

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA	: No. CR-478-2016
	:
vs.	:
	:
	: Post-Sentence Motion
JEFFREY HUNTER,	:
Defendant	:

OPINION AND ORDER

This Opinion and Order are being entered following a rollercoaster ride for the defendant in connection with these proceedings. Following a jury trial that took place on June 23, 2017, the defendant was found guilty of simple assault and harassment. He was sentenced to a 10-month to 24-month minus 1 day county term of incarceration.

On September 7, 2017, the defendant filed a Post-Sentence Motion. By Order filed November 22, 2017, that motion was denied. The defendant took an appeal to the Superior Court on December 15, 2017. On April 25, 2018, the appeal was dismissed due to appellate counsel's failure to file a brief.

On May 18, 2018, the defendant filed an uncounseled PCRA Petition. PCRA counsel was appointed on the defendant's behalf. On October 22, 2018, PCRA counsel filed an amended petition on behalf of the defendant. On October 24, 2018, the court granted the PCRA Petition which reinstated the defendant's appellate rights nunc pro tunc. The court also granted an oral request to allow the defendant to file supplemental Post-Sentence Motions.

On October 29, 2018, the defendant filed a Post-Sentence Motion for Relief

raising one issue: Whether the verdict was against the weight of the evidence. Argument on the defendant's Post-Sentence Motion was held on January 3, 2019.

During the defendant's argument on his Post-Sentence Motion for Relief filed on October 29, 2018, the defendant argued that the verdict was against the weight of the evidence "as no witness saw him hit the victim."

A motion for new trial on the grounds that the verdict is contrary to the weight of the evidence is addressed to the discretion of the trial court. *Commonwealth v. Widmer*, 744 A.2d 745, 751 (Pa. 2000).

A new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. A trial judge must do more than reassess the credibility of the witnesses and allege that he would not have assented to the verdict if he were a juror. Rather, the role of the trial judge is to determine that "notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the fact is to deny justice."

Commonwealth v. Weir, 2018 WL 6600226, *3 (Pa. Super. December 17, 2018)(citing *Widmer*, 744 A.2d at 752); see also *Commonwealth v. Soto*, 2018 WL 6816969, *11 (Pa. Super. December 28, 2018).

In other terms, the grant of a new trial on a weight claim is appropriate only when the verdict is so contrary to the evidence as to shock one's sense of justice.

Commonwealth v. Boyd, 73 A.3d 1269, 1274 (Pa. Super. 2013)(en banc).

A verdict is said to be so 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...."

Id. at 1274, 1275 (citing *Commonwealth v. Cruz*, 919 A.2d 279, 281-82 (Pa. Super. 2007)).

After a thorough review of the record, this court finds that the jury's verdict is not so contrary to the evidence as to make the award of a new trial imperative. Clearly, the jury was free to believe the testimony of the witnesses. As well, and contrary to what the defendant claims, it was not necessary that an individual actually see him strike the victim. Along with the defendant's admission that he saw an individual strike the victim as well as the circumstantial evidence implicating the defendant, the verdict was not so contrary as to shock this court's sense of justice.

In this case, all of the evidence was such to prove that a simple assault had occurred and that the defendant committed it.

Tonya Coleman first testified on behalf of the Commonwealth. She testified that on the evening of November 27, 2015, she was at the Shamrock Bar in Williamsport and had been playing darts with the defendant. (Transcript, 6/23/17, at 13). She previously knew the defendant although the extent of the relationship was her saying hi to him if she had seen him out. (Transcript, 6/23/17, at 14, 15).

At approximately 7:00 or 8:00 p.m., the dart game had ended. Ms. Coleman had won the game, the defendant left the bar out of the front door and, about five minutes later, Ms. Coleman left the bar out of the back door. (Transcript, 6/23/17, at 14, 15).

There is a parking lot outside of the back of the Shamrock Bar. Ms. Coleman started walking on the inside sidewalk of the parking lot to the area where the sidewalk met with the roadway near a dumpster. (Transcript, 6/23/17, at 17, 18). Ms. Coleman's intent was to meet her friend, Trina Bogart, for the purpose of giving her "her fried mushrooms." (Transcript, 6/23/17, at 18). As Ms. Coleman reached the dumpster, she saw Ms. Bogart

approaching her. (Transcript, 6/23/17, at 18). She “happened to glance” and she saw the defendant walking up on the other side of the sidewalk across the street toward the Shamrock and her. (Transcript, 6/23/17, at 19).

As she saw the defendant walking toward her, she looked at Ms. Bogart and said “watch.” She was concerned that the defendant was “coming up” and wasn’t sure what was going to happen. (Transcript, 6/23/17, at 20).

While standing by the dumpster, Ms. Coleman felt pain in the right side of her face and the next thing she remembered was waking up on the ground covered in blood. (Transcript, 6/23/17, at 22).

The last people she saw were “just Trina Bogart and...Jeffrey Hunter.” (Transcript, 6/23/17, at 22).

Ms. Coleman testified that as a result of being struck, she had to go to the hospital for treatment of serious injuries including but not limited to a broken jaw. (Transcript, 6/23/17, at 22, 23). Among other injuries, her face was bruised, she had scarring on her chin, and bleeding from her ear. (Transcript, 6/23/17, at 23, 24).

Ms. Coleman clarified on cross-examination that she saw Defendant walking up the sidewalk across the street. (Transcript, 6/23/17, at 28). She then handed Ms. Bogart the mushrooms; Ms. Bogart turned around and started walking away. (Transcript, 6/23/17, at 29). She was not looking at the defendant but was aware that he was coming across the sidewalk to “our side.” (Transcript, 6/23/17, at 29). She did not see who actually struck her but the only individuals near her were Ms. Bogart and the defendant. (Transcript, 6/23/17, at 29). The defendant was approximately 10 to 15 feet away from her when she last saw him

and he was closer to her than Ms. Bogart. (Transcript, 6/23/17, at 31).

Trina Bogart testified on behalf of the Commonwealth. She too was acquainted with the defendant. They had previously met at the Shamrock Bar, became friends and “hung out.” (Transcript, 6/23/17, at 34).

On the date of the incident, November 27, 2015, the defendant passed “right next” to her approaching Ms. Coleman. (Transcript, 6/23/17, at 35, 36). Ms. Coleman gave the fried mushrooms to Ms. Bogart who then started to leave. Ms. Coleman “stood behind the dumpster.” Ms. Coleman told Ms. Bogart to “watch.” Ms. Bogart was in the middle of looking back behind her talking to Ms. Coleman. Ms. Bogart saw the defendant crossing toward Ms. Coleman and then heard a thud. She turned around further and saw Ms. Coleman on the ground. She also saw the defendant walking away from Ms. Coleman “toward the opposite side of the Shamrock.” (Transcript, 6/23/17, at 37).

At this time, she heard the defendant say, “That’s for telling me to shut up two weeks ago. And you’re lucky it was only one hit.” (Transcript, 6/23/17, at 37). The defendant was saying this directly to Ms. Coleman. (Transcript, 6/23/17, at 37). After Ms. Bogart heard the thud and turned around, the defendant was only four or five feet away. There was no one else in the vicinity. (Transcript, 6/23/17, at 38-39).

Ms. Bogart could see that Ms. Coleman was obviously injured. She was bleeding from her ear and had a gash on her nose and under her chin. Ms. Bogart also helped care for Ms. Coleman while her jaw was wired shut. The whole right side of Ms. Coleman’s face was puffy and bruised. (Transcript, 6/23/17, at 40-41).

The defendant also took the stand to testify. He indicated that after he left the

Shamrock, he was walking down Edwin Street, the street behind the Shamrock, heading toward Walnut Street. (Transcript, 6/23/17, at 66). He saw “a guy crossing the street...right up in this area where Tonya was standing.” (Transcript, 6/23/17, at 67, 68). As the defendant was walking, he “happened to see somebody” who walked behind Ms. Coleman and then saw Ms. Coleman “lying on the ground behind the dumpster.” (Transcript, 6/23/17, at 68). The defendant denied punching Ms. Coleman in the face. (Transcript, 6/23//17, at 69). According to the defendant, he saw Ms. Coleman fall but did not see her get punched. (Transcript, 6/23/17, at 68). However, on redirect examination, when asked if he turned around and saw Ms. Coleman on the ground, the defendant stated “That’s – that’s when I was coming out of the alley after the person hit her, she was falling to the ground. That’s the last I seen of her.” (Transcript, 6/23/17, at 76).

Contrary to what the defendant argues, crimes can be proved by wholly circumstantial evidence if the circumstantial evidence is sufficient to convince the trier of fact that the crime occurred beyond a reasonable doubt. *Commonwealth v. Cooney*, 431 Pa. 153, 156, 244 A.2d 651, 652 (1968) (“Proof by eyewitnesses...of the commission by the defendant of the crime charged is not necessary....It is clearly settled that a man may be convicted on circumstantial evidence alone, and a criminal intent may be inferred by the jury from the facts and circumstances which are of such a nature as to prove defendant’s guilt beyond a reasonable doubt); *see also Commonwealth v Keaton*, 729 A.2d 529, 541-542 (Pa. 1999).

From all of the facts and circumstances of this case, the jury could reasonably find that Ms. Coleman was struck in the face and that the defendant was the individual who

struck her. The jury was free to accept the credibility of Ms. Coleman and Ms. Bogart's testimony and reject the credibility of the defendant's testimony. The jury's verdict did not shock the court sense of justice or even cause it to pause.

Accordingly, the defendant's claim that the verdict was against the weight of the evidence is without merit.

ORDER

AND NOW, this ____ day of February 2019, following a hearing and argument, the defendant's Motion for Post-Sentence Relief filed on October 29, 2018 is **DENIED**.

The court hereby advises the defendant that:

1. He has a right to appeal. An appeal is taken by filing a notice of appeal with the Lycoming County Clerk of Courts within 30 days after entry of this order. See Pa.R.App. P. 902; Pa.R.App.P. 903; Pa.R.App.P. 904.
2. He has the right to assistance of counsel in the preparation of the appeal.
3. He has the right, if he is indigent, to appeal *in forma pauperis* (without the payment of costs and fees) and to proceed with assigned counsel as provided in Rule 122 of the Pennsylvania Rules of Criminal Procedure.
4. He has a qualified right to bail under Rule 521(B) of the Pennsylvania Rules of Criminal Procedure. When the sentence imposed includes imprisonment of less than 2 years, the defendant has the same right to bail as before verdict unless the judge modified the bail order. When the sentence imposed includes imprisonment of 2 years or

more, the defendant does not have the same right to bail as before verdict, but bail may be allowed in the discretion of the judge. In either scenario, the defendant's release on bail is conditioned on the defendant filing an appeal within 30 days after the entry of this order.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (DA)
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