IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	**CR-1-2016**
	:	
v.	:	
	:	
DENEYSHA POOLE,	:	**1925a**
Defendant	:	

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

Deynesha Poole (Defendant) appeals from the Judgement of Sentence of October 21, 2016.

Background

Assistant Public Defender Ravi Marfatia represented Defendant at trial. The Court appointed Robert Cronin, Esquire to represent Defendant on Post Sentence Motions and direct appeal due to an increasingly deteriorating relationship between Defendant and the Public Defenders assigned to represent her.

On April 5, 2016, Defendant was found guilty after jury trial of a violation of Title 18 Section 4906 (a) (false reports to law enforcement authorities)[1], a misdemeanor of the second degree. The Court sentenced the Defendant to a state correctional institution for a minimum of 6 months and a maximum of 24 months. The Court intended that the sentence be served concurrent to any other state sentence the Defendant was serving. Post Sentence Motions were denied on March 1, 2017.

[1] (a) Falsely incriminating another. — Except as provided in subsection (c), a person who knowingly gives false information to any law enforcement officer with intent to implicate another commits a misdemeanor of the second degree. 18 Pa.C.S. § 4906.

Testimony

On May 26, 2015, Defendant made an allegation that Correctional Officer Hannah Adrian watched her while using the bathroom and that such watching made her feel uncomfortable. The correctional officer receiving the allegation, Deputy Frantz (Frantz), testified that this allegation fell under the Prison Rape Elimination Act as "voyeurism". Jury Trial, 4/5/2016, at 36. At the time of the allegation, Frantz was the corrections classification program manager and PREA Compliance Manager at SCI Muncy. Id. at 35.

Frantz testified that the date of the incident complained of was May 14, 2015. He also testified that Defendant made no written statement nor one was requested of her. Id. at 43. The Commonwealth submitted into evidence a video taken outside of the Defendant's cell on the date and time of the incidence and the DC-121 Frantz filled out after his conversation with Defendant on May 26, 2015. Id. at 38.

CO Adrian testified that on that date of the incident, she had gone to Defendant's cell in the Restricted Housing Unit to inform Defendant that she had a legal visit. CO Adrian attended the cell with three correctional officers because in transporting an inmate out of a RHU cell, the inmate must be strip searched and escorted by two correctional officers. In the case of this particular Defendant, she also must be videoed when leaving her cell.[2]

[2] The Defendant prior to the commencement of trial asked that the handheld video taken from May 14, 2015 (date of the incident) and May 26, 2015 (time of the oral allegation) be submitted into evidence; however, the Court ruled that the evidence was irrelevant with leave to reconsider depending on the Commonwealth's evidence presented at trial. Jury Trial, 10/21/2016, at 16-17, 20. Trial Counsel represented to the Court that he was provided with the handheld video from the day of the alleged incident. Id.

CO Adrian testified that on the date of this particular escort, Defendant told her she was going to fuck her up. Jury Trial, 10/21/2016, at 15. CO Adrian testified that she wrote the misconduct report for that statement that day. Id. at 55.

Captain Waltman of SCI Muncy testified that Frantz received an oral report from Defendant. Id. at 63. Frantz wrote a report to Waltman based upon Defendant's statement to him. Id. at 63. Waltman investigated Frantz's statement and watched the specific incident that was recorded on the facility's close circuit television. Id. at 64. He also reviewed the handheld video of Defendant from that day[3].

Commonwealth's Exhibit 2 was the video from the facility's close circuit television of the date and time of the incident. The parties stipulated to its authenticity. It depicts the events on the date of May 14, 2015, between 2:39 p.m. and 2:48 p.m. Id. at 65. In response to the Commonwealth's questions regarding the video, as to whether CO Adrian can be seen looking into Defendant's call, Waltman stated "No Ma'am". Id. at 68. The strip search is not recorded. Id.

Commonwealth's 2A was the handheld video from that date. Id. at 69. Waltman took statements from the three COs attending to Poole on the date in question in addition to viewing the videos. He determined that the allegations were unfounded. Id. at 71. It was Waltman's belief that any allegation that is determined by his investigation to be unfounded is *ipso facto* not made in good faith. Waltman does not make a separate good faith determination. Id. Waltman testified that he did

[3] Inmate Poole is on video camera restrictions, so any movement of Defendant outside her cell was required to be videorecorded. "So when they went up to her cell to conduct a strip search, before her—prior to removing her from the cell, a video is to be turned on and recording started." Jury Trial, 4/5/2016, at 64.

not interview the Defendant about the incident in conducting his investigation[4]. Id. at 72. He testified that "we do not need to interview the inmate…when the video clearly refutes the inmate's allegation". Id. at 77. He went on to explain further

"Unfounded means we are able to prove beyond a shadow of a doubt that the incident did not occur…Unsubstantiated report means we are unable to, through the course of an investigation, to determine whether the inmate's allegation actually occurred or did not occur. We are unable to prove either way, so we would go with unsubstantiated."

Id. at 80.

Matters Complained of on Appeal

1. Whether the jury verdict was against the weight of the evidence?

Appellant raised the weight of the evidence issue in post-sentence motions that were denied on March 1, 2017, therefore, the Court finds that Defendant raises it properly on direct appeal and addresses it here:

The finder of fact is the exclusive judge of the weight of the evidence as the fact finder is free to believe all, part, or none of the evidence presented and determines the credibility of the witnesses…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 [her] breath, temporarily, and causes [her] to almost fall from the bench, then it is truly shocking to the judicial conscience.

Appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim. Commonwealth v. Toritto, 67 A.3d 29, 35 (Pa. Super. 2013), appeal denied, 80 A.3d 777 (Pa. 2013) (citation and quotations marks omitted).

"[T]he trial court's denial of a motion for a new trial based on a weight of the evidence claim is the least assailable of its rulings." Commonwealth v. Weathers, 95 A.3d 908, 911 (Pa. Super. 2014), appeal denied, 106 A.3d 726 (Pa. 2015) (citation omitted).

[4] Commonwealth's Exhibit #3, Investigation Packet, 7/10/2015.

The Court found the jury's verdict to be in in full accord with the evidence as outlined above and as such any claim to the verdict being against the weight of evidence must fail.

2. Whether the evidence was sufficient to prove the following three elements beyond a reasonable doubt:

a. Knowingly
b. Intent
c. Law enforcement

The standard for sufficiency of the evidence is

whether, viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact finder to find every element of the crime beyond a reasonable doubt…the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Ratsamy, 934 A.2d 1233, 1236 n.2 (Pa. 2007).

The jury was given the following jury instruction in determining whether the evidence was sufficient:

To find the defendant guilty of this offense, you must find that the following elements have been proven beyond a reasonable doubt:

First, that the defendant gave the information alleged to Corporal Frantz , a law enforcement officer;

Second, that the information was false;

Third, that the defendant knew that the information was false; and

Fourth, that the defendant did so with intent to implicate SCI Muncy Corrections Officer Adrian that is, with intent to cause SCI Muncy Corrections Officer Adrian to become a suspect in an incident in violation of PREA.

Jury Trial, 4/5/2016, at 99-100.

The testimony established that the report was false, whether the Defendant knew the information was false was a determination for the jury to make and it did in the affirmative. Waltman testified that the video showed that 1) Defendant could not see CO Adrian from the toilet in her RHU cell. Id. at 78. and 2) CO Adrian is facing away from [Defendant's] cell in the video. Id. at 68. The video was shown to the jury. They were free to believe that Defendant knew and agreed with that description of events i.e. that Adrian was not looking at Defendant while she toileted, and if even if she had been the Defendant would be unable to view her doing so from that vantage point.

A person intends to implicate another when it is her conscious object or purpose to cause such implication. The testimony of CO Adrian and CO Frantz , if taken by the jury as true, are enough to find intent beyond a reasonable doubt. Defendant told CO Adrian she "was going fuck her up". Frantz testified that Defendant made a PREA allegation. The jury was made privy to the report and both Frantz and Waltman were cross examined on their investigative process. The jury was free to believe or disbelieve their testimony and come to the conclusion that the threat to "fuck [Adrian] up" was made good on by implicating Adrian in a PREA violation.

The Court believes that Defendant was able to form the necessary intent to implicate another as it found [related to Defendant's courtroom behavior]:

> that the Defendant has intentionally refused to cooperate with the Court. That she is intentionally refusing to answer the Court [when being questioned].

Jury Trial, 4/5/2016, at 89.

Regarding whether Frantz is a "law enforcement officer", in Commonwealth v. Dobbins, 934 A.2d 1170 (2007) the Supreme Court of Pennsylvania held that sheriff's deputies were not law enforcement officers, pursuant to the Wiretrap Act, because they lacked authority to conduct investigations or to make arrests for the predicate offenses of the act. The Prison Rape Elimination Act does not define "law enforcement officer". See 42 U.S. Code § 15609 – Definitions. It is the Court's belief that because correctional officers are given authority to conduct investigations and that a report to a prison PREA compliance manager, which could ultimately lead to a report to law enforcement authorities, would be included under the type of actions Section 4906 of the Crimes Code intends to make illegal. See Merlino v. Philadelphia Bd. of Pensions and Retirement, 916 A.2d 1231 (Pa. Cmwlth. Ct. 2007) (crime of making false statements to a federal agency was substantially similar to statement crimes of making false reports to law enforcement authorities, which were crimes listed in the city retirement code that warranted denial of police officer's application for retirement benefits).

3. Whether the Commonwealth is precluded from prosecuting this offense pursuant to the Prison Rape Elimination Act.

The Code of Federal Regulations provides that when inmates make a report of sexual abuse in good faith based upon a reasonable belief that the alleged conduct

occurred, that for the purpose of disciplinary action, such report shall not constitute falsely reporting an incident or lying. 28 CFR Part 115 § 115.78 (disciplinary sanctions for inmates). The converse of this must also be true, that when an inmate makes a report of sexual abuse not based on good faith, that the inmate can be disciplined, including criminally prosecuted.

4. Whether the Court erred in denying Defense Counsel's Motion for Mistrial.

No Motion for Mistrial was made by Defense Counsel so there would be nothing for the Court to review.

5. Whether the Sentence was excessive.

The maximum sentence Defendant could have received is a one to two year sentence. The standard guideline range suggests a minimum sentence of anywhere from one month to nine months. The Court sentenced the Defendant to a minimum of six months: the Court's sentence was within the guideline range. The appellate court may only vacate a sentence and remand for resentencing if it finds 1) that the court intended to sentence within the guidelines, but "applied the guidelines erroneously;" 2) a sentence was imposed within the guidelines "but the case involves circumstances where applications of the guidelines would be clearly unreasonable;" or 3) "the sentencing court sentenced outside the guidelines and the sentence is unreasonable." 42 Pa.C.S. § 9781(c). The Defendant did not plead with particularity why she felt that the sentence was excessive; however, the Court in making its decision on sentencing considers the least restrictive environment that will serve Defendant's rehabilitative needs. In this particular case, the Defendant was already confined to state prison.

Therefore, a two year maximum would need to be imposed to be a state prison sentence. The Court reasoned to give her any less than confinement in a state correctional institution would be inappropriate, as it would reward her behavior. Moreover, the sentence was ordered to run concurrent to any other state sentence that Defendant was serving so any claim of excess is patently frivolous.

The Court respectfully requests that its Judgement of Sentence in the above captioned matter be affirmed.

BY THE COURT,

DATE: _____ _____
Nancy L. Butts, P.J.

cc: District Attorney
Robert Cronin, Esq. Appellant's Counsel
Gary Weber, Esq.