

COMMONWEALTH OF PA	: No. CR-1485-2015
	:
vs.	:
	:
	:
PETER LAROCHELLE,	:
Defendant	: Post-Sentence Motion

OPINION AND ORDER

Defendant was charged by Information filed on September 18, 2015 with one count of simple assault, a misdemeanor two offense and one count of harassment, a summary offense.

The case was tried before a jury on September 26, 2016 after which Defendant was found guilty of the simple assault. The court, sitting without a jury, found Defendant guilty of harassment.

On November 29, 2016, following a sentencing hearing, the court sentenced Defendant to a period of probation of 18 months under the supervision of the Lycoming County Adult Probation office. Defendant’s probation included special conditions relating to Defendant’s mental health and taking of prescription medications.

Defendant filed a post-sentence motion on December 9, 2016. In his motion, Defendant asserted that the verdict was against the weight of the evidence with respect to Defendant’s self-defense or justification claim. He argued that his testimony should have been taken as credible and determinative. Defendant also claimed that there was insufficient evidence to sustain his conviction in that the Commonwealth failed to disprove self-defense beyond a reasonable doubt. Specifically, Defendant argued that the Commonwealth failed to disprove that Defendant reasonably believed force was necessary to protect himself.

Argument was originally scheduled for December 28, 2016 but was continued because trial counsel was not present. Argument was subsequently held on January 20, 2017.

The court will first address Defendant's weight of the evidence claim.

"When the defendant introduces evidence of self-defense, the Commonwealth bears the burden of disproving such defense beyond a reasonable doubt." *Commonwealth v. Rivera*, 983 A.2d 1211, 1221 (Pa. 2009).

The Commonwealth sustains this burden if it establishes at least one of the following: (1) the accused did not reasonably believe that he was in danger of death or serious bodily injury; (2) the accused provoked or continued the use of force; or (3) the accused had a duty to retreat and the retreat was possible with complete safety. The Commonwealth need only prove one of these elements beyond a reasonable doubt to sufficient disprove a self-defense claim.

Commonwealth v. Ventura, 975 A.2d 1128, 1143 (Pa. Super. 2009)(citations omitted), appeal denied, 987 A.2d 161 (Pa. 2009).

Defendant argued that the court utilized an incorrect standard with respect to the reasonableness of Defendant's belief that he was in imminent danger. Defendant specifically argued that a subjective standard must be applied. Contrary to what Defendant argued, in determining whether an actor's belief that he was in imminent danger of serious bodily harm was reasonable, the trier of fact must employ an objective test. *Commonwealth v. Correa*, 648 A.2d 1199, 1202 (Pa. Super. 1994), re-argument denied, appeal denied, 657 A.2d 487 (Pa. 1995). More specifically, defendant's belief must be reasonable in light of the facts as they appeared to the defendant, "a consideration that involves an objective standard." *Commonwealth v. Mouzon*, 53 A.3d 738, 752 (Pa. 2012).

With respect to a weight of the evidence claim, "the trial judge may not grant relief merely on some conflicting testimony or because the judge would reach a different

conclusion based on the same facts.” *Commonwealth v. Sanchez*, 36 A.3d, 24, 39 (Pa. 2011)(quoting *Commonwealth v. Blakeney*, 946 A.2d 245, 253 (Pa. 2008)). A new trial should be granted only in truly extraordinary circumstances, i.e., “when a jury’s verdict 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.” *Id.*

The determination of whether to grant a new trial because the verdict is against the weight of the evidence rests within the discretion of the trial court... Where issues of credibility and weight of the evidence are concerned, it is not the function of the appellate court to substitute its judgment based on a cold record for that of the trial court. The weight to be accorded of conflicting evidence is exclusively for the fact finder, whose findings will not be disturbed...if they are supported by the record. A claim that the evidence presented at trial was contradictory and unable to support the verdict requires the grant of a new trial only when the verdict is so contrary to the evidence as to shock one’s sense of justice.

Commonwealth v. Young, 692 A.2d 1112, 1114-15 (Pa. Super. 1997).

A verdict is said to be contrary to the evidence such that it shocks one’s sense of justice when “the figure of Justice totters on her pedestal,” or when “the jury’s verdict, at the time of its rendition, causes the trial judge to lose his breath, temporarily, and causes him to almost fall from the bench, then it is truly shocking to the judicial conscience.”

Commonwealth v. Cruz, 919 A.2d 279, 282 (Pa. Super. 2007).

Clearly and based upon the evidence as set forth below, the jury’s verdict did not shock the court’s conscience.

Defendant apparently ignores the evidence presented by the Commonwealth, which the jury was free to accept and apparently did.

The incident occurred on June 9, 2015 at 615 Grier Street at approximately 5:30 in the afternoon. Defendant sprayed the victim Glenn Murchison with pepper spray.

Defendant and the victim were previously arguing over a parking spot and at

no time did the victim act in an aggressive or physical manner toward Defendant. Defendant admitted that the argument was just a verbal argument and that he in fact sprayed the victim with pepper spray.

The one witness who viewed the entire event indicated that the victim was not at all physical towards Defendant and did nothing to warrant being pepper sprayed. The witness testified that Defendant “simply overreacted.” The witness testified that the victim never threatened Defendant, used profanity toward Defendant, or came at Defendant. She saw no reason whatsoever why Defendant needed to pepper spray the victim.

While the jury was certainly aware of Defendant’s belief and the circumstances, it chose not to believe Defendant’s testimony that the victim was yelling or aggressively moving toward him.

Accordingly, the court will deny Defendant’s motion for a new trial based on his allegation that the jury’s verdict was against the weight of the evidence.

Defendant’s second claim relates to sufficiency of evidence.

The standard to be applied in reviewing the sufficiency of evidence is “whether the evidence admitted at trial, and all reasonable inferences drawn therefrom, viewed in the light most favorable to the Commonwealth as the verdict winner, support the jury’s finding of all of the elements of the offense beyond a reasonable doubt. The Commonwealth may sustain its burden by means of wholly circumstantial evidence.” *Commonwealth v. Mattison*, 82 A.3d 386, 392 (Pa. 2013); see also *Commonwealth v. Roche*, 2017 PA Super 4, 2017 Pa. Super. LEXIS 2, *16 (January 4, 2017); *Commonwealth v. Furness*, 2016 PA Super 298, 2016 Pa. Super. LEXIS 785, *7 (December 22, 2016); *Commonwealth v. Doughty*, 126 A.3d 951, 958 (Pa. 2015).

Clearly, the evidence was sufficient to sustain the Commonwealth's burden of proving beyond a reasonable doubt that while Defendant may have subjectively believed he needed to pepper spray Mr. Murchison, his belief was not objectively reasonable under the circumstances. The evidence viewed in the light most favorable to the Commonwealth established that the victim did not attack Defendant, move aggressively toward Defendant, or do anything else which would have justified Defendant's behavior.

Accordingly, the court will deny Defendant's motion for judgment of acquittal based on his assertion that the evidence was insufficient to disprove his claim of self-defense.

ORDER

AND NOW, this 27th day of January 2017, following a hearing and argument on Defendant's post-sentence motion, said post-sentence motion is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Melissa Kalaus, Esquire (ADA)
Ravi Marfatia, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)