

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No's. CR-452-2010; CR-1294-2010
 : CR-1148-2013
 CHRISTOPHER SCHENCK, :
 Defendant : Post-Sentence Motion

OPINION AND ORDER

Before the court is Defendant's post-sentence motion filed on July 7, 2015. The post-sentence motion seeks either a new trial or a judgment of acquittal in connection with the conviction of Defendant under Docket No. 1148-2013 following a jury trial of Aggravated Assault and related charges.

More specifically, on April 14, 2015 following a jury trial, Defendant was convicted of aggravated assault, a felony of the first degree; endangering the welfare of children, a felony of the third degree; simple assault of a child, a misdemeanor of the first degree; and recklessly endangering another person, a misdemeanor of the second degree.

On June 30, 2015, the court imposed an aggregate sentence of 11 to 27 years for the aggravated assault and related offenses. Because Defendant was serving sentences of probation under 452-2010 and 1294-2010 when he committed the offenses under 1148-2013, the court revoked Defendant's probation sentences and re-sentenced him to incarceration. The total aggregate period of incarceration imposed on Defendant in connection with the underlying criminal convictions and the probation violations was a minimum of 13 and a maximum of 31 years.

Defendant's post-sentence motion includes a motion for judgment of acquittal, in which Defendant asserts that the evidence was insufficient to "prove beyond a reasonable doubt that the Defendant caused the injuries to the victim, to wit, extensive bruising and a subdural hematoma." (Defendant's Post-Sentence Motion, paragraph 7). Alternatively, Defendant argues that the verdict of guilty was contrary to the weight of the evidence and that a new trial is warranted.

Argument on Defendant's post-sentence motion was held before the court on August 5, 2015. Defendant asserts that the evidence was either insufficient or against the weight of the evidence to the extent that it identified him as the perpetrator of the offenses against the minor child. The Commonwealth proved to the jury that between April 12, 2013 and June 2, 2013, the Defendant, who was the caretaker of a three year old boy, caused significant injuries to the boy by assaulting him.

There were no eyewitnesses to the assault on the minor victim. The Commonwealth's entire case was based on circumstantial evidence.

On June 2, 2013, Officer Brian Fioretti of the Tiadaghton Police Department responded to an apartment in Jersey Shore for an unresponsive three year old male. Upon the officer's arrival to the scene, he found the victim unresponsive on the floor with no clothes on. The officer observed multiple bruises all over the victim's body including his legs, thighs, face, buttocks, back, arms and neck. He also observed fresh bruises on the child's right cheek and eye.

Officer Fioretti was advised by Defendant, who was the caretaker of the child, that approximately an hour and a half earlier the child was in the tub and had slipped and had hit his head. Defendant explained that this incident is what caused the bruises to the eye and face. The other bruises, according to Defendant, were caused when the child fell while engaged in other activities such as fishing.

The mother of the child who was living with Defendant and the victim had left the apartment for work earlier that morning at approximately 5:30 a.m. The child was sleeping soundly and the evening before when she gave him a bath, he did not have nearly as many of the bruises that were found on his back, face, shoulders, legs, thighs and head on June 2, 2013.

According to the mother, Defendant was the sole caretaker of her son. They did not use physical discipline on him. On the morning of the incident, Defendant contacted her and told her that her son had fallen in the tub and hit his cheek. Defendant explained that the child had placed a cup in the kitchen sink and was running from the kitchen into the living room when he tripped and fell over the threshold strip onto his face. Initially, the child was okay but shortly afterwards he became unconscious and unresponsive.

On the morning of the incident, the downstairs neighbors heard noises at approximately 7:00 a.m. which woke them up. The noises went on for approximately one and a half hours at different intervals. Eventually, they heard a loud “thud” like a “refrigerator” falling. After that, they heard some whimpering and then “nothing else.”

The child was eventually flown from Jersey Shore Hospital to Geisinger

Medical Center in Danville, Pennsylvania. He was examined by numerous physicians and eventually placed in the Intensive Care Unit. Dr. Paul Bellino of the Pediatric Intensive Care Unit and a specialist in child abuse testified that the injuries were not consistent with the mechanisms which Defendant indicated and that they were consistent with physical abuse.

He observed countless contusions on the victim with the majority of the contusions being new along with some older contusions. He testified that there was swelling on the victim's brain from a subdural hematoma, which most likely caused him to be unconscious, if not immediately, shortly after the injury occurred. He testified that the majority of the contusions were fresh contusions and not old contusions. He testified that these injuries are "definitely consistent with that of physical abuse." He ruled out any other type of condition which could have caused these injuries. He also ruled out that the injuries could have been self-inflicted by the victim or caused by the falling on the carpet as apparently explained by Defendant.

While a conviction may not be based on mere suspicion or conjecture, circumstantial evidence may be sufficient to establish guilt beyond a reasonable doubt. *Commonwealth v. Hargrave*, 745 A.2d 20, 22 (Pa. Super. 2000).

In reviewing a sufficiency of evidence claim, the court "must determine whether the evidence admitted at trial, and all reasonable inferences derived therefrom, when viewed in a light most favorable to the Commonwealth as the verdict winner, supports the jury's finding of all of the elements of the offense beyond a reasonable doubt."

Commonwealth v. Towles, 106 A.3d 591 (Pa. 2014)(quoting *Commonwealth v. Champney*,

574 Pa. 435, 832 A.2d 403, 408 (Pa. 2003)).

In this case, there was clearly sufficient evidence to prove that it was Defendant who caused the injuries to the minor child. The minor child did not have the injuries prior to being in Defendant's sole care. The downstairs neighbors heard activity in the apartment consistent with an assault of the minor child. Defendant's explanation as to how the injuries occurred was inconsistent and, in fact, contrary to the physical findings, and the expert testimony regarding the mechanism of the injuries was that of physical abuse. Indeed, the evidence was overwhelming against Defendant. The child certainly did not inflict the injuries on himself, and the child did not have any medical condition that could have explained the injuries. The child was in the sole care of Defendant. The child was fine when the mother left. When the police arrived, however, the child was unconscious, had suffered a subdural hematoma, and had fresh bruising all over his body.

With respect to Defendant's weight of the evidence claim, a new trial is warranted only when the jury's verdict is so contrary to the evidence that it shocks one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail. *Commonwealth v. Morales*, 91 A.3d 80, 91 (Pa. 2014).

In this case, the verdict was not so contrary to the evidence as to shock the conscious of the court. Indeed, the verdict was entirely consistent with what the court expected. The evidence against Defendant was overwhelming.

ORDER

AND NOW, this ____ day of September 2015, Defendant's post-sentence motion is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Julian Allatt, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work file