

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE INTEREST OF: E.D.P., a minor : IN THE SUPERIOR COURT OF
: PENNSYLVANIA
:
: No. 1262 MDA 2012

Appeal from the Dispositional Order of March 30,
2012, in the Court of Common Pleas of Dauphin
County, Juvenile Division, at No. CP-22-JV-0000363-
2011.

BEFORE: MUNDY, OLSON and STRASSBURGER,* JJ.

MEMORANDUM BY OLSON, J.:

Filed: March 12, 2013

Appellant, E.D.P., appeals from the order of disposition entered on March 30, 2012, as made final by the denial of Appellant's post-dispositional motion on July 2, 2012. We affirm.

The juvenile court has provided us with a thorough and well-written summary of the underlying facts and procedural posture. As the juvenile court explained:

This matter involves a robbery that occurred on February 25, 2012 near a McDonald's restaurant on Division Street in Harrisburg, Pennsylvania. The victim in this matter, [named "Terrance"], walked to McDonald's to get some food for his mother. . . . Terrance's mother gave him some money for the food and her cell phone. At approximately 3:30 p.m.[,] Terrance walked into McDonald's and saw several people [whom] he knew. Terrance identified one individual as Pedro [] and two others as Shaquan and Jordan. During the [adjudicatory] hearing, surveillance video from McDonald's on February 25, 2012 was presented to Terrance for him to identify the individuals he claimed [he saw] in McDonald's that day. Terrance testified that he saw Pedro and Shaquan in the surveillance video.

*Retired Senior Judge assigned to the Superior Court.

Additionally, Terrance identified [Appellant] in the McDonald's surveillance video as well.

After Terrance received his order of food at McDonald's[,] he called his mother to make sure he had everything she ordered . . . and then proceeded to leave McDonald's. As Terrance was walking home, he noticed that [Pedro, Appellant, and two other people] were following him. . . . As Terrance was approaching his parents' [Waldo Street] house, [he saw Appellant put on a black ski mask. Immediately afterwards,] one of the [four] boys . . . punched Terrance in the back of the head[, causing Terrance] to fall to the ground. When Terrance was on the ground[, the four boys started to go through his pockets and [Appellant] punched Terrance in the right eye[. After Terrance was punched the second time,] Pedro said "[t]hat's it. We got everything. Let's go." . . . Thereafter, the four boys ran away. . . .

[In total,] the four boys took [Terrance's] mother's cell phone and approximately \$2.00. . . . Terrance was able to positively identify Pedro and [Appellant] as two of his assailants because he [knew Pedro] and [because he] saw [Appellant's face] before [Appellant put on the] ski mask. . . .

After the robbery, Terrance got up from the ground, went into his house and told his mother what happened. Terrance's mother then called the police.

Officer Allison Shuff, a patrol officer in Harrisburg, was called to the [particular] block of Waldo Street [to respond to the robbery]. When Officer Shuff arrived at Terrance's house, she observed that Terrance's right eye was nearly swollen shut. After taking the initial report from Terrance, Officer Shuff took Terrance to McDonald's to review the surveillance video[. During this review,] Terrance identified [both] Pedro and [Appellant as his attackers]. Thereafter, Officer Shuff returned to her car and parked on Jefferson and Radnor streets and started to write her report of the incident. As she started to write [her] report[, she saw Pedro[, Appellant, and two] other boys walk in front of her vehicle. She then alerted other patrol units in the area that

she was going to stop [the four] boys. Officer Shuff was able to stop [the four] boys at Jefferson and Lena [Streets].

Detective Iachini . . . subsequently arrived at the scene where the four boys were stopped and Officer Shuff directed him to retrieve Terrance from his house to come and identify the boys that Officer Shuff had stopped. When [Detective] Iachini brought Terrance to the scene, Terrance positively identified Pedro and [Appellant] as two of the boys that [had] robbed him. When Officer Shuff conducted a search of Pedro and [Appellant,] she recovered ski masks from both of their pockets.

After the search, [Detective] Iachini radioed Officer Shuff that Terrance had positively identified Pedro and [Appellant]. Pedro was [taken into] custody and placed in the back of [Officer Shuff's police] car without incident. When Officer Shuff and another officer went to take [Appellant] into custody[, Appellant] started to cry and flail his arms. [Appellant also] pushed one of the officers and refused to put his hands behind his back. Officer Shuff and the other officer had to force [Appellant] to the ground to restrain him[.]

When the robbery occurred on February 25, 2012, [Appellant] was being electronically monitored for another offense. Kelly Peterson, a program director [of] the Abraxas Harrisburg Community Based Programs, was responsible for overseeing [the] electronic monitoring of [Appellant]. Once Ms. Peterson was alerted [to] this incident[,] she printed out [Appellant's] location during the time of the robbery. At the [adjudicatory] hearing, Ms. Peterson testified that [Appellant] was present at [the] McDonald's . . . [from] approximately 3:00 p.m. to 3:30 p.m. [on February 25, 2012. T]he electronic monitoring data indicated that [Appellant] proceeded down Waldo Street at approximately 3:30 p.m. [and stayed on Waldo Street for approximately five minutes. The robbery occurred around 3:30 p.m. on Waldo Street].

. . .

On March 30, 2012[, following an adjudicatory hearing, Appellant] was adjudicated delinquent [for acts constituting]

robbery, conspiracy[,] and resisting arrest.^[1] Disposition of [Appellant] was conducted immediately after [Appellant's] adjudication hearing. As part of [the order of disposition, Appellant's] probation was revoked and he was found to be in need of treatment, rehabilitation[,] and supervision. [Appellant] was committed to ARC Lancaster, effective April 2, 2012[.] . . .

[Following the *nunc pro tunc* restoration of Appellant's right to file a post-dispositional motion, Appellant filed a timely post-dispositional motion and claimed that his adjudication was against the weight of the evidence. The juvenile court denied Appellant's] motion on July 2, 2012. [Appellant] then filed a [timely notice of appeal on] July 7, 2012.

Juvenile Court Opinion, 8/8/12, at 1-4 (internal citations and footnotes omitted).

Appellant raises one claim on appeal:

Whether the juvenile court abused its discretion in denying Appellant's post-dispositional motion because the adjudication was so contrary to the weight of the evidence as to shock one's sense of justice where the victim testified that he was not able to get a good look at any of his attackers, and where the victim was unable to identify who actually attacked him?

Appellant's Brief at 4.²

As our Supreme Court has explained:

a verdict is against the weight of the evidence only when [it] is so contrary to the evidence as to shock one's sense of justice. It is well established that a weight of the evidence claim is addressed to the discretion of the trial court. A new

¹ 18 Pa.C.S.A. §§ 3701(a)(1)(ii), 903(a), and 5104, respectively.

² The juvenile court ordered Appellant to file a concise statement of errors complained of on appeal, pursuant to Pennsylvania Rule of Appellate Procedure 1925(b). Appellant complied and preserved the claim he currently raises on appeal.

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. Rather, the role of the trial court is to determine that notwithstanding all the evidence, 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. A motion for a new trial on the grounds that the verdict is contrary to the weight of the evidence concedes that there is sufficient evidence to sustain the verdict; thus the trial court is under no obligation to view the evidence in the light most favorable to the verdict winner.

Significantly, in a challenge to the weight of the evidence, the function of an appellate court on appeal is to review the trial court's exercise of discretion based upon a review of the record, rather than to consider *de novo* the underlying question of the weight of the evidence. In determining whether this standard has been met, appellate review is limited to whether the trial judge's discretion was properly exercised, and relief will only be granted where the facts and inferences of record disclose a palpable abuse of discretion. It is for this reason that the 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. Rivera, 983 A.2d 1211, 1225 (Pa. 2009) (internal quotations and citations omitted). Further, "the credibility of witnesses and weight of evidence are determinations that lie solely with the trier of fact. The trier of fact is free to believe all, part or none of the evidence."

Commonwealth v. Williams, 854 A.2d 440, 445 (Pa. 2004) (internal citations omitted).

Here, Appellant argues that his adjudication was against the weight of the evidence, as he "was not sufficiently identified as a member of the group

[that] robbed" Terrance. Appellant's Brief at 12. The juvenile court rejected this contention, reasoning:

All of the testimony and evidence presented [by the Commonwealth] was credible [and supported the juvenile court's] finding that [Appellant] was delinquent. [The juvenile court] found Terrance's testimony to be very credible because he clearly identified Pedro and [Appellant] as two of the four boys that followed him after leaving McDonald's on February 25, 2012. Terrance [testified] that he saw [Appellant] following him and as he [neared] his house[,] he saw [Appellant] put a ski mask on and walk behind him. While it was not possible for Terrance to see who it was that punched him in the back of the head, Terrance testified that he was able to positively identify [Appellant] as the boy that punched him in the right eye. Whether [Appellant] was the boy that punched Terrance in the back of the head is irrelevant in determining [Appellant's delinquency, as Terrance] ultimately identified [Appellant] as [the] attacker who punched him in the right eye during the robbery. . . .

Further evidence supported Terrance's testimony[,] as the McDonald's surveillance video showed that [Appellant] was present at McDonald's when Terrance was there. [Moreover, when Appellant] was stopped by Officer Shuff, [the officer] found a ski mask on [Appellant's] person[, thus corroborating] Terrance's testimony that [Appellant] was wearing a ski mask [when he committed the robbery]. In addition to all of this corroborating evidence, the location data collected from [Appellant's] electronic monitor indisputably placed [Appellant] at the scene of the robbery on Waldo Street.

Juvenile Court Opinion, 8/8/12, at 5-6.

The record thoroughly supports the juvenile court's factual conclusions and determinations. Certainly, the evidence connecting Appellant to the robbery in this case was overwhelming. We, therefore, conclude that the

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juvenile court did not abuse its discretion when it rejected Appellant's weight of the evidence claim and that Appellant's claim on appeal fails.

Order of disposition affirmed.