

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
WILLIAM JACKSON,	:	
	:	
Appellant	:	No. 1999 EDA 2013

Appeal from the Judgment of Sentence Entered January 18, 2013,
In the Court of Common Pleas of Philadelphia County,
Criminal Division, at No. CP-51-CR-0000312-2011.

BEFORE: BENDER, P.J.E., SHOGAN and FITZGERALD*, JJ.

MEMORANDUM BY SHOGAN, J.:

FILED JULY 15, 2014

Appellant, William Jackson, appeals from the judgment of sentence entered on January 18, 2013, in the Philadelphia County Court of Common Pleas. We affirm.

The relevant facts of this matter were set forth by the trial court as follows:

On March 29, 2007, at approximately 3:30 am, Vera Spruill (Victim) heard commotion outside of her home at 3937 Wyalusing Avenue in the City and County of Philadelphia. Victim, who was in her bedroom with her infant child, went downstairs and opened her front door to see the cause of the commotion. William Jackson (Appellant), Johnny Sowell (Co-Defendant), and a third male forced themselves through Victim's front door and into her home and threw her to the floor; only Appellant and the third male brandished firearms. All three males searched Victim yelling, "Where the f*ck is the money!?" When Victim responded that she had no money, all three males began to ransack the home. They asked who else was in the

*Former Justice specially assigned to the Superior Court.

home and Victim responded, "Just me and the baby." The third male yelled to Appellant, "We takin['] all this sh*t . . . take [Victim] to the basement!"

Appellant threw Victim down the basement steps. As Victim was rising to her feet, Appellant forced her back down on her knees. He held the gun to Victim's head and forced her to perform oral sex on him. After a few moments, the other males yelled to Appellant to come back upstairs, and all three exited the house.

Victim ran upstairs to her child and called police, who arrived a short time later. Victim went with police to the district station to file a report.

Trial Court Opinion, 11/4/13, at 2 (footnote omitted).

The record further reflects that Appellant, his co-defendant Johnny Sowell, and the unidentified man stole many items from Victim's house including a laptop computer and computer bag. N.T., 7/16/12, at 29-36. However, it was not until three years later that police discovered Victim's property in Johnny Sowell's residence during an unrelated investigation. N.T., 7/16/12, at 77. Inside Victim's computer bag was a repair ticket bearing Victim's boyfriend's name and handwriting, and a photograph. **Id.** at 81-83, 102. Appellant was one of the men in the photograph. **Id.** at 83, 103. Victim was called and later identified the computer bag and other items as property that was stolen in 2007. **Id.** at 101-103. When the police showed Victim the photograph that was found inside the computer bag, she identified one of the men as Appellant, and she stated that Appellant was

the one who forced her to perform oral sex at gunpoint. *Id.* at 103. Victim also identified Appellant from a separate photo array. *Id.* at 110.

The trial court set forth the procedural history as follows:

On July 23, 2012, following a jury trial, William Jackson (Appellant) was found guilty of the crimes of Robbery, Criminal Conspiracy, Rape, and Possession of an Instrument of Crime (PIC). On January 18, 2013, Appellant was sentenced to an aggregate term of fifteen (15) to thirty (30) years incarceration. Trial counsel, Daniel J. O’Riordan, Esq. filed post-sentence motions on January 25, 2013, which were denied by operation of law on May 29, 2013. On June 20, 2013, trial counsel filed a motion to withdraw, and on that same date, appellate counsel, Norris E. Gelman, Esq., entered his appearance and later filed a Notice of Appeal. On July 30, 2013, this court filed a 1925(b) statement, and on August 14, 2013, Appellant’s statement was received by this court. This appeal follows.

Trial Court Opinion, 11/4/13, at 1.

On appeal, Appellant raises one issue:

- I. Was the evidence was [sic] sufficient to sustain [the victim’s] identification of Appellant beyond a reasonable doubt[?]

Appellant’s Brief at 4.

In reviewing the sufficiency of the evidence, we 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. ***Commonwealth v. Rivera***, 983 A.2d 1211 (Pa. 2009). 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. **Commonwealth v. Diamond**, 83 A.3d 119 (Pa. 2013). The Commonwealth may sustain its burden of proving every element of the crime by means of wholly circumstantial evidence. **Commonwealth v. Hansley**, 24 A.3d 410 (Pa. Super. 2011). Moreover, as an appellate court, we may not re-weigh the evidence and substitute our judgment for that of the fact-finder. **Commonwealth v. Kelly**, 78 A.3d 1136 (Pa. Super. 2013). In addition, courts have noted that “evidence of identification need not be positive and certain to sustain a conviction.” **Commonwealth v. Jones**, 954 A.2d 1194, 1197 (Pa. Super. 2008) (citations omitted).

On appeal, Appellant claims that Victim’s testimony, wherein she identified him as one of the perpetrators, is suspect due to her drug use. Appellant’s Brief at 12. At the outset, we note that while Appellant entitled his claim of error as one involving the sufficiency of the evidence, it is actually a challenge to the weight of the evidence. **See Commonwealth v. W.H.M., Jr.**, 932 A.2d 155, 160 (Pa. Super. 2007) (stating that the appellant’s claim that the trial court erred in crediting the victim’s testimony goes to the weight, not sufficiency, of the evidence). The 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. **Commonwealth v. Orr**, 38 A.3d 868, 873 (Pa. Super. 2011) (citation and quotation marks omitted). This Court cannot substitute its judgment for

that of the finder of fact and, therefore, we may reverse the verdict only if it is so contrary to the evidence as to shock one's sense of justice. ***Id.*** Additionally, a challenge to the weight of the evidence must be preserved either in a post-sentence motion, by a written motion before sentencing, or orally prior to sentencing. ***In re C.S.***, 63 A.3d 351, 357 (Pa. Super. 2013). Failure to preserve a challenge to the weight of the evidence claim results in its waiver on appeal. ***Id.***

Upon review, the record reflects that Appellant failed to properly preserve his challenge to the weight of the evidence as this issue was never raised before the trial court in his post-sentence motion, by a written motion before sentencing, or orally prior to sentencing. Therefore, the claim is waived, and Appellant is entitled to no relief.¹ Accordingly, the judgment of sentence is hereby affirmed.

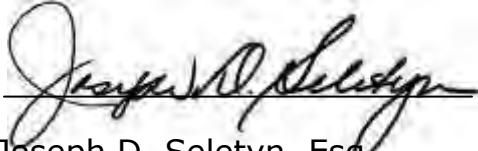
Judgment of sentence affirmed.

FITZGERALD, J., Concur in the Result.

¹ Were we to reach the merits of Appellant's challenge to the weight of the evidence, we would affirm Appellant's judgment of sentence. As stated above, the jury was free to credit Victim's testimony and identification of Appellant as her attacker, and nothing in the verdict shocks one's sense of justice.

J-S26024-14

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: 7/15/2014