

COMMONWEALTH OF PA : No. CR-478-2016  
:   
vs. :   
:   
:   
JEFFREY HUNTER, :   
Defendant : Post-Sentence Motion

**OPINION AND ORDER**

Following a jury trial that took place on June 23, 2017, the defendant was found guilty of simple assault and harassment. On September 6, 2017, following a hearing, the sentence of the court with respect to the simple assault conviction was that the defendant undergo incarceration in the Lycoming County prison for an indeterminate term, the minimum of which was 10 months and the maximum of which was 24 months minus one day. Count 2 merged with count 1 for sentencing purposes.

On September 7, 2017, through newly retained counsel, the defendant filed a post-sentence motion. The first part of the post-sentence motion is what is styled as a motion for judgment of acquittal, in arrest of judgment or, in the alternative, for a new trial. The second part of the post-sentence motion is a motion to modify sentence.

In the defendant’s motion for judgment of acquittal, he raises five issues. First, the defendant claims that his trial counsel was ineffective in failing to object to the defendant’s “purported confession” because the corpus delicti of the crime was not established. Second, the defendant asserts that the court erred in permitting the “purported confession” because its admission allegedly violated the corpus delicti rule. Third, the defendant argues that counsel was ineffective in not requesting and/or that this court erred in not arresting judgment “where no witness actually witnessed” the defendant assaulting the

victim. Fourth, the defendant argues that should the court exclude the “purported admission”, that there was insufficient evidence to convict the defendant beyond a reasonable doubt. Lastly, the defendant argues that there was new evidence presented at the time of sentence which supports a new trial.

With respect to the defendant’s motion to modify sentence, the defendant again raises ineffectiveness claims. The defendant first claims that counsel was ineffective, or that the court erred in concluding that the defendant had a long and unbroken history of offenses. Second, the defendant claims ineffectiveness of counsel in allowing, or in the alternative that the court erred, in concluding that the defendant had never been held accountable for his prior offenses. Lastly, the defendant claims that counsel was ineffective in not objecting to, or in the alternative the court erred, in concluding that the defendant had “just punched this poor woman out of the blue.”

A hearing and argument on the defendant’s motion was held on September 28, 2017. The court also obtained the transcript of the defendant’s trial and reviewed such.

Tonya Coleman first testified on behalf of the Commonwealth. She testified that on the evening of November 27, 2015, she was at the Shamrock bar in Williamsport and had been playing darts with the defendant, Jeffrey Hunter. (June 23, 2017 Transcript, p. 13). She previously knew the defendant although the extent of the relationship was her saying hi to him if she had seen him out. (Transcript, pp. 14, 15).

At approximately 7:00 or 8:00 p.m. the game had ended. Ms. Coleman had won the game. The defendant left the bar out of the front door and, about five minutes later, Ms. Coleman left the bar out of the back door. (Transcript, pp. 14, 15).

There is a parking lot outside of the back of the Shamrock. Ms. Coleman

started walking on the inside sidewalk of the parking lot to the area where the sidewalk met with the roadway near a dumpster. (Transcript, pp. 17, 18).

Ms. Coleman's intent was to meet her friend, Trina Bogart, for the purpose of giving her "her fried mushrooms." (Transcript, p. 18). As Ms. Coleman reached the dumpster, she saw Ms. Bogart approaching her. (Transcript, p. 18). She "happened to glance" and saw the defendant walking up on the other side of the sidewalk across the street towards the Shamrock and her. (Transcript, p. 19).

As she saw the defendant walking toward her, she looked at Ms. Bogart and said "watch." She was concerned that he was "coming up" and wasn't sure what was going to happen. (Transcript, p. 20).

While standing by the dumpster, Ms. Coleman felt pain in the right side of her face and the next thing she remembered was waking up on the ground covered in blood. (Transcript, p. 22).

The last people she saw were "just Trina Bogart and...Jeffrey Hunter." (Transcript, p. 22).

Ms. Coleman testified that as a result of being struck, she had to go to the hospital for treatment of serious injuries including but not limited to a broken jaw. (Transcript, pp. 22, 23). Among other injuries, her face was bruised, she had scarring on her chin, and bleeding from her ear. (Transcript, pp. 23, 24).

On cross-examination, Ms. Coleman clarified the incident involving the defendant. Sequentially, she saw him walking up the sidewalk across the street. (Transcript, p. 28). She then handed Ms. Bogart the mushrooms; Ms. Bogart turned around and started walking away. (Transcript, p. 29). She was not looking at the defendant but was aware that

he was coming across the sidewalk to “our side.” (Transcript, p. 29). She did not see who actually struck her but the only individuals near her were Ms. Bogart and the defendant. (Transcript, p. 29). The defendant was approximately 10 to 15 feet away from her when she last saw him and was closer to her than Ms. Bogart. (Transcript, pp. 30, 31).

Trina Bogart then testified on behalf of the Commonwealth. She too was acquainted with the defendant. They had previously met at the Shamrock, became friends and “hung out.” (Transcript, p. 34).

On the date of the incident, November 27, 2015, the defendant passed “right next” to her approaching Ms. Coleman (Transcript, pp. 35, 36). Ms. Coleman gave the fried mushrooms to Ms. Bogart who then started to leave. Ms. Coleman “stood behind the dumpster.” Ms. Coleman told Ms. Bogart to “watch.” Ms. Bogart was in the middle of looking back behind her talking to Ms. Coleman. Ms. Bogart saw the defendant crossing toward Ms. Coleman and then heard a thud. She turned around and saw Ms. Coleman on the ground. She also saw the defendant walking away from Ms. Coleman “towards the opposite side of the Shamrock.” (Transcript, p. 37).

At this time, she heard the defendant say, “That’s for telling me to shut up two weeks ago. And you’re lucky it was only one hit.” (Transcript, p. 37). The defendant was saying this directly to Ms. Coleman. (Transcript, p. 37).

After Ms. Bogart heard the thud and turned around, the defendant was only four or five feet away. There was no one else in the vicinity. (Transcript, pp. 38-39).

Ms. Bogart could see that Ms. Coleman was obviously injured. She was bleeding from her ear and had a gash on her nose and under her chin. As well, the right side of her face was puffy and bruised. (Transcript, pp. 40-41).

The defendant took the stand to testify on his own behalf. He indicated that after he left the Shamrock he was walking down Edwin Street, the street behind the Shamrock, heading east toward Walnut Street. (Transcript, p. 66). He saw “a guy crossing the street...right up in this area where Tonya was standing.” (Transcript, pp. 67, 68). As the defendant was walking, he “happened to see somebody” who walked behind Ms. Coleman and then saw Ms. Coleman laying on the ground behind the dumpster. (Transcript, p. 68). According to the defendant, he saw her fall but he did not see her get punched. (Transcript, p. 68). He denied punching Ms. Coleman in the face. (Transcript, p. 69).

The court will first address the issues set forth in the defendant’s motion for judgment of acquittal. The defendant first claims that his trial counsel was ineffective in not objecting to defendant’s “purported confession” to Ms. Bogart. The defendant claims that counsel should have objected as the “purported confession” violated the corpus delicti rule.

Generally speaking, ineffectiveness claims must be deferred until the collateral review stage of the proceedings as it offers a defendant the best avenue to pursue his Sixth Amendment right to counsel. *Commonwealth v. Grant*, 572 Pa. 48, 813 A.2d 726, 738 (Pa. 2002). *Commonwealth v. Holmes*, 621 Pa. 595, 79 A.3d 562 (2013). Absent exceptional circumstances, a trial court should not entertain a claim of ineffectiveness raised in a post-sentence motion. *Holmes*, 79 A.3d at 576.

The extraordinary case where the trial court, in its exercise of discretion, may consider an ineffectiveness claim at the post-sentence level involves a claim of ineffectiveness that is both meritorious and apparent from the record so that immediate consideration and relief is warranted. *Id.* at 577. As the Court explained: “The administration of criminal justice is better served by allowing trial judges to retain the discretion to consider

and vindicate such distinct claims of ineffectiveness.” *Id.*

This court declines to exercise its discretion to address the defendant’s claim of ineffectiveness. It is not apparent from the record or so meritorious that immediate consideration and relief is warranted.

In fact, in order to prevail on an ineffective assistance of counsel claim, a defendant must prove the following: “(1) an underlying claim of arguable merit; (2) no reasonable basis for counsel’s act or admission; and (3) prejudice as a result, that is, a reasonable probability but for counsel’s action or admission, the outcome of the proceeding would have been different. “ *Commonwealth v. Cooper*, 596 Pa. 119, 941 A.2d 655, 664 (Pa. 2007). “A failure to satisfy any prong of this test is fatal to the ineffectiveness claim.” *Id.* Further, “[c]ounsel is presumed to have been effective.” *Id.*

While the court concedes that the statement of the defendant as apparent from the record may be prejudicial, there is nothing of record to demonstrate the basis for counsel’s act or admission and, determinatively, the claim is not of arguable merit. Immediate consideration and relief is far from warranted.

Contrary to what the defendant claims, there is not a clear violation of the corpus delicti rule. In *Commonwealth v. Bullock*, 2017 PA Super 284, 2017 Pa. Super. LEXIS 661 (August 31, 2017), the court discussed in detail the corpus delicti rule.

A criminal conviction may not be based upon the extra-judicial admission, statement or confession of the accused unless it is corroborated by independent evidence establishing the corpus delicti of the crime. *Bullock*, at \*7, citing *Commonwealth v. Wood*, 203 Pa. Super. 358, 833 A.2d 740, 748-49 (Pa. Super. 2003).

The corpus delicti rule is essentially a rule of evidence that precludes an

admission or statement of the accused from being utilized unless and until the corpus delicti of the crime has first been established by independent proof. *Commonwealth v. Rhoads*, 225 Pa. Super. 208, 310 A.2d 406, 409 (1973). Establishing the corpus delicti in Pennsylvania is a two-step or two-phase process.

(1) In the first phase, the court determines whether the Commonwealth has proven the corpus delicti of the crimes charges by a preponderance of the evidence. If so, the confession [or extra-judicial statement] of the defendant is admissible; (2) In the second phase, the rule requires that the Commonwealth proves the corpus delicti to the factfinder's satisfaction beyond a reasonable doubt before the factfinder is permitted to consider the confession [or extra-judicial statement] in assessing the defendant's innocence or guilt.

*Bullock*, at \*8 (citing *Commonwealth v. Reyes*, 582 Pa. 317, 870 A.2d 888, 894 n.4 (Pa. 2005)(citations omitted)).

It must be understood that the Commonwealth is not required to prove the existence of a crime beyond a reasonable doubt. Rather, it is enough for the Commonwealth to prove that the injury or loss is consistent with the crime having been committed.

*Commonwealth v. Persichini*, 444 Pa. Super. 110, 663 A2d 699, 702 (1995); see also *Rhoads*, supra. Furthermore, the identity of the party responsible for the act is not part of the corpus delicti. *Persichini*, supra.

Corpus delicti means "the body of a crime." *Commonwealth v. Taylor*, 574 Pa. 390, 831 A.2d 587, 590 (Pa. 2003).

Under Pennsylvania law, a person commits the offense of simple assault if the person attempts to cause or intentionally, knowingly, or recklessly causes bodily injury to another. 18 Pa. C.S.A. § 2701. The corpus of a simple assault charge is that an injury has occurred and that the injury is a result of a person's intentional, knowing, or reckless act.

In this particular case, both the direct and circumstantial evidence prove by a

preponderance of the evidence that the corpus of simple assault had been committed. A certain consequence or injury occurred and the consequence or injury was a result of a person's act.

More specifically, only three people were in the location where the act occurred. The defendant was walking toward the victim. The defendant was the only person close to the victim, as the defendant was approaching the victim within approximately four to five feet, and within a very short period of time, a witness heard a thud and saw the victim on the ground. The victim immediately felt pain and suffered injuries consistent with being punched. Those injuries included a puffy and swollen face, immediate bleeding from the nose, a bloody ear, a cut to the nose and a broken jaw. Following the incident, the defendant immediately started walking away.

Moreover, the defendant took the stand and testified in this matter. He testified that he was walking down Edwin Street toward the victim and that an unnamed person walked toward the victim immediately after which the victim was on the ground. The jury is free to disbelieve this evidence and use it as circumstantial evidence of the defendant's guilt. If the jury concluded that the defendant was lying about the presence of the unnamed person, said evidence could be used as circumstantial evidence of the defendant's guilt. *See Commonwealth v. Williams*, 532 Pa. 265, 615 A.2d 715, 721 (Pa. 1992)(jury is permitted to find evidence of guilt should they determine that appellant's defense was fabricated).

Accordingly, the defendant's first claim of error fails. The defendant's claim of ineffectiveness is not meritorious and not apparent from the record.

The defendant's second claim of error begs logic. The defendant argues that



the court erred in admitting the “purported confession” as it violated the corpus delicti rule. First and as indicated above, the admission did not violate the corpus delicti rule. Secondly, and determinatively, no objection was made to the testimony and, accordingly, any error is waived. *Commonwealth v. Chambliss*, 847 A.2d 115, 120 (Pa. Super. 2004). Additionally, it is not the court’s role to object. Timely objections and evidentiary motions must be made by the parties. Pa.R.E. Rule 103.

The defendant’s next claim of error is that counsel was ineffective in not requesting a motion in arrest of judgment and/or the court erred in not *sua sponte* arresting judgement “where no witness actually witnessed” the assault.

The defendant has not and cannot cite to any law that requires an eyewitness to an event. In fact, the law is well-settled to the contrary. All crimes can be proven by wholly circumstantial evidence if the circumstantial evidence is sufficient to convince the trier of fact that the crime occurred beyond a reasonable doubt. *Commonwealth v. Cooney*, 431 Pa. 153, 156, 244 A.2d 651, 652 (1968)(“Proof by eyewitnesses or direct evidence of the corpus delicti or of the commission by the defendant of the crime charged is not necessary...It is clearly settled that a man may be convicted on circumstantial evidence alone, and a criminal intent may be inferred by the jury from the facts and circumstances which are of such a nature as to prove defendant’s guilt beyond a reasonable doubt.”). Accordingly, this court will not exercise its discretion in addressing the ineffectiveness against counsel. It is certainly not apparent from the record and it is not at all meritorious. Moreover, the court has no responsibility whatsoever to *sua sponte* arrest judgment.

The defendant’s fourth claim of error is, as the defendant argued during the oral argument in this matter, an “extension of the corpus delicti argument.” Because the court

finds that the defendant's statement did not violate the corpus delicti rule, this claim of error fails.

The defendant's last claim involves a motion for a new trial. The defendant asserts that there is new evidence. The defendant claims that at sentencing the victim could not identify a reason why the defendant would have assaulted her, which is contrary to the testimony from "your witness at trial" that the defendant stated "that's for telling me to shut up two weeks ago, and you're lucky it was only one hit." The defendant claims that "[h]ad the statement actually been made, she [the victim] certainly would have remembered it." The defendant asserts that the victim's statement at sentencing indicates a likelihood that the trial testimony was fabricated.

The defendant's argument is spurious. Contrary to what defendant claims, there is no "new evidence" that indicates that a likelihood that the testimony was fabricated. The defendant makes it seem as if the victim gave inconsistent statements at trial and at sentencing; however, the different statements or recollections are from two different witnesses. The victim, Ms. Coleman, did not testify at trial that she heard the defendant make any statements; her friend, Ms. Bogart, testified to the defendant's statements. Furthermore, there is a perfectly reasonable explanation for why the victim did not hear or did not remember the defendant's statements. The victim was laying on the ground with serious injuries, which included a broken jaw, a blown eardrum, and bleeding from her ears and her chin. (Transcript, pp. 22-24.)

The court will next address the defendant's motion to modify sentence. Initially, the court notes that the defendant's claims are in the alternative. First, the defendant claims that there was ineffective assistance of counsel and secondly, in the alternative, the

defendant claims that the court erred.

The ineffectiveness claims fail. They are certainly not apparent from the record and not so meritorious as to warrant immediate consideration and relief. Indeed, the defendant fails to allege how the court's actions were either inconsistent with a specific provision of the Sentencing Code, or contrary to the fundamental norms which underlie the sentencing process. *Commonwealth v. Kittrell*, 19 A.3d 532, 538-39 (Pa. Super. 2011).

The defendant has not alleged that there was an abuse of discretion by the court that involved a sentence which was manifestly unreasonable, or which resulted from partiality, prejudice, bias or ill will. *Commonwealth v. Malovich*, 903 A.2d 1247, 1252-53 (Pa. Super. 2006). The defendant has not alleged 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. Kitchen*, 162 A.3d 1140, 1146 (Pa. Super. 2007). The defendant has not alleged that the court failed to consider the particular circumstances of the offense or the character of the defendant. *Commonwealth v. Antidormi*, 84 A.3d 736, 761 (Pa. Super. 2014). There is no question that the court observed the defendant and considered the Pre-Sentence Investigation (PSI) report. *Commonwealth v. Devers*, 546 A.2d 12, 18 (Pa. 1988).

The defendant does not allege that the sentencing court imposed a sentence that was not consistent with the protection of the public, taking into account the gravity of the offense as it related to the community. 42 Pa. C.S. § 9721 (b). Indeed, the sentence was within the standard range of the guidelines and Pennsylvania law views the sentence as appropriate under the Sentencing Code. *Commonwealth v. Moury*, 992 A.2d 162, 171 (Pa. Super. 2010).

Instead, the defendant argues that the court erred in making the following conclusions: (1) the defendant had a long and unbroken history of offenses; (2) the defendant had never been held accountable; (3) there was a failure of the system in not demanding some sort of accountability; and (4) the defendant just punched this poor woman out of the blue.

Despite the defendant's arguments, all of the court's conclusions were reasonably based on the circumstances of the offense, Mr. Hunter's bail release sentencing report, the court's observations of Mr. Hunter, and the PSI report.

Unfortunately, the defendant misrepresents the facts. The defendant claims that he was "last in trouble over ten years ago while living in Virginia." The assault on the victim occurred on November 27, 2015. The defendant's prior criminal record included criminal offenses which occurred as recently as 2012, specifically two driving while intoxicated offenses in Virginia.

The defendant's argument about accountability and the failure of the system also begs logic. The court is entitled to reach its own conclusions as to what appropriate punishment should be in addressing the relevant sentencing factors including the defendant's rehabilitation, the seriousness of the offense and the protection of the public. Clearly, the defendant's prior sentences were not a sufficient deterrent to prevent the defendant from committing this offense. Since 1984, the defendant has been convicted of eight separate misdemeanor offenses. Despite such, he has spent a total of only 16 days in jail. All of his sentences included probation or suspended jail terms.

Lastly, the defendant's claim that the court erred in concluding that the defendant "just punched this poor woman out of the blue" is again without any merit

whatsoever. The jury found that the defendant committed the offense of simple assault. The direct and circumstantial evidence clearly supports the court's conclusion.

**ORDER**

**AND NOW**, this \_\_\_\_ day of November 2017, for the reasons set forth above, the defendant's post-sentence motions are **DENIED**.

By The Court,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)  
Matthew J. Zeigler, Esquire  
Work file  
Gary Weber, Esquire (Lycoming Reporter)