NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. BRANDON MICHAEL SIGECAN Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 210 WDA 2013

Appeal from the Judgment of Sentence December 20, 2012
In the Court of Common Pleas of Butler County
Criminal Division at No(s): CP-10-CR-0002460-2011

BEFORE: BOWES, J., MUNDY, J., and COLVILLE, J.*

MEMORANDUM BY MUNDY, J.: **FILED AUGUST 14, 2013**

Appellant, Brandon Michael Sigecan, appeals from the December 20, 2012 aggregate judgment of sentence of 90 days' imprisonment, imposed after being found guilty of two counts of harassment.[1] After careful review, we affirm.

The relevant facts as gleaned from the certified record follow. On July 9, 2011, Appellant, his girlfriend, Shannon Miller, and a few of his friends attended the Butler County Fair. At some point in the night, Appellant won a giant stuffed banana. Initially, Appellant engaged in conversation with a few individuals about selling the banana, but the groups parted ways and

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* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S.A. § 2709(a)(1).

Appellant retained the banana. Around 10:00 p.m. the groups again crossed paths, exchanged words, and eventually, a fight between Appellant and the victims, Tyler William Fannie and Wayne Vincent Thompson, ensued over the banana. As a result of the fight, Appellant was subsequently charged with simple assault[2] and two counts of harassment. Prior to trial, the Commonwealth dismissed the simple assault charge.

On November 19, 2012, a summary bench trial was held and Appellant was found guilty of both counts of harassment for punching both victims. Thereafter, on December 20, 2012, Appellant was sentenced to 90 days' imprisonment. On December 31, 2012, Appellant filed a timely post-sentence motion requesting a judgment of acquittal or an arrest of judgment on the grounds that he was acting in justifiable self-defense.[3] On January 3, 2013, the trial court denied Appellant's motion. Thereafter, on January 23, 2013, Appellant filed a timely notice of appeal.[4]

On appeal, Appellant raises the following issue for our review.

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[2] 18 Pa.C.S.A. § 2701(a)(1).

[3] We observe that the 30th day for Appellant to file an appeal fell on Sunday, December 30, 2012. When computing the 30-day filing period "[if] the last day of any such period shall fall on Saturday or Sunday ... such day shall be omitted from the computation." 1 Pa.C.S.A. § 1908. Therefore, the 30th day for Appellant to file an appeal actually fell on Monday, December 31, 2012.

[4] Appellant and the trial court have complied with Pa.R.A.P. 1925.

> I. Whether the trial court abused its discretion, or erred as a matter of law, by finding [Appellant] guilty and not sustaining his affirmative and justifiable defense of self-defense when the Commonwealth did not prove beyond a reasonable doubt the required elements as provided under the rules for justification when non-deadly force is used or offer any evidence following [Appellant]'s case-in-chief to disprove this defense[?]

Appellant's Brief at 7.

Appellant contends the evidence was insufficient to convict him of harassment because the Commonwealth did not disprove his self-defense claim. Accordingly, Appellant requests this Court vacate "this matter [and] remand[] back to the [t]rial [c]ourt with instructions to enter a non-guilty verdict." ***Id.*** at 14.

"A motion for judgment of acquittal challenges the sufficiency of the evidence to sustain a conviction on a particular charge, and is granted only in cases in which the Commonwealth has failed to carry its burden regarding that charge." ***Commonwealth v. Xander***, 14 A.3d 174, 177 (Pa. Super. 2011), *quoting* ***Commonwealth v. Hutchinson**,* 947 A.2d 800, 805 (Pa. Super. 2008), *appeal denied*, 980 A.2d 606 (Pa. 2009). Additionally, we are guided by our well-settled standard in reviewing Appellant's claim.

> The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute

> our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder 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. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Caban, 60 A.3d 120, 132-133 (Pa. Super. 2012), *quoting* ***Commonwealth v. Quel***, 27 A.3d 1033, 1037–1038 (Pa. Super. 2011). Further, "[a] person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person . . . strikes, shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same[.]" 18 Pa.C.S.A. § 2709(a)(1).

The relevant statutory provision governing self-defense is as follows.

> **§ 505. Use of force in self-protection**
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> **(a) Use of force justifiable for protection of the person.--**The use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion.

Id. § 505(a).

The actor's belief as mentioned in the foregoing must have been reasonable in order for a self-defense claim to succeed. ***Commonwealth v. Ventura***, 975 A.2d 1128, 1143 (Pa. Super. 2009). "While there is no burden on a defendant to prove the claim, before the defense is properly at issue at trial, there must be some evidence, from whatever source, to justify a finding of self-defense." ***Commonwealth v. Torres***, 766 A.2d 342, 345 (Pa. 2001), *citing* ***Commonwealth v. Black****,* 376 A.2d 627, 630 (Pa. 1977). If there is some evidence adduced from any source that the defendant acted in self-defense, then the issue is properly before the jury and the Commonwealth has the burden to disprove self-defense beyond a reasonable doubt. ***Id.*** "Although the Commonwealth is required to disprove a claim of self-defense ... a jury is not required to believe the testimony of the defendant who raises the claim." ***Commonwealth v. Houser***, 18 A.3d 1128, 1135 (Pa. 2011) (citation omitted), *cert. denied,* ***Houser v. Pennsylvania***, 132 S. Ct. 1715 (2012).

Finally, we note,

> Where an accused raises the defense of self-defense under Section 505 of the Pennsylvania Crimes Code, the burden is on the Commonwealth to prove beyond a reasonable doubt that the defendant's act was not justifiable self-defense. ***Commonwealth v. Yanoff***, 456 Pa. Super. 222, 690 A.2d 260 (1997). The Commonwealth sustains this burden if "it establishes at least one of the following: 1) the accused did not reasonably believe that he was in danger of death or serious bodily injury; or 2) the accused provoked or continued the use of force; or 3) the accused had a duty to retreat and the retreat was possible with

> complete safety." ***Id.*** at 264 (citations omitted). It remains the province of the jury to determine whether the accused's belief was reasonable, whether he was free of provocation, and whether he had no duty to retreat. ***Commonwealth v. Buksa***, 440 Pa. Super. 305, 655 A.3d 576 (1995).

Commonwealth v. McClendon, 874 A.2d 1223, 1229-1230 (Pa. Super. 2005).

Taking the evidence in a light most favorable to the Commonwealth as the verdict winner, we conclude the Commonwealth sufficiently disproved Appellant's defense of self-defense by establishing that Appellant was not free from fault in continuing to escalate the situation by punching the victims in the face. Specifically, the evidence showed that by Appellant's own admission he pushed Thompson first, and that after allegedly being hit, he retaliated by punching Fannie and Thompson.

Instantly, at the summary trial the Commonwealth presented the two victims Fannie and Thompson. Fannie testified that Thompson tried to grab the stuffed banana from Appellant and as a result was pushed to the ground by Appellant. N.T., 11/19/12, at 6. He testified that "[t]he next thing I know, I got hit and was just on the ground, and, like, I put my hand up to my mouth and it was covered with blood[.]" ***Id.*** Fannie testified that he did not see who hit him, he did not hit Appellant, and he did not say anything to incite the argument. ***Id.*** at 7. As a result of the punch, Fannie underwent oral surgery to get two plates and four screws in his upper gum line, and his jaw was wired shut for two weeks. ***Id.*** at 8.

Additionally, Thompson testified at trial that he and his friends were walking behind Appellant, and that someone in Thompson's group, but not Thompson or Fannie, said something to Appellant about buying his stuffed banana. ***Id.*** at 18-19. Thompson testified, "the kid in my group wanted to buy the stuffed animal and then after that he said that it was just, like, he gave some, some reason not to and just turned around and hit me." ***Id.*** at 19. Thompson stated he was hit only once and did not require medical attention. ***Id.*** Further, Thompson stated that he did not grab the banana, he did not say anything to Appellant, he did not hit Appellant, and that he did not see anyone hit Appellant. ***Id.*** at 25. Thompson testified that he witnessed Appellant punch Fannie in the face. ***Id.*** at 17.

The defense also presented two witnesses, Appellant, and his girlfriend Shannon Miller. Miller testified that early in the evening of July 9, 2011, she and her group of friends met up with the two victims and their group of friends at the Butler County Fair. Miller testified at that time the two groups joked about selling the stuffed banana Appellant had won for a few bucks. ***Id.*** at 37. She also indicated that as they were leaving the fair the two groups ran into each other again and a verbal exchange over the banana began to occur. ***Id.*** at 37-38. Miller testified she saw Appellant get hit by a person from the victims group but she did not identify Fannie or Thompson as the person who struck Appellant. ***Id.*** at 40, 43-44.

Finally, Appellant testified on his own behalf. Specifically, Appellant testified Thompson tried to grab the stuffed banana from him and the following ensued.

> Q. And what happened then?
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> A. As he was grabbing it I just pushed him in the chest, which is how I assume that his sunglasses might have been broken. And I pushed him in the chest, he fell on the ground. Then the next thing you know I was struck in the right side of my temple and things kind of blurred out. I was hit maybe one or two more times, I don't know by who but I know from my girlfriend and other people that the first strike was from Montay. And then whenever I regained - - he was like hitting me and spun me. I regained conscious – like, focus, and I saw Noel Wilson and Tyler Fannie and I, they were both just standing there with me, like, and I was being hit and I just punched the first person I saw. Whether Tyler [Fannie] actually hit me I don't know, you know.

Id. at 49. Appellant further testified that after he was hit he threw a punch, which at the time he believed was at the person who had struck him. ***Id.*** at 50. He stated that after he threw the punch he "backed up… the other kids that were hitting me got scared and backed up because the damage that was done to the kid that I hit." ***Id.***

Upon thorough review of the record, we conclude that the trial court, as fact-finder, properly weighed the evidence and determined the following.

> The evidence presented at trial demonstrated that [Appellant] punched Wayne Thompson in the face. It also showed that [Appellant] punched Tyler Fannie and caused him to suffer facial injuries. The

> evidence showed that Mr. Fannie did not in any way threaten [Appellant] prior to the time of the attack. It also showed that [Appellant]'s use of force against Mr. Thompson was not made in response to a physical threat of violence against [Appellant]'s or another's person, or a threat to the personal property of [Appellant], made by Mr. Thompson, under circumstances where the use of force would have been permitted under the law.

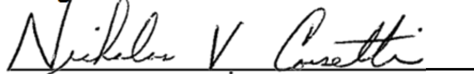
Trial Court Opinion, 2/25/13, at 1-2.

In light of the foregoing, we conclude that the Commonwealth presented sufficient evidence to convict Appellant of both counts of harassment. Therefore, we affirm Appellant's December 20, 2012 judgment of sentence.

Judgment of sentence affirmed.

Judge Colville concurs in the result.

Judgment Entered.



Deputy Prothonotary

Date: 8/14/2013