

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
DAVID COIT,		
Appellant		No. 1936 EDA 2011

Appeal from the Judgment of Sentence June 28, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0005384-2010

BEFORE: STEVENS, P.J., GANTMAN, J., and LAZARUS, J.

MEMORANDUM BY STEVENS, P.J.

Filed: March 12, 2013

This is an appeal from the judgment of sentence entered in the Court of Common Pleas of Philadelphia County following Appellant's conviction on the charges of aggravated assault and simple assault.¹ Appellant presents challenges to the sufficiency and weight of the evidence supporting his convictions. We affirm.

The relevant facts and procedural history are as follows: Appellant was arrested and, on March 21, 2011, represented by counsel, he, along with his co-defendant, Christina Walton, proceeded to a non-jury trial. At trial, Ronald Hernandez testified that he had a romantic relationship with Ms. Walton, and at some point during the relationship, he admitted to Appellant

¹ 18 Pa.C.S.A. §§ 2702(a)(1) and 2701(a)(1), respectively.

that he loved Ms. Walton. N.T. 3/21/11 at 20-25. In response, Appellant became visibly angry, apparently since he, too, had a relationship with Ms. Walton. N.T. 3/21/11 at 25. Soon after Valentine's Day in 2010, Mr. Hernandez and Ms. Walton's romantic relationship ended; however, on March 1, 2010, Ms. Walton called Mr. Hernandez, asking for his assistance because Appellant had "beat her and put her on the street." N.T. 3/21/11 at 23-25. Mr. Hernandez felt bad for Ms. Walton, and, therefore, they arranged to meet at Hoagie City. N.T. 3/21/11 at 25.

Within fifteen minutes of receiving the phone call, Mr. Hernandez walked into Hoagie City. N.T. 3/21/11 at 25-27. Ms. Walton was standing at the back of the hoagie store, looking scared. N.T. 3/21/11 at 28-29. Mr. Hernandez gave her some money and asked her to leave the hoagie store with him; however, she refused. N.T. 3/21/11 at 30-32. Ms. Walton moved away from Mr. Hernandez; however, he grabbed her hand and tried to pull her towards him. N.T. 3/21/11 at 32, 65, 67. Suddenly, Appellant, who was wearing a hoodie and sunglasses, rushed towards Mr. Hernandez, striking him in the face. N.T. 3/21/11 at 37. Appellant put Mr. Hernandez into "a bear hug" and repeatedly slammed his face into the ground and Ms. Walton hit and kicked Mr. Hernandez in the face. N.T. 3/21/11 at 39-43. Despite being "curled in a ball," Appellant continued his attack until Mr. Hernandez "blacked out" and awoke in a hospital bed. N.T. 3/21/11 at 41-43. As a result of the beating, Mr. Hernandez was in a neck brace, suffered a swollen

face, and received stitches to a wound on his forearm. N.T. 3/21/11 at 46-48. Although he did not remember being stabbed during the attack, Mr. Hernandez also suffered a stab wound to the left side of his chest. N.T. 3/21/11 at 48. Mr. Hernandez denied that he had any weapons on his person when he entered Hoagie City. N.T. 3/21/11 at 48.

On cross-examination, Mr. Hernandez admitted that he had consumed alcohol before going into Hoagie City and, during the time in question, he used PCP "with some regularity." N.T. 3/21/11 at 54-57. Mr. Hernandez denied that he beat Ms. Walton while they were dating or any time thereafter. N.T. 3/21/11 at 51-52, 75-76. He further denied that he was attempting to blackmail Ms. Walton with a romantically provocative picture of her in a negligee. N.T. 3/21/11 at 50-54, 61-62. Mr. Hernandez admitted that, prior to Appellant attacking him, he had grabbed Ms. Walton's hand, and she pulled it away. N.T. 3/21/11 at 67-68. However, he specifically denied striking Ms. Walton and he indicated he let go of her hand when Appellant told him to do so. N.T. 3/21/11 at 68, 89.

Police Officer Roberto Luciano testified he was on patrol on March 1, 2010, when a call came in about a possible robbery in progress at Hoagie City. N.T. 3/21/11 at 107. Within fifteen minutes, he arrived at Hoagie City and someone approached him outside to report that a man was on the ground inside of the store. N.T. 3/21/11 at 110. Officer Luciano went inside and discovered Mr. Hernandez lying face-down and moaning with blood all

around him. N.T. 3/21/11 at 111. Officer Luciano leaned down and asked Mr. Hernandez who had hurt him, and Mr. Hernandez provided Officer Luciano with Appellant's and Ms. Walton's names. N.T. 3/21/11 at 112-113.

Police Officer Brian Waters testified that, on March 1, 2010, as part of the investigation, he went to an address where the police believed Appellant would be staying. N.T. 3/21/11 at 117. Appellant was not at home; however, Appellant's son, who was at the home, called Appellant and, within five minutes, Appellant, who was "covered in blood," arrived at the house. N.T. 3/21/11 at 117-119. Officer Waters arrested Appellant and seized \$227, as well as a razor blade, from his pants. N.T. 3/21/11 at 119. The police discovered in Appellant's van a blue utility knife, which had dried blood on it, and a black jacket, which was covered in blood. N.T. 3/21/11 at 119, 128-131. Aside from a cut to his lip, Officer Waters did not observe any injury to Appellant. N.T. 3/21/11 at 121-125.

At this point, the parties stipulated that, at approximately 8:17 p.m., on March 1, 2010, the police apprehended Ms. Walton approximately one block from Hoagie City, and she had a black eye. N.T. 3/21/11 at 132.

Police Officer Ynez Martinez testified that, on March 1, 2010, he was working at the window of the 25th Police District in Philadelphia when Appellant, who was covered in blood, appeared at the window. N.T. 3/21/11 at 133-134. Officer Martinez asked Appellant what happened and Appellant told him he had gotten into a physical altercation with a man at Hoagie City.

N.T. 3/21/11 at 134-135. Officer Martinez described Appellant as "agitated" with a cut lip, bleeding nose, and cuts on his hands. N.T. 3/21/11 at 135, 139-140. Officer Martinez asked Appellant why he had been fighting, and Appellant said he "was defending [his] girlfriend." N.T. 3/21/11 at 136. Officer Martinez asked Appellant to wait until he could speak to a detective; however, Appellant left, indicating his son was calling him. N.T. 3/21/11 at 136.

At this point, the parties stipulated that, on March 1, 2010, Mr. Hernandez, who was under the influence of alcohol upon his arrival at the hospital, suffered a one-centimeter stab wound to his left chest, a one-centimeter stab wound to his left lower back, a six-centimeter superficial wound to his left forearm, a laceration to his right temple, and a laceration above his lip.² N.T. 3/21/11 at 143-144.

At the conclusion of all testimony, the trial court convicted Appellant on one count of aggravated assault and one count of simple assault,³ and on June 28, 2011, the trial court sentenced Appellant to an aggregate of seven years to fourteen years in prison, to be followed by three years of probation. Appellant filed a timely post-sentence motion contending, *inter alia*, the

² Appellant and Ms. Walton waived their right to testify. N.T. 3/21/11 at 149-153.

³ The trial court acquitted Appellant on remaining charges, including criminal conspiracy, possessing an instrument of crime, and recklessly endangering another person. Additionally, the trial court found Appellant's co-defendant, Ms. Walton, not guilty on all charges.

verdict was against the weight of the evidence, and the trial court denied the motion. This timely appeal followed, and all Pa.R.A.P. 1925 requirements have been met.

Appellant's first contention is the evidence is insufficient to sustain his convictions for aggravated assault and simple assault. Specifically, he alleges "[i]t is clear from the testimony in the trial record that [Appellant] did not commit the criminal offenses [since]...his use of force against [Mr.] Hernandez was justifiable to protect, not himself, but Christina Walton." Appellant's Brief at 11.

In reviewing the sufficiency of the evidence, we view all the evidence admitted at trial in the light most favorable to the Commonwealth, as verdict winner, to see whether there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. ***Commonwealth v. Clark***, 746 A.2d 1128 (Pa.Super. 2000) (*en banc*). "This standard is equally applicable to cases where the evidence is circumstantial rather than direct so long as the combination of the evidence links the accused to the crime beyond a reasonable doubt." ***Commonwealth v. Sanders***, 627 A.2d 183, 185 (Pa.Super. 1993) (citation omitted). Although a conviction must be based on "more than mere suspicion or conjecture, the Commonwealth need not establish guilt to a mathematical certainty." ***Commonwealth v. Badman***, 580 A.2d 1367, 1372 (Pa.Super. 1990) (citation omitted). "[T]he trier of fact while passing

upon the credibility of witnesses and the weight of the evidence is free to believe all, part, or none of the evidence." *Commonwealth v. McClendon*, 874 A.2d 1223, 1229 (Pa.Super. 2005) (quotations and citation omitted).

18 Pa.C.S.A. § 2702 provides, in relevant part, the following:

§ 2702. Aggravated assault

(a) Offense defined.-A person is guilty of aggravated assault if he:

(1) attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life[.]

18 Pa.C.S.A. § 2702(a)(1) (bold in original).

"Serious bodily injury" is defined as "bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." 18 Pa.C.S.A. § 2301. If a victim does not suffer actual "serious bodily injury," an appellant may be convicted of aggravated assault where he "attempted to cause serious bodily injury." 18 Pa.C.S.A. § 2702(a)(1). When premised upon such an attempt, a conviction for aggravated assault requires proof of (1) specific intent demonstrating that it was the appellant's "conscious object to engage in conduct of that nature or to cause such a result," and (2) acts which constitute "a substantial step toward perpetrating a serious bodily injury upon another." *Commonwealth v. Gray*, 867 A.2d 560, 567 (Pa.Super. 2005). The intent to cause serious bodily injury may be proven by direct or circumstantial evidence and be inferred from the use of a

deadly weapon⁴ on a vital part of the body. *See Commonwealth v. Hall*, 574 Pa. 233, 830 A.2d 537 (2003); *Commonwealth v. Nichols*, 692 A.2d 181 (Pa.Super. 1997).

18 Pa.C.S.A. § 2701 provides, in relevant part, the following:

§ 2701. Simple assault

(a) Offense defined.-A person is guilty of assault if he:

(1) Attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another[.]

18 Pa.C.S.A. § 2701(a)(1) (bold in original).

“Bodily injury” is defined as “[i]mpairment of physical condition or substantial pain.” 18 Pa.C.S.A. § 2301. “The Commonwealth need not establish the victim actually suffered bodily injury; rather, it is sufficient to support a conviction if the Commonwealth establishes an attempt to inflict bodily injury. This intent may be shown by circumstances, which reasonably suggest a defendant intended to cause injury.” *Commonwealth v. Martuscelli*, 54 A.3d 940, 948-49 (Pa.Super. 2012) (citations omitted).

Although a defendant has no burden to prove the use of force for the protection of other persons, before the defense is properly in issue “there must be some evidence, from whatever source, to justify such a finding.”

⁴ 18 Pa.C.S.A. § 2301 defines “deadly weapon” as “[a]ny firearm, whether loaded or unloaded, or any device designed as a weapon and capable of producing death or serious bodily injury, or any other device or instrumentality which, in the manner in which it is used or intended to be used, is calculated or likely to produce death or serious bodily injury.”

Commonwealth v. Mouzon, 53 A.3d 738, 740 (Pa. 2012). When there is such evidence for the defense of others, the analysis is identical to the analysis used when an individual claims to have acted in self-defense. **See** *Commonwealth v. Smith*, 710 A.2d 1218, 1220 (Pa.Super. 1998). The pertinent section of the Crimes Code provides:

§ 506. Use of force for the protection of other persons

(a) General rule.- The use of force upon or toward the person of another is justifiable to protect a third person when:

(1) the actor would be justified under section 505 (relating to use of force in self-protection) in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect;

(2) under the circumstances as the actor believes them to be, the person whom he seeks to protect would be justified in using such protective force; and

(3) the actor believes that his intervention is necessary for the protection of such other person.

(b) Exception.- Notwithstanding subsection (a), the actor is not obliged to retreat to any greater extent than the person whom he seeks to protect.

18 Pa.C.S.A. § 506 (bold in original).

"Once the question [of the justification] is properly raised, the burden is upon the Commonwealth to prove beyond a reasonable doubt that the defendant was not acting in [the defense of others]." *Mouzon*, 53 A.3d at 740. The Commonwealth sustains that burden of negation if it proves any of the following: that the defendant and the person he sought to protect were free from fault in provoking or continuing the difficulty, that the

defendant did not reasonably believe that the person he was seeking to protect was in imminent danger of death or great bodily harm, or that the defendant and the person he sought to protect violated a duty to retreat or avoid the danger. *See Mouzon, supra*.

Instantly, Appellant suggests the evidence establishes that, after Mr. Hernandez approached Ms. Walton in Hoagie City, Mr. Hernandez tried to pull Ms. Walton towards him, and in response, Appellant “defended his girlfriend” by attacking Mr. Hernandez. *See* Appellant’s Brief at 11. Appellant contends the only logical conclusion is that he was justified in so doing pursuant to 18 Pa.C.S.A. § 506.

However, in rejecting Appellant’s argument, the trial court stated the following:

There was sufficient credible evidence which taken in the light most favorable to the verdict winner, established that the defendant did not reasonably believe that he was in fear of death or serious bodily injury. While Mr. Hernandez did grasp hold of the arm of Ms. Walton, this Court found credible the testimony of Mr. Hernandez that he released her arm when Appellant told him to let go. (N.T. 3/21/11 at 27, 67, 86-87, 89). At this point neither the defendant nor Ms. Walton were in reasonable fear of immediate death or serious bodily injury. Nevertheless, [Appellant] still struck Mr. Hernandez, brought him to the ground, and proceeded to slam Mr. Hernandez’s face into the ground. (*Id.* at 37-40, 43, 89-91). At some point during the ensuing struggle, Mr. Hernandez was stabbed in his chest and back. (*Id.* at 143).

Moreover, there was sufficient evidence that [Appellant] provoked or continued the use of force. It was [Appellant] who first struck Mr. Hernandez. (*Id.* at 37, 89-91). Once Mr. Hernandez was on the ground and curled into a ball, [Appellant] continued the attack. (*Id.* at 40-41). The attack ultimately resulted in Mr. Hernandez being stabbed multiple times.

Trial Court Opinion filed 12/22/11 at 5-6.

Applying our standard of review, we find the evidence was sufficient to sustain Appellant's convictions for aggravated assault and simple assault. More specifically, we find no abuse of discretion in the trial court's conclusion that the Commonwealth negated Appellant's claim of defense of others under 18 Pa.C.S.A. § 506. *Mouzon, supra*.

Appellant's final claim is the trial court should have granted his post-sentence motion on the basis the verdict is against the weight of the evidence. Specifically, Appellant claims the verdict is based on pure conjecture since the only witness to the attack, Mr. Hernandez, admitted during trial that his memory was negatively affected by the fact he was under the influence of alcohol at the time of the attack and he was a PCP addict.

We remind Appellant that:

[t]he weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. An appellate court cannot substitute its judgment for that of the finder of fact. Thus, we may only reverse the lower court's verdict if it is so contrary to the evidence as to shock one's sense of justice. Moreover, where the trial court has ruled on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.

Commonwealth v. Shaffer, 2012 WL 910191, *3 (Pa.Super. filed 3/19/12)

(quotation omitted).

In finding no merit to Appellant's weight of the evidence claim, the trial court stated, in relevant part, the following:

This Court found the testimony by Mr. Hernandez credible. Mr. Hernandez testified that [Appellant] struck him, brought him to the ground, and then slammed his head into the ground multiple times. (N.T. 3/21/11 at 37-40, 43, 89-91). Mr. Hernandez's testimony was supported by the testimony of the three police officers and the medical records. Officer Luciano discovered Mr. Hernandez lying on the ground covered in blood. (*Id.* at 111-12). Officer Waters observed [Appellant] covered in blood and noticed a blood stained knife in [Appellant's] vehicle. (*Id.* at 118, 127, 130). [Appellant] told Officer Martinez that he had been in a fight. (*Id.* at 135-136). The medical records, which detailed facial lacerations and knife wounds to Mr. Hernandez, further reinforced the testimony of Mr. Hernandez. (*Id.* at 143). Obviously, therefore, this Court's verdict was based upon overwhelming evidence, not pure conjecture.

Trial Court Opinion filed 12/22/11 at 7 (citations omitted).

We find no abuse of discretion and note the trial court was free to determine what, if any, the effect of Mr. Hernandez's intoxicated state and PCP addiction had on his ability to recollect the assault at issue. **See *Shaffer, supra***. The fact the trial court found Mr. Hernandez's testimony to be credible does not shock one's sense of justice. **See *id.***

For all of the foregoing reasons, we affirm.

Affirmed.