

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 00-10,685
	:
vs.	: Criminal Division
	:
TYRONE DUNN,	:
Defendant	:

OPINION IN SUPPORT OF ORDER
DATED JANUARY 4, 2001 IN
COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

Defendant has appealed this Court's Order of January 4, 2001, which denied his Motion for Post Sentence Relief. Defendant was convicted of aggravated assault and simple assault after a jury trial held on September 29, 2000. In his Statement of Matters Complained of on Appeal, Defendant contends the verdict was against the weight of the evidence and the evidence was insufficient to establish his guilt beyond a reasonable doubt with respect to those charges, and also contends the Court erred in denying his Motion in Limine to exclude testimony that he had been involved in a domestic dispute.

The test of the sufficiency of the evidence in a criminal matter is whether, viewing the evidence in the light most favorable to the Commonwealth as verdict winner, and drawing all reasonable inferences in the Commonwealth's favor therefrom, there is sufficient evidence to enable the trier of fact to find every element of the crime charged beyond a reasonable doubt. Commonwealth v Jones, 672 A.2d 1352 (Pa. Super. 1996). The claim that the verdict was against the weight of the evidence requires the grant of a new trial only when the verdict is so contrary to the evidence as to shock one's sense of justice. Commonwealth v Rodgers, 605 A.2d 1228 (Pa. Super. 1992). After reviewing the evidence presented at trial in the instant matter, the Court believes that the evidence was sufficient to support the jury's verdict and such verdict does not shock the Court's sense of justice.

The evidence presented by the Commonwealth showed that police were dispatched to an apartment for a disturbance in progress and upon arriving at the scene made contact with Defendant, who was lying on the landing of the stairwell of the apartment, bleeding from the head and face. Defendant was transported to the Emergency Room of Williamsport Hospital and was being treated in the Emergency Room for approximately three (3) hours. Defendant became uncooperative and removed the EKG monitoring leads which had been applied to his chest, and the blood pressure cuff from his arm. The nurse and Emergency Room technician attempted to have Defendant lie back down on the bed and in the course of that, Defendant said “I want to get the ‘f_ _ _ out of here’ and called the nurse a “bitch.” Defendant did lie back down on the table but while the nurse was putting the blood pressure cuff back on his arm he hit her in the chest with his right forearm and a closed fist and then again hit her, this time in the forehead and face. The nurse testified that the first strike did not injure her but the second time Defendant struck her she “got a pain on [her] face. [Her] nose was reddened and the right side [her] face was reddened, and it was pretty strong.” The nurse indicated that she was treated for an abrasion to the bridge of her nose and had swelling in her nose area. The Commonwealth had also presented testimony from the police officer that there was an on-going investigation into the domestic disturbance and that Defendant was involved in that investigation. The Court finds this evidence sufficient to allow the jury to find beyond a reasonable doubt that Defendant intentionally or knowingly caused bodily injury (impairment of physical condition or substantial pain) to the nurse. All of the elements of the crimes charged were thus satisfied.¹

With respect to the Motion in Limine, it was presented to the Court that Defendant had gone to the home of an ex-girlfriend in violation of a Protection from Abuse Order and had become involved in an altercation with another male, that as a result of that altercation had fallen down a flight of steps and was injured and was thereafter transported to the hospital. Defendant sought to exclude

1

A person is guilty of aggravated assault if he attempts to cause or intentionally or knowingly causes bodily injury to, inter alia, a registered nurse while working within the scope of his or her employment. 18 Pa. C.S. Section 2702(a)(3). A person is guilty of simple assault if he attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another. 18 Pa. C.S. Section 2701 (a)(1).

any testimony which would indicate to the jury that Defendant had been involved in an altercation or any kind of domestic dispute. Defendant objected to such evidence on the basis of relevancy and on the grounds that the prejudicial effect outweighed the probative value. With respect to relevancy, the Court believes that inasmuch as Defendant's mens rea is an element of the crimes charged, the fact that he had been in a domestic dispute and was therefore under investigation for such was relevant to his state of mind in light of the testimony which indicated that Defendant stated "I want to get the f _ _ _ out of here", thus showing his actions were intentional rather than accidental. As far as the prejudicial effect of such testimony, the Court did restrict the Commonwealth from presenting evidence that Defendant was at the apartment in violation of a Protection from Abuse Order, as the Court felt the prejudicial effect of such information would outweigh the probative value with respect to that particular fact. A domestic dispute, however, does not engender quite the level of negativity as does the contempt of a Protection from Abuse Order. The Court felt that the Commonwealth should be able to show a motive for Defendant to wish to leave the hospital, i.e. the police investigation, in order to rebut any argument by defense counsel that Defendant's movement of his arm was accidental. The probative value was thus felt to outweigh any prejudice the mentioning of a domestic dispute might produce, and the Court believes the Motion in Limine was properly denied.

Dated March 13, 2001

By the Court,

Dudley N. Anderson, Judge

cc: DA
Ed Rymza, Esq.
Gary Weber, Esq.
Hon. Dudley N. Anderson