NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
	:	
DAARON SHEARS,	:	
	:	
Appellant	:	No. 1782 WDA 2013

Appeal from the Judgment of Sentence August 15, 2013
In the Court of Common Pleas of Fayette County
Criminal Division No(s).: CP-26-CR-0000370-2013

BEFORE: BOWES, JENKINS, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: **FILED JUNE 30, 2014**

Appellant, Daaron Shears, appeals from the judgment of sentence of twenty-seven months' to five years' imprisonment entered in the Fayette County Court of Common Pleas after a jury found him guilty of aggravated harassment by a prisoner, terroristic threats, and harassment.[1] Appellant claims the trial court committed reversible error when it permitted the Commonwealth to present evidence of his prior conviction for rape and denied relief on his challenge to the weight of the evidence. We affirm.

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* Former Justice specially assigned to the Superior Court.

[1] 18 Pa.C.S. §§ 2703.1, 2706(a)(1), 2709(a)(4). Appellant was acquitted of charges of aggravated assault by physical menace and simple assault by physical menace. 18 Pa.C.S. §§ 2702(a)(6), 2701(a)(3).

The procedural history of this appeal and the evidence presented at the jury trial are well known to the parties and need not be restated here. It suffices to say that Appellant perfected this appeal by filing a timely notice of appeal and preserved all claims in timely-filed post-sentence motions and a Pa.R.A.P. 1925(b) statement.

As to Appellant's first issue—that the trial court erred in permitting the Commonwealth to introduce evidence of his prior rape conviction—our standards of review are as follows. "Questions concerning the admissibility of evidence lie within the sound discretion of the trial court, and a reviewing court will not reverse the court's decision on such a question absent a clear abuse of discretion." ***Commonwealth v. Hernandez***, 862 A.2d 647, 650 (Pa. Super. 2004) (citations omitted). "An abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous." ***Commonwealth v. Henkel***, 938 A.2d 433, 440 (Pa. Super. 2007).

There is no specific statute or rule of evidence governing the Commonwealth's admission of a prior conviction under the circumstances of this case. ***See*** 42 Pa.C.S. § 5918 (establishing general prohibition, and exceptions thereto, regarding examination of the defendant as to other offenses); Pa.R.E. 404(a), 608(b), 609 (discussing admissibility of evidence

of character, specific acts, and specific instances versus reputation). However, our decisional law recognizes that evidence of a non-*crimen falsi* conviction may be admitted into evidence after the defendant voluntarily raised the issue of his good character. ***See Hernandez***, 862 A.2d at 652.

Instantly, Appellant was charged with, *inter alia*, aggravated harassment by a prisoner and terroristic threats for throwing urine on a female corrections officer and verbally threatening her. At trial, Appellant testified on his own behalf and denied throwing anything at the officer. N.T., 8/6/13, at 34. Appellant admitted that he told the officer to "shut up, bitch." ***Id.*** at 35. He then testified, "But I didn't threaten no woman. I would never threaten a woman. I did not threaten her at all, as God as my witness." ***Id.***

On cross-examination by the Commonwealth, the following exchange occurred:

> [Commonwealth]: You said you never threatened [the officer] is that right?
>
> [Appellant]: No.
>
> [Commonwealth]: And you said that was because you wouldn't threaten a woman?
>
> [Appellant]: I wouldn't disrespect no woman at all.

Id. at 36.

After Appellant was excused from the stand, defense counsel raised a motion *in limine* seeking to preclude the Commonwealth from introducing evidence of Appellant's prior rape conviction. ***Id.*** at 39. Subsequently, the

Commonwealth made an offer of proof that it intended to introduce Appellant's prior rape conviction, which occurred "within the last year or two," to impeach his testimony that "he has never disrespected a woman." ***Id.*** at 59. Appellant objected, noting that the statement was a "very minor point in his testimony" and any probative value of the offer was "highly outweighed by the prejudicial effect." ***Id.*** at 60. The trial court determined that the Commonwealth was entitled to impeach the Appellant's testimony and "to let [Appellant's] statement remain on record when he has this conviction . . . would be extremely unfair to the Commonwealth." ***Id.*** The Commonwealth thereafter called the clerk of the court to testify as to Appellant's prior rape conviction, after which the trial court issued a cautionary instruction. ***Id.*** at 61-63.

Following our review, we discern no legal error in the trial court's ruling that Appellant's voluntary testimony regarding a pertinent character trait opened the door to the admission of prior crimes evidence in rebuttal of his defense. ***See Hernandez***, 862 A.2d at 652. Moreover, although the court did not expressly weigh the probative value of the prior rape conviction against the potential prejudice to Appellant, we discern no reversible error, particularly since the court issued a thorough cautionary instruction to the jury. ***See Commonwealth v. LaCava***, 666 A.2d 221, 228 (Pa. 1995) (reiterating that our courts must presume that the jury followed the court's instruction). Thus, no relief is due.

Appellant next claims the verdicts were against the weight of the evidence. Specifically, he notes that a chemical test conducted on the officer's clothes did not detect the presence of urine. He argues that this evidence should have outweighed the other evidence at trial suggesting that the substance thrown at the officer was urine. We disagree.

The Pennsylvania Supreme Court has summarized the standards governing our review as follows:

> 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. 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. 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.'" 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."
>
> 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. 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. One of the least assailable reasons for granting or denying a new trial is the lower court's

> conviction that the verdict was or was not against the weight of the evidence and that a new trial should be granted in the interest of justice.
>
> This does not mean that the exercise of discretion by the trial court in granting or denying a motion for a new trial based on a challenge to the weight of the evidence is unfettered. In describing the limits of a trial court's discretion, we have explained:
>
> > The term "discretion" imports the exercise of judgment, wisdom and skill so as to reach a dispassionate conclusion within the framework of the law, and is not exercised for the purpose of giving effect to the will of the judge. Discretion must be exercised on the foundation of reason, as opposed to prejudice, personal motivations, caprice or arbitrary actions. Discretion is abused where the course pursued represents not merely an error of judgment, but where the judgment is manifestly unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias or ill-will.

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

The crime of aggravated harassment by prisoner is defined as follows:

> A person who is confined in or committed to any local or county detention facility, jail or prison or any State penal or correctional institution or other State penal or correctional facility located in this Commonwealth commits a felony of the third degree if he, while so confined or committed . . . intentionally or knowingly causes or attempts to cause another to come into contact with blood, seminal fluid, saliva, urine or feces by throwing, tossing, spitting or expelling such fluid or material.

18 Pa.C.S. § 2703.1. In ***Commonwealth v. Boyd***, 763 A.2d 421 (Pa. Super. 2000), this court held that "it is unnecessary for the Commonwealth

to conduct a chemical analysis of the fluid or material to determine whether it is one of the fluids/materials listed in Section 2703.1." ***Id.*** at 424. Accordingly, the Commonwealth may meet its burden of proof by relying upon circumstantial evidence that the substance was one of the offensive substances listed in the statute. ***Id.***

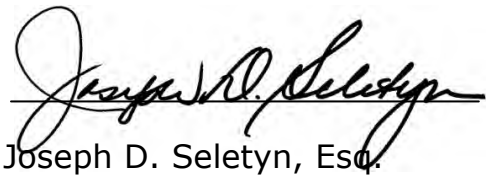
Instantly, the defense presented evidence that chemical testing of the officer's clothes yielded a negative result. N.T. at 49-50. On cross-examination by the Commonwealth, the forensic scientist noted she performed the test on August 5, 2013—the first day of trial and more than eight months after the incident. ***Id.*** at 51. The Commonwealth also elicited testimony suggesting the forensic scientist could not "say for sure there was no urine" on the clothes. ***Id.*** at 56-57.

Additionally, the record reveals the officer testified the liquid Appellant threw at her "smelled like urine." ***Id.*** at 11. She also testified that after the Appellant threw the liquid, he asked her "how'd that taste, bitch?" ***Id.*** at 15. Lastly, Appellant acknowledged that he did not have access to water at the time of the incident and that feces and urine were left in the toilets because the prisoners could not flush their toilets. ***Id.*** at 36.

Following our review, we discern no abuse of discretion in the trial court's determination that the verdicts were not against the weight of the evidence. Accordingly, no relief is due.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/30/2014