

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

DANIEL M. LEYVA

Appellant

No. 1660 MDA 2013

Appeal from the Judgment of Sentence of August 15, 2013
In the Court of Common Pleas of Berks County
Criminal Division at No.: CP-06-CR-0001191-2013

BEFORE: PANELLA, J., WECHT, J., and STRASSBURGER, J.*

MEMORANDUM BY WECHT, J.:

FILED JULY 11, 2014

Daniel Leyva appeals his August 15, 2013 judgment of sentence. Leyva's sole challenge is to the weight of the evidence. We affirm.

The trial court summarized the factual history of this case as follows:

[Daniel] and Sandra Leyva married in 1994. Between 2010 and 2012, Sandra lived in Reading, Berks County, Pennsylvania and [Leyva] resided in another county. In late July 2012, [Leyva] returned to Reading and attempted to contact Sandra. On or about July 26, the two met in Sandra's apartment, and Sandra gave [Leyva] a key to the apartment. On July 28, Sandra returned home to her apartment to find [Leyva] waiting inside.

Sandra testified that [Leyva] was sitting on the couch in her apartment, holding a knife in his hand. She testified that immediately after she closed the door, [Leyva] attacked her: "He started beating me up . . . with his closed fists and open hands . . . on my torso, but a lot in my face." She testified that

* Retired Senior Judge assigned to the Superior Court.

the beating "went on for about a half hour at least," that she yelled and tried to fight back, and that she sustained a cut while trying to wrest the knife away from [Leyva]. She testified that after the punching ended, [Leyva] began to choke her—"He took his arm and went around my neck and was yelling, Die, bitch, die"—and that this continued for several minutes and that she nearly lost consciousness.³

³ [Leyva] also testified concerning the attack. His account characterizes the encounter as a mutual fight which ensued because he was upset with his wife for "dating a black American." He explained that he found this offensive due to his racial prejudices: "If she had been dating a white guy, I would have given her a high five, but she was dating a black American, and I'm racist." He testified that a verbal argument began with Sandra yelling at him, and that Sandra slapped him and that he slapped her: "We started slapping each other around." He testified that he hit her in the face and head with an open hand—but never with a closed fist: "If I would have hit her with a closed fist, you would have had some lumps, you know, lumps sticking out." On cross-examination, [Leyva] admitted to hitting his wife in the eye, on her lip, on the back of the neck—all with an open hand.

Sandra testified that after the attack concluded, [Leyva] asked her to take a shower, which she did, after which she and [Leyva] had sexual intercourse. Sandra testified that afterwards, her phone was ringing and that someone was knocking on the door, but that [Leyva] would not allow her to open the door or answer the phone. She testified that she could not sleep, but that [Leyva] "passed out" next to her until the morning, when she convinced him to permit her to leave the apartment and to ask a neighbor for Tylenol.

A 9-1-1 call was placed from the neighbor's apartment around 10:00 a.m., and Officer James Thomas of the Reading Police Department was dispatched. Officer Thomas met Sandra Leyva at the neighbor's apartment. He testified that she appeared to be very upset, and that she had "bruising" and "redness on her face," but that he "did not see any blood." Sandra was taken to the emergency room at Reading Hospital. The treating physician

observed contusions and ecchymoses^[1] on her forehead, mouth, eyes, neck, shoulder, and spine. An abrasion to the left hand was also observed. Sandra Leyva was discharged approximately 4½ hours after her arrival to the emergency room.

Based on Sandra's report to the police, Officer Thomas radioed a description of [Leyva] as the suspect for an alleged assault. Officer Michael Sansoti of the Reading Police Department testified that he saw a male matching the description at the corner of Tenth and Penn Streets in Reading, whom he identified at trial as [Leyva]. Sansoti testified that when he made eye contact with [Leyva], [Leyva] "decided to run, sprint down southbound through a vacant parking lot into the 1000 block of Court Street." Sansoti began chasing [Leyva] on foot until he lost sight of [Leyva], who was ultimately apprehended while hiding behind a green air conditioner or similar machinery in the 1000 block of Penn Street.

Trial Court Opinion ("T.C.O."), 12/31/2013, at 2-4 (internal citations omitted; minor grammatical modifications made for clarity).

The trial court summarized the relevant procedural history of this case as follows:

Following a jury trial held July 22-23, 2013, [Leyva] was convicted of aggravated assault and simple assault.^[2] [Leyva] was acquitted of rape, sexual assault, terroristic threats, and possessing instruments of crime.^[3] On August 15, 2013, [Leyva] was sentenced to 10-20 years' imprisonment.¹ [Leyva]

¹ An "ecchymosis" (plural "ecchymoses") is defined as "the escape of blood into the tissues from ruptured blood vessels." Merriam-Webster, <http://www.merriam-webster.com/dictionary/ecchymosis> (last visited June 11, 2014).

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

³ 18 Pa.C.S. §§ 3121(a)(2), 3124.1, 2706(a)(1), and 907(a), respectively.

filed a postsentence motion for a new trial the next day, which we denied on August 19, 2013.

¹ The sentence imposed was the subject of the mandatory minimum sentencing provisions of 42 Pa.C.S. § 9714, requiring a minimum sentence of 10 years' incarceration for a second conviction of a "crime of violence" as defined by the statute. [Leyva] was previously convicted of aggravated assault, which invokes these mandatory provisions.

On September 16, 2013, [Leyva] filed [a] notice of appeal, and on September 17, 2013, we ordered the filing of a concise statement of errors pursuant to Rule 1925(b) of the Pennsylvania Rules of Appellate Procedure. [Leyva] filed a timely concise statement,² in which he allege[d] [sufficiency of the evidence and weight of the evidence claims].

² Our original order, directing that a concise statement be filed within 21 days, was filed on September 17, 2013. On October 3, 2013, [Leyva] filed a petition for an extension of time to file the statement due to a delay in the transcription of testimony. On October 4, 2013, we issued an order granting [Leyva's] petition and ordering that the statement be filed within 10 days of the filing of all transcripts. The trial transcript was filed by the court reporter on October 4, 2013, and [Leyva] filed his concise statement on October 11, 2013.

Id. at 1. On December 31, 2013, the trial court entered an opinion pursuant to Rule 1925(a).

Leyva raises the following issue for our review:

Whether the Court erred by not granting a new trial on the basis that the guilty verdict for Aggravated Assault was contrary to the weight of the evidence presented, where Sandra Leyva's testimony was incredible, inconsistent, unclear, and clearly motivated by ulterior motives, and where [Leyva] testified and explained how Sandra Leyva was injured?

Brief for Leyva at 4.

Our review is guided by the following well-settled legal principles:⁴

A motion for a new trial based on a claim that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. **Commonwealth v. Widmer**, 744 A.2d 745, 751-52 (Pa. 2000); **Commonwealth v. Brown**, 648 A.2d 1177, 1189 (Pa. 1994). 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. **Widmer**, 744 A.2d at 752. 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.” **Id.** (citation omitted). It has often been stated that “a new trial should be awarded when the jury’s verdict is so contrary to the evidence as to shock one’s sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail.” **Brown**, 648 A.2d at 1189.

An appellate court’s standard of review when presented with a weight of the evidence claim is distinct from the standard of review applied by the trial court:

Appellate review of a weight claim is a review of the exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence. **Brown**, 648 A.2d at 1189. Because the trial judge has had the opportunity to hear and see the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court’s determination that the verdict is against the weight of the evidence. **Commonwealth v. Farquharson**, 354 A.2d 545 (Pa. 1976). One of the least assailable reasons for granting or denying a new trial is the lower court’s conviction that the

⁴ To properly be preserved, a weight of the evidence claim must be raised in a motion prior to sentencing, in an oral motion at sentencing, or in a post-sentence motion. **Commonwealth v. Griffin**, 65 A.3d 932, 938 (Pa. Super. 2013). Leyva preserved his claim in a post-sentence motion. **See** Motion for Post-Sentence Relief, 8/19/2013 at 3-4.

verdict was or was not against the weight of the evidence[.]

Widmer, 744 A.2d at 753 (internal citations truncated for continuity, emphasis added).

Commonwealth v. Clay, 64 A.3d 1049, 1054-55 (Pa. 2013) (citations modified).

Moreover, when evaluating a trial court's ruling, we keep in mind that an abuse of discretion is not merely an error in judgment. Rather, it involves bias, partiality, prejudice, ill-will, manifest unreasonableness or a misapplication of the law. By contrast, a proper exercise of discretion conforms to the law and is based on the facts of record.

Commonwealth v. West, 937 A.2d 516, 521 (Pa. Super. 2007) (citing **Commonwealth v. Hardy**, 918 A.2d 766, 776 (Pa. Super. 2007)). The jury is free to believe all, part, or none of the evidence, and an appellate court will not make its own assessment of the credibility of the evidence. **Commonwealth v. Ramtahal**, 33 A.3d 602, 609 (Pa. 2011).

A person is guilty of aggravated assault if he attempts to cause serious bodily injury to another, or if he causes serious bodily injury intentionally, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life. 18 Pa.C.S. § 2702(a)(1). "Serious bodily injury" is defined as "[b]odily injury [that] creates a substantial risk of death or [that] causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." 18 Pa.C.S. § 2301. Leyva argues that the jury's finding that Leyva caused serious bodily injury or intended to inflict serious bodily injury to Mrs. Leyva was

contrary to the weight of the evidence presented; he posits that, while his own testimony was credible, Mrs. Leyva's testimony was incredible, inconsistent, unclear, and motivated by ulterior motives. Brief for Leyva at 15-22. Leyva relies upon this Court's holding in ***Commonwealth v. Dailey***, 828 A.2d 356, 359 (Pa. Super. 2003), arguing that "[w]here the victim does not sustain serious bodily injury, the Commonwealth must prove that the appellant acted with specific intent to cause serious bodily injury." Brief for Leyva at 15. We disagree.

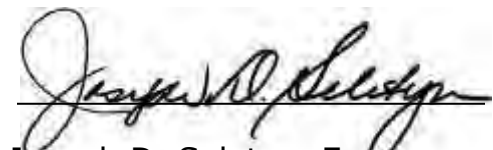
At trial, the Commonwealth's evidence included "testimony of the victim, medical personnel, police, and [Leyva] himself; photographs depicting the victim's injuries; medical reports related to the victim's admission in the emergency room; and the opinion of an expert in the field or forensic medicine." T.C.O. at 6. As the trial court noted, "[a]ll the evidence established that an altercation had ensued between Sandra Leyva and [Leyva]. Although [Leyva] denied having choked or attempted to strangle Sandra, Sandra's testimony was corroborated by observations of bruises about her neck as well as the expert opinion that such strangulation had been attempted." ***Id.*** Additionally, Leyva admitted to bruising his wife during the altercation. Notes of Testimony ("N.T."), 10/4/2013, at 207-09. Furthermore, expert medical testimony established that "[a]ny patient who is strangled is at potential risk for serious bodily injury or even death." ***Id.*** at 121-22. This testimony established that Leyva caused serious bodily

injury to his wife by creating a risk of serious bodily injury or death. Although Leyva claims that he never choked Mrs. Leyva, the jury found Leyva's testimony to be incredible and Mrs. Leyva's testimony, which was corroborated by expert medical testimony, to be credible. We are bound by the jury's credibility determination, and based upon the evidence adduced at trial, the trial court did not abuse its discretion in determining that the jury's verdict was in line with the weight of the evidence.

Nothing in Leyva's argument, or in our review of the evidence, suggests that the jury's verdict should have shocked the trial court's sense of justice. Thus, the trial court did not abuse its discretion in ruling that Leyva had failed to establish the sort of injustice that would require a new trial. Consequently, Leyva's challenge to the weight of the evidence must fail.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/11/2014