

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-989-2011  
vs. :  
: CRIMINAL DIVISION  
STEPHEN THOMPSON, :  
Appellant : 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 non-jury verdict and sentencing order dated March 23, 2012. The relevant facts follow.

In the early morning hours of June 8, 2011, Defendant Stephen Thompson (hereinafter Appellant) was at the apartment of Matthew Wagner (hereinafter Wagner) drinking beer, watching television, and talking. After an hour or two, Appellant and Wagner got into an argument that developed into a physical altercation. During the argument, both men stood up and Appellant pushed Wagner in the chest, causing Wagner to trip over a chair. Wagner got up, and Appellant pushed him down again. When Wagner got up the second time, he yelled at Appellant to leave. Appellant grabbed a nearby pedestal fan and began swinging the base of it at Wagner. Wagner turned his head away from Appellant and attempted to block the blows with his left arm, but the base of the fan struck Wagner in the back of the head. Wagner felt the back of his head and noticed he was bleeding profusely. He yelled at Appellant, "Look what you did to me." Appellant fled, and Wagner went to the apartment of a neighbor who called 911.

The police responded and spoke to Wagner briefly before emergency personnel arrived and transported Wagner to the hospital. Wagner sustained two gashes on his head that required a total of 13 staples and bruising on his left arm.

The police interviewed Appellant. While he admitted striking Wagner with the base of the fan, he claimed that Wagner was not the innocent victim but would not provide any details. The officer did not see any injuries on Appellant.

The police charged Appellant with simple assault, a misdemeanor of the second degree. Upon motion of the Commonwealth and without objection from Appellant, the Information was amended to charge harassment graded as a summary offense. The case then proceeded to a summary trial before the Court.

At the summary trial, Wagner testified that during the verbal disagreement Appellant repeatedly pushed him down and then struck him with the base of the fan. Wagner also stated that he did not push Appellant or attack him in any way.

Appellant testified in his own defense. He claimed that during a conversation about whether a UFC fighter was Mexican or not, Wagner stood up and then he stood up. Wagner poked him in the chest, and he pushed Wagner away, causing him to fall backwards. Wagner got up, got in Appellant's face and poked him in the chest again. Appellant pushed Wagner down again. Wagner got up and started yelling at Appellant to leave. When Appellant was about five steps outside, Wagner called his name. Appellant turned around. Wagner stepped off the stoop with the fan in his hands and jabbed the base at Appellant, scraping his arm. Wagner lunged at Appellant a second time, causing Appellant to fall backwards and get a "road rash" scrape on his arm. Appellant grabbed the base of the fan and pulled while Wagner was still holding it. The fan broke into two pieces, with Appellant

holding the base and Wagner holding the top of it. At that point, Appellant started swinging the base of the fan, clipping Wagner in the back of the head at some point. Wagner backed up, put his hand to his head and said, “Steve, look what you did to me.” Then Wagner backed into his room, grabbed his aluminum baseball bat, and told Appellant to get out. Appellant left with the base of the fan still in his hands. He threw the base of the fan in a dumpster and ran away.

Appellant claimed he showed his injuries to the police when he said Wagner was not an innocent victim, but he did not take pictures of his injuries because a neighbor told him Wagner was not pressing charges. He said he did not tell the officer about Wagner poking him in the chest, because he really didn’t want to talk to him until he spoke to a lawyer. He also claimed he retrieved the fan base from the dumpster and gave it to a neighbor to give back to Wagner.

Appellant also called his son as a witness to testify about the scrapes he sustained on his arm and elbow and retrieving the base of the fan from the dumpster and giving it to a neighbor to return to Wagner. Appellant’s daughter also testified regarding the scrapes and cuts on his arms.

The Court found Appellant guilty of summary harassment and sentenced him to pay a \$300 fine and restitution totaling \$1,900.15.

Appellant’s sole issue on appeal is that his conviction for harassment was not supported by the weight of the evidence.

A motion for a new trial alleging that the verdict was against the weight of the evidence is addressed to the discretion of the trial court. The appellate court, therefore, reviews the exercise of discretion, not the underlying question of whether the verdict is against the weight of the evidence. The fact finder is free to believe all, part, or none of the

evidence and to determine the credibility of witnesses. The trial court will award a new trial only when the... verdict is so contrary to the evidence as to shock one's sense of justice. In determining whether this standard has been met, appellate review is limited to whether the trial judge's discretion was properly exercised, and relief will only be granted where the facts and inferences of record disclose a palpable abuse of discretion. Thus, the trial court's denial of a motion for a new trial based on the weight of the evidence is the least assailable of its rulings.

Commonwealth v. Ramtahal, 33 A.3d 602, 609 (Pa. 2011), quoting Commonwealth v. Diggs, 597 Pa. 28, 949 A.2d 873, 879-80 (2008). Furthermore, a challenge to the weight of the evidence concedes that there was sufficient evidence to support the verdict. Commonwealth v. Widmer, 560 Pa. 308, 744 A.2d 745, 751 (2000).

The verdict did not shock the Court's conscience. Based on the demeanor of the individuals, the Court found Wagner more credible than Appellant. Transcript, pp. 71-72. The Court also found that the fact Appellant ran away after the incident showed his consciousness of guilt. Transcript, p. 72.

DATE: \_\_\_\_\_

By The Court,

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Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)  
Kathryn Bellfy, Esquire (APD)  
Work file  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)