 A.3d 977 (Pa. Super. 2025). However, because Richardson has not raised that issue, it is waived. ***See Commonwealth v. Cline***, 177 A.3d 922, 927 (Pa. Super. 2017) (constitutional claims are waived if not raised in trial court).

Convictions affirmed. Judgment of sentence for aggravated assault vacated. Judgment of sentence affirmed in all other respects. Jurisdiction relinquished.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/18/2026