

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. 1464-2009
	:	CRIMINAL DIVISION
EMIL COOPER,	:	APPEAL
Defendant	:	

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

On September 17, 2009, Emil Cooper, Defendant, was charged with Criminal Attempt Homicide, Aggravated Assault, Aggravated Assault with a Deadly Weapon, Simple Assault, and Possession of an Instrument of Crime. On August 4, 2010, Defendant entered a guilty plea of Aggravated Assault with a Deadly Weapon and Possession of an Instrument of Crime pursuant to a plea agreement. Donald F. Martino, Esquire, was appointed to represent the Defendant due to the conflict now created with the Public Defender's Office by the Defendant wanting to withdraw his plea of guilty, which the Court permitted on February 8, 2011.

On May 16, 2011, Defendant waived his right to a jury trial and a bench trial was scheduled. The trial was held on June 8, 2011 and July 8, 2011. On July 20, 2011, the Court entered an Opinion and Order finding the Defendant guilty of Criminal Attempt (Homicide), Aggravated Assault, Aggravated Assault (Deadly Weapon), Simple Assault (Deadly Weapon), Simple Assault, and Possession of an Instrument of Crime. On October 31, 2011, Defendant was sentenced for the charge of Count 1, Criminal Attempted Homicide to eighteen (18) years to thirty-six (36) years in a State Correctional Institution. For the Possession of an Instrument of Crime charge, the Defendant was to be placed, consecutive to Count 1, under the supervision of the Pennsylvania Board of Probation and Parole for a period of five (5) years.

On November 3, 2011, Defendant filed a Post-Sentence Motion. Defendant argued two issues in his Motion: (1) that the verdict was against the weight of the evidence as to the count

one, Criminal Attempt Homicide; and (2) insufficient evidence as to count one Criminal Attempt Homicide. On March 5, 2012, the Court denied Defendant's Post-Sentence Motion by operation of law pursuant to Pa.R.Crim.P. 720(B)(3)(a) and notified the Defendant of his appeal rights. The Defendant filed a Notice of Appeal on March 7, 2012, and on March 16, 2012, the Court directed the Defendant, in accordance with Pa.R.A.P. No. 1925(b), to file within thirty (30) days a Concise Statement of Matters Complained of on Appeal. The Court received the Defendant's Concise Statement of Matters Complained of on Appeal on April 4, 2012.

The Defendant raises one issue on appeal: (1) The trial court erred in finding Defendant guilty of Criminal Attempt Homicide and by denying Mr. Cooper's Post-Sentence Motion for Judgment of Acquittal on this charge when the Commonwealth failed to offer sufficient evidence to support a conviction on the charge of Criminal Attempt Homicide.

When a defendant challenges the sufficiency of the evidence, the appellate court must determine whether the evidence is sufficient to permit a fact finder to determine that each and every element of the crimes charged has been established beyond a reasonable doubt. Commonwealth v. Ratsamy, 934 A.2d 1233 (Pa. 2007). It is the function of the fact finder to pass upon the credibility of the witnesses and to determine the weight to be accorded the evidence produced. In a non-jury trial the court acts as the fact finder where there is conflicting evidence. Commonwealth v. Hart, 460 A.2d 745 (Pa. 1983).

For a defendant to be found guilty of Attempted Homicide, the Commonwealth must establish that the defendant took a substantial step towards committing homicide with specific intent to kill. Commonwealth v. Packard, 6767 A.2d 1068, 1071 (Pa. Super. 2001). Specific intent to kill can be inferred from the circumstances surrounding the incident. Because a person generally intends the consequences of his act, specific intent to kill may be inferred from the fact

that the accused used a deadly weapon to inflict injury to a vital part of the victim's body.
Commonwealth v. Sattazahn, 631 A.2d 597, 602 (Pa. Super. 1993).

For purposes of this Opinion, the Court will rely on its Opinion and Order dated July 20, 2011, which found that the Commonwealth presented sufficient evidence to find that the Defendant took a substantial step towards committing homicide and had the specific intent to kill.

DATE: _____

By the Court,

Nancy L. Butts, President Judge

xc: DA
Donald Martino, Esq.
Gary L. Weber (LLA)