

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

GREGORY CANTY,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1674 EDA 2015

Appeal from the Judgment of Sentence of December 20, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0003528-2012
and CP-51-CR-0003529-2012.

BEFORE: BENDER, P.J.E., OLSON and PLATT,* JJ.

MEMORANDUM BY OLSON, J.:

FILED FEBRUARY 16, 2016

Appellant, Gregory Canty, appeals from the judgment of sentence entered on December 20, 2012. We affirm.

The trial court ably explained the underlying facts of this case:

Trial began in this matter on September 11, 2012. . . . The Commonwealth called [S.C.] as its first witness. [S.C.] testified that she was [Appellant's] wife. [S.C.] further testified that, on February 27, 2012, she and [Appellant] were driving towards Esperanza EARN Center when she decided to question [Appellant] about a bag which contained clothes and a card from a woman she did not know that was in the back seat of their car. [S.C.] testified that [Appellant] became angry after she had confronted him with the bag and they began to argue. [S.C.] further testified that [Appellant] subsequently pulled the car over to the side of the road and punched her with his fist on her left cheek after she told him that she was going to throw the bag out of the car.

*Retired Senior Judge assigned to the Superior Court.

[S.C.] testified that, after he punched her, he asked her if she could drive to a bank and get \$500[.00] for him. [S.C.] further testified that she drove to a bank located at 100 West Erie Avenue but it was closed, which caused them to resume arguing with one another. [S.C. testified] that she took the keys out of the car's ignition and tried to exit the car but, as she was getting out of the car, [Appellant] jumped on her back and started hitting her in her stomach. [S.C.] testified that she was [five-and-a-half] months pregnant at the time with [Appellant's] baby and that her pregnancy showed. [S.C.] further testified that [Appellant] hit her two or three times in the stomach with a closed fist.

[S.C.] testified that she was trying to get up off the ground when [Appellant] approached her from the driver's side of the car and started to choke her. [S.C.] further testified that she believed [Appellant] choked her for over a minute and that she struggled to breathe while [Appellant] had his hand on her neck. [S.C. testified] that [Appellant] cursed at her and stated that he did not care if someone called 911 on him. [S.C.] testified that eventually she was able to get away from [Appellant] and return[] to her home. [S.C.] further testified that she felt sharp pains in her belly and shortness of breath as she walked back to her home. [S.C. testified] that no one was at her home, so she went next door to tell her neighbor what had happened and that she was having pains. [S.C.] further [testified] that her friend subsequently picked her up from her neighbor's house and drove her to the police station, where she filed a police report. [S.C.] testified that she was at the police station for approximately 20 minutes and had not received any medical attention up to that point. [S.C.] further testified that she returned to her neighbor's home from the police station, where she continued to have stomach pains. [S.C. testified] that she eventually returned to her home sometime between 10:00 p.m. to 11:00 p.m. that night.

[S.C.] testified that, once she returned to her home, she had started to fold clothes when she heard one or two big bangs, which she later realized was [Appellant] kicking the door with his foot. [S.C.] further testified that she called the police, who came to her house but left after speaking with [Appellant]. [S.C. testified] that [Appellant] continued to kick the door thereafter until he kicked it in. [S.C.]

further [testified] that, after [Appellant] had kicked the door in, he ran towards her and started to choke her with two hands. [S.C.] testified that she was unable to breathe as he choked her so she bit him on his finger. [S.C.] further testified that [Appellant] bit her on her temple in return and left the room, so she ran downstairs to try to leave the house but he caught her and closed the door.

[S.C.] testified that [Appellant] backed her into a couch and then hit her on her chest and leg with a rear-view mirror. [S.C.] further testified that, as a result of being hit [with] the mirror, she started to bleed and had a bruise on her leg. [S.C. testified] that [Appellant] continued to yell and curse at her, then started to slap and punch her in the face. [S.C.] further testified that she fell to the ground as a result and had further pains in her stomach. [S.C. testified] that she called 911 and waited on the floor for an ambulance to arrive. [S.C.] further testified that she was taken to Temple University Hospital by the ambulance, where she was kept overnight. [S.C. testified] that she continued to have pains in her stomach for about a day or two after leaving the hospital.

The Commonwealth called Officer Michael James ("James") as its next witness. James testified that he was working as a Philadelphia Police Officer on February 27, 2012 and that, at approximately 11:30 p.m. that [night], he responded to a radio call of domestic violence in the area of 3912 North 8th Street. . . . James [testified] that, when he arrived at the location, he entered the house and saw [S.C.] lying on the floor in the living room. James further testified that the furniture in the room was in disarray and [S.C.'s] clothes were damaged, as though someone had pulled or torn them. James [testified] that [S.C.] was crying and had her hands around her stomach as though she was holding a basket. James further [testified] that he observed blood around [S.C.'s] lower lip.

James testified that [S.C.] told him that she had been struck multiple times by [Appellant] and that they had earlier been involved in an argument while they were in [S.C.'s] car. James [testified] that [S.C.] was extremely upset when he arrived at the house, was breathing rapidly and was sniffing to the point that she could only speak a

few words at a time. James further [testified] that he arrived at the scene less than three minutes after receiving the radio call and started to talk to [S.C.] as soon as he arrived. James testified that [S.C.] told him that [Appellant] had earlier punched her in the face after an argument they had inside a car in the area of 6th and Erie. James further testified that [S.C.] told him that, sometime during that altercation, the rear-view mirror in the car had become detached and [Appellant] used it to strike her in the face. James testified that he proceeded to the area of 6th and Erie, where he saw the car still at that location. James further testified that he found [Appellant] at 3914 North 8th Street and that [Appellant] appeared uninjured. James [testified] that [Appellant] seemed slightly excited and annoyed. James further [testified] that he arrested [Appellant] after [S.C.] positively identified him.

The Commonwealth read a stipulation that, if Dr. Bruce Carnivale ("Carnivale") were called to testify, he would testify that [S.C.] was brought to the emergency room at Temple University Hospital by ambulance on February 28, 2012 at 12:50 a.m. Carnivale would further testify that [S.C.] told doctors that she was hit in multiple places on her head, face[,], and legs, and bitten on the left side of her face, by [Appellant]. . . . Carnivale would testify that doctors observed an abrasion to her right leg and the right side of her head. Carnivale would further testify that [S.C.] was 22 weeks pregnant at the time of admission and hospital staff noted decreased fetal movement before admitting [S.C.] for monitoring, but no additional injury to the fetus was noted. Carnivale would further testify that [S.C.] was given Tylenol to treat a headache and was discharged from the hospital at 6:49 p.m. on February 28[,], 2012]. After the stipulation, the Commonwealth and the defense rested.

Trial Court Opinion, 7/10/15, at 1 and 3-7 (internal citations omitted).

At the conclusion of the bench trial, the trial court found Appellant guilty of two counts of simple assault, two counts of recklessly endangering another person ("REAP"), and one count of possession of an instrument of

crime (“PIC”).¹ On December 20, 2012, the trial court sentenced Appellant to serve an aggregate term of eight to 23 months in jail, followed by five years of probation.

Following the *nunc pro tunc* reinstatement of Appellant’s direct appeal rights, Appellant filed a timely notice of appeal to this Court. Appellant raises two claims on appeal:

[1.] Whether the verdict was contrary to law[?]

[2.] Whether the [trial court] abused its discretion by admitting testimony of Philadelphia Police Officer James containing hearsay[?]

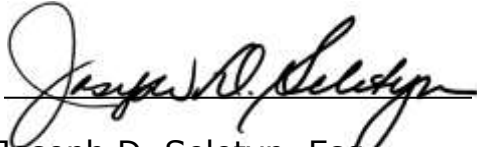
Appellant’s Brief at 7 (some internal capitalization omitted).

We have reviewed the briefs of the parties, the relevant law, the certified record, the notes of testimony, and the opinion of the able trial court judge, the Honorable Genece E. Brinkley. We conclude that there has been no error in this case and that Judge Brinkley’s opinion, entered on July 10, 2015, meticulously and accurately disposes of Appellant’s issues on appeal. Therefore, we affirm on the basis of Judge Brinkley’s opinion and adopt it as our own. In any future filings with this or any other court addressing this ruling, the filing party shall attach a copy of the trial court opinion with the victim’s name redacted.

Judgment of sentence affirmed.

¹ 18 Pa.C.S.A. §§ 2701(a)(1), 2705, and 907(a), respectively.

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: 2/16/2016