

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

v.

CHARLES ALLEN FULLER, SR.,

Appellant

No. 1305 WDA 2017

Appeal from the Judgment of Sentence August 30, 2017
in the Court of Common Pleas of Fayette County,
Criminal Division at No(s): CP-26-CR-0002478-2016

BEFORE: GANTMAN, P.J., SHOGAN, J., and MUSMANNNO, J.

MEMORANDUM BY MUSMANNNO, J.:

FILED MAY 30, 2018

Charles Allen Fuller, Sr. ("Fuller"), appeals from the judgment of sentence entered following his conviction of two counts of failure to comply with registration requirements of Megan’s Law.¹ We affirm.

In its Opinion, the trial court summarized the factual history underlying the instant appeal, which we adopt for the purpose of this appeal. **See** Trial Court Opinion, 10/12/17, at 2.

Following a jury trial, Fuller was convicted of the above-described charge. The trial court subsequently sentenced Fuller to six to twelve years in prison. Thereafter, Fuller filed the instant timely appeal, followed by a court-ordered Pa.R.A.P. 1925(b) Concise Statement of matters complained of on appeal.

¹ **See** 42 Pa.C.S.A. § 4915.1.

Fuller challenges the sufficiency of the evidence underlying his convictions. Brief for Appellant at 7, 10. According to Fuller, “[t]he Commonwealth presented evidence of such a speculative and unreliable nature that there could be no reasonable inferences drawn thereon[,] nor could that evidence, even when viewed in the best possible light, suffice to prove that the alleged acts occurred with proof beyond a reasonable doubt.” *Id.* at 13. Fuller argues that, contrary to the testimony of the Commonwealth’s witnesses, he had registered an address “through the Commonwealth of Pennsylvania.” *Id.* at 14. In support, Fuller states that “the evidence was wholly insufficient to find that [he] established a new residence[,] requiring registration of a new address.” *Id.* at 15. Fuller contends that “the jury’s verdict of guilty is manifestly sufficient to shock one’s sense of justice in that the verdicts were inconsistent requiring an arrest of judgment or grant of a new trial.” *Id.* Fuller does not direct this Court to evidence supporting his assertions.

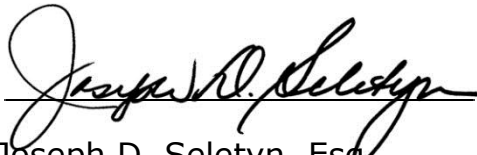
Fuller appears to conflate a challenge to the sufficiency of the evidence with the standard applicable to a claim that the verdict is against the weight of the evidence. In his Concise Statement of matters complained of on appeal, Fuller challenged only the sufficiency of the evidence. **See** Concise Statement, 9/21/17. Accordingly, any challenge to the verdict as against the weight of the evidence is waived. **See Commonwealth v. Bullock**, 948 A.2d 818, 823 (Pa. Super. 2008) (stating that where a trial court directs that a concise

statement be filed, any issues not raised in that statement shall be deemed waived).

In its Opinion, the trial court set forth the applicable law, addressed Fuller's challenge to the sufficiency of the evidence, and concluded that Fuller was not entitled to relief. **See** Trial Court Opinion, 10/12/17, at 3-5. We agree with the sound reasoning of the trial court, as set forth in its Opinion, and affirm on this basis with regard to Fuller's challenge to the sufficiency of the evidence. **See id.**

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: 5/30/2018

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
COMMONWEALTH OF PENNSYLVANIA, : CRIMINAL ACTION

v. :

CHARLES FULLER, : NO. 2478 OF 2016

Appellant. :

_____ : JUDGE JOSEPH M. GEORGE, JR.

ATTORNEYS AND LAW FIRMS

Christina Demarco, Esquire, Assistant District Attorney, *For the Commonwealth*

Robert Gordon, Esquire, Assistant Public Defender, *For the Appellant*

OPINION

GEORGE, J.

October 11, 2017

Following a trial by jury, the Appellant was found guilty of two counts of failure to comply with registration requirements.¹ On August 30, 2017, the Appellant was sentenced to a term of imprisonment of not less than six (6) years nor more than twelve (12) years. He filed a direct appeal to the Superior Court of Pennsylvania. This Opinion is in support of the verdict of the jury.

CONCISE ISSUES

The Appellant filed the following Statement of Errors Complained of on Appeal:

1. Whether the evidence was insufficient to find the Appellant guilty beyond a reasonable doubt of the criminal charges?

¹ 18 Pa. C.S. § 4915.1. Originally, the three charges were filed under the now expired § 4915. After the jury was selected, but before opening statements were given, the Commonwealth moved to amend and the Court permitted the amendment of the criminal informations to reflect the correct section of the crimes code, § 4915.1. (T.T. pp. 7-10). Appellant was found not guilty of one of the three counts.

FACTS

Trooper Adam Janosko testified that the Appellant is subject to Megan's Law registration requirements. (T.T. p. 57). The Appellant became subject to those requirements on December 16, 2002, when he was convicted of aggravated indecent assault.² (T.T. p. 57 and Exhibit 1). The Appellant is required to report his permanent address to the State Police as his permanent address changes. (T.T. p. 58). As a Tier III offender, the Appellant is required to appear at the State Police Barracks in person once every three (3) months.³ (T.T. p. 58). The Appellant did not register an address with the State Police in the State of Ohio; Perryopolis, Pennsylvania; or Scottdale, Pennsylvania, at any time between November 30, 2015 and February 5, 2016. (T.T. p. 59). Furthermore, he did not appear in person at the State Police Barracks at any point between April 30, 2015 and February 5, 2016, as required of him. (T.T. p. 60). The Appellant did appear at the State Police Barracks on July 8, 2016, after charges were filed. (T.T. p. 60).

The Appellant registered the following address on November 30, 2015: 3000 South Grande Boulevard, Greensburg, Pennsylvania 15601. (T.T. pp. 58-59). He has since registered the following address as his primary address: 3001 Beaver Avenue, Pittsburgh, Pennsylvania 15233. (T.T. p. 60). The Beaver Avenue address was registered following the institution of criminal proceedings against the Appellant. (T.T. pp. 60-61).

² 18 Pa.C.S. § 3125.

³ 42 Pa.C.S. § 9799.25(a)(3).

DISCUSSION

I. Sufficiency of the Evidence

The standard of review for a challenge to the sufficiency of the evidence is to determine whether, when viewed in a light most favorable to the verdict winner, the evidence at trial and all reasonable inferences therefrom is sufficient for the trier of fact to find that each element of the crimes charged is established beyond a reasonable doubt. The Commonwealth may sustain its burden of proving every element beyond a reasonable doubt by means of wholly circumstantial evidence.

The facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubt raised as to the accused's guilt is to be resolved by the fact-finder. [In this context, Courts] do not assess credibility nor . . . assign weight to any of the testimony of record. Therefore, we will not disturb the verdict unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances.

Commonwealth v. Vogelsong, 90 A.3d 717, 719 (Pa. Super. 2014).

“In order to preserve a challenge to the sufficiency of the evidence on appeal, an appellant's Rule 1925(b) statement must state with specificity the element or elements upon which the appellant alleges that the evidence was insufficient.”

Commonwealth v. Garland, 63 A.3d 339, 344 (Pa. Super. 2013) (emphasis added). See *Commonwealth v. Gibbs*, 981 A.2d 274, 281 (Pa. Super. 2009).

As the Appellant has waived his right to contest the sufficiency of the evidence, we incorporate *Garland* in place of our own analysis: “Here, as is evident, Appellant not only failed to specify which elements he was challenging in his Rule 1925(b)

statement, he also failed to specify which conviction he was challenging. Thus, we find Appellant's sufficiency claim waived on this basis." *Garland*, at 344.

Even if the Appellant had not waived his challenge to sufficiency, we find that the evidence amply supports the verdict. When a party challenges the sufficiency of the evidence, the critical inquiry on review does not require a court to ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt. *Commonwealth v. McCurdy*, 943 A.2d 299, 301 (Pa. Super. 2008). Instead, it must determine simply whether the evidence believed by the fact-finder was sufficient to support the verdict. All of the evidence and any inferences drawn therefrom must be viewed in the light most favorable to the Commonwealth as the verdict winner. *Id.*, at 301-302. While it is true that the Commonwealth must prove every essential element of a crime beyond a reasonable doubt, it is well established that the Commonwealth may sustain this burden by means of wholly circumstantial evidence. *Commonwealth v. Richardson*, 357 A.2d 671, 673 (Pa. Super. 1976). The Commonwealth need not preclude every possibility of innocence or establish the Appellant's guilt to a mathematical certainty. *Commonwealth v. Williams*, 871 A.2d 254, 259 (Pa. Super. 2005).

Further, any doubts regarding an appellant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that no probability of fact may be drawn from the combined circumstances. The trier of fact, while passing upon the credibility of the witnesses and the weight of the evidence produced, is free to believe

all, part, or none of the evidence. *Commonwealth v. Robertson-Dewar*, 829 A.2d 1207, 1211 (Pa. Super. 2003).

With the above principles in mind, we now consider whether the Commonwealth presented sufficient evidence to sustain the Appellant's convictions.

The Appellant was convicted of two counts of failure to comply with registration requirements, namely that he was "an individual who is subject to registration under 42 Pa.C.S. § 9799.13 (relating to applicability)" and he "knowingly fail[ed] to verify his address or be photographed as required under 42 Pa.C.S. § 9799.15, 9799.19, or 9799.25." 18 Pa.C.S. § 4915.1. Additionally, "an individual convicted of a Tier III sexual offense," such as aggravated indecent assault,⁴ "shall appear in person at an approved registration site quarterly." 42 Pa.C.S. § 9799.25.

The testimony and evidence show that the Appellant was convicted of aggravated indecent assault on December 16, 2002. (T.T. p. 57 and Exhibit 1). Additionally, the testimony and evidence show that the Appellant had notice of the registration requirement. (T.T. p. 57).

Viewed under the aforementioned standard, the Appellant's challenge to the sufficiency of the evidence fails. A review of the record reveals that the evidence, sufficient in kind and quality, presented at trial, such that the trier of fact permissibly concluded that the Appellant committed the two offenses when he failed to report a change in address and failed to appear in person at the State Police Barracks. As such, the Appellant's sole issue is without merit.

⁴ See 42 Pa.C.S. § 9799.14(d)(7).

Wherefore, it is respectfully submitted that this appeal is without merit and should be denied.

ATTEST:

Janice Snyder
CLERK OF COURTS *sw*

BY THE COURT:

George

JOSEPH M. GEORGE, JR., JUDGE

FILED

2017 OCT 12 PM 2:12

CLERK OF COURTS
CLAY COUNTY