

PETITIONER'S APPENDIX A

COMMONWEALTH OF PENNSYLVANIA v. CHRISTOPHER FORMAN, Appellant
SUPERIOR COURT OF PENNSYLVANIA
2020 Pa. Super. Unpub. LEXIS 3379
No. 3389 EDA 2019
October 27, 2020, Decided
October 27, 2020, Filed

Notice:

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

Editorial Information: Prior History

Appeal from the Judgment of Sentence Entered April 6, 2017. In the Court of Common Pleas of Philadelphia County Criminal Division at No(s): CP-51-CR-0006295-2014.

Judges: BEFORE: LAZARUS, J., DUBOW, J., and FORD ELLIOTT, P.J.E. MEMORANDUM BY LAZARUS, J.

PENNSYLVANIA JUDICIAL DECISIONS / 2021 / 2020 Pa. Super. Unpub. LEXIS 3379::Commonwealth v. Forman::October 27, 2020 / Opinion

Opinion

Opinion by: LAZARUS

Opinion

MEMORANDUM BY LAZARUS, J.:

Christopher Forman, a/k/a Christopher Coker (Forman), appeals from the judgment of sentence, entered in the Court of Common Pleas of Philadelphia County, after a jury convicted him of burglary,¹ criminal trespass,² criminal conspiracy,³ and two counts of recklessly endangering another person.⁴ Upon careful review, we affirm.

On February 10, 2014, at approximately 7:15 pm, the victims, Eliezer Colon and Moraima Alicea, were returning home with their two children⁵ when they discovered that Forman and an unidentified male were inside their home. N.T. Jury Trial, 1/10/17, at 4. Colon first observed, from his vehicle, that the "upstairs light was on" in the house, and asked Alicea whether she forgot to turn it off; when she said no, he assumed that she was mistaken. *Id.* at 8. As the family tried to enter their home, Alicea noted that she could not unlock the front door. At this point, Colon "realized that somebody was in there" because the deadbolt, which prevented their entry, could only be locked from the inside. *Id.* at 8-9. He then noticed a crack in the window blind and instructed his family to get back in the car. *Id.* at 9. Once inside the vehicle, Alicea called 911 to report a burglary. *Id.* at 75-76, 80.

Meanwhile, Colon drove around to the back of the house and spotted a black Ford F-150 pickup truck idling by the back door, with Forman and another male attempting to carry a large, several-hundred-pound gun safe out of the house.⁶ *Id.* at 6-10, 34-37. Upon seeing the homeowners return, the burglars left the safe and fled the scene separately; the unidentified male escaped on foot while Forman drove away in the pickup truck. *Id.* at 13-14. With his family still in the vehicle, Colon pursued Forman in a high-speed chase down Roosevelt Boulevard. Eventually, Forman spotted a police vehicle parked ahead of him, made a sudden U-turn down the same lane he was traveling, crashed into the victims' vehicle, continued driving away, lost control of his truck,⁷ and crashed into a tree. *Id.* at 16-18. Forman proceeded to flee on foot, with Colon still in pursuit, before eventually turning to engage Colon. Colon was able to "hold[] Forman down" until police arrived. *Id.* at 20-21.

Upon returning home, Colon and Alicea discovered that the house had been ransacked; "[e]verything was out [of] the drawers, [the burglars ate] food out [of their] refrigerator," and the following items were stolen: one fifty-five-inch television, two Sony PlayStations, fifty PlayStation videogames, one iPhone, various pieces of jewelry, and twelve bottles of Ciroc vodka. *Id.* at 21, 47.

Following trial, a jury convicted Forman of the abovementioned crimes. Sentencing was deferred pending a pre-sentence investigation and mental health evaluation. Prior to sentencing, the Commonwealth notified Forman that it was pursuing a mandatory minimum sentence pursuant to Pennsylvania's "second strike" rule. *See* 42 Pa.C.S.A. § 9714 (relating to second and subsequent crimes of violence). Forman stipulated that he had been previously convicted of voluntary manslaughter, a crime of violence under section 9714, but challenged whether the instant conviction for first-degree burglary qualified as a crime of violence as defined under that section. *See* N.T., Sentencing, 4/6/17, at 7-9, 17-18; *see also* 42 Pa.C.S.A. § 9714(g) (only burglary under section 3502(a)(1) constitutes crime of violence). He argued that because Colon and his family were locked out of their home at the time of the burglary, no one was "present" during its commission; therefore, it was not a second or subsequent crime of violence as defined by section 9714. N.T. Sentencing, 4/6/17, at 7-9, 17-18. The sentencing court disagreed, explaining to Forman that:

[T]he Commonwealth has met the requirements under [s]ection 9714. This conviction does qualify as a second strike as it relates to the burglary charge.

Sir, those people came home. It was their house, and when they tried to enter, they were stopped because of you and your cohorts.

[T]his matter does qualify under the statute . . . based upon the facts that this [c]ourt heard with respect to the [complainants] attempted reentry [in]to their own home[,] and the response of the defendant thereafter, when they went around the back[] and the high speed chase [then] ensued. *Id.* at 31-33.

The court applied the mandatory minimum "second strike" provision and sentenced Forman to an aggregate term of incarceration of 15 1/2 to 44 years' incarceration. N.T. Sentencing, 4/17/17, at 6-18. A post-sentence motion was filed, which the court subsequently denied.⁸ On November 19, 2019, the trial court entered an order on the docket denying Forman's timely post-sentence motion. Forman timely appealed that order on November 23, 2019; both he and the trial court complied with Pa.R.A.P. 1925. Forman raises the following issues for our review:

1. Was [Forman] illegally sentenced pursuant to 42 Pa.C.S.A. § 9714 insofar as the Commonwealth did not sufficiently establish that [Forman] committed a crime of violence with respect to the charge of burglary in the matter *sub judice* as no person was present in the residence at the time of the burglary?
2. Should the mandatory minimum sentence imposed by the trial court under 42 Pa.C.S.A. § 9714 be vacated, and this matter remanded for a new sentencing hearing, due to the fact that [section] 9714 is unconstitutional as drafted insofar as it violates [Forman]'s rights under the Fifth and/or Sixth Amendment to the U.S. Constitution (made applicable in this matter by the Fourteenth Amendment to the U.S. Constitution) and Article I, § 9 of the Pennsylvania Constitution? Brief of Appellant, at 4-5.

First, Forman argues that the evidence presented at trial is legally insufficient to sustain his conviction for burglary under 18 Pa.C.S.A. § 3502(a)(1), and that accordingly, his conviction and the mandatory minimum sentence imposed on that count pursuant to section 9714 are illegal and must be vacated. Brief of Appellant, at 22.

Whether sufficient evidence exists to support a verdict is a question of law; our standard of review is *de novo* and our scope of review is plenary. *Commonwealth v. Tejada*, 2015 PA Super 2, 107 A.3d 788, 792 (Pa. Super. 2015). We review the evidence in the light most favorable to the Commonwealth as verdict winner to determine whether there is sufficient evidence to allow the fact-finder to find every element of a crime beyond a reasonable doubt. *Id.* Additionally, "[w]hen reviewing the legality of a sentence, our standard of review is *de novo* and our scope of review is plenary." *Commonwealth v. Brown*, 2017 PA Super 79, 159 A.3d 531, 532 (Pa. Super. 2017).

Section 3502 of the Crimes Code defines burglary, in relevant part, as follows:

§ 3502. Burglary.

(a) Offense defined.—A person commits the offense of burglary if, with the intent to commit a crime therein, the person:

- (1) (i) enters a building or occupied structure, or separately secured or occupied portion thereof, that is adapted for overnight accommodations in which at the time of the offense any person is present and the person commits, attempts or threatens to commit a bodily injury crime therein;
- (ii) enters a building or occupied structure, or separately secured or occupied portion thereof that is adapted for overnight accommodations in which at the time of the offense any person is present; (2) enters a building or occupied structure, or separately secured or occupied portion thereof that is adapted for overnight accommodations in which at the time of the offense no person is present; 18 Pa.C.S.A. § 3502(a) (emphasis added). Burglary is a

felony of the first degree; however, in cases involving structures **not** adapted for overnight accommodations where no person is present, the offense constitutes second-degree burglary. 18 Pa.C.S.A. § 3502(a)(4), (c)(1)-(2)(i). "[T]he Crimes Code treats first-degree burglary distinctly from second-degree burglary [in that] first-degree burglary...contemplates the potential for confrontation, whereas second-degree burglary does not."⁹ *Commonwealth v. Chester*, 627 Pa. 429, 101 A.3d 56, 64 (Pa. 2014). Pursuant to section 9714, only burglaries under section 3502(a)(1)-burglaries of a structure adapted for overnight accommodations at which time someone is present-constitute "crimes of violence" triggering a mandatory minimum sentence. 42 Pa.C.S.A. 9714.

Forman argues that, given the unequivocal testimony from Colon and Alicea that they were unable to enter their front door at the time of the burglary, "there is no evidence of record that any person was present inside the complainant's home when [Forman] . . . entered [] or remained within." Brief of Appellant, at 24. Forman repeatedly asserts throughout his brief that, because no person was present "inside the complainant's home" during the burglary, *see id.* at 24, 25, 28 (emphasis added), no person was "present" at all for purposes of section 3502(a)(1); therefore, his conviction cannot be sustained. He is entitled to no relief, as his victims, upon returning home and finding themselves locked out, spotted Forman in their backyard before chasing and apprehending him; thus, they were present during the burglary.

We recognized in *Commonwealth v. Dickison*, 334 Pa. Super. 549, 483 A.2d 874 (Pa. Super. 1984), that:

The different gravity score[] for burglaries . . . where persons are present . . . is premised upon the **likelihood of greater mischief**[.] . . . Even if no further crime is committed, the **presence of the victims and the potential for harm to them** suggest an offense possessing gravity greater than when no person is present. *Id.* We reiterated those concerns in *Commonwealth v. Jackson*, 401 Pa. Super. 426, 585 A.2d 533 (Pa. Super. 1991), where we held that, when a homeowner is seated on the back porch of her home at the time it is burglarized, the homeowner is present "within the structure" for purposes of calculating the offense gravity score under the sentencing guidelines. Specifically, in *Jackson*, we affirmed the trial court's holding that the defendant committed "a value seven (7) [b]urglary,"-a "[b]urglary of a structure adapted for overnight accommodations [when] **any person is present**,"-based on the victim being seated on her back porch at the time of the offense. *Id.* at 534-35. There,

The victim was unaware of the crime until the police returned to the scene and informed her that they witnessed the defendant exit the front door of her house. We held that, **even though the victim was unaware of the defendant's presence in her home, this was a case where the likelihood of greater mischief was present.** *Commonwealth v. Stepp*, 438 Pa. Super. 499, 652 A.2d 922, 923 (Pa. Super. 1995) (discussing *Jackson, supra*).

In *Stepp, supra*, where the victim returned to his mobile home to find a burglar exiting the back door, we concluded that "under 42 Pa.C.S.A. § 9721[,] burglary . . . in which at the time of the offense **any person is present**" includes burglaries where someone enters the structure while the perpetrator is still inside[.]." *Id.* at 924.; *see also Commonwealth v. Knowles*, 2006 PA Super 4, 891 A.2d 745 (Pa. Super. 2006) (holding "presence" requirement under section 9714 satisfied "where a person returns to the structure while a perpetrator is still [there]").

Forman submits that *Stepp* is inapposite because, unlike the matter *sub judice*, the homeowner in *Stepp* actually entered his mobile home at the time of the burglary. Brief of Appellant, at 30. We explained, however, that "[t]he same rationale which is applied in *Dickison* and *Jackson* concerning 'the likelihood of greater mischief' is applicable to a case such as the present one **where the victim returns home only to find the sanctity and security of his home shattered by an intruder.**" *Stepp, supra* at 924 (emphasis added).

This Court further explained in *Stepp* that "a technical application of the definition of burglary misses the purpose and spirit which underlie the different gravity offense scores. . . . A potentially violent encounter exists whenever a person discovers an intruder inside his home." *Id.* at 923. We recognized that the "proper approach" considers that "'the likelihood for greater mischief and violence is **equally present** both when a person **returns to their residence** and discovers an intruder and when a person **already within the home** discovers an intruder." *Id.* (emphasis added).¹⁰

Here, the potential for greater mischief and violence was present and was actually realized when Colon encountered Forman exiting his home and, like the victim in *Stepp*, proceeded to chase him until police took over. As the sentencing court explained to Forman:

This case, while it is a burglary, had aspects to it where you endangered the lives of not [only] yourself, but the [] people in the car whose home you broke into that [] interrupted you[,] including a child.

You struck their vehicle. You ended up hitting a bloody tree . . . and you still continued to fight. N.T. Sentencing, 4/17/17, at 14-15.

Accordingly, the evidence was sufficient to prove the victims' presence at their home at the time of the burglary, *Stepp, supra; Jackson, supra; Dickison, supra*, and sustain Forman's conviction under section 3502(a)(1)(ii). Thus, the court

did not err in imposing a mandatory minimum "second strike" sentence on that count pursuant to section 9714 where Forman stipulated to committing a prior "crime of violence" under section 9714(g).

Next, Forman argues that 42 Pa.C.S.A. § 9714 is unconstitutional as drafted in that it increases the minimum punishment for a crime based on a fact not submitted to a jury and proven beyond a reasonable doubt; specifically, a prior conviction for a crime of violence. Brief of Appellant, at 38-59. He is entitled to no relief.

The Supreme Court of the United States held that any fact-other than a prior conviction-that increases a mandatory minimum sentence for an offense must be submitted to the jury and proven beyond a reasonable doubt. *Alleyne v. United States*, 570 U.S. 99, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013). (emphasis added). This Court noted in *Commonwealth v. Reid*, 2015 PA Super 135, 117 A.3d 777 (Pa. Super. 2015), that *Alleyne* did not overturn prior precedent holding that prior convictions are sentencing factors and not elements of offenses. *Id.* at 784; see *Almendarez-Torres v. United States*, 523 U.S. 224, 118 S. Ct. 1219, 140 L. Ed. 2d 350 (1998) (recognizing narrow exception for prior convictions to rule that any fact increasing punishment for defendant must be submitted to jury and proven beyond reasonable doubt).

We specifically held in *Reid* that section 9714 is not rendered unconstitutional by *Alleyne*, as it provides for mandatory minimum sentences based on prior convictions-specifically, crimes of violence. Recently, our Supreme Court, in a *per curiam* order, affirmed our decision in *Commonwealth v. Bragg* reaching the same result. See 2016 PA Super 25, 133 A.3d 328 (Pa. Super. 2016) (challenge to mandatory minimum sentence for subsequent crimes of violence pursuant to section 9714 has no merit), aff'd *per curiam*, 642 Pa. 13, 169 A.3d 1024 (Pa. 2017).

Here, Forman was previously convicted of voluntary manslaughter, a crime of violence that qualifies as a first strike. See 42 Pa.C.S.A. § 9714(g). The Commonwealth timely filed notice of its intention to seek a second strike mandatory minimum sentence for first-degree burglary. Accordingly, under *Reid* and *Bragg*, the trial court's imposition of the mandatory minimum sentence for first-degree burglary in accordance with section 9714 was not unconstitutional.¹¹

Judgment of sentence affirmed.

Judgment Entered.

Date: 10/27/2020

PENNSYLVANIA JUDICIAL DECISIONS / 2021 / 2020 Pa. Super. Unpub. LEXIS 3379::Commonwealth v. Forman::October 27, 2020 / Footnotes

Footnotes

1

18 Pa.C.S.A. § 3502(a)(1).

2

18 Pa.C.S.A. § 3503.

3

18 Pa.C.S.A. § 903.

4

18 Pa.C.S.A. § 2705.

5

Colon and Alicea testified that they left the house with their children that day around 7:30 in the morning. N.T. Jury Trial, 1/10/17, at 4, 80.

6

Colon explained that "The back door leads directly into the house. There's no gate or nothing [sic]. It's just the back of the house[; a little driveway section and then the back door. [On the other side of that back door is t]he basement." N.T. Jury Trial, 1/10/17, at 12.

7

Colon testified that the road "was kind of icy because it was winter time." N.T. Trial, 1/10/17, at 18.

8

Thereafter,

[Forman] filed a [n]otice of [a]ppeal on May 10, 2017. A Statement of Errors Complained of on Appeal pursuant to Pa.R.A.P. [] 1925(b) was ordered [] on May 24, 2017. The statement was filed on June 14, 2017 requesting an extension of time to file a supplemental statement of errors upon receipt of the notes of testimony. [The court granted the extension.] After receiving [them], that statement was filed on July 28, 2017.

On July 30, 2018, th[e c]ourt filed its 1925(a) [o]pinion addressing [Forman]'s issues. On April 10, 2019, the Superior Court reversed and remanded the case for the trial court to determine who filed the post-sentence motion in this case[, Forman] or prior counsel, Mary Maran, Esquire. Attorney Maran informed [the trial] court that she had filed the post-sentence motion on behalf of [Forman]. On August 6, 2019, the Superior Court quashed the appeal due to the fact that [Forman]'s post-sentence "motion was still pending at the time [Forman] filed his counseled notice of appeal on May 10, 2017, and it was never formally disposed of by order docketed of record." [See *Commonwealth v. Forman*, 221 A.3d 239 (Pa. Super. filed 2019) (unpublished memorandum)]. Trial Court Opinion, 1/13/20, at 3.

9

In *Chester*, our Supreme Court rejected the appellant's contention that his first-degree burglary conviction was not "violent behavior" because he did not employ violence during the burglary. *See id., supra*.

10

Moreover, we observed:

[I]t may be true that some burglars are more 'professional' than others and plan their criminal activity so that the occupants are most likely absent[,] . . . [but] it does not advance the interests of justice to 'reward' the burglar . . . simply because he was lucky at the moment he entered the then[-]unoccupied structure. *Stepp, supra* at 924. Similarly, it does not advance the interests of justice to reward Forman for using the deadbolt to prevent the victims' entry during the burglary.

11

Forman dedicates a substantial portion of his appellate brief to arguing that *Almendarez-Torres* was wrongly decided and is "due to be overruled." Brief of Appellant, at 52. This, however, we cannot do. *Bosse v. Oklahoma*, 137 S.Ct. 1, 2, 196 L. Ed. 2d 1 (2016) ("It is this Court's prerogative alone to overrule one of its precedents."). Forman further submits that *Bragg* "is [similarly] due to be overturned," and explains that these "good faith argument[s] for a change in the existing law . . . [are] made to fully preserve [his appellate] rights." Brief of Appellant, at 39.

PETITIONER'S APPENDIX B

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 459 EAL 2020
Respondent	:	Petition for Allowance of Appeal from the Order of the Superior Court
v.		
CHRISTOPHER FORMAN,	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 13th day of April, 2021, the Petition for Allowance of Appeal is
DENIED.

A True Copy
As Of 04/13/2021

Attest: 
Patricia A. Johnson
Chief Clerk
Supreme Court of Pennsylvania

PETITIONER'S APPENDIX C

Commonwealth of Pennsylvania
Court of Common Pleas
County of Philadelphia
1st Judicial District



INFORMATION

Commonwealth of Pennsylvania
v.
Christopher Forman

Docket No: CP-51-CR-0006295-2014

The Attorney for the Commonwealth of Philadelphia County by this information charges that in the County of Philadelphia, Pennsylvania, Christopher Forman:

COUNT 1: Simple Assault - (M2)

Offense Date: 02/10/2014 18 § 2701 §§ A

Attempted to cause, or intentionally, knowingly, or recklessly caused, bodily injury to another; and/or negligently caused bodily injury to another with a deadly weapon; and/or attempted by physical menace to put another in fear of imminent serious bodily injury;

Victim: Alicea Moraima

COUNT 2: Recklessly Endangering Another Person - (M2)

Offense Date: 02/10/2014 18 § 2705

Recklessly engaged in conduct which placed or may have placed another person in danger of death or serious bodily injury

Victim: Alicea Moraima

COUNT 3: Burglary - Overnight Accommodation, Person Present - (F1)

Offense Date: 02/10/2014 18 § 3502 §§ A1

Entered a building or occupied structure, or separately secured or occupied portion thereof, with intent to commit a crime therein; said building, structure, or portion thereof was adapted for overnight accommodation, and an individual was present at the time of entry

Victim: Alicea Moraima

COUNT 4: Conspiracy - (F1)

Offense Date: 02/10/2014 18 § 903

With the intent of promoting or facilitating the commission of a crime, agreed with another person or persons that they or one or more of them would engage in conduct which would constitute such crime, or an attempt or solicitation to commit such crime, and/or agreed to aid another person or persons in the planning or commission of a crime, or of an attempt or solicitation to commit such crime

Objective: Assault and Robbery

Overt Act: Assaulted and Robbed the Complainant

COUNT 5: Crim Tres-Break Into Structure - (F2)

Offense Date: 02/10/2014 18 § 3503 §§ A1II

Knowing that he or she was not licensed or privileged to do so, broke into an building or occupied structure or separately secured or occupied portion thereof

Victim: Alicea Moraima

Location: 6627 Large Street, Philadelphia, PA 19149

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COUNT 6: Crim'l Misch-Tamper W/Property - (F3)

Offense Date: 02/10/2014 18 § 3304 §§ A2



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Commonwealth of Pennsylvania
Court of Common Pleas
County of Philadelphia
1st Judicial District



INFORMATION

Commonwealth of Pennsylvania
v.
Christopher Forman

Docket No: CP-51-CR-0006295-2014

Intentionally or recklessly tampered with tangible property of another so as to endanger person or property

Victim: Alicea Moraima
Damaged Property: Rear Door

COUNT 7: **Theft By Unlaw Taking-Movable Prop - (F3)**

Offense Date: 02/10/2014 **18 § 3921 §§ A**

Unlawfully took, or exercised unlawful control over, movable property of another with intent to deprive him or her thereof

Victim: Alicea Moraima
Property: Electronics, Jewelry

COUNT 8: **Receiving Stolen Property - (F3)**

Offense Date: 02/10/2014 **18 § 3925 §§ A**

Intentionally received, retained, or disposed of movable property of another knowing that it had been stolen, or believing that it had probably been stolen, without intent to restore such property to the owner

Victim: Alicea Moraima
Stolen Property: Electronics, Jewelry

COUNT 9: **Robbery-Threat Immed Ser Injury - (F1)**

Offense Date: 02/10/2014 **18 § 3701 §§ A1II**

In the course of committing a theft, inflicted serious bodily injury upon another; and/or threatened another with, or intentionally put another in fear of, immediate serious bodily injury; and/or committed or threatened to immediately to commit a felony of the first or second degree; and/or inflicted bodily injury upon another, or threatened another with or intentionally put another in fear of immediate serious bodily injury; and/or physically took or removed property from the person of another by force

Victim: Alicea Moraima

COUNT 10: **Burglary - Overnight Accommodation, Person Present - (F1)**

Offense Date: 02/10/2014 **18 § 3502 §§ A1**

Entered a building or occupied structure, or separately secured or occupied portion thereof, with intent to commit a crime therein; said building, structure, or portion thereof was adapted for overnight accommodation, and an individual was present at the time of entry

Victim: Eliezer Colon
Location: 6627 Large Street, Philadelphia, PA 19149

COUNT 11: **Conspiracy - (F1)**

Offense Date: 02/10/2014 **18 § 903**

With the intent of promoting or facilitating the commission of a crime, agreed with another person or persons that they or one or more of them would engage in conduct which would constitute such crime, or an attempt or solicitation to commit such crime, and/or agreed to aid another person or persons in the planning or commission of a crime, or of an attempt or solicitation to commit such crime

Objective: Assault and Robbery
Overt Act: Assaulted and Robbed the Complainant

Commonwealth of Pennsylvania
Court of Common Pleas
County of Philadelphia
1st Judicial District



INFORMATION

Commonwealth of Pennsylvania
v.
Christopher Forman

Docket No: CP-51-CR-0006295-2014

COUNT 12: Crim Tres-Break Into Structure - (F2)

Offense Date: 02/10/2014 18 § 3503 §§ A1II

Knowing that he or she was not licensed or privileged to do so, broke into an building or occupied structure or separately secured or occupied portion thereof

Victim: Eliezer Colon

Location: 6627 Large Street, Philadelphia, PA 19149

COUNT 13: Crim'l Misch-Tamper W/Property - (F3)

Offense Date: 02/10/2014 18 § 3304 §§ A2

Intentionally or recklessly tampered with tangible property of another so as to endanger person or property

Victim: Eliezer Colon

Damaged Property: Vehicle, Rear Door

COUNT 14: Theft By Unlaw Taking-Movable Prop - (F3)

Offense Date: 02/10/2014 18 § 3921 §§ A

Unlawfully took, or exercised unlawful control over, movable property of another with intent to deprive him or her thereof

Victim: Eliezer Colon

Property: Jewelry, Electronics

COUNT 15: Receiving Stolen Property - (F3)

Offense Date: 02/10/2014 18 § 3925 §§ A

Intentionally received, retained, or disposed of movable property of another knowing that it had been stolen, or believing that it had probably been stolen, without intent to restore such property to the owner

Victim: Eliezer Colon

Stolen Property: Jewelry, Electronics

COUNT 16: Simple Assault - (M2)

Offense Date: 02/10/2014 18 § 2701 §§ A

Attempted to cause, or intentionally, knowingly, or recklessly caused, bodily injury to another; and/or negligently caused bodily injury to another with a deadly weapon; and/or attempted by physical menace to put another in fear of imminent serious bodily injury;

Victim: Eliezer Colon

COUNT 17: Recklessly Endangering Another Person - (M2)

Offense Date: 02/10/2014 18 § 2705

Recklessly engaged in conduct which placed or may have placed another person in danger of death or serious bodily injury

Victim: Eliezer Colon

Commonwealth of Pennsylvania
Court of Common Pleas
County of Philadelphia
1st Judicial District



INFORMATION

Commonwealth of Pennsylvania
v.
Christopher Forman

Docket No: CP-51-CR-0006295-2014

Citation of Statute
and Section:

- 1 18 § 2701 §§ A (M2)
- 2 18 § 2705 (M2)
- 3 18 § 3502 §§ A1 (F1)
- 4 18 § 903 (F1)
- 5 18 § 3503 §§ A1II (F2)
- 6 18 § 3304 §§ A2 (F3)
- 7 18 § 3921 §§ A (F3)
- 8 18 § 3925 §§ A (F3)
- 9 18 § 3701 §§ A1II (F1)
- 10 18 § 3502 §§ A1 (F1)
- 11 18 § 903 (F1)
- 12 18 § 3503 §§ A1II (F2)
- 13 18 § 3304 §§ A2 (F3)
- 14 18 § 3921 §§ A (F3)
- 15 18 § 3925 §§ A (F3)
- 16 18 § 2701 §§ A (M2)
- 17 18 § 2705 (M2)

All of which is against the Act of Assembly and the peace and dignity of the Commonwealth.

A handwritten signature in black ink, appearing to read "R. Seth Williams".

Philadelphia County District Attorney
R Seth Williams

PETITIONER'S APPENDIX D

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION - CRIMINAL SECTION

OPINION

FILED

JAN 13 2020

**Office of Judicial Records
Appeals/Post Trial**

COYLE, J.

JANUARY 13, 2020

I. FACTS and PROCEDURAL HISTORY

On January 13, 2016, the Defendant, Christopher Forman (Appellant hereinafter), appeared before this Court and following a jury trial, was found guilty of Burglary – Overnight Accommodation, Person Present,¹ Conspiracy to Commit Burglary,² Criminal Trespass³ and (2)

18 Pa. C.S.A. §3502

2 18 Pa. C.S.A. §903

³ 18 Pa. C.S.A. §3503

counts of Recklessly Endangering Another Person.⁴ The evidence at trial established that on February 10, 2014, at approximately 7:15pm, the complainant, Eliezer Colon, and his family were returning home from work when the complainant realized there were people in his house. Mr. Colon observed the Appellant and another male exiting the rear door of his house. Once out of the house, Appellant immediately jumped into an idling truck and fled the scene. The complainant and his family pursued Appellant in their own vehicle wherein Appellant led them on a high speed chase down Roosevelt Boulevard. Appellant made a U-turn and was driving straight at the complainant's car. The complainant veered out of the way as Appellant turned onto the cross street, struck a tree, and proceeded to flee on foot. The complainant followed and held Appellant until police arrived.

Appellant was arrested and was charged with Burglary – Overnight Accommodation, Person Present, Conspiracy to Commit Burglary, Robbery, Criminal Trespass, Simple Assault, and (2) counts of Recklessly Endangering Another Person. After a jury trial, he was convicted of Burglary – Overnight Accommodation, Person Present, Conspiracy to Commit Burglary, Criminal Trespass, and (2) counts of Recklessly Endangering Another Person. Sentencing was deferred pending a pre-sentence investigation and mental health evaluation. Prior to sentencing, on March 9, 2017, Appellee filed a motion seeking application of section 9714 of the Mandatory Minimum Sentencing Act ("Act").

On April 6, 2017, following argument, this Court concluded that the prior conviction which triggered section 9714's mandatory sentencing provision was a July 19, 2005 voluntary manslaughter conviction. Thereafter, this Court sentenced the Defendant to an aggregate term of twenty-two (22)

⁴ 18 Pa. C.S.A. § 2705

to forty-four (44) years of incarceration.⁵ The Court filed a reconsideration of sentence *sua sponte* and on April 17, 2017, reduced the sentence to an aggregate term of fifteen and one-half (15½) to forty-four (44) years of incarceration.⁶ A post-sentence motion was immediately filed and was subsequently denied by operation of law. Appellant filed a Notice of Appeal on May 10, 2017. A Statement of Errors Complained of on Appeal pursuant to Pa. R.A.P. Rule 1925 (b) was ordered by this Court on May 24, 2017. That statement was filed on June 14, 2017 requesting an extension of time to file a supplemental statement of errors upon receipt of the notes of testimony. After receiving the notes of testimony, that statement was filed on July 28, 2017.

On July 30, 2018, this Court filed its 1925(a) Opinion addressing Appellant's issues. On April 10, 2019, the Superior Court reversed and remanded the case for the trial court to determine who filed the post-sentence motion in this case; the Appellant or prior counsel, Mary Maran, Esquire. Attorney Maran informed this court that she had filed the post-sentence motion on behalf of Appellant. On August 6, 2019, the Superior Court quashed the appeal due to the fact that Appellant's post-sentence "motion was still pending at the time [Appellant] filed his counseled notice of appeal on May 10, 2017, and it was never formally disposed of by order docketed of record."

⁵ Appellant was sentenced to a mandatory term of ten (10) to twenty (20) years of incarceration on the charge of burglary as a second strike followed by consecutive terms of ten (10) to twenty (20) years of incarceration on the charge of conspiracy to commit burglary, and one (1) to (2) years of incarceration on each count of recklessly endangering another person. Each sentence was to run consecutive to any sentencing currently serving.

⁶ Appellant was sentenced to a mandatory term of ten (10) to twenty (20) years of incarceration on the charge of burglary as a second strike followed by consecutive terms of three and a half (3½) to twenty (20) years of incarceration on the charge of conspiracy to commit burglary, and one (1) to (2) years of incarceration on each count of recklessly endangering another person. Each sentence was to run consecutive to any sentencing currently serving.

On November 19, 2019, this court entered upon the docket an order formally denying Appellant's timely post-sentence motion. Appellant filed a Notice of Appeal on November 23, 2019. A Statement of Errors Complained of on Appeal pursuant to Pa. R.A.P. Rule 1925 (b) was ordered by this Court on December 9, 2019. That statement was filed on December 6, 2019.

II. ISSUES ON APPEAL

Appellant raises the following issues verbatim on appeal:

1. Was the defendant illegally sentenced pursuant to 42 Pa.C.S.A. §9714 insofar as the Commonwealth did not sufficiently establish that defendant committed a crime of violence with respect to the charge of burglary in the manner *sub judice* as no person was present in the residence at the time of any alleged burglary?
2. Should the mandatory minimum sentence imposed by the trial court under 42 Pa.C.S.A. §9714 be vacated, and this matter remanded for a new sentencing hearing, due to the fact that §9714 is unconstitutional as currently drafted insofar as it violates defendant's rights under Fifth and/or Sixth Amendment to the U.S. Constitution (made applicable in this matter by the Fourteenth Amendment to the U.S. Constitution) and Article I, § 9 of the Pennsylvania Constitution where facts triggering the imposition of a mandatory minimum sentence are not treated as elements of a crime submitted to a jury to be found beyond a reasonable doubt?

III. DISCUSSION

Appellant argues that the Commonwealth did not sufficiently establish that he committed a

crime of violence with respect to the charge of burglary as no person was present at the time of the burglary. Additionally, he argues that he was illegally sentenced pursuant to 42 Pa.C.S.A. §9714 insofar as that statute, as written, violates his due process rights and his rights under the Fifth and/or Sixth Amendment to the U.S. Constitution as made applicable by the Fourteenth Amendment of the Pennsylvania Constitution. This argument fails.

The issue in this appeal is the constitutionality of section 9714 of the Mandatory Minimum Sentencing Act (“Act”), 42 Pa.C.S. § 9714. Appellant concludes that the Court should not have imposed a Section 9714(a) mandatory minimum sentence. Appellant's claim challenges the legality of his sentence. *See Commonwealth v. Vasquez*, 560 Pa. 381, 744 A.2d 1280 (2000) (stating application of mandatory sentencing provisions implicates legality of sentence). Issues relating to the legality of a sentence are questions of law. *Commonwealth v. Diamond*, 945 A.2d 252, 256 (Pa.Super.2008), *appeal denied*, 598 Pa. 755, 955 A.2d 356 (2008). The defendant or the Commonwealth may appeal as of right the legality of the sentence. 42 Pa.C.S.A. § 9781(a). *See also Commonwealth v. Edrington*, 780 A.2d 721 (Pa.Super.2001) (maintaining legality of sentence claims cannot be waived, where reviewing court has proper jurisdiction). When the legality of a sentence is at issue on appeal, our “standard of review over such questions is *de novo* and our scope of review is plenary.” *Diamond, supra* at 256. If no statutory authorization exists for a particular sentence, that sentence is illegal and subject to correction. An illegal sentence must be vacated. *Commonwealth v. Pombo*, 26 A.3d 1155, 1157 (Pa.Super.2011) quoting *Commonwealth v. Bowers*, 25 A.3d 349, 352 (Pa.Super.2011); *appeal denied*, 616 Pa. 666, 51 A.3d 837 (2012).

Appellant attacks the legality of his sentence. Addressing his second issue first, Appellant

contends that he should be resentenced without the application of 42 Pa.C.S. § 9714(a)(2) because the jury's finding that Eliezer Colon was inside his home on the 6600 block of Large Street at the same time as Appellant was not supported by evidence of record, and thus cannot constitute a "crime of violence" for the application of § 9714(a)(2). This argument fails.

Here, the evidence established that Eliezer Colon and his family returned to their home after work and dinner out to find that they could not enter their home because their key would not work; the dead bolt had been locked from the inside. Before walking up to his front door, Mr. Colon noticed that the upstairs lights were on, but wasn't concerned because he just thought his wife had simply forgotten to turn the light off that morning; he also noticed that the downstairs blinds were "cracked". When they were unable to open the front door, Mr. Colon realized someone was inside his home he got his family back into the car and drove around to the back of the house. There is a long driveway in the back and he pulled up to where he saw a truck parked behind his house. As he got closer, he saw two (2) black males at the basement door trying to lift something out of his house. As soon as the males saw him, they ran off; one ran off on foot and Appellant jumped into the truck that was parked behind Mr. Colon's house. (N.T. 1/10/17, pp. 6-14).

According to Appellant, since neither Mr. Colon nor his family were inside the house at the time of the burglary, it was error to convict him of a crime of violence with respect to the charge of burglary as no person was present in the residence at the time. This argument is flawed however since the homeowner did return to his residence while Appellant was still present inside the house and as stated by the Superior Court in Strepp, *infra*, "a technical application of the definition of burglary misses the purpose and spirit which underlie the different gravity offense scores." See

Commonwealth v. Stepp, 438 Pa. Super. 499, 652 A.2d 922 (1995).

In Commonwealth v. Stepp, supra., the Superior Court, held:

For these reasons, we hold that, under 42 Pa.C.S.A, § 9721 (204 Pa.Code § 303.8(d)), burglary of a structure adapted for overnight accommodation "in which at the time of the offense any person is present" includes burglaries where someone enters the structure while the perpetrator is still inside the structure. This is the proper approach as "*the likelihood for greater mischief and violence is equally present both when a person returns to their residence and discovers an intruder and when a person already within the home discovers an intruder.*

Commonwealth v. Stepp, 438 Pa. Super. at 504, 652 A.2d at 924.

In Commonwealth v. Dickison, 334 Pa. Super. 549, 483 A.2d 874 (1984), the Superior Court reasoned:

The different gravity scores for burglaries committed of structures where persons are present and structures where persons are not present is premised upon the likelihood of greater mischief in the former situation. If a burglary is committed while the structure is occupied, the potential for additional and more serious offenses is always present. Even if no further crime is committed, the presence of the victims and the potential for harm to them suggest an offense possessing gravity greater than when no person is present.

The same rationale which is applied in Dickison, concerning "the likelihood of greater mischief" is applicable to a case such as the present one where the victim returns home only to find the sanctity and security of his home shattered by an intruder. As the court has continuously expressed, the danger of harm to a person is the same whether that person confronts the burglar upon re-entry into his home or whether he comes downstairs and finds the burglar in his living room. In either situation, it does not advance the interests of justice to "reward" the burglar with a lower offense gravity score simply because he was lucky at the moment he entered the then unoccupied structure. A potentially violent encounter exists whenever a person discovers an intruder inside his home. Id.

Moreover, the burglary subcategories were designed to differentiate crimes with different potential for injury and impact on the life of the victim. Burglaries of a structure adapted for overnight accommodation include homes, hotels, motels, camp structures, house trailers, etc. Burglaries in which at the time of the offense any person is present include burglaries where the defendant did not know when he entered the structure that someone was present, and burglaries where someone such as a returning resident or a policeman enters the structure when the defendant is still inside.

Here, Mr. Colon testified that he did not give Appellant permission to be in his home; to lock the deadbolt so that he could not enter. While investigating what he thought was true (that someone was in his home), he observed Appellant and his accomplice trying to remove something from his house; they exited his home through the back door in the basement. Both Appellant and his unidentified accomplice were inside Mr. Colon's home and were still there when he returned home from work with his wife and children. While one may argue it wasn't the smartest idea, Mr. Colon (with his family in the car) chased after Appellant (driving at a high rate of speed, ignoring traffic lights, and veering across Roosevelt Boulevard) and held him until police arrived. The jury believed Mr. Colon's testimony at trial which was sufficient evidence to sustain the conviction of the Appellant for his crimes. The jury, being free to believe all, some, or none of Colon's testimony unanimously determined as indicated on their verdict sheet, that he was in fact in the home at the same time as Appellant. This finding is supported by the record, and thus this Court did not err in determining that the Burglary conviction was a "crime of violence" for the application of § 9714(a) (2).

Thus, Appellant's prior Voluntary Manslaughter conviction coupled with the jury's determination that Eliezer Colon was home when Appellant committed the instant Burglary, required this Court to impose the mandatory "two-strike" provision set out at § 9714(a)(2). Accordingly the sentence of 10-20 years is not only proper, it was in fact a requirement. *See Commonwealth v. Norris*, 819 A.2d 568, 571 (Pa. Super. 2003) *citing Commonwealth v. Vasquez*, 744 A.2d 1280, 1282 (Pa. 2000) ("Once a trial court has determined that the Commonwealth has established the requirements of a legislatively mandated sentence, the trial court has no discretion to deviate its sentence from that which is defined by statute."). *See Commonwealth v. Knowles*, 891 A.2d 745, 746-47 (Pa. Super. 2006) (mandatory minimum under 42 Pa.C.S. § 9714 applies where residence burglarized when homeowner was not home at time of break-in but arrived home while burglary was in progress); *Commonwealth v. Stepp*, 652 A.2d 922 (Pa. Super. 1995) (higher OGS applies when homeowner was not home at time of break-in but arrived home while burglary was in progress); *Commonwealth v. Jackson*, 585 A.2d 533 (Pa. Super. 1991) (higher OGS applies when owner is in back porch of residence while it is burglarized). Accordingly, judgment of sentence should be affirmed.

Next, Appellant contends that Pennsylvania's mandatory minimum statute at 42 Pa.C.S. § 9714⁷ is unconstitutional and should not have been applied here, because as written, it violates his

⁷ § 9714. Sentences for second and subsequent offenses

(a) Mandatory sentence.—

(1) Any person who is convicted in any court of this Commonwealth of a crime of violence shall, if at the time of the commission of the current offense the person had previously been convicted of a crime of violence, be sentenced to a minimum sentence of at least ten years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. Upon a second conviction for a crime of violence, the court shall give the person oral and written notice of the penalties under this section for a third conviction for a crime of violence. Failure to provide such notice shall not render the offender ineligible to be sentenced

due process rights in violation of the United States and Pennsylvania Constitutions. This Court disagrees.

Upon considering a constitutional challenge, it must be remembered that a legislative enactment enjoys a presumption in favor of its constitutionality and will not be declared unconstitutional unless it clearly, palpably and plainly violates the Constitution. All doubts are to be resolved in favor of a finding of constitutionality. Singer v. Sheppard, 464 Pa. 387, 346 A.2d 897 (1975). *See also Commonwealth v. Colon-Plaza*, 2016 PA Super 50, 136 A.3d 521, 530 (2016) (All doubts are to be resolved in favor of finding that the legislative enactment passes constitutional muster. Thus, there is a very heavy burden of persuasion upon one who challenges the constitutionality of a statute). The legislature must be respected in its attempt to exercise the State's police power and the power of judicial review must not be used as a means by which the courts might substitute its judgment as to public policy for that of the legislature. Glance v. Casey, 447 Pa. 77, 84, 288 A.2d 812, 816 (1972). Any discussion of the constitutionality of lawfully-enacted

under paragraph (2).

(d) Proof at sentencing.—Provisions of this section shall not be an element of the crime and notice thereof to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The sentencing court, prior to imposing sentence on an offender under subsection (a), shall have a complete record of the previous convictions of the offender, copies of which shall be furnished to the offender. If the offender or the attorney for the Commonwealth contests the accuracy of the record, the court shall schedule a hearing and direct the offender and the attorney for the Commonwealth to submit evidence regarding the previous convictions of the offender. The court shall then determine, by a preponderance of the evidence, the previous convictions of the offender and, if this section is applicable, shall impose sentence in accordance with this section.

42 Pa.C.S.A. § 9714(a)(2), (d) (emphasis added). The term "crime of violence" includes voluntary manslaughter as defined in 18 Pa.C.S. § 2503. 42 Pa.C.S.A. § 9714(g).

legislation must commence with the restatement of the principle of law which creates a 'presumption' in favor of constitutionality. The burden rests heavily upon the party seeking to upset legislative action on constitutional grounds; all doubt is to be resolved in favor of sustaining the legislation. Singer v. Shepard, 346 A.2d 897, 900 (Pa. 1975) quoting Milk Control Commission v. Battista, 413 Pa. 652, 659, 198 A.2d 840, 843 (1964); See also Glancey v. Casey, *supra*.

Additionally, recidivist legislation is designed to enhance sentences for those criminals who persist in committing violent crimes. Commonwealth v. Eddings, 721 A.2d 1095, 1100 (Pa.Super.1998), *appeal granted and cross appeal denied*, 561 Pa. 687, 751 A.2d 185, 2000 Pa. Lexis 346 (2000); Commonwealth v. Parker, 718 A.2d 1266, 1268 (Pa.Super.1998), *appeal denied*, 561 Pa. 655, 747 A.2d 899, 1999 Pa. Lexis 3878 (1999). It is within the province of the legislature to determine sentencing procedures. Commonwealth v. Wright, 508 Pa. 25, 494 A.2d 354 (1985), *affirmed sub nom*, McMillan v. Pennsylvania, 477 U.S. 79, 106 S.Ct. 2411, 91 L.Ed.2d 67 (1986). The legislature defines the contours of a crime, sets the limits for punishment, and provides for implementing and administering the penal system. Commonwealth v. Hernandez, 339 Pa. Super. 32, 488 A.2d 293, 298 (1985). Due process of law is not violated when courts accede to legislative authority to frame a coherent statutory scheme for the administration of sentencing for certain criminal offenses. Id. at 293. Moreover, in noncapital cases the legislature is not constitutionally obligated to permit the convicted recidivist the opportunity to mitigate application of the statutorily mandated sentence. See Commonwealth v. Waters, 334 Pa. Super. 513, 483 A.2d 855, 861 (1984), *cert. denied*, 471 U.S. 1137, 105 S.Ct. 2679, 86 L.Ed.2d 697 (1985) (stating "Determinations regarding the appropriateness of individualized sentencing for noncapital cases are within the

province of the legislature. For first-degree murder, where the death sentence is not applicable, our legislature has seen fit to impose a mandatory life sentence, choosing to deny the judiciary the discretion allowed in sentencing many other types of offenders. Its decision to do so does not violate the United States or Pennsylvania Constitutions.”). *See Commonwealth v. Wynn*, 2000 PA Super 271, ¶ 8, 760 A.2d 40, 44–45 (2000), *rev’d*, 567 Pa. 183, 786 A.2d 202 (2001).

Furthermore, with *Alleyne* [v. United States, 133 S.Ct. 2151 (2013)] in mind, the Superior Court concluded, “the protections of the Sixth and Fourteenth Amendments of the United States Constitution do not extend to the fact of prior convictions.” *Commonwealth v. Lane*, 81 A.3d 974, 976 n. 5. (Pa. Super. 2013) *citing Alleyne* v. United States, 133 S.Ct. 2151 (2013). In finding that the court instead of a jury was proper in determining that § 9714 should apply, the Lane court reasoned, “[b]ecause it was solely the existence of two prior convictions that made Appellant eligible for sentencing within a range of increased penalties, the court properly imposed the judgment of sentence.” *Id.*

Additionally, the Alleyne court noted that “[i]n *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), we recognized a narrow exception to this general rule [that any facts that increase the prescribed range of penalties to which a criminal defendant is exposed are elements of the crime] for the fact of a prior conviction.” Alleyne, 133 S.Ct. at 2160 n. 1. It is undisputed that 42 Pa.C.S.A. §9714 is duly enacted legislation which compels this Court to presume its constitutionality.

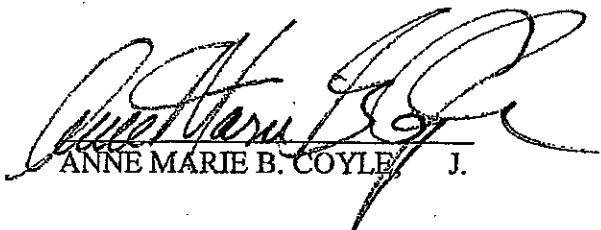
As stated above, the appellate court has recognized that the mandatory minimum sentences set forth in section 9714 are predicated on prior convictions and, thus, that provision is not unconstitutional under Alleyne. *See Commonwealth v. Bragg*, 133 A.3d 328, 333 (Pa. Super. 2016)

(recognizing that 42 Pa.C.S. § 9714 “is not unconstitutional under Alleyne as it provides for mandatory sentences based on prior convictions”), *aff’d*, — Pa. —, 169 A.3d 1024 (2017) (*per curiam* order). Thus, Appellant’s challenge to the legality of his sentence is meritless on this basis, as well. Furthermore, this Court has not found any Pennsylvania case that has applied Alleyne to sentences enhanced solely by prior convictions. Thus, the application of § 9714(a)(1) to Appellant’s sentence remains legal. As such, this Court imposed a lawful mandatory sentence upon Appellant as to his burglary conviction under “second strike” legislation.

IV. CONCLUSION

In summary, this court has carefully reviewed the entire record and finds no harmful, prejudicial, or reversible error and nothing to justify the granting of Defendant’s request for relief in this case. For the reasons set forth above, Defendant’s judgment of sentence should be affirmed.

BY THE COURT:



ANNE MARIE B. COYLE, J.