

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	No. 99-11,734
	:	
vs.	:	CRIMINAL DIVISION
	:	
JOSEPH LESKIN,	:	
Defendant	:	1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's Judgment of Sentence issued on or about October 26, 2000. The relevant facts are as follows: On October 22, 1999, Defendant Joseph Leskin went to the Wagon Wheel bar in Cammal, Pennsylvania. When the defendant entered the establishment he saw Harry Finkbiner, an acquaintance of his, at the bar. The defendant ordered a beer and went over to Mr. Finkbiner. The defendant began arguing with Mr. Finkbiner about some backhoe work he had performed for him. The defendant was upset that Mr. Finkbiner had hired someone else to complete the project for him. Someone summoned Tony Campana, the owner of the establishment, from his residence next door. Mr. Campana came into the bar and asked the defendant to leave. The defendant calmed down, apologized to Mr. Finkbiner and a little girl who was crying over the incident and asked Mr. Campana if he could finish his beer. Mr. Campana agreed, so the defendant drank the rest of his beer and then left.

Sometime thereafter, the bartender Yvonne Younkin received a phone call.

She recognized the caller's voice as that of the defendant. The defendant indicated he was upset about the incident earlier in the evening and said he would shoot her, Tony and anyone else in there. Defendant also said he would burn the place down. Ms. Younkin asked the defendant to let her get Tony and he finally said, "fine get Tony." Ms. Younkin went next door to Tony's residence to have Tony pick up on the extension there. Tony picked up the telephone and the defendant made the same threats to Tony.

Between 10:00 and 11:00 p.m., the defendant returned to the Wagon Wheel and demanded a beer. Ms. Younkin refused and told him he was cut off for the night. The defendant then demanded to see Tony. Ms. Younkin went next door and got Tony. When Ms. Younkin left, the defendant approached Mr. Finkbiner and began yelling at him again, saying this was all his fault. Patrons playing pool asked the defendant to calm down and not start any trouble. The defendant told them to mind their own business.

When Tony arrived, he told the defendant he had to leave. The defendant did not comply, so Tony approached him and took him by the arm to escort him from the premises. The defendant did not cooperate and a scuffle ensued. The defendant pulled a gun from his pocket and pointed it at Tony's head. Tony began to back up towards the bar. When Yvonne Younkin saw the defendant pointing a gun at Tony, she reached under the bar, pulled a gun out and handed it to Tony. Tony pointed the gun at the defendant underneath his chin. At some point during this incident, the defendant chambered a round in his gun. Tony said neither one of us wants to do this. The defendant replied 'go ahead and pull the trigger because it looks like its going to be both of us.' Patrons of the bar told Tony not to do it, that it wasn't worth it. Tony said this is bologna and put the gun back on

the bar. Tony then told everybody to leave the bar and he walked out.

As patrons left the bar, the defendant was ranting, raving and waving his gun at them. Mr. Finkbiner did not know what to do because the defendant felt Finkbiner was responsible for the problem. Mr. Finkbiner told Yvonne to leave. Yvonne ran to the door and held it open. She yelled for Mr. Finkbiner to get out of the bar. Mr. Finkbiner got up and started to walk toward the door. The defendant came up behind Mr. Finkbiner and hit him in the back. Mr. Finkbiner knocked over three stools as he fell to the floor. Mr. Finkbiner got up. Although he did not turn around to see it, Mr. Finkbiner knew the defendant had his gun pointed at his back as he left the bar.

Outside, Tony retrieved a shotgun from his truck. The patrons who had been playing pool, still had their pool cues. One told Tony not to shoot the defendant and, instead, give him a chance to hit him with his pool cue. The defendant came out, threatening to shoot Tony. While the defendant was distracted with Tony and his shotgun, one of the patron's hit the defendant in the head near his ear with a pool cue, knocking the defendant unconscious. Another patron knocked the gun from the defendant's hand. These patrons held the defendant on the ground until the police arrived approximately 45 minutes later.

The police arrested the defendant and took custody of his gun. The gun had one round in the chamber and three additional rounds in the clip. The defendant was charged with burglary, firearms not to be carried without a license, and multiple counts each of aggravated assault, simple assault and terroristic threats.

A jury trial was held April 24-25, 2000. The jury acquitted the defendant of

harassment by communication, aggravated assault against Yvonne Younkin, and terroristic threats against Yvonne Younkin, David Christman, Harry Finkbiner and Rodney Mahosky. The jury convicted the defendant of aggravated assault/attempt to cause serious bodily injury against Anthony Campana, aggravated assault/attempt to cause serious bodily injury against Harry Finkbiner, firearm not to be carried without a license, terroristic threats against Anthony Campana and Samuel Shaheen, recklessly endangering, disorderly conduct, and simple assaults against Anthony Campana, Yvonne Younkin, Samuel Shaheen, David Christman, Harry Finkbiner and Rodney Mahosky.

On October 26, 2000, the Court sentenced the defendant to 5-10 years incarceration for the aggravated assault of Anthony Campana, a concurrent 5-10 years for aggravated assault of Harry Finkbiner, 3 years consecutive probation for carrying a firearm without a license, a concurrent 6-12 months for each terrorist threats conviction, a concurrent 6-12 months for recklessly endangering, a concurrent 6-12 months for disorderly conduct, and a concurrent 6-12 months for each simple assault conviction that did not merge with an aggravated assault conviction.

On November 22, 2000, the defendant filed a notice of appeal. On January 8, 2001, he filed post sentence motions nunc pro tunc challenging the weight and sufficiency of the evidence. The Court denied these motions on or about January 11, 2001.

In his statement of matters complained of on appeal, the defendant raises two issues: (1) the verdict was against the weight of the evidence; and (2) the evidence was insufficient to find him guilty of aggravated assault of Anthony Campana and Harry

Finkbiner. The Court will address these issues in reverse order.

When addressing a challenge to the sufficiency of the evidence, the Court must determine whether, viewing all the evidence and inferences deducible therefrom in the light most favorable to the Commonwealth as verdict winner, the trier of fact could have found that each element of the offenses charged was proven beyond a reasonable doubt.

Commonwealth v. Foster, 764 A.2d 1076, 1082 (Pa.Super. 2000). 18 Pa.C.S. §2702, entitled “Aggravated assault,” provides:

- (a) Offense defined.-- A person is guilty of aggravated assault if he:
 - (1) attempts to cause serious bodily injury to another or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life.

Id. Serious bodily injury is defined 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 or organ.” 18 Pa.C.S. §2301.

In this case, the Commonwealth proceeded on an attempt theory. The defendant claims the Commonwealth failed to establish that the defendant in fact attempted to cause serious bodily injury under circumstances manifesting extreme indifference to the value of human life. This Court cannot agree. Initially, the Court notes it believes the language “under circumstances manifesting extreme indifference to the value of human life” only applies when it is alleged the defendant recklessly caused serious bodily injury. See Commonwealth v. Cassidy, 668 A.2d 1143, 1147 (Pa.Super. 1995). Instead, to “prove aggravated assault based upon an attempt, the Commonwealth must show that the accused acted with specific intent to inflict serious bodily injury.”

Commonwealth v. Rodriguez, 673 A.2d 962, 966 (Pa.Super. 1996). This intent may be proven circumstantially. Id.

DATE: _____

By The Court,

Kenneth D. Brown, J.

cc: District Attorney

Law Clerk

Court Reporter

Superior Court (original & 1)