NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. ANTONIO RODRIGUEZ, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2715 EDA 2012

Appeal from the Judgment of Sentence Entered August 16, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s):
CP-51-CR-0001654-2011
CP-51-CR-0001658-2011
CP-51-CR-0001663-2011

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

MEMORANDUM BY BENDER, P.J.E.: **FILED JUNE 17, 2014**

Appellant, Antonio Rodriguez, appeals from his sentence of three terms of life imprisonment. Appellant challenges the sufficiency and the weight of the evidence supporting his convictions. After careful review, we affirm.

Appellant proceeded to a nonjury trial on August 13, 2012. The facts adduced at trial were as follows:

> In late 2010, … the bodies of three women, Elaine Goldberg, Nicole Piacentini, and Casey Mahoney[,] were discovered in the Kensington section of Philadelphia. Each of the women's bodies exhibited bruising in the neck and head areas

---

* Former Justice specially assigned to the Superior Court.

> and in each case the cause of death was later determined to be asphyxiation. An examination of the three crimes scenes and the women's bodies resulted in the discovery of DNA evidence. Testing of that DNA evidence revealed [Appellant] to be the source of it.
>
> Following his arrest, [Appellant] was interviewed by the police. During the interview, he confessed that he had raped and murdered the three women and that after he had killed the women, he engaged in necrophilia with each of the bodies. He added that prior to leaving the scenes of his crimes he would position the victims[’] bodies such that their buttocks were placed in an upright position.

Trial Court Opinion (TCO), 12/3/12, at 2.

At the conclusion of Appellant’s trial, the court found him guilty in each case of first-degree murder, rape, involuntary deviate sexual intercourse (IDSI), and abuse of a corpse. On August 16, 2012, Appellant was sentenced to three mandatory terms of life imprisonment. He filed a timely notice of appeal, as well as a timely concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b).[1]

---

[1] On October 11, 2012, the trial court issued an order directing Appellant to file a Rule 1925(b) statement by November 1, 2012. Appellant filed a Rule 1925(b) statement on October 17, 2012, challenging the sufficiency and the weight of the evidence presented at trial. The trial court issued an opinion on December 3, 2012.

On October 4, 2013, Appellant filed an appellate brief, raising the sufficiency and weight claims we address herein, as well as a Petition for Remand. On November 6, 2013, this Court issued an order remanding Appellant’s case to the trial court, directing Appellant to file a Supplemental Rule 1925(b) statement by November 27, 2013. Appellant filed a Supplemental Rule 1925(b) statement on November 27, 2013, reiterating the sufficiency and weight claims from his previous filing, and adding a suppression claim. The trial court issued a supplemental opinion on December 19, 2013 addressing these issues.

(Footnote Continued Next Page)

Appellant now presents the following questions for our review:

> I. Is [Appellant] entitled to an arrest of judgment on each of three [c]ounts of [first-degree murder] where the verdict is not supported by sufficient evidence as the Commonwealth did not prove that [Appellant] acted with a specific intent to kill nor did the Commonwealth prove that [Appellant] was aware of that intention to kill at the time of the homicide[s] and where the Commonwealth did not prove malice?[2]
>
> II. Is [Appellant] entitled to a new trial as the verdict was not supported by the greater weight of the evidence?

Appellant's brief at 3.

Our standard of review of sufficiency claims on appeal is well-established:

> A claim challenging the sufficiency of the evidence is a question of law. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt …. When reviewing the sufficiency claim the court is required to view the evidence in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence.

Commonwealth v. Widmer, 744 A.2d 745, 751 (Pa. 2000) (citations omitted).

(Footnote Continued) ———————————

No new brief was filed for Appellant following remand. We now address the issues raised in Appellant's October 4, 2013 brief, noting that Appellant has abandoned the suppression claim raised in his November 27, 2013 Rule 1925(b) statement.

[2] Appellant does not challenge the sufficiency, or the weight, of the evidence supporting his convictions for rape, IDSI, or abuse of a corpse in the instant appeal.

The crime of first-degree murder is defined by 18 Pa.C.S. § 2502(a): "A criminal homicide constitutes murder of the first degree when it is committed by an intentional killing." Appellant claims that the evidence was insufficient to support his convictions for this offense, as it failed to establish he intended to kill the victims. We conclude this claim is meritless.

As discussed by the trial court:

> [T]he evidence showing how the victims were killed and the injuries sustained by the victims coupled with the contents of [Appellant's] admissions to the police that he intentionally choked the victims established beyond a reasonable doubt that [Appellant] acted with premeditation and specific intent to kill…. In addition, the evidence indicating that defendant posed the bodies of the victims after he killed them also demonstrated that the Commonwealth met its burden of proving specific intent to kill and premeditation.

Supplemental Trial Court Opinion, 12/19/13, at 2-3.

Moreover, Associate Medical Examiner Dr. Aaron Rosen testified for the Commonwealth that he performed autopsies on all three victims. N.T., 8/16/12, at 5. In addition to evidence of strangulation, there was evidence of blunt force trauma elsewhere on all three victims' bodies. ***Id.*** at 8, 18, 20, 23. Moreover, Dr. Rosen testified that it generally takes three to five minutes of continued pressure after a strangulation victim has lost consciousness for death to occur. ***Id.*** at 28. We agree that this evidence, taken in the light most favorable to the Commonwealth, established Appellant's intent to kill the victims. As such, the evidence was sufficient to support Appellant's convictions for first-degree murder.

We now turn to Appellant's argument in the alternative; namely, that the verdict was against the weight of the evidence. We conclude this claim is meritless.

> An allegation that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. ***Commonwealth v. Dupre***, 866 A.2d 1089, 1101 (Pa. Super. 2005), *appeal denied*, 583 Pa. 694, 879 A.2d 781 (2005) (citing ***Commonwealth v. Sullivan***, 820 A.2d 795, 805-806 (Pa. Super. 2003), *appeal denied*, 574 Pa. 773, 833 A.2d 143 (Pa. 2003) (quoting ***Commonwealth v. Widmer***, 560 Pa. 308, 744 A.2d 745, 751-752 (2000)). The Pennsylvania Supreme Court has explained that "[a]ppellate 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." ***Widmer***, 744 A.2d at 753 (citation omitted). To grant a new trial on the basis that the verdict is against the weight of the evidence, this Court has explained that "the evidence must be 'so tenuous, vague and uncertain that the verdict shocks the conscience of the court.'" ***Sullivan***, 820 A.2d at 806 (quoting ***Commonwealth v. La***, 433 Pa. Super. 432, 640 A.2d 1336, 1351 (1994), *appeal denied*, 540 Pa. 597, 655 A.2d 986 (1994)).
>
> … [I]t is well settled that we cannot substitute our judgment for that of the trier of fact. ***Commonwealth v. Holley***, 945 A.2d 241, 246 (Pa. Super. 2008). Further, the finder of fact was free to believe the Commonwealth's witnesses and to disbelieve the witness for the Appellant. ***See Commonwealth v. Griscavage***, 512 Pa. 540, 517 A.2d 1256 (1986) (the finder of fact is free to believe all, none, or part of the testimony presented at trial).

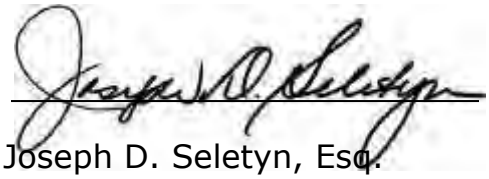
Commonwealth v. Manley, 985 A.2d 256, 262 (Pa. Super. 2009). "A motion for new trial on the grounds that the verdict is contrary to the weight of the evidence, concedes that there is sufficient evidence to sustain the verdict." ***Commonwealth v. Sullivan***, 820 A.2d 795, 806 (Pa. Super. 2003) (quoting ***Widmer***, 744 A.2d at 751).

Appellant does not specify what evidence offered against him at trial was tenuous or vague. Rather, he argues that the evidence failed to establish the element of a specific intent to kill, claiming that the "greater weight of the evidence" established that he engaged in "the fetish of 'choking'"… "during the course of a situation where the working woman changed her mind" … "and then where things went terribly wrong." Appellant's brief at 13. Rather than conceding the sufficiency and challenging the weight of the evidence offered at his trial, Appellant claims that the evidence failed to establish an element of the crime. In other words, Appellant's weight claim is merely a reiteration of his sufficiency claim which we have already addressed, *supra*.

However, even if Appellant had properly articulated a challenge to the weight of the evidence, we would find that the trial court did not abuse its discretion in denying that claim. As stated by the trial court: "[T]he verdict does not shock the conscience. DNA evidence implicated [Appellant] in each incident and [Appellant] confessed to each crime. This evidence was not refuted at trial." TCO at 5. The trial court, sitting as factfinder, was free to disbelieve this evidence, but it did not. We cannot substitute our judgment for the trial court's. Moreover, given the record before us, we would not conclude that the trial court abused its discretion in denying Appellant relief on this claim.

Judgment of sentence ***affirmed***.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/17/2014