

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-994-2017
 :
 CODY CHESTNUT, :
 :
 Defendant : Post-Sentencing Motion, Nunc Pro Tunc

OPINION AND ORDER

By Information filed on June 16, 2017, the defendant was charged with one count of aggravated assault, one count of strangulation, one count of unlawful restraint, one count of simple assault and one count of harassment. Defendant elected to proceed to a jury trial which was held on April 10 and April 11, 2018. Following deliberations, the jury convicted the defendant of Count 1, aggravated assault, a felony of the first degree and Count 4, simple assault, a misdemeanor of the second degree.

On June 18, 2018, the court sentenced the defendant on the aggravated assault conviction to a term of incarceration in a State Correctional Institution, the minimum of which was five (5) years and the maximum of which was twelve (12) years. All remaining counts were dismissed.

The defendant filed a Post-Sentence Motion on July 16, 2018. Argument on Defendant's motion was held on September 20, 2018. At the time of argument, the defendant amended his Post-Sentence Motion to include a Motion for Arrest of Judgment alleging that the verdict was against the weight of the evidence.

The defendant argues that he is entitled to a new trial because a juror, subsequent to the verdict, sent an email to the court indicating that she did not believe the

defendant to be guilty and asking if there was anything that could be done regarding such. The defendant further argues that there was insufficient evidence to convict him of aggravated or simple assault because there was an alternate explanation for the cause of the victim's injuries, the extent and severity of the victim's injuries was not serious and the juror's email to the court "caused him to question the sufficiency of the evidence at trial."

Dennis Chestnut, the defendant's father first testified on behalf of the Commonwealth. On March 22, 2017, the defendant called him and indicated that he was on his way to his father's house. The defendant and his father started smoking crack cocaine. The defendant told his father that he needed money. The defendant claimed that his father owed him money.

Soon thereafter, the defendant punched his father in the face. His father fell to the floor at which time the defendant continued to kick "the shit" out of his father. With his feet and knees, the defendant was striking his father while his father was on the ground.

The defendant's father tried to leave the barn where the incident occurred but the defendant drug him by his sweatshirt back into the barn. Defendant sat his father down on an old sofa.

As a result of being punched in his face and struck about his body, the defendant's father suffered serious injuries. He could not see out of his left eye, which was full of blood and completely swollen shut. He had a lot of pain in his back near his ribs. He was diagnosed with a broken optical orbit, broken ribs, lacerated liver and torn aortic valve.

At the time of the trial, the victim had two surgeries. Soon after the trial, the

victim was scheduled for his “final eye surgery.” As for his vision, he couldn’t focus, couldn’t tolerate bright light, couldn’t read, and had double vision. His eyelid did not shut completely. He couldn’t drive and couldn’t work. He was completely put “out of business.” He was unable to do any physical labor for six months, couldn’t sleep on his one side because of his broken ribs and still suffers from limited range of sight and double vision in his affected eye.

The Commonwealth also called Dianne Leonard, a trauma surgeon at Geisinger Medical Center at Danville. Upon presenting to the trauma bay, the victim had evidence of traumatic injuries around the face. He was found to have an injury “complex” that included multiple facial fractures around the left eye, a fracture of the orbit of the maxilla and cheekbone. He also had nasal bone fractures, two rib fractures, a liver laceration and a tear in his aorta.

Dr. Leonard concluded that the victim’s facial injuries were “certainly” consistent with the physical assault. Dr. Leonard could not conclude that the liver laceration or the torn aorta were a result of the assault. She did, however, note that the rib fractures were consistent with “blunt force trauma.”

Trooper Jonathan Thompson of the Pennsylvania State Police testified as well on behalf of the Commonwealth. He interviewed the defendant who admitted to striking and punching his father. The Commonwealth introduced various photographs of the victim while at the Geisinger Intensive Care Unit.

Jamie Moore also testified on behalf of the Commonwealth. On March 22,

2017, she drove the defendant to his father's house. Later that afternoon after she dropped the defendant off, she went back to the victim's residence. She observed that the victim had damage to his eye, his head was a little swollen on one side of his face, and his ribs were kind of red. He was also bleeding from his eyes, nose and a little bit by his mouth. Earlier that day when she first dropped Cody off at the victim's residence, she did not notice any injuries to the victim.

Patricia Barclay also testified on behalf of the Commonwealth. She and the victim had been living together for 17 years as "boyfriend/girlfriend."

On the morning of March 22, 2017, she and the victim woke up and she then went to work. At the time, the victim had no physical injuries whatsoever.

In the mid-afternoon on the 22nd of March, however, she was called back to the residence to take the victim to the hospital. When she got to the residence, the victim had blood on his face, he could not stand up on his own, and "he looked bad, like he definitely needed to go to the hospital." The whole side of his face was swollen and bloody.

She ended up driving the victim to Muncy Valley Hospital. After being initially assessed, the defendant was then transported by an emergency unit to Geisinger.

The defendant took the stand and testified on his own behalf. He admitted to striking his father multiple times with a closed fist, one time in the face and maybe three times to the body. He claimed, however, that it was in self-defense. The defendant also claimed that the victim was lying about the incident.

To bolster his testimony that the victim was lying, the defendant presented

reputation testimony from other witnesses that the victim had an untruthful reputation. They additionally testified that the victim had a reputation for being non-violent.

With respect to the defendant's first claim, it fails as a matter of law. A jury verdict may not be impeached by the subsequent testimony of a juror under the circumstances as alleged. "It is axiomatic that a jury verdict may not be overturned or impeached by evidence regarding the deliberative process." *Commonwealth v. Nypaver*, 69 A.3d 709, 718 (Pa. Super. 2013). The only exception to this no impeachment rule is when extraneous information, i.e., information that was not provided in open court or vocalized by the trial court via instructions, might have affected or prejudiced the jury in their deliberations. *Id.* at 718-19.

Juror No. 2 signed and submitted an Affidavit that she "felt manipulated into a guilty verdict." The email sent to the court indicated that she was having an extremely difficult time dealing with the trial, hasn't slept much and believed that there was not enough evidence to find the defendant guilty.

Pennsylvania law does not permit the impeachment of a verdict based upon such concerns. *Commonwealth v. Patrick*, 416 Pa. 437, 206 A.2d 295, 297 (1965)(juror affidavit that he had been coerced by his fellow jurors could not be used to invalidate the jury's verdict). Indeed, at the time of jury selection and during the court's opening and closing instructions to the jury, the court made it clear that jurors should not return a verdict solely for the purpose of returning a verdict.

With respect to the defendant's sufficiency claims, they are without merit.

Contrary to what Defendant claims, the testimony from Dr. Leonard supported the victim's facial injuries and rib injuries being caused by the assault by the defendant. Moreover, there was direct and circumstantial evidence to prove beyond any doubt that prior to the incident, the victim was not suffering from any facial or rib injuries but after the incident, he was suffering from serious injuries.

The defendant's argument that the extent and severity of the injuries was insufficient begs logic. The victim suffered multiple facial fractures necessitating at least three surgeries, was unable to work for at least six months and has vision loss. These types of injuries clearly constitute serious bodily injury.

Finally, the defendant argues that the juror's concerns "calls into question the sufficiency of the evidence." This argument is nothing more than a vague assertion with no legal authority and no logical basis.

The defendant's weight argument is based on a claim that the jury should have credited his testimony regarding self-defense and not credited the victim's testimony. The defendant submits that the weight of the evidence in light of the defendant's testimony, the victim's testimony, the testimony of the doctor and the other witnesses was clearly against the verdict.

It appears to the court, however, that the defendant misconstrues a weight of the evidence argument. Clearly, the victim testified that he was assaulted by the defendant. The Commonwealth introduced a video recording of the victim talking about the assault shortly after it occurred. Numerous photos were introduced depicting the victim's injuries.

As well, there was testimony and pictures concerning blood that was found in different areas of the barn where the assault occurred.

The defendant admitted that he “snapped” and hit the victim in the face multiple times. There were photographs of the defendant’s hands consistent with assaulting someone.

Dr. Leonard noted that “certainly” the facial injuries were consistent with a physical assault or blow to the head. Although she testified that the aortic tear was likely not a result of being hit around the face, she did testify that the liver injury and rib fractures could have come from blunt force trauma. The defendant admitted hitting his father in the ribs. While Dr. Leonard indicated that the facial injuries could be the result of blunt force trauma, there was no evidence whatsoever that the victim suffered blunt force trauma to the face prior to the incident.

“The weight of the evidence is exclusively for the finder of fact, who is free to believe all, none or some of the evidence and to determine the credibility of witnesses.” *Commonwealth v. Cramer*, 2018 PA Super 248, 2018 WL 4232479, *2 (September 6, 2018), (quoting *Commonwealth v. Talbert*, 129 A.3d 536, 545 (Pa. Super. 2015), *appeal denied*, 138 A.3d 4 (Pa. 2016)). “Resolving contradictory testimony and questions of credibility are matters for the factfinder.” *Id.* (quoting *Commonwealth v. Hopkins*, 747 A.2d 910, 917 (Pa. Super. 2000)).

A defendant will prevail on a challenge to the weight of evidence only when the evidence is so tenuous, vague and uncertain that the verdict shocks the conscious of the

court. *Cramer*, at *3; *Talbert*, 129 A.3d at 546.

The jury chose to disbelieve the defendant's narrative as to how the incident occurred. The jury chose to believe the victim's narrative with respect to the assault charges. While the defendant highlights evidence that may support his own narrative, the jury observed the victim and other witnesses who testified and rejected the defendant's self-defense claim with respect to the assault charges. In light of the other evidence in this case, including the medical testimony regarding the nature and extent of the victim's injuries and the defendant's own testimony admitting that he "snapped" and hit the victim in the face several times, the jury's decision to find the defendant guilty of the assault charges did not shock the conscience of the court.

ORDER

AND NOW, this ___ day of October 2018 following a hearing, argument and review of the trial transcript in this matter, the court **DENIES** Defendant's post-sentence motion.

Defendant has a right to appeal from this order. Any appeal must be filed within 30 days.

Defendant has the right to assistance of counsel in preparation of the appeal. If Defendant is indigent, Defendant may appeal *in forma pauperis* (without the paying the filing fees and costs associated with the appeal) and proceed with assigned counsel.

Defendant has a qualified right to bail under Rule 521(B). In other words, if Defendant's sentence includes imprisonment of less than 2 years, Defendant shall have the

same right to bail as before verdict, unless the judge modified the bail order after verdict or after sentencing. If Defendant's sentence includes imprisonment of 2 years or more, Defendant does not have the same right to bail as before verdict, but bail may be allowed in the discretion of the judge.

By The Court,

Marc F. Lovecchio, Judge

cc: District Attorney
William Miele, Esquire (PD)
Gary Weber, Esquire, Lycoming Reporter
Work File