IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR-1148-2013**
	:	
Vs.	**:**	
	:	
CHRISTOPHER SCHENCK,	**:**	
Defendant	**:**	**1925 (b) Opinion**

RULE 1925 (b) OPINION IN SUPPORT OF ORDER

Under Information 1148-2013 (Lycoming County) following a jury trial on April 13, 2015 and April 14, 2015, Defendant was found guilty of four separate criminal offenses. On June 30, 2015, Defendant was sentenced as follows:

Count 1, aggravated assault, a felony one offense, 8 ½ to 20 years; Count 2, endangering the welfare of children, a felony 3 offense, a consecutive 2 ½ to 7 years, for an aggregate period of state incarceration, the minimum of which was 11 years and the maximum of which was 27 years. The remaining two counts merged for sentencing purposes.

Defendant timely filed Post-Sentence Motions that were denied by Opinion and Order of Court dated September 3, 2015. Defendant filed a timely appeal on October 2, 2015.

In Defendant's Concise Statement of Matters Complained of on appeal, filed on December 8, 2015, Defendant raises four issues. This Opinion shall address each of those issues in Order.

Defendant first argues that the evidence at trial was insufficient to prove beyond a reasonable doubt that Defendant caused injuries to the victim, mainly extensive bruising and a subdural hematoma.

In response to this argument, the Court incorporates its Opinion and Order dated September 3, 2015 addressing this exact issue. A review of said Order will set forth the

reasons in support of the Court's conclusion that the Commonwealth presented sufficient facts beyond a reasonable doubt to prove that the Defendant caused the injuries to the victim.

Furthermore, a review of the direct testimony of the Commonwealth's witnesses clearly supports the Court's conclusions. (Brian Fioretti, transcript, pp. 28 through 35, Brady Breon, transcript pp. 41 through 47, 55-56; Kayleigh Lauer, pp. 58-61, 68; Jared Hill, transcript, pp. 70 through 75, 83; Leigh McCarty, transcript, pp. 87 through 106; Dr. James C. Smith, transcript, pp. 148 through 167; Dr. Thomas W. Wilson, transcript, pp. 181 through 186; Dr. Paul Bellino, transcript, pp. 185 through 188, 197 to 231; Trooper Jennifer McMunn, 4-14-2015 transcript, pp. 3 through 16, 25; Trooper Joseph Akers, 4-14-2015 transcript, pp. 25 through 28).

Defendant's second argument is that the evidence presented at trial was insufficient to prove beyond a reasonable doubt that the injuries to the victim occurred during the period of time wherein the victim was alleged to have been in the sole custody of the Defendant.

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)). 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).

The evidence introduced at trial when viewed in a light most favorable to the

Commonwealth clearly proved that the relevant injuries to the victim occurred while the victim was in the sole custody of the Defendant.

Leigh McCarty, the victim's mother, testified that during the date in question, she was living in her second floor apartment with the Defendant and her son. (April 13, 2015 transcript, pp. 87-89). When she was at work, her son was watched by the Defendant (transcript, p. 90).

On Saturday night, the night before the victim was taken to the hospital and his very serious injuries were discovered, she gave him a bath and put him to bed at approximately 10 or 10:30 p.m. (transcript, p. 91). The next morning she got up at around 5:00 a.m. and left the apartment to go to work. (transcript, p. 91). When she left, the only two people in the apartment were the Defendant and her son. (transcript, p. 91).

Ms. McCarty was shown numerous photographs of injuries to the child. She testified that the vast majority of them, and all of the very serious injuries, did not appear on her son when she gave them the bath the night before but were present when she next saw him in the hospital late Sunday afternoon or early evening (transcript, pp. 93 through 102).

While she was at work, the Defendant was "watching" the minor child. (transcript, p. 106). The Defendant had been doing this a while after he initially offered to take care of the child. (transcript, p. 107).

Following her becoming aware of the injuries to her son, she confronted the Defendant. The Defendant specifically stated that the child suffered the injuries because he tripped coming from the kitchen into the living room and fell and hit his head. (transcript, pp. 102-103).

In fact, the Defendant spoke with Brian Fioretti of the Tiadaghton Valley

Regional Police Department admitting that he was watching the minor child and explained that the bruising and injuries were either caused by some sort of medical condition or when the child went out to the kitchen, came back and tripped through the doorway. (4-13-2015 transcript, pp. 32, 33). The Defendant told somewhat of a different story to Brady Breon, a paramedic. Defendant told Mr. Breon that he was watching the child and that the child had fallen earlier in the day in the bathtub and most recently tripped over the carpet strip and fell and stuck his head. (4-13-2015 transcript, pp. 42-44).

This history was also provided by the Defendant to medical personnel at Geisinger Medical Center. (4-13-2015 transcript, p. 199-200).

Clearly this evidence was sufficient to prove beyond a reasonable doubt that the relevant injuries the victim suffered occurred during the period of time wherein the victim was in the sole custody of the Defendant.

Defendant's third assertion is that the jury's verdict on all of the counts was contrary to the weight of evidence presented at trial.

Again, this claim was addressed by the Court in its September 3, 2015 Opinion and Order. Clearly in light of all of the evidence, the verdict was not so contrary to the evidence as to shock the conscience of the Court. As the Court noted in its prior Opinion, the evidence against the Defendant was "overwhelming."

Defendant's final argument is that the Court erred in not allowing Defendant to cross-examine the mother, Ms. McCarty, on her alleged "habit" of leaving the three-year old victim in the bathtub wherein the mother testified that she had given the victim a bath at approximately 10 or 10:30 p.m. the evening before Defendant was alleged to have assaulted the victim.

On cross-examination, Ms. McCarty testified that she gave her son a bath on June 1, the night before. (transcript, p. 133). When she put her son in the bathtub, water would be put in the bathtub and the child would be left alone although she could still see him where he was standing. (transcript, p. 133).

Defense counsel then asked: "So you would stand somewhere outside of the bathroom leaving him alone in the tub but where you could observe him." (transcript, p. 134). The Commonwealth lodged an objection that the Court sustained. Nowhere in the record does defense counsel ask about any habit. Moreover, Ms. McCarty was previously asked and in fact answered the question about standing outside and watching the child while he was left in the bathtub. (transcript, p. 133).

The Court sustained the objection on relevancy grounds. Defense counsel argued that he was trying to show that "this kid was not properly cared for." (transcript, p. 135). Defense counsel further argued that by mother leaving the child alone in the bathtub, she was "endangering the welfare of a child." (transcript, p. 135). Finally, defense counsel argued that "if it's to believed that [Defendant] left him alone in the bathtub, he was taught how to do that by mom and that goes to endangering the welfare, I think that it's something the jury should understand better about the culture of caring for this kid in this house." (transcript, 136).

The admissibility of evidence is within the sound discretion of the Trial Court and the decision of the Court will not be reversed concerning said admissibility absent an abuse of the Trial Court's discretion. ***Commonwealth v. Flor***, 998 A.2d 606, 623 (Pa. 2011). An abuse of discretion will not be found based on a mere error of judgment, but rather exists where the court has reached a conclusion which overrides or misapplies the law, or where the

judgement exercises is manifestly unreasonable, or the result of partiality, prejudice, bias or ill will. ***Commonwealth v. Eichinger***, 915 A.2d 112, 1140 (Pa. 2007).

Evidence is relevant if it logically tends to establish a material fact in the case or tends to support a reasonable inference regarding a material fact. ***Commonwealth v. Weakley***, 972 A.2d 1182, 1188 (Pa. Super. 2009).

The proffered evidence in the Court's opinion was not relevant to any disputed fact or issue. Furthermore, it had previously been asked and answered. Accordingly, Defendant's claim is without merit.

Date: _____ By The Court,

_____
Marc F. Lovecchio, Judge

cc: Superior Court (original and 1)
Martin Wade, Esquire (ADA)
Julian Allatt, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work File