

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : No. 01-11251
:
:
vs. : CRIMINAL DIVISION
:
:
MICHAEL LEE REBO, :
Defendant : 1925(a) Opinion

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

This opinion is written in support of this Court's Judgment of Sentence docketed January 1, 2003.

In the Defendant's Appeal he raises two issues:

1. The verdict of guilty of simple assault was against the weight of the evidence.

2. The Court erred in ruling admissible the testimony of Constable Metzger, Corporal Ammerman, and all testimony regarding a car chase as evidence of consciousness of guilt, because the probative value of the testimony was outweighed by the prejudicial impact against the Defendant.

A jury trial was held on September 23-25, 2002. The jury found the Defendant guilty of simple assault of Eric Andy, but found him not guilty of an aggravated assault against this individual. The Defendant was also found not guilty of aggravated assault and simple assault of Roy

Pursell.

The Court will summarize the basic facts of the case to address the Defendant's contention that the verdict was against the weight of the evidence.

The events subject to the trial occurred on July 4-5, 2001. A July 4 party was held at a river lot owned by Jennifer Dudek and Alex Bobotas. The river lot was located across the street from the home of Ms. Dudek and Mr. Bobotas. The party began on the afternoon of July 4 and ran into the early morning hours of July 5. Approximately sixty (60) people were present at the party on an on and off basis. The hosts had a keg of beer for the participants.

Alex Bobotas was acquainted with the Defendant. The Defendant appeared at the party between 2:30 and 3:00 a.m. on July 5. The Defendant came with his brother, Matt Rebo, and a girlfriend, Ashley Pfleegor. Mr. Bobotas was aware the Defendant was going to come to the party to set off some fireworks. He arrived later than expected and since some of the children were sleeping, Mr. Bobotas told the Defendant that it was not such a good idea to launch the fireworks. N.T., September 23, 2002, at 51. The Defendant set off some of the fireworks anyway. Subsequently, Ms. Pfleegor got into an altercation with another female at the party. Mr. Bobotas told the Defendant it would be a good idea for him to leave.

Id. at 53. The Defendant left the party in his vehicle with his brother and Ms. Pfleegor as requested by Mr. Bobotas.

Shortly thereafter, the Defendant returned to the party. Ms. Dudek approached Ms. Pfleegor and told her to leave the party. Id. at 15-16. Ms. Pfleegor became angry and she threw a punch at Ms. Dudek. The punch hit Ms. Dudek in the head. Id. at 17-18. Ms. Dudek then saw the Defendant go to his car. She testified that next she saw the Defendant charge into people and he started to punch and hit people. Id. at 18. Ms. Dudek testified that when the Defendant went to his car, he reached in the car and came out with something that looked like a club. Id. at 19. The Defendant went over to a group of people and hit Roy Pursell in the side of the face and next hit Eric Andy in the back of the head with the club. Id. at 21. Eric Andy fell down and Ms. Dudek noticed his head was bleeding. The Defendant continued to hit Mr. Andy while he was on the ground. Id. at 21. Ms. Dudek indicated Eric Andy did not provoke the attack and she testified Mr. Andy had his back towards the Defendant. Id. at 22.

Eric Andy testified he was involved in the earlier scuffle when the Defendant first left the scene of the party. The individuals involved left the party but then returned ten (10) minutes later. N.T., September 24, 2002, p. 214. Mr.

Andy next saw the Defendant charge at him with something in his hand. Id. at 215. Mr. Andy turned around and tried to walk away from the Defendant. Id. at 215. Mr. Andy saw the Defendant's hand go up like he was going to hit Mr. Andy. Id. at 215. The next thing Mr. Andy remembered was that he was down on the ground and the back of his head was hurting. Id. at 217. The blood from his head soaked his pants and underwear. Id. at 217. As a result, he was transported to the hospital for treatment. A CAT Scan of Mr. Andy's head showed a hemorrhage in the right front portion of his brain. Id. at 222. Because of this injury, Mr. Andy has two scars on the back of his head and has lost his senses of taste and smell. Id. at 222-223.

The Commonwealth produced medical testimony to corroborate the extent of Mr. Andy's injury. Dr. Denise Wilson, an emergency physician, testified about initially treating Mr. Andy. Id. at 326-331. A CAT Scan revealed a hemorrhage of Mr. Andy's brain.

John Moran, radiologist, testified that he performed the CAT Scan on Mr. Andy's brain. Id. at 332-348. The CAT Scan revealed bleeding in the frontal lobe of Mr. Andy's brain. Mr. Andy was hit from behind. Id. at 338. There were multiple areas of contusion. Id. at 341. He noted that one of the twelve cranial nerves runs along the frontal lobe. Id.

at 342-343. This cranial nerve transfers information to the smaller nerves that are involved in the sense of smell. Damage to these nerves would cause the loss of the sense of smell. Id. at 343. Mr. Moran could not say if the blow to the head was with a fist or a club or a piece of wood.

Dr. Hani Tuffaha, a neurosurgeon who was called in to treat Mr. Andy, also testified concerning Mr. Andy's condition. Id. at 527-540. Dr. Tuffaha described how, in an injury like this, the fibers of the olfactory nerve can be injured, bruised or actually severed. Id. at 534. The doctor testified that the loss of smell and taste would be consistent with this injury to Mr. Andy. Id. at 534.

The Commonwealth called a number of other eyewitnesses present at the party who testified how Mr. Andy sustained his injuries. Shawn McKenzie described the Defendant hitting Mr. Andy with an object like a bat. N.T., September 23, at 157. Michael Dorris testified the Defendant grabbed a stick or small baseball bat from under the Defendant's car seat, ran toward Mr. Andy, and hit him with the stick. Id. at 166. When the Defendant ran toward Mr. Andy, Mr. Andy turned away and tried to cover up. Id. at 167. After Mr. Andy hit the ground, the Defendant kept hitting him on the head. Id. at 167-168.

Ashley Pfleeger, the female with the Defendant on

July 4-5, 2001, testified for the Commonwealth. She stated that, after they left the party the first time, the Defendant turned the car around and went back to the party. Id. at 103. She testified that the Defendant left the car with some sort of "bat or something" from under the car seat. Id. at 103-104. She did not see what happened after the Defendant took the bat. Id. at 104. Ms. Pfleegor testified she was fearful of the Defendant and after the night of the assault, she gave a false version of the events to the police and an attorney the Defendant's mother arranged for her to talk to, because she was fearful of the Defendant and his brother. Id. at 106-109, 115.

At trial, the Defendant claimed self-defense. He testified he was invited to the river party to set off fireworks. N.T., September 24-25, 2002, at 403-512. He was eventually told to stop by Alex Bobotas. The Defendant claimed some of the individuals at the party were saying rude things so he, his brother Matt and Ashley Pfleegor got into his car and left. The Defendant claimed that when they were $\frac{3}{4}$ miles up the road Ashley Pfleegor asked him to return to get one of her shoes, which she left at the party. When they returned, Ashley left the car and was confronted by Ms. Dudek. When Ashley and Ms. Dudek began fighting, the Defendant got out of his car and told his brother to stay in the car. Alex

Bobotas then joined in the attack on Ashley. The Defendant testified he interceded and told Ashley to get into the car. The Defendant testified that Alex Babotas and Shawn McKenzie attacked him from behind. Roy Pursell joined in the attack. Eric Andy put his shoulder at the Defendant's waist and grabbed his leg. Id. at 477. The Defendant claimed he saw others coming at him. Fearful he would be hurt seriously if he fell down, the Defendant brought his elbows down on the back of Eric Andy's head. Andy went limp and slid down. Andy then tightened his arms on the Defendant's legs, so the Defendant hit Mr. Andy on the back of the head again. The Defendant claimed Shawn McKenzie grabbed his brother and McKenzie had a piece of firewood in his hands. Matt Rebo knocked the firewood out of McKenzie's and the Defendant picked it up and told the people coming after him to back up. Id. at 479. At this point, he, Matt and Ashley were able to get back into the car and leave the scene.

The Defendant testified that he was proficient in martial arts. Id. at 472-474. He claimed he used his martial arts skills defensively against Mr. Andy when he was attacked at the party. The Defendant denied hitting anyone with the piece of firewood, claiming he only used his hands.

The Defendant did not call his brother Matt Rebo as a witness.

The first issue raised by the Defendant is that his conviction for simple assault is against the weight of the evidence. This Court cannot agree. "The weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of witnesses." Commonwealth v. Begley, 566 Pa. 239, 263, 780 A.2d 605, 619 (2001). "[A] new trial can only be granted on a claim that the verdict is against the weight of the evidence in the extraordinary situation where the jury's verdict is so contrary to the evidence that it shocks one's sense of justice." Commonwealth v. Drumheller, 808 A.2d 893, 908 (Pa. 2002); Commonwealth v. Begley, supra. While the jury may have had a reasonable doubt that the Defendant struck Mr. Andy in the head with a weapon, as they found the Defendant not guilty of Aggravated Assault of Mr. Andy, the jury rejected the Defendant's claim of self-defense when they found him guilty of simple assault of Mr. Andy. Although there were many questions of credibility throughout the trial, the jury's verdict does not shock the Court's sense of justice. The Defendant admitted hitting Mr. Andy in the head. Mr. Andy suffered bodily injury. The jury did not credit the Defendant's claim of self-defense. This is not surprising since many witnesses, including Ashley Pfleegor, the Defendant's former girlfriend and his companion at the

events in question, testified the Defendant was the aggressor.¹ Unquestionably, the weight of the evidence supported the verdict.

The Defendant's second issue is equally meritless. The Defendant complains the Court erred in admitting into evidence testimony from Constable Metzger and Corporal Ammerman concerning the Defendant's flight from them after the time of arrest on these charges.

The admission of evidence is within the sound discretion of the trial court and will be reversed only upon a showing that the trial court clearly abused its discretion. Commonwealth v. Stallworth, 566 Pa. 349, 363, 781 A.2d 110, 117 (2001). Admissibility depends on relevance and probative value. Id. Relevant evidence may be excluded if its probative value is outweighed by the danger of **unfair** prejudice. Pa.R.Evid. 403; Commonwealth v. Brown, 567 Pa. 272, 286-287, 786 A.2d 961, 969 (2001). Evidence of flight is relevant and admissible to show consciousness of guilt. Commonwealth v. Rizzuto, 566 Pa. 40, 56, 777 A.2d 1069, 1078 (2001); Commonwealth v. Gorby, 527 Pa. 98, 112, 588 A.2d 902, 909 (1991); Commonwealth v. Coyle, 415 Pa. 379, 393, 203 A.2d 782, 789 (1964).

The Defendant was arrested for the charges, including felony aggravated assault charges, within days of

¹ If anything, the Court was somewhat surprised that the jury found the

the July 5, 2001 incident. The Defendant posted bail after the arrest. He next appeared for an initial preliminary hearing, which was continued and rescheduled for August 8, 2001. The Defendant failed to appear for the August 8, 2001 preliminary hearing, which led to a warrant being issued for his arrest on these charges.

On or about December 22, 2001, the Defendant was seen in the Phillipsburg, Pennsylvania area. Constable Dave Metzger from the Phillipsburg area was notified as he was looking for the Defendant pursuant to the Lycoming County arrest warrant. On December 22, 2001, Constable Metzger observed the Defendant in his vehicle. Constable Metzger tried to follow the Defendant's vehicle and requested back-up from the Pennsylvania State Police. Constable Metzger was in an unmarked vehicle but he was wearing a uniform and badge. He pulled up alongside of the Defendant's vehicle and advised the Defendant he was under arrest and to pull over. N.T., September 24-25, at 351. The Defendant shook his head like he was acknowledging the Constable's request to pull over. However, the Defendant then swerved his car attempting to strike the Constable's car. The Defendant then took off driving away from the Constable traveling back over a median strip and hitting a guardrail. Id. at 352. This action on the part of the Defendant led to a high-speed vehicle chase,

which also involved marked units of the Pennsylvania State Police. Id. at 357.

Corporal Merrill Ammerman of the State Police testified to his involvement in the chase. N.T., September 24-25, at 375-381. He was in uniform in an unmarked vehicle. The Defendant drove his vehicle by the Corporal's vehicle at a "really fast" speed. Id. at 379. Corporal Ammerman had his lights and siren on. Id. at 380. He got out of his car to throw stop sticks into the lane in which the Defendant was driving his vehicle. Id. at 377. However, before he could get the sticks down on the road, the Defendant drove by him. The Defendant drove his vehicle within 4-5 feet of Corporal Ammerman's vehicle. Id. at 379.

The chase continued with a marked state police cruiser with its lights on and siren flashing as the lead vehicle. Id. at 358-359. The Defendant eventually turned right into a strip mine area, where he jumped out of his vehicle and fled on foot into a wooded area. Id. at 360. The Defendant was eventually apprehended when he exited the wooded area a few hours later. Id. at 361, 435.

This evidence was clearly admissible as classic evidence of consciousness of guilt. There was nothing about this evidence that was **unfairly** prejudicial to the Defendant. "'Unfair prejudice' means a tendency to suggest a decision on

an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially." Pa.R.Evid. 403 comment. The evidence did not refer to other crimes nor was it inflammatory. The only "prejudice" to the Defendant was this evidence was relevant and probative to establishing the Defendant's guilt, which is not prohibited by either Rule 403 or the case law of this Commonwealth.

DATE: _____

By The Court,

Kenneth D. Brown, Judge

cc: Donald Martino, Esquire (ADA)
Public Defender's Office
Law Clerk
Gary Weber, Esquire (Lycoming Reporter)
Work file