

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-478-2016  
vs. :  
JEFFREY HUNTER, :  
Appellant : 1925(a) Opinion

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

This opinion is written in support of this court's judgment of sentence dated September 6, 2017 and docketed September 13, 2017. Appellant's direct appeal rights were reinstated nunc pro tunc through PCRA proceedings after his appeal was dismissed due to counsel's failure to file an appellate brief.

On December 23, 2015, the police filed a criminal complaint against Appellant, charging him with simple assault and harassment. Following a jury trial that took place on June 23, 2017, Appellant was found guilty of both charges. On September 6, 2017, the court sentenced Appellant to a 10-month to 24-month minus 1 day county term of incarceration.

On September 7, 2017, through newly retained counsel, Appellant filed a post sentence motion, which included a claim that the evidence was insufficient to support the verdict. The court denied this post sentence motion on November 22, 2017.

Appellant filed a notice of appeal on December 15, 2017, but his appeal was dismissed on April 25, 2018 due to appellate counsel's failure to file a brief.

Through PCRA proceedings, the court permitted Appellant to file a supplemental post sentence motion nunc pro tunc and reinstated Appellant's direct appeal rights nunc pro tunc. In his supplemental post sentence motion, Appellant asserted that the verdict was against the weight of the evidence. The court denied this post sentence motion on February 7, 2019.

Appellant filed a timely notice of appeal. The court directed Appellant, through counsel, to file a concise statement of errors on appeal. Appellant's counsel filed a statement, which indicated that she intended to file an *Anders/McClendon* brief. While such is clearly permitted by the Rules of Appellate Procedure, see Pa. R.A.P. 1925(c)(4), it does not notify the court of the issues which Appellant seeks to assert on appeal; it only notifies the court of counsel's belief that there are no non-frivolous issues to be raised. Nevertheless, based on statements made on the record by either Appellant or his counsel that Appellant does not believe he could lawfully be convicted when no one saw him strike the victim, the court will address the sufficiency and the weight of the evidence.

In reviewing the sufficiency of the evidence, [the court] must determine whether the evidence admitted at trial and all reasonable inferences drawn therefrom, viewed in the light most favorable to the Commonwealth as verdict winner, were sufficient to prove every element of the offense beyond a reasonable doubt. "[T]he facts and circumstances established by the Commonwealth need not preclude every possibility of innocence." It is within the province of the fact-finder to determine the weight to be accorded to each witness's testimony and to believe all, part, or none of the evidence. The Commonwealth may sustain its burden of proving every element of the crime by means of wholly circumstantial evidence.

*Commonwealth v. Russell*, 2019 PA Super 143 at 8, 2019 WL 1967823 at \*4 (May 3, 2019)(citations omitted).

An individual is guilty of simple assault if he or she attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another person. 18 Pa. C.S. §2701(a)(1). Bodily injury means impairment of physical condition or substantial pain. 18 Pa. C.S. §2301.

Tonya Coleman testified that on the evening of November 27, 2015, she was at the Shamrock bar in Williamsport and had been playing darts with Appellant. (Transcript, June 23, 2017, at 13). She previously knew Appellant although the extent of the relationship was her saying hi to him if she had seen him out. (Transcript, at 14, 15).

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

There is a parking lot outside of the back of the Shamrock. 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, at 17, 18).

Ms. Coleman's intent was to meet her friend, Trina Bogart, for the purpose of giving her "her fried mushrooms." (Transcript, at 18). As Ms. Coleman reached the dumpster, she saw Ms. Bogart approaching her. (Transcript, at 18). She "happened to glance" and saw Appellant walking up on the other side of the sidewalk across the street towards the Shamrock and her. (Transcript, at 9).

As she saw Appellant walking toward her, she looked at Ms. Bogart and said "watch." She was concerned that he was "coming up" and wasn't sure what was going to happen. (Transcript, 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, at 22).

The last people she saw were “just Trina Bogart and...Jeffrey Hunter.”

(Transcript, 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, at 22, 23). Among other injuries, her face was bruised, she had scarring on her chin, and bleeding from her ear. (Transcript, at 23, 24).

On cross-examination, Ms. Coleman clarified the incident involving Appellant. Sequentially, she saw him walking up the sidewalk across the street. (Transcript, at 28). She then handed Ms. Bogart the mushrooms; Ms. Bogart turned around and started walking away. (Transcript, at 29). She was not looking at Appellant but was aware that he was coming across the sidewalk to “our side.” (Transcript, at 29). She did not see who actually struck her but the only individuals near her were Ms. Bogart and Appellant. (Transcript, at 29). Appellant was approximately 10 to 15 feet away from her when she last saw him and was closer to her than Ms. Bogart. (Transcript, at 30, 31).

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

On the date of the incident, November 27, 2015, Appellant passed “right next” to her approaching Ms. Coleman (Transcript, 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 Appellant crossing toward Ms. Coleman and then heard a thud. She turned around and saw Ms. Coleman on the ground. She also saw Appellant walking away from Ms. Coleman “towards the opposite side of the Shamrock.” (Transcript, at 37).

At this time, she heard Appellant say, “That’s for telling me to shut up two weeks ago. And you’re lucky it was only one hit.” (Transcript, at 37). Appellant was saying this directly to Ms. Coleman. (Transcript, at 37).

After Ms. Bogart heard the thud and turned around, Appellant was only four or five feet away. There was no one else in the vicinity. (Transcript, 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. As well, the right side of her face was puffy and bruised. (Transcript, at 40-41).

The testimony of Ms. Coleman and Ms. Bogart was sufficient to prove that Appellant committed simple assault. Appellant was the only other individual in the vicinity. Appellant approached Ms. Coleman, she was struck, she suffered several injuries including a broken jaw, Appellant walked away and said, “That’s for telling me to shut up two weeks ago and you’re lucky it was only one hit.” Although Appellant denied punching Ms. Coleman and claimed that he saw another individual approaching her, the jury was not required to believe Appellant’s testimony.

Appellant has not and cannot cite to any law that requires an eyewitness to an

event. In fact, the law is well-settled to the contrary. All crimes can be proven 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 or direct evidence of the corpus delicti or 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.”).

During Appellant’s argument on his Post-Sentence Motion for Relief filed on October 29, 2018, Appellant 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 facts is to deny justice.”

*Commonwealth v. Weir*, 201 A.3d 163, 167-168 (Pa. Super. 2018)(citing *Widmer*, 744 A.2d at 752); see also *Commonwealth v. Soto*, 202 A.3d 80, 97 (Pa. Super. 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 found that the jury's verdict was 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 Ms. Coleman and Ms. Bogart, and reject the testimony of Appellant. As well, and contrary to what the Appellant claimed, it was not necessary that an individual actually see him strike the victim. In this case, the evidence established that a simple assault had occurred and that Appellant committed it. The jury's verdict finding Appellant guilty of simple assault was not shocking or unexpected. Therefore, the verdict was not against the weight of the evidence.

DATE: \_\_\_\_\_

By The Court,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: District Attorney  
Trisha Jasper, Esquire  
Work file  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)