

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
v.	:	
	:	
JAMES AUGUSTUS YORK,	:	No. 342 EDA 2012
	:	
Appellant	:	

Appeal from the Judgment of Sentence, November 22, 2011,
in the Court of Common Pleas of Lehigh County
Criminal Division at No. CP-39-CR-0003703-2010

BEFORE: FORD ELLIOTT, P.J.E., BENDER AND SHOGAN, JJ.

MEMORANDUM BY FORD ELLIOTT, P.J.E.: **FILED MAY 31, 2013**

Appellant challenges the judgment of sentence imposed following his conviction for homicide by vehicle, accidents involving death or personal injury while not properly licensed ("accidents without license")(2 counts), drivers required to be licensed, limitations on backing on limited access highway, careless driving,¹ involuntary manslaughter, and recklessly endangering another person (8 counts).² Finding no error, we affirm.

¹ 75 Pa.C.S.A. §§ 3732(a), 3742.1(a), 1501(a), 3702(b) and 3714(a), respectively.

² 18 Pa.C.S.A. §§ 2504(a) and 2705, respectively.

Appellant's convictions arose from an incident that occurred on the morning of July 17, 2010 on I-78 near Allentown. Appellant was driving a passenger van carrying numerous passengers on a trip to Dorney Park and Wildwater Kingdom. After appellant missed the exit to Dorney Park, he pulled the van over to the berm. Appellant then proceeded to back the vehicle up in order to re-access the exit. According to an accident reconstruction expert, appellant was in the right lane of I-78 while he backed up. At that moment, first the cab and then the trailer of a tractor-trailer slammed into the van, killing one passenger and injuring several others.

On October 5, 2011, appellant was found guilty of the aforementioned offenses following jury trial. On November 22, 2011, appellant was sentenced to an aggregate term of 3 years and 5 months to 17 years' imprisonment. On December 2, 2011, appellant filed post-sentence motions. On January 3, 2012, the trial court vacated one sentence of one month to one year, but ordered all other terms and conditions of the November 22, 2011 sentence to remain in effect. This timely appeal followed.

Appellant raises the following issues on appeal:

- A. WHETHER THE OFFENSES OF HOMICIDE BY VEHICLE AND ACCIDENT INVOLVING DEATH WHILE NOT PROPERLY LICENSED MERGE FOR PURPOSES OF SENTENCING?

- B. WHETHER THE COURT ERRED IN PERMITTING THE ENTRY OF THE STATEMENT BY THE DEFENDANT DURING WHICH HE INDICATED HE WAS NEGLIGENT IN CAUSING THE ACCIDENT WHICH RESULTED IN DEATH OF ANOTHER WHEN SUCH STATEMENT MAY HAVE CONFUSED THE JURY OR OTHERWISE IMPINGED UPON THE ROLE OF THE JURY IN DETERMINING NEGLIGENCE?
- C. WAS THE EVIDENCE SUFFICIENT TO SUSTAIN THE DEFENDANT'S CONVICTION FOR THE CHARGE OF HOMICIDE BY VEHICLE?
- D. DID THE LOWER COURT IMPOSE AN EXCESSIVE SENTENCE BASED UPON THE CONSECUTIVE NATURE OF THE SENTENCES IMPOSED AND THE DISPORTIONALITY [sic] BETWEEN THE TOTAL SENTENCES AND THE CRIMINAL ACTIONS OF THE DEFENDANT?

Appellant's brief at 8-9.

We begin our analysis with appellant's contention that homicide by vehicle and accidents without license should merge for sentencing purposes.

The legislature has provided the following statutory guidance for merger:

§ 9765. Merger of sentences

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.

To determine whether offenses are greater and lesser-included offenses, we compare the elements of the offenses. If the elements of the lesser offense

are all included within the elements of the greater offense and the greater offense has at least one additional element, which is different, then the sentences merge. ***Commonwealth v. Anderson***, 538 Pa. 574, 650 A.2d 20, 24 (1994). If both crimes require proof of at least one element that the other does not, then the sentences do not merge. ***Id.***

Commonwealth v. Nero, 58 A.3d 802 (Pa.Super. 2012), quoting ***Commonwealth v. Johnson***, 874 A.2d 66, 70–71 (Pa.Super. 2005), ***appeal denied***, 587 Pa. 720, 899 A.2d 1122 (2006).

Additionally, the legislature has defined the crimes at issue as follows:

§ 3732. Homicide by vehicle

(a) Offense.--Any person who recklessly or with gross negligence causes the death of another person while engaged in the violation of any law of this Commonwealth or municipal ordinance applying to the operation or use of a vehicle or to the regulation of traffic except section 3802 (relating to driving under influence of alcohol or controlled substance) is guilty of homicide by vehicle, a felony of the third degree, when the violation is the cause of death.

§ 3742.1. Accidents involving death or personal injury while not properly licensed

(a) Offense defined.--A person whose operating privilege was disqualified, canceled, recalled, revoked or suspended and not restored or who does not hold a valid driver's license and applicable endorsements for the type and class of vehicle being operated commits an offense under this section if the person was the driver of any vehicle and caused an accident resulting in injury or death of any person.

75 Pa.C.S.A. §§ 3732(a) and 3742.1, respectively. We would further note that case law has imposed a ***scienter*** requirement of negligence as to

section 3742.1. ***See Commonwealth v. Hurst***, 889 A.2d 624, 628-629 (Pa.Super. 2005), ***appeal denied***, 588 Pa. 743, 902 A.2d 969 (2006).

Thus, the elements of homicide by vehicle are: 1) recklessness or gross negligence, 2) causing death, and 3) while violating the vehicular code and the violation is the cause of death. The elements of accidents without license are: 1) negligence, 2) causing death or personal injury, and 3) while unlicensed. Plainly, homicide by vehicle is not a lesser included offense of accidents without license. Homicide by vehicle requires a showing of recklessness or gross negligence, a greater ***scienter*** requirement than the mere negligence of accidents without license.

Likewise, we do not find accidents without license to be a lesser included offense of homicide by vehicle. The first element of negligence would be subsumed by the recklessness or gross negligence element of homicide by vehicle. The second element, causing death or personal injury, would only be subsumed by the causing death element of homicide by vehicle where the harm resulted in death. However, even where death occurs, the offenses do not merge because of the third element. The third element of accidents without license requires specific proof that the defendant was not licensed at the time of the accident; this specific offense is not a requirement of homicide by vehicle. Moreover, in the instant situation we cannot say that the violation of accidents without license was the cause of the victim's death as is required by homicide by vehicle.

Rather, the violations of limitations on backing on limited access highway and careless driving were the proximate causes of the victim's death. Thus, we find that the trial court properly did not merge accidents without license with homicide by vehicle.

Turning to appellant's next two issues, pertaining to the admission of appellant's statement to police and to the sufficiency of the evidence, we find no error with the trial court's holding. After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the trial court, it is our determination that there is no merit to these three questions raised on appeal. The trial court's meticulous, 23-page opinion, filed on February 16, 2012, comprehensively discusses and properly disposes of those questions. We will adopt it as our own and affirm those issues on that basis.³

Finally, in his last issue, appellant complains that his sentence is excessive.

³ Issue C also challenged the sufficiency of the evidence as to accidents without license. In appellant's brief he indicates that he has a driver's license from either Bermuda or the Bahamas. Appellant's brief at 13-14. Appellant does not indicate if this information appears anywhere in the record, nor can we find said information. We do note that the parties stipulated at trial that appellant did not have a valid driver's license. (Notes of testimony, 10/4/11 at 64-65.) We mention this in passing because Pennsylvania exempts from the licensing requirements of the vehicle code those persons of at least 16 years of age who possess a driver's license from a foreign country. 75 Pa.C.S.A. § 1502(3). Had appellant proven at trial that he possessed a valid driver's license from Bermuda or the Bahamas, the evidence as to accidents without license would have been insufficient.

"A challenge to the discretionary aspects of sentence must be considered a petition for permission to appeal." **Commonwealth v. Hoch**, 936 A.2d 515, 518 (Pa.Super.2007). The Rules of Appellate Procedure mandate that, to obtain review of the discretionary aspects of a sentence, Appellant must include in his brief a Concise Statement of Reasons Relied Upon for Allowance of Appeal. **See** Pa.R.A.P. 2119(f). This statement must "raise a substantial question as to whether the trial judge, in imposing sentence, violated a specific provision of the Sentencing Code or contravened a 'fundamental norm' of the sentencing process." **Commonwealth v. Flowers**, 950 A.2d 330, 331 (Pa.Super.2008).

Commonwealth v. Simmons, 56 A.3d 1280, 1286 (Pa.Super. 2012).

Instantly, citing **Commonwealth v. Dodge**, 957 A.2d 1198 (Pa.Super. 2008), **appeal denied**, 602 Pa. 662, 980 A.2d 605 (2009) appellant's concise statement maintains that his sentence was excessive because his sentences were imposed consecutively. We note that **Dodge** involved an extreme situation in which consecutive sentencing resulted in essentially a life sentence for numerous nonviolent crimes including several property crimes where the property was of little value. In contrast, appellant's conduct resulted in the death of one person and severe injuries to others while his sentence was only 3 years and 5 months to 17 years' imprisonment. "[T]he imposition of consecutive, rather than concurrent, sentences may raise a substantial question in only the most extreme circumstances, such as where the aggregate sentence is unduly harsh, considering the nature of the crimes and the length of imprisonment." **Commonwealth v. Lamonda**, 52 A.3d 365, 372 (Pa.Super. 2012).

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Appellant' sentence, viewed in the light of his criminal behavior, does not present the extreme situation as in **Dodge**. Thus, we find that appellant has failed to raise a substantial question.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Kevin B. Smith", written over a horizontal line.

Prothonotary

Date: 5/31/2013

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

vs.

JAMES AUGUSTUS YORK,
Defendant

)
)
) Case No. 3703/2010
)
)
)

APPEARANCES:

V. PAUL BERNARDINO, III, ESQUIRE,
SENIOR DEPUTY DISTRICT ATTORNEY,
On behalf of the Commonwealth

MICHAEL BRUNNABEND, ESQUIRE,
On behalf of Defendant

OPINION

MARIA L. DANTOS, J.

Defendant, James York, filed an appeal from this Court's Order of January 3, 2012, which denied the Defendant's Post Sentence Motion. Accordingly, we are issuing this Opinion pursuant to the provisions of Pennsylvania Rule of Appellate Procedure 1925.

The relevant facts are as follows: On October 5, 2011, Defendant, James York, after a jury trial, was found guilty of Homicide by Vehicle,¹ two (2) counts of

¹ 75 Pa. C.S.A. § 3732(a).

Accidents Involving Death or Personal Injury While Not Properly Licensed,² Involuntary Manslaughter,³ eight (8) counts of Recklessly Endangering Another Person,⁴ Drivers Required to be Licensed,⁵ Limitations on Backing on Limited Access Highway,⁶ and Careless Driving.⁷ Thereafter, on November 22, 2011, this Court sentenced the Defendant to an aggregate sentence of three (3) years and five (5) months to seventeen (17) years. Specifically, the sentence was ordered in the following manner: Homicide by Vehicle, a sentence of not less than one (1) year nor more than five (5) years in a state correctional institution; Accidents Involving Death While Not Properly Licensed, a sentence of not less than one (1) year nor more than two (2) years in a state correctional institution; Accident Involving Serious Bodily Injury While Not Properly Licensed (victim: Merisa Baptiste), a sentence of not less than nine (9) months nor more than two (2) years in a state correctional institution; each of eight (8) counts of Recklessly Endangering Another Person, a sentence of not less than one (1) month nor more than one (1) year in a state correctional institution. The sentences in all counts were ordered to run consecutively. Additionally, Involuntary Manslaughter, Careless Driving and Limitations on Backing on Limited Access Highway merged with Homicide by Vehicle for sentencing purposes. Moreover, Drivers Required to be Licensed merged with Accidents Involving Death While Not Properly licensed for sentencing purposes. Then, the Defendant filed timely Post Sentence Motions. On January 3, 2012, this Court vacated its sentence of not less than one (1) month nor more than one (1) year on the charge of Recklessly

² 75 Pa. C.S.A. § 3742.1(a).

³ 18 Pa. C.S.A. § 2504(a).

⁴ 18 Pa. C.S.A. § 2705.

⁵ 75 Pa. C.S.A. § 1501(a).

⁶ 75 Pa. C.S.A. § 3702(b).

⁷ 75 Pa. C.S.A. § 3714(a).

Endangering Another Person as it relates to Valisca Jeremiah, but ordered all other terms and conditions of the sentence of November 22, 2011, to remain in full force and effect. The within appeal followed.

A. Motion in Limine

In his concise statement of errors complained of on appeal, the Defendant argues that this Court erred in denying the Defendant's Motion in Limine regarding statements given by the Defendant relating to his negligence. The Defendant contends that the admission of the statements was improper and infringed on the duty of the jury to determine if negligence existed. We cannot agree.

During the interview with the Defendant, Trooper Frank DeBellis asked the Defendant if he thought that his actions on that day were "negligent, in that his actions caused the accident. Trooper DeBellis specifically explained to the Defendant that he was using the term "negligence" to mean that his actions were unlawful and the cause of the accident. In response, the Defendant indicated that he was "negligent." While it is true that Trooper DeBellis utilized the term "negligence," which can be a legal term, there is also a common sense understanding of the word, which has no legal connotation. The context in which Trooper DeBellis utilized the word "negligence," was not that of a legal definition.

To amplify this to the jury, this Court delivered a special instruction to them at the conclusion of the testimony of Trooper DeBellis on October 4, 2011:

COURT: You have just heard a statement that was attributed to the defendant. In that statement the word "negligent" was used. The word "negligent" may have a different legal meaning than when it is used by a lay person. You are to evaluate the defendant's use of the word in the context of his statement but you are to take the legal standard of negligence from my instruction to you on the law

- and not from any other definition you might know or heard from the corporal in this case.

Based on the foregoing, and in light of the special cautionary instruction provided to the jury, no legal error was committed by his Court and the Defendant's appeal should be dismissed in this regard.

B. Challenging the Sufficiency

In Defendant's concise statement of errors complained of on appeal, the Defendant asserts that the verdict was not supported by sufficient evidence. Defendant's assertions lack merit.

A claim challenging the sufficiency of the evidence is a question of law which asserts that there is insufficient evidence to support at least one material element of the crime for which the Defendant was convicted. Commonwealth v. Lyons, 833 A.2d 245, 258 (Pa. Super. 2003). The standard for reviewing sufficiency challenges was explained in the following manner by the Superior Court of Pennsylvania:

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.

Commonwealth v. Taylor, 831 A.2d 661, 663 (Pa. Super. 2003), *quoting* Commonwealth v. DiStefano, 782 A.2d 574, 582 (Pa. Super. 2001). In addition, the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Commonwealth v. Hunzer, 868 A.2d 498, 505 (Pa. Super. 2005). Any doubts regarding a defendant's guilt are properly resolved by the finder of

fact 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. Id. 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. Id. If the finder of fact reasonably could have determined from the evidence adduced that all of the necessary elements of the crime were established, then the evidence will be deemed sufficient to support the verdict. Id. at 506.

In the instant case, twenty-four (24) year old Mareshah Jeremiah and his wife of five (5) weeks, Valisca Jeremiah, planned a trip to Dorney Park and Wildwater Kingdom, Allentown, Lehigh County, Pennsylvania, with their family and friends. They hired two (2) passenger vans to transport them to Dorney Park and Wildwater Kingdom on July 17, 2010. At approximately 6:00 A.M., Mareshah Jeremiah and his wife left their hometown of Brooklyn, New York with Mareshah Jeremiah's niece, Merisa Baptiste; Mareshah Jeremiah's eight (8) year old nephew, Jashar Junior Baptiste; twelve (12) year old Isiah Nicolas St. Clair; fourteen (14) year old Dwayne Lenox Charles, and his wife's cousin, Jenelle Rennea Collis, together in one (1) passenger van.

Mareshah Jeremiah testified that they were travelling on Route I-78 in Pennsylvania. The passenger van that he was seated in was following another passenger van carrying other friends and relatives. Mareshah Jeremiah felt the van stop on the shoulder of the road, as he perceived the rumble strips under the tires of the vehicle. The driver of the passenger van indicated that he had missed the exit to Dorney Park and Wildwater Kingdom. At this time, Mareshah Jeremiah was talking on the telephone to his sister, Marsha Baptiste, who was a passenger in the other

passenger van. He related to her that they had missed the exit and that the driver was in the process of going in reverse. Suddenly, Mareshah Jeremiah observed a truck in the right lane and screamed to the driver, "the truck!" The passenger van was struck in the rear by the front of the truck and then a second time by the truck's attached trailer.⁸ Mareshah Jeremiah was unsure of the location of the passenger van when it was struck by the truck.

Upon impact, Mareshah Jeremiah's nephew, Jashar Junior Baptiste, flew out of his seat into him. He removed his unconscious nephew from the van. Mareshah Jeremiah then proceeded to attempt to rescue his niece, Merisa Baptiste, who lay unconscious and unresponsive, with her legs lodged under the van's seat. Unsuccessful in his efforts to help his niece, Mareshah Jeremiah then removed Isiah Nicolas St. Clair from the van.⁹ Then Mareshah Jeremiah looked in the back of the

⁸ Mareshah Jeremiah's sister did not view the impact, but did observe the ejection of Valisca Jeremiah from the passenger van. From her vantage point in the other passenger van, it appeared that the passenger van was close to the guardrail when it was backing up.

⁹ Dr. Daniel Roesler, an expert in trauma and critical care, was the attending trauma physician when the victims of this crash were brought to Lehigh Valley Hospital - Cedar Crest for care. Dwayne Lenox Charles and Merisa Baptiste were trauma alerts and required immediate evaluation.

Dwayne suffered significant neck pain and was diagnosed with a fracture of the seventh cervical vertebrae. He required an evaluation by a spinal surgeon and it was determined not to be a life-threatening injury.

Merisa Baptiste suffered two (2) intracranial bleeds, a grade 4 spleen laceration (the spleen acts as a filter in the human body and removes red and white blood cells from the bloodstream), a grade 1 liver laceration, and a jaw fracture. She suffered from a life-threatening subdural hematoma and a life-threatening frontal contusion (a bruise within the tissue of the brain). Merisa Baptiste was admitted to the pediatric ICU and remained at Lehigh Valley Hospital for four (4) to five (5) days. She underwent surgery to repair her jaw fracture and her mouth was wired closed. Dr. Roesler opined that the head injury that she suffered would result in long term deficits and disruptions of cognitive functions (such as headaches, dizziness, attention and speech difficulties), although the length of time that the difficulties would persist could not be determined. Also, restrictions were placed on Merisa Baptiste's participation in sports and strenuous events for fear of the spleen re-bleeding.

Merisa Baptiste, the fourteen (14) year old niece of Mareshah Jeremiah, testified that as a result of the vehicular accident, she suffered a brain injury, spleen damage and a broken jaw. From the brain injury, Merisa Baptiste continues to suffer frequently from headaches, and she

passenger van and noticed that his wife was not there. He exited the van and went to the other side of the van. Mareshah Jeremiah observed his wife on the ground.¹⁰ (C. Ex. 1); (C. Ex. 2). He held his wife and talked to her until medical personnel arrived on the scene. Valisca Jeremiah suffered fatal injuries as a result of this vehicular accident.¹¹

At approximately 8:03 A.M., Trooper Francis DeMatto of the Pennsylvania State Police Fogelsville Barracks was dispatched to the scene of a motor vehicle crash involving two (2) vehicles on westbound Route 1-78 in the area of mile marker 57.7, Allentown, Lehigh County, Pennsylvania. Trooper DeMatto observed that a 2007 white Ford Econoline van¹² and a Central Transport tractor trailer truck were involved in the accident.¹³ As a result of the motor vehicle accident, the westbound side of Route 1-78 was totally blocked and there was debris on the eastbound side.

At approximately 9:00 A.M., Trooper DeMatto was dispatched to Lehigh Valley Hospital - Cedar Crest to conduct interviews of the occupants of the white Econoline van. At approximately 9:43 A.M., Trooper DeMatto conducted a short ten

is under a physician's care for same. To remedy the broken jaw, Merisa Baptiste had her mouth wired shut for approximately six (6) weeks and then she required follow-up orthodontic care. She has a scar on her right cheek and on her right orbital area. Merisa Baptiste testified that she is not able to participate in sports in school as she had done prior to the motor vehicle accident.

Jashar Junior Baptiste, Janelle Rennea Collis and Isiah Nicolas St. Clair were evaluated in the emergency department and were in need of treatment, albeit not immediate. They suffered minor soft tissue injuries, contusions and abrasions. These three (3) victims were released from Lehigh Valley Hospital within twenty-four (24) hours of their admissions.

¹⁰ Mareshah Jeremiah's sister, Marsha Baptiste, ran over from the other passenger van.

¹¹ Dr. Samuel Land, a forensic pathologist, performed an autopsy on Valisca Jeremiah on July 19, 2010. He opined that the cause of her death was multiple blunt force trauma and the manner of her death was "accident." Dr. Land explained "accidental death" as death caused as a result of some event that occurred while an individual is carrying out an activity of daily life.

¹² The white 2007 Ford Econoline van was registered to Dawn York, the Defendant's wife.

¹³ After the impact, the white van was facing south, with the two (2) front tires on the right lane of travel, and the rear tires near the berm.

(10) to fifteen (15) minute interview with Defendant James York. At the time of this interview, Trooper DeMatto did not believe the Defendant to be a suspect in the case. The Defendant was free to leave at any time during the brief interview.

While speaking to Trooper DeMatto, the Defendant was lying on a hospital gurney, but was fully conscious and coherent. The Defendant did not show any signs of being under the influence of any medications. Indeed, the Defendant appeared to understand Trooper DeMatto's questioning in English. Although Trooper DeMatto noted that the Defendant had an accent, he did not have any difficulty communicating with him.

The Defendant indicated that he was the operator of the white Ford Econoline van. He explained that he and James Waterton, the operator of a second van, met earlier that morning at approximately 5:00 A.M. in Brooklyn, New York, to transport a large group of individuals from Brooklyn, New York to Dorney Park and Wildwater Kingdom in Allentown.¹⁴ The Defendant charged Four Hundred twenty (\$420.00) Dollars for his transportation services for this excursion.

The Defendant stated that he observed James Waterton exit off of Route I-78 at the Lehigh Street exit. However, the Defendant missed the exit and consequently pulled up on the berm.¹⁵ The Defendant indicated that he waited until it was clear to begin backing his vehicle up on Route I-78, so that he could exit at the Lehigh Street exit as well. The Defendant related that a tractor trailer truck skidded into his vehicle while he was on the side of the road.

¹⁴ On the day at issue, the Defendant's van contained seven (7) passengers plus the Defendant. It was determined that the occupants of the vehicle were Merisa Baptiste, Jashar Junior Baptiste, Mareshah Oscar Jeremiah, Isiah Nicolas St. Clair, Dwayne Lenox Charles, Jenelle Rennea Collis and Valisca Jeremiah.

¹⁵ James Waterton was interviewed by Trooper DeMatto. Mr. Walters did not witness the

The Defendant admitted to Trooper DeMatto that he did not possess a New York driver's license.¹⁶ The Defendant conveyed to Trooper DeMatto that he had a driver's license from the Bahamas, and that he had lived in New York "on and off" for approximately ten (10) years.

Later that day, at approximately 2:30 P.M., Trooper DeMatto was informed that the Defendant was going to be taken into custody as a result of the events of that morning. Consequently, at 2:45 P.M., Trooper DeMatto arrived at Lehigh Valley Hospital - Cedar Crest to arrest the Defendant and transport him to police headquarters.

Trooper Frank DeBellis of the Pennsylvania State Police Fogelsville Barracks was called in to assist in the interview of the Defendant at police headquarters. Because the Defendant was now in custody, Trooper DeBellis mirandized the Defendant in the presence of Trooper Justin Humanick. Trooper DeBellis utilized the *Miranda* Waiver Form to mirandize the Defendant. Specifically, Trooper DeBellis read the *Miranda* Waiver Form to the Defendant in English and then the Defendant initialed same to indicate that he waived his *Miranda* rights. (C. Ex. 33). The Defendant spoke in English and there did not appear to be a language barrier. In fact, the Defendant acknowledged that he could read and write the English

vehicular crash.

¹⁶ Trooper Justin Humanick of the Pennsylvania State Police, the first officer to respond to the scene of the accident, requested a driving abstract for the Defendant. Trooper Humanick learned that the Defendant did not have a valid New York driver's license at the time of the accident. (C. Ex. 32).

Upon his arrival, Trooper Humanick observed the dual tractor trailer combination facing east, occupying the left berm and leaning up against the median. The first trailer was facing in a southwest direction, occupying the left lane. The rear trailer was facing west and occupying the left and center lanes. He observed the white Econoline passenger van, facing south, in the right lane and berm, with the two (2) front tires on the right lane and the two (2) rear tires on the berm. (C. Ex. 3); (C. Ex. 4); (C. Ex. 5); (C. Ex. 6); (C. Ex. 31). Trooper

language. The Defendant understood the rights enumerated on the *Miranda* Waiver Form.

After being mirandized, the Defendant stated that he was involved in the traffic accident. He indicated that he did not have a valid driver's license from any state within the United States, and only possessed a New York identification card. He stated that he was residing in New York and Jamaica over the past ten (10) years and was traveling back and forth between these two (2) locations.

The Defendant explained that he and James Waterton were transporting a group of Christians to Dorney Park and Wildwater Kingdom on the date at issue. They met at approximately 5:30 A.M. in Brooklyn to pick up their passengers. The Defendant was unsure of the route between Brooklyn and Allentown. While the Defendant was travelling on Route I-78 in Pennsylvania, he drove in the middle lane. Mr. Walters was travelling in the right lane and took the exit ramp to Exit 57 (Lehigh Street exit). Because of traffic, the Defendant was unable to get into the right lane in time to exit behind Mr. Walters, so he drove onto the berm after missing the exit ramp to Exit 57. The Defendant further explained that he looked out his driver's side window for a police car, as well as any other oncoming traffic. He then reversed the van, using the fog line and the guardrail as guides. Then, the Defendant observed a tractor trailer truck approaching. The Defendant related that he stopped and placed his vehicle in park. The Defendant stated that the tractor trailer truck struck his vehicle from behind. The Defendant acknowledged that he could not lawfully reverse his vehicle on a highway. The interview was then terminated.

The driver of the Central Transport tractor trailer involved in the crash,

Humanick also observed a body cast of the passenger van. (C. Ex. 1); (C. Ex. 2).

Mr. Yaroslav Savchuk,¹⁷ explained that, without ample notice, he observed the white passenger van backing up in the vicinity of the Lehigh Street exit on Route I-78 westbound. Mr. Savchuk explicitly places the white van in the right lane of travel on Route I-78 when it was backing up. Mr. Savchuk attempted to stop his truck and avoid an accident by applying the brakes of his vehicle. He was unsuccessful. The Central Transport tractor trailer struck the left rear corner of the Ford Econoline van. (C. Ex. 3); (C. Ex. 4); (C. Ex. 5); (C. Ex. 6).

Pennsylvania State Police Trooper David Barr, Jr., an expert in the field of accident reconstruction, arrived on scene and investigated the crash. He observed the tractor trailer truck, the white Ford Econoline van, tire scuffs and debris. (C. Ex. 9); (C. Ex. 10); (C. Ex. 11); (C. Ex. 12); (C. Ex. 13). He photographed and electronically documented the crash site. (C. Ex. 14); (C. Ex. 15); (C. Ex. 16); (C. Ex. 17); (C. Ex. 18); (C. Ex. 19); (C. Ex. 20); (C. Ex. 21); (C. Ex. 22); (C. Ex. 23); (C. Ex. 24); (C. Ex. 25); (C. Ex. 26); (C. Ex. 27); (C. Ex. 28). Trooper Barr prepared a scaled diagram of the scene utilizing a forensic mapping program which depicts the locations of the vehicles and the relevant marks on the highway as he found them. (C. Ex. 29); (C. Ex. 30). From the tire marks¹⁸ that were located on the highway, as well as the location of the vehicles, and the damage to the vehicles, Trooper Barr determined and opined to a reasonable degree of scientific certainty that the point of impact was *within* the right-

¹⁷ Mr. Savchuk had arrived in Secaucus, New Jersey the night before from Charlotte, North Carolina. He rested for approximately ten (10) hours in his truck, and then continued his return trip to Charlotte, North Carolina. (D. Ex. 1). Mr. Savchuk is familiar with Route I-78 in the Lehigh Valley because he routinely travels it for his assigned truck route between Secaucus, New Jersey and Charlotte, North Carolina.

¹⁸ The tire marks/scuffs/demarcations from the white passenger van originated in the right-hand lane. Consequently, it was determined that the white passenger van was located in the right-hand lane at the time of impact. Additionally, the tractor trailer's tire marks/scuffs showed the brake pattern of the truck, as well as the left-hand steering. This evidence further

hand lane of travel on Route I-78 West.¹⁹ Trooper Barr also extracted data from the white Ford Econoline van. (C. Ex. 34). This data established that the van was in reverse at the time of the impact. Based on the foregoing, it was determined by Trooper Barr that the cause of the crash was the white passenger van operator's backing up on the roadway.²⁰

Pennsylvania State Police Trooper James Knerr, an expert in the field of commercial vehicle safety inspections, conducted an inspection of the subject Central Transport tractor trailer at the Atlas Towing facility. Upon inspection of the tractor trailer that was involved in the accident, Trooper Knerr found one (1) "out of service level" violation. This violation stemmed from having loose hazardous material on the truck. Specifically, large non-flammable cylinders were not properly secured and were partially tipped over. The other violations that he found did not rise to the level of "out of service" and included, chafed brake hose, one (1) tire with low tread, minor leak in the power steering, and leak in the inner seal of the brake. However, Trooper Knerr determined that the flaws located dealing with the braking or steering would not have caused the truck to go out of service.

The Defendant was found guilty of Homicide By Vehicle. Homicide By Vehicle is defined as "[a]ny person who recklessly or with gross negligence causes the death of another person while engaged in the violation of any law of this Commonwealth or municipal ordinance applying to the operation or use of a vehicle or

supported Trooper Barr's opinion that the impact occurred in the right-hand lane of travel.

¹⁹ Trooper Barr opined that the white passenger van was on the berm, and as it started to back up, it entered the right-hand lane of travel. The truck was in the right lane, and saw the white passenger van. Therefore, the operator of the truck made reasonable attempts to brake and steer to the left to avoid the collision. The impact occurred on the right side of the truck and the left rear of the white passenger van.

²⁰ Trooper Barr inspected the white passenger van at the salvage yard at Faust Towing.

to the regulation of traffic ... is guilty of homicide by vehicle, a felony of the third degree, when the violation is the cause of death." 75 Pa. C.S.A. § 3732(a). See Commonwealth v. Francis, 445 Pa. Super. 353 (1995) (finding it sufficient to sustain convictions for homicide by vehicle when defendant backed up his vehicle on a limited access highway which resulted in a multi-vehicle crash). Based on the testimony, there was sufficient evidence for the jury to find that while the Defendant was operating his wife's 2007 Ford Econoline van west bound on Route I-78 in Pennsylvania, he missed the exit ramp to Exit 57. Having missed his desired exit, the Defendant reversed his vehicle in the right-hand lane of travel, thereby proceeding east bound in the west bound lanes of Route I-78. Ultimately, a tractor trailer truck struck the rear of his vehicle and Valisca Jeremiah suffered fatal injuries as a result of this vehicular accident.

Next, a person is guilty of Accidents Involving Death or Personal Injury While Not Properly Licensed if "[a] person whose operating privilege was disqualified, canceled, recalled, revoked or suspended and not restored or who does not hold a valid driver's license and applicable endorsements for the type and class of vehicle being operated ... [drove] any vehicle and caused an accident resulting in injury or death of any person." 75 Pa. C.S.A. § 3742.1(a). In this case, there was sufficient evidence for a jury to find that on July 17, 2010, the Defendant was operating the white Ford Econoline van without a valid United States driver's license at the time that his vehicle collided with a tractor trailer truck. By reversing his vehicle and proceeding east bound in the west bound lanes of Route I-78, the Defendant caused

He determined that the van did not have any mechanical defects.

the motor vehicle crash, and the resultant injuries to his passenger, Merisa Baptiste, and the resultant death of Valisca Jeremiah.

The Defendant was also found guilty of Involuntary Manslaughter. A person is guilty of Involuntary Manslaughter "when as a direct result of the doing of an unlawful act in a reckless or grossly negligent manner, or the doing of a lawful act in a reckless or grossly negligent manner, he causes the death of another person." 18 Pa. C.S.A. § 2504(a). Moreover, the Defendant was also found guilty of eight (8) counts of 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.A. § 2705. In the case at bar, the Defendant, having missed his desired exit, reversed his vehicle, thereby illegally proceeding east bound in the west bound lanes of Route I-78. Ultimately, a tractor trailer truck collided with the Defendant's vehicle traveling in reverse in the right-hand lane of Route I-78 West. The jury concluded that this evidenced the Defendant's conscious disregard of a known risk of death or great bodily harm to another person. Valisca Jeremiah suffered fatal injuries as a result of this motor vehicle accident. Additionally, the jury found that passengers Merisa Baptiste, Jashar Junior Baptiste, Mareshah Jeremiah, Isiah Nicolas St. Clair, Dwayne Lenox Charles and Jenelle Rennea Collis, as well as the operator of the tractor trailer truck, Yarosiav Savchuk, suffered and/or were placed in danger of death or serious bodily injury by the Defendant's conduct.

Next, the jury found the Defendant guilty of Careless Driving. A person is guilty of Careless Driving if he "drives a vehicle in careless disregard for the safety of

persons or property.” 75 Pa. C.S.A. § 3714(a). By placing his Ford Econoline in reverse, thereby proceeding east bound in the west bound lanes of Route I-78, the jury found that the Defendant operated his vehicle in careless disregard for the safety of persons or property.

Finally, the Defendant was found guilty of Driving Without a License. This summary offense is defined as “[n]o person, except those expressly exempted, shall drive any motor vehicle upon a highway or public property in this Commonwealth unless the person has a driver’s license valid under the provisions of this chapter.” 75 Pa. C.S.A. § 1501(a). Here, the evidence reflects that the Defendant did not hold a valid United States driver’s license on July 17, 2010. Therefore, the jury concluded that the Defendant was guilty of this offense.

Viewing all the evidence and all reasonable inferences arising therefrom in the light most favorable to the Commonwealth, it is clear that the evidence was sufficient to enable a finder of fact to conclude that all the elements of the offenses were established beyond a reasonable doubt. Indeed, at the conclusion of the jury trial, the jury had no doubt that the Defendant committed the aforementioned offenses.

C. Harsh and Excessive Sentence

In his concise statement of errors complained of on appeal, the Defendant contends that this Court erred in sentencing the Defendant to an unreasonably harsh and excessive sentence. In other words, the Defendant is

challenging the discretionary aspects of sentencing. Commonwealth v. Bishop, 831 A.2d 656, 660 (Pa. Super. 2003).

Initially this Court notes that:

Sentencing is within the sound discretion of the sentencing judge, and that decision will not be disturbed absent an abuse of discretion. Commonwealth v. Jones, 418 Pa. Super. 93, 613 A.2d 587, 591 (1992)(*en banc*). "To constitute an abuse of discretion, the sentence imposed must either exceed the statutory limits or be manifestly excessive." Commonwealth v. Gaddis, 432 Pa. Super. 523, 639 A.2d 462, 469 (1994). Nevertheless, sentencing guidelines are merely advisory, and the court may, in its discretion, sentence outside the guidelines. When a trial court deviates from the guidelines, it must state its reasons for deviation on the record at the time of sentencing or in a contemporaneous written statement. Commonwealth v. Lawson, 437 Pa. Super. 521, 650 A.2d 876, 881 (1994). The court must also consider the guidelines as a starting point and deviate so as to impose a sentence consistent with both the public's safety needs and the defendant's rehabilitative needs. *Id.*

Commonwealth v. Shaffer, 722 A.2d 195, 198-199 (Pa. Super. 1998). If "the sentencing court proffers reasons indicating that its decision to depart from the guidelines is not unreasonable," its responsibilities have been fulfilled and the appellate courts will not disturb the sentence. Commonwealth v. Gibson, 716 A.2d 1275, 1277 (Pa. Super. 1998).

In the instant case, the Defendant's minimum sentence for each of the aforementioned offenses was set in the standard range of the guidelines and the maximums were set well below the statutory limits. Unquestionably, the sentences imposed did *not* exceed the statutory limits. Therefore, the Defendant's sentence must be evaluated to determine if it was "manifestly excessive." To do so, the following considerations must be examined:

In determining whether a sentence is manifestly excessive, the appellate court must give great weight to the sentencing court's discretion, as he or she is in the best position to measure factors such as the nature of the crime, the defendant's character, and the defendant's display of remorse, defiance, or indifference. Commonwealth v. Ellis, 700 A.2d 948, 958 (Pa. Super. 1997). Where an excessiveness claim is based on a court's sentencing outside the guideline ranges, we look, at a minimum, for an indication on the record that the sentencing court understood the suggested sentencing range. 42 Pa. C.S.A. § 9721(b). When the court so indicates, it may deviate from the guidelines, if necessary, to fashion a sentence which takes into account the protection of the public, the rehabilitative needs of the defendant, the gravity of the particular offenses as it relates to the impact on the life of the victim and the community, so long as the court also states of record the factual basis and specific reasons which compelled him to deviate from the guideline range.

Commonwealth v. Mouzon, 828 A.2d 1126, 1128 (Pa. Super. 2003) (citations omitted).

Moreover, "[i]t is well-settled that appeals of discretionary aspects of a sentence are not reviewable as a matter of right." Commonwealth v. Ladamus, 896 A.2d 592, 595 (Pa. Super. 2006); see also Commonwealth v. Shugars, 895 A.2d 1270, 1274 (Pa. Super. 2006); Commonwealth v. McNabb, 819 A.2d 54, 55 (Pa. Super. 2003). The defendant must demonstrate that a substantial question exists concerning the sentence. Commonwealth v. Lee, 876 A.2d 408, 411 (Pa. Super. 2005). Furthermore, a substantial question requires something more than an allegation that the sentences imposed are excessive or harsh. Ladamus, 896 A.2d at 595. Consequently, Defendant's assertion that this Court abused its discretion by imposing an excessive and harsh sentence fails to present a substantial question to justify a review of his claim.

Additionally, even if the merit of the Defendant's sentencing claim were addressed, Defendant's argument must fail. The Defendant's sentence must initially

be evaluated to determine if there was an abuse of discretion. Commonwealth v. Walls, 926 A.2d 957 (Pa. 2007). The standard of review has been explained in the following manner:

Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.

Commonwealth v. Fullin, 892 A.2d 843, 847 (Pa. Super. 2006), citing Commonwealth v. Rodda, 723 A.2d 212, 214 (Pa. Super. 1999)(en banc).

In imposing the Defendant's sentence, this Court considered the "protection of the public, the gravity of the offense as it relates to the impact on the victim and the community, the defendant's rehabilitative needs, and the sentencing guidelines." 42 Pa. C.S.A. § 9721(b); Commonwealth v. Feucht, 955 A.2d 377, 383 (Pa. Super. 2008). Prior to sentencing, this Court carefully reviewed the Pre-Sentence Investigation Report prepared on November 4, 2011, and the recommendation contained therein. Also, this Court did not fail to consider mitigating factors. Commonwealth v. Devers, 519 Pa. 88, 546 A.2d 12 (1988) (holding that where a pre-sentence report exists, there is a presumption that the sentencing judge was aware of and adequately considered information relevant to the defendant's character, as well as any mitigating factors). Indeed, this Court was aware of the fact that the Defendant had a prior record score of zero and had never been charged with a criminal offense prior to the within matter. This Court considered the Defendant's rehabilitation

potential and the Defendant's behavior in Lehigh County Prison. However, this Court also considered his questionable expression of remorse, the resultant tragedy and damage from his illegal and knowing act of backing up a passenger van on Route 1-78 without a license, and the fact that there were separate victims in each of the Recklessly Endangering Another Person offense.²¹ With *all* of this information in mind and using its discretion, this Court imposed a sentence that was within the standard range of the guidelines and within the law. Accordingly, the Defendant's argument is baseless and the Defendant's appeal should be denied.

D. Merger Issue

Next, the Defendant argues that the sentence should be vacated because the conviction for Accidents Involving Death or Personal Injury While Not Properly Licensed merges with the Homicide by Vehicle conviction for sentencing purposes. This argument is legally flawed.

The elements necessary to establish these crimes are set forth in 75 Pa. C.S.A. § 3732(a) and 75 Pa. C.S.A. § 3742.1(a) which provide in pertinent part:

§ 3732(a). Homicide by vehicle

²¹ Additionally, it is axiomatic that the imposition of consecutive rather than concurrent sentences lies within the sound discretion of the sentencing court. Commonwealth v. Booze, 953 A.2d 1263, 1279 (Pa. Super. 2008). Long-standing precedent recognizes that 42 Pa. C.S.A. § 9721 affords the sentencing court discretion to impose its sentence concurrently or consecutively to other sentences being imposed at the same time or to sentences already imposed. 42 Pa. C.S.A. § 9721. See also Commonwealth v. Johnson, 961 A.2d 877, 880 (Pa. Super. 2008); Commonwealth v. Marts, 889 A.2d 608, 612 (Pa. Super. 2005). "A challenge to the imposition of consecutive rather than concurrent sentences does not present a substantial question regarding the discretionary aspects of sentence." Commonwealth v. Lloyd, 878 A.2d 867, 873 (Pa. Super. 2005). Indeed, the Superior Court of Pennsylvania has stated: "We see no reason why [a defendant] should be afforded a 'volume discount' for his crimes by having all sentences run concurrently." Commonwealth v. Hoag, 445 Pa. Super. 455, 665 A.2d 1212, 1214 (1995).

- (a) Offense. – Any person who recklessly or with gross negligence causes the death of another person while engaged in the violation of any law of this Commonwealth or municipal ordinance applying to the operation or use of a vehicle or to the regulation of traffic except section 3802 (relating to driving under influence of alcohol or controlled substance) is guilty of homicide by vehicle, a felon of the third degree, when the violation is the cause of death.

75 Pa. C.S.A. § 3732(a).

§ 3742.1(a). Accidents involving death or personal injury while not properly licensed

- (a) Offense defined. – A person whose operation privilege was disqualified, canceled, recalled, revoked or suspended and not restored or who does not hold a valid driver's license and applicable endorsements for the type and class of vehicle being operated commits an offense under this section if the person was the driver of any vehicle and caused an accident resulting in injury or death of a person.

75 Pa. C.S.A. § 3742.1(a).

Initially we note that the test for determining whether crimes merge²² for sentencing purposes was clarified in Commonwealth v. Anderson, 538 Pa. 574, 650 A.2d 20 (1994). There, the Pennsylvania Supreme Court held “that in all criminal cases, the same facts may support multiple convictions and separate sentences for each conviction except in cases where the offenses are greater and lesser included offenses.” Commonwealth v. Dobbs, 452 Pa. Super. 488, 682 A.2d 388, 390 (1996), quoting, Anderson 650 A.2d at 23. “The operative inquiry is whether the crimes involved are greater and lesser included offenses, i.e., whether the elements of the lesser included offense are a necessary subcomponent but not a sufficient component

²² The doctrine of merger is a rule of statutory construction designed to determine whether the legislature intended for the punishment of one (1) offense to encompass that for another offense arising from the same criminal act or transaction. Commonwealth v. Collins, 564 Pa. 144, 764 A.2d 1056 (2001).

of elements of another crime." *Id.*, Commonwealth v. Silay, 694 A.2d 1109, 1110 (Pa. Super. 1997).

In the instant case, the crime of Accidents Involving Death or Personal Injury While Not Properly Licensed does not necessarily involve the crime of Homicide by Vehicle since all of the essential elements of Accidents Involving Death or Personal Injury While Not Properly Licensed are not included in the offense of Homicide by Vehicle.²³ Thus, Accidents Involving Death or Personal Injury While Not Properly Licensed is not a lesser included offense of Homicide by Vehicle. Additionally, the converse is true as well. Consequently, Homicide by Vehicle is not a lesser included offense of Accidents Involving Death or Personal Injury While Not Properly Licensed.²⁴ Therefore, these convictions do not merge for the purpose of sentencing.

Finally, the Defendant maintains that two (2) Recklessly Endangering Another Person convictions (one (1) related to Valisca Jeremiah and one (1) related to Merisa Baptiste) merge with the convictions for Homicide by Vehicle and Accidents Involving Death or Personal Injury While Not Properly Licensed, as they relate to Valisca Jeremiah and Merisa Baptiste, respectively, for sentencing purposes.²⁵ While this Court disagrees with this contention as it relates to Merisa Baptiste, this Court previously conceded the Defendant's argument as it relates to Valisca Jeremiah.

²³ Indeed, a main element of the crime of Accidents Involving Death or Personal Injury While Not Properly Licensed is that the operating privilege of the driver was disqualified, canceled, recalled, revoked or suspended and not restored, or did not have a valid driver's license and applicable endorsements. This argument was rejected by this Court at the time of sentencing and the Defendant was unable to provide this Court with any law to support his position.

²⁴ To be found guilty of Homicide by Vehicle, the person must act with recklessness or gross negligence. These *mens rea* elements are not present in the crime of Accidents Involving Death or Personal Injury While Not Properly Licensed.

²⁵ This argument was *not* raised at the time of sentencing.

The elements necessary to establish these crimes are set forth in 75 Pa. C.S.A. § 3732(a) (*supra*) and 75 Pa. C.S.A. § 3742.1(a) (*supra*) and 18 Pa. C.S.A. § 2705 and provide in pertinent part:

§ 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.A. § 2705

All of the essential elements of Accidents Involving Death or Personal Injury While Not Properly Licensed or Homicide by Vehicle are not included in the offense of Recklessly Endangering Another Person.²⁶ Further, this Court notes that the essential elements of Recklessly Endangering Another Person are not included in the offense of Accidents Involving Death or Personal Injury While Not Properly Licensed, and therefore the convictions of Accidents Involving Death or Personal Injury While Not Properly Licensed and Recklessly Endangering Another Person do not merge.²⁷ However, by Order dated January 3, 2012, this Court found that the crime of Recklessly Endangering Another Person is a lesser included offense of Homicide by

²⁶ As stated above, a main element of the crime of Accidents Involving Death or Personal Injury While Not Properly Licensed is that the operating privilege of the driver was disqualified, canceled, recalled, revoked or suspended and not restored, or did not have a valid driver's license and applicable endorsements. Also, essential elements of Homicide by Vehicle is that the person caused the death of another person while engaged in the violation of any law of this Commonwealth or municipal ordinance applying to the operation or use of a vehicle or to the regulation of traffic. These elements are not included in the crime of Recklessly Endangering Another Person. Thus, Accidents Involving Death or Personal Injury While Not Properly Licensed and Homicide by Vehicle are not lesser included offenses of Recklessly Endangering Another Person.

²⁷ The crime of Accidents Involving Death or Personal Injury While Not Properly Licensed does not contain the element of recklessness. Therefore, Recklessly Endangering Another Person is not a lesser included offense of Accidents Involving Death or Person Injury While Not Properly Licensed.

Vehicle. Both of these crimes require the same mental state, *i.e.*, recklessness.²⁸ Additionally, the facts necessary to prove the Homicide by Vehicle charge were also those relied upon to establish the crime of Recklessly Endangering Another Person. Therefore, this Court determined that these crimes should merge for the purpose of sentencing. Thus, this Court vacated its sentence of not less than one (1) month nor more than one (1) year on the charge of Recklessly Endangering Another Person as it relates to Valisca Jeremiah.

Accordingly, the Defendant's appeal should be dismissed.

²⁸ See Commonwealth v. Tipton, 396 Pa. Super. 402, 578 A.2d 964 (Pa. Super. 1990) (finding that Recklessly Endangering Another Person is a lesser included offense of Involuntary Manslaughter, a charge whose *mens rea* is recklessness or gross negligence).