

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1039-2011
vs. :
:
RONALD A. RICHARDSON, :
Defendant : Post-Sentence Motion

OPINION AND ORDER

On February 1, 2012, Defendant was sentenced to undergo incarceration in a State Correctional Institution for a minimum of two (2) years and a maximum of five (5) years on Count 1 of the Information, Assault by a Prisoner, a Felony 2 offense.

Defendant was tried before this Court non-jury on November 7, 2011 and November 18, 2011. Defendant faced one count of Assault by a Prisoner, one count of Aggravated Assault and one count of Simple Assault.

By Verdict dated November 21, 2011, the Court found the Defendant guilty of Count 1, Assault by a Prisoner, not guilty of Count 2, Aggravated Assault and guilty of Count 3, Simple Assault. For sentencing purposes the Court determined that Count 3 merged with Count 1.

Defendant filed a timely Post-Sentence Motion on February 3, 2012. An argument was held on Defendant's Post-Sentence Motion on May 2, 2012.

Defendant argued that the verdict was based on insufficient evidence and alternatively that it was against the weight of the evidence. Defendant argued that the victim, Thomas Bower was patently unreliable and could not make an identification of the Defendant. Furthermore, Defendant argued that the other evidence of record clearly supported Defendant's claim that he did not commit any assault whatsoever on Mr. Bower.

In addressing Defendant's sufficiency of evidence claim, the Court must determine whether the evidence introduced at trial and all reasonable inferences derived from the record, viewed in a light most favorable to the Commonwealth as the verdict winner, are sufficient to establish beyond a reasonable doubt all elements of the offense. Commonwealth v. Sanchez, 36 A.3d 24, 37 (Pa. 2011).

Moreover, the Commonwealth may sustain its burden by only circumstantial evidence and need not disprove every possibility of innocence. Commonwealth v. Orr, 38 A.3d 868, 872 (Pa. 2011), citing Commonwealth v. Hansley, 24 A.3d 410, 416 (Pa. Super. 2011). "Any doubts regarding a Defendant's guilt may be resolved by the factfinder unless the evidence is so weak and inconclusive that as a matter of law no probability of facts may be drawn from the combined circumstances." Id.

In the Court's Opinion and Verdict dated November 21, 2011, the Court exhaustively set forth the facts supporting the finding of guilt.

To convict the Defendant of assault by a prisoner in violation of 18 Pa. C.S.A. § 2703, the Commonwealth must prove that the Defendant was a person confined in or committed to a County Prison and while so confined he committed an assault upon another by any means or force likely to produce serious bodily injury.

The Court found beyond a reasonable doubt that the Defendant was an inmate at the Lycoming County Prison and that he pulled the victim off the bed with the requisite amount of force likely to produce serious bodily injury. The Defendant clearly approached the victim while the victim was either sleeping or unaware of the Defendant's presence. The Defendant then grabbed the victim around the victim's torso and jerked him off of the top

bunk, 4 ½ feet above the concrete floor. The victim flailed away in vain to prevent the assault. The force used actually pulled the victim entirely off the bunk, casting him in the air and down onto the concrete floor.

This finding is based upon the testimony of Mr. Bower, the victim; Lieutenant William McKissick, III; Sarah Horn; Ronald Kuhns; and Brad Shoemaker as well as a review of the admitted evidence. The testimony of these individuals and the admitted evidence were all referenced in detail in the Court's prior Opinion and Order.

A weight of the evidence claim enables a judge to reverse the verdict only when it is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail. Sanchez, 36 A.3d at 39, citing Commonwealth v. Blakeney, 596 Pa. 510, 946 A.2d 645, 652-53 (Pa. 2008). "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 the witnesses." Commonwealth v. Small, 559 Pa. 423, 435, 741 A.2d 666, 672-73 (1999), cert. denied, 531 U.S. 829, 121 S. Ct. 80 (2000).

Clearly, the Court's verdict did not shock its conscience. The findings of fact and the determination of credibility are all set forth in the Opinion and Verdict dated November 21, 2011.

Accordingly, the following Order shall be entered:

ORDER

AND NOW, this ____ day of May 2012, for the reasons set forth herein as well as in the Opinion and Verdict dated November 21, 2011, said Opinion and Verdict, which is incorporated herein as if fully set forth herein, the Court **DENIES** Defendant's Post-Sentence Motion.

By The Court,

Marc F. Lovecchio, Judge

cc: DA (EL)
PD (JL)
Gary Weber, Esquire (Lycoming Reporter)
Work File