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Commonwealth v. Coppedge

COMMONWEALTH OF PENNSYLVANIA
v. LALLITRA LYNETTE COPPEDGE, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action No. 2007-1626
Charges: Aggravated Assault, Simple Assault, Endangering the Welfare of a Child

Appeal from denial of post-sentence motions for sentence modification and judgment of acquittal

1. Merger is appropriate only if the crimes arise from a single criminal act, and all of the statutory elements of one offense coincide with the statutory elements of the other offense.
2. Sentences for simple assault and for endangering the welfare of a child do not merge because, although the defendant's convictions for simple assault and for endangering arose from a single act — holding her 3-year-old daughter in hot water, resulting in bodily injury — not all of the statutory elements of endangering are subsumed within simple assault insofar as the additional element of a duty of care, protection or support is an element which is not part of simple assault.
3. Where the defendant was acquitted of aggravated assault but convicted of endangering, she was not entitled to a judgment of acquittal on the grounds of an inconsistent verdict where the factual basis for each charge was not identical insofar as aggravated assault is not a necessary predicate to endangering because the requisite levels of intent or state of mind are not identical.

Appearances:

Lauren E. Sulcove, Esquire, *Assistant District Attorney*

R. Paul Rockwell, Esquire, *Assistant Public Defender*

OPINION SUR PA.RA.P. 1925(A)

Herman, P.J., April 20, 2009

Background

The defendant was charged with the above-captioned offenses as a result of an incident which occurred on April 23, 2007. The Commonwealth alleged that the defendant held her then-3-year-old daughter Destiny in hot water in a bathtub, causing Destiny to suffer serious bodily injury in the nature of second and third degree burns. At the conclusion of a three-day trial on August 20-22, 2008, the jury acquitted the defendant of aggravated assault and convicted her of simple assault and endangering the welfare of a child ("endangering"). The court sentenced the defendant on October 8, 2008 to serve 12-36 months for simple assault (this was a sentence in the aggravated range under the guidelines and the court placed its reasons for imposing such a sentence in the record at the sentencing) and 6-36 months for endangering, with the sentences to be served consecutively.

The defendant filed timely post-sentence motions seeking various forms of relief. The court reviewed the

Commonwealth's answer, as well as written arguments and relevant transcripts. On January 28, 2009, the court entered a speaking Order denying the two post-sentence motions still at issue.^[1] The defendant filed a timely notice of appeal and a concise statement of matters complained of on appeal as directed. She raises two issues on appeal. These issues are identical to those which she raised in her post-sentence motions and which the court addressed in its January 28, 2009 Order.

Discussion

Merger

The defendant alleges that this court erred in denying her motion for modification of sentence, specifically, her motion to vacate the sentence imposed for simple assault. The defendant had alleged in her post-sentence motion that the sentences for simple assault and for endangering should have merged for sentencing purposes because the elements of simple assault are subsumed within the elements of endangering. It is well-established that merger is appropriate only if the crimes arise from a single criminal act **and all** of the statutory elements of one offense coincide with the statutory elements of the other offense. 42 Pa.C.S.A. §9765; Commonwealth v. Martz, 926 A.2d 514 (Pa.Super. 2007); Commonwealth v. Williams, 920 A.2d 887 (Pa.Super. 2007).

The Commonwealth alleged and the jury agreed that the defendant committed the crime of simple assault in that she "attempt(ed) to cause or intentionally, knowingly or recklessly cause(d) bodily injury to another." 18 Pa.C.S.A. §2701(a) (1). The Commonwealth further alleged and the jury further agreed that the defendant committed the crime of endangering the welfare of a child which is defined as follows: "A parent, guardian, or other person supervising the welfare of a child under 18 years of age...commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support." 18 Pa.C.S.A. §4304(a).

The Commonwealth conceded in its answer to the post-sentence motion that the defendant's convictions for simple assault and for endangering arose from a single criminal act — that of holding her three-year-old daughter Destiny in hot water, resulting in bodily injury. However, not all of the statutory elements of the crime of endangering are subsumed within the crime of simple assault, as is necessary for merger under 42 Pa.C.S.A. §9765 and its interpretive cases. This is because endangering requires the additional element of a violation of a duty of care, protection or support — an element which is not part of simple assault. Under these circumstances, this court clearly did not err in denying the defendant's motion to vacate the separate sentence we imposed for simple assault.

Judgement of Acquittal

The defendant's second allegation is that the court erred in denying her post-sentence motion for judgment of acquittal on the charge of endangering. She argued that the jury's verdict was inconsistent because she was found guilty of endangering even though the jury acquitted her of aggravated assault. According to the defendant, the verdict was inconsistent because the conduct at issue, i.e., the factual basis for both charges, was identical. The defendant's argument is based on the premise that the informations filed as to both charges alleged that she "did hold her three-year-old daughter in hot water, resulting in serious bodily injury" and therefore aggravated assault was the underlying offense to endangering.

As stated in our January 28, 2009 Order, we find the defendant's interpretation of the verdict to be unduly narrow in light of the wording of all three informations containing the different elements of all three charges, as well as the evidence presented at trial. The jury found that the defendant "intentionally, knowingly, or recklessly caused physical harm to her daughter, resulting in bodily injury." [Simple Assault, 18 Pa.C.S.A. §2701(a)(1).] The jury also found that she "knowingly endangered [her] child's welfare by violating a duty of care, protection or support by holding her three-year-old daughter in hot water, resulting in serious bodily injury." [Endangering Welfare of a Child, 18 Pa.C.S.A. §4304(a).] Clearly, the jury found that the defendant intentionally, knowingly or recklessly caused serious bodily injury to her daughter by holding her in hot water.

The information charging the defendant with aggravated assault alleged that she caused serious bodily injury to her daughter by holding her in hot water **and** that she did so "intentionally, knowingly, or recklessly **under circumstances manifesting extreme indifference to the value of human life.**" 18 Pa.C.S.A. §2702(a)(1) (emphasis supplied). The jury did not have to convict the defendant of aggravated assault in order to convict her of endangering. This is because, under the clear wording of the Crimes Code, the elements of aggravated assault are not the same as those of endangering. Aggravated assault is not a necessary predicate to endangering because the requisite levels of intent or

state of mind are not identical.

Furthermore, the defendant in making her argument does not take into account the testimony of the Commonwealth's medical expert, Dr. Mitchell Goldstein, M.D. Although it was Dr. Goldstein's opinion that Destiny's injuries were serious and not accidental, he conceded that he was unable to state to a reasonable degree of medical certainty precisely how long she had been held in the hot water. (N.T., August 21, 2008.) Therefore, although the jury found that the defendant intentionally, knowingly or recklessly caused her daughter serious bodily injury by holding her in hot water, it is reasonable to infer that the jury was unable to reach the unanimous conclusion that she possessed the necessary level of intent to prove beyond a reasonable doubt that she "manifest[ed] extreme indifference to the value of human life." Based on the foregoing, the verdict was not inconsistent and this court did not err in denying her motion for judgment of acquittal.

We submit that this court committed no error in any aspect of this proceeding and respectfully request the appellate court to affirm the conviction, the sentence, and the denial of post-sentence motions.

ORDER OF COURT

April 20, 2009, pursuant to Pennsylvania Rule of Appellate Procedure 1931(c), it is hereby ordered that the Clerk of Courts of Franklin County shall promptly transmit to the Prothonotary of the Superior Court the record in this matter, along with the attached Opinion sur Pa.R.A.P. 1925(a).

^[1]The defendant had initially raised five post-sentence motions but later reduced those to two.