

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

TIA WALKER

Appellant

No. 2488 EDA 2012

Appeal from the Judgment of Sentence March 2, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0007783-2011

BEFORE: ALLEN, J., OTT, J., and COLVILLE, J.*

MEMORANDUM BY OTT, J.:

FILED NOVEMBER 22, 2013

Tia Walker brings this appeal *nunc pro tunc*¹ from the judgment of sentence imposed on March 2, 2012, in the Court of Common Pleas of Philadelphia County. In a nonjury trial, the judge found Walker guilty of possession of an instrument of crime, simple assault, and recklessly endangering another person.² The trial judge sentenced Walker to an

* Retired Senior Judge assigned to the Superior Court.

¹ Although a timely appeal was not filed after the denial of Walker's post sentence motion, Walker's direct appeal rights were reinstated upon her petition filed pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546.

² 18 Pa.C.S. §§ 907(a), 2701(a), and 2705, respectively. The trial judge found Walker not guilty of the charge of aggravated assault, 18 Pa.C.S. § 2702(a).

aggregate term of three years' probation. In this appeal, Walker raises two questions: (1) Whether this Court should remand this appeal for completion of the record, and (2) Whether the convictions were against the weight of the evidence. As the first question has been resolved by orders of this Court directing the trial court to correct omissions in the record,³ we address only the second question raised in this appeal. Based upon the following, we affirm.

The trial judge has summarized the facts underlying this appeal as follows:

On June 1, 2011, the Complaining Witness, Jacqueline Boone,^[4] was standing alone in front of her cousin's property [Walker's] mother, Lisa Walker, came outside and had a heated argument with the Complaining Witness.

[Walker] then approached the Complaining Witness carrying in her hand a four foot stick, that looked like [a] mop or broom handle. [Walker] swung the stick at the Complaining

³ In this Court, Walker and the Commonwealth each filed a motion to correct omissions in the record pursuant to Pa.R.A.P. 1926. By orders of May 23, 2013, and September 19, 2013, this Court ordered the trial court to certify and transmit to this Court supplemental records containing photographs and 911 recordings, respectively. We note that although a photograph of Walker admitted into evidence appears to be missing from the trial record and has not been located, **see** Walker's Motion to Correct Omissions in the Record Pursuant to Pa.R.A.P. 1926, 5/23/2013, at 1 n.a, the description of the photograph and Walker's injuries in testimony under oath is tantamount to completion of the record regarding the photograph under Pa.R.A.P. 1923 and 1924. **See** N.T., 3/2/2012, at 70-71.

⁴ It bears mention that Walker and Boone have children with the same father. **See** N.T., 3/2/2012, at 8, 31.

Witness, striking her left shoulder. When the Complaining Witness grabbed the stick from [Walker], [Walker] began punching the Complaining Witness in the face. [Walker] then went into a crouching position, pulled out a steak knife and stabbed the Complaining Witness three times, once in her kneecap, and twice in her rear thigh. People then rushed in to take the knife from [Walker], who held on to it by the blade. The knife broke. ...

[Walker] and her mother testified about the fight, both denying that [Walker] stabbed the Complaining Witness. ...

Trial Court Opinion, 10/31/2012, at 1–2 (record citations omitted).

The trial judge found the testimony of the victim to be credible and the testimony of Walker and her mother to be not credible. ***Id.*** at 2. The judge convicted Walker of the above mentioned charges and, following sentencing and the denial of Walker’s post sentence motion,⁵ this *nunc pro tunc* appeal followed.⁶

Here, Walker challenges the weight of the evidence, contending: “[T]he only evidence that it was Tia Walker who started the fight is the testimony of Jacqueline Boone. Every other piece of evidence in the trial points in the opposite direction, and greatly outweighs Ms. Boone’s testimony.” Walker’s Brief at 18. Specifically, she argues:

⁵ Walker preserved her weight challenge by raising the issue in her post sentence motion. **See** Pa.R.Crim.P. 607(A) (weight of evidence claim must be raised with trial judge either orally before sentencing, by written motion before sentencing, or in post sentence motion).

⁶ Walker timely complied with the order of the trial court to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b).

The wound suffered by Ms. Walker, which left a large scar on her finger that the court saw and noted on the record, was obviously caused by Ms. Walker grabbing the blade of a knife (as it was wielded by Ms. Boone, according to Ms. Walker's testimony) — something which is far more likely to happen when someone else is wielding the knife (and thus gripping its handle. Ms. Walker's explanation for the wound on her hand, corroborated by the testimony of her mother, is far more plausible than the testimony of Ms. Boone. Ms. Walker's wounds were documented by the medical records provided in court of her hospital treatment — whereas Ms. Boone's supposed injuries were not documented by any neutral source. It was Ms. Walker who called 911, which shows the opposite of a guilty mind. Ms. Boone claimed that Louis Murphy^[7] and other bystanders were not helping her beat up Ms. Walker, but only disarmed Ms. Walker after she pulled a knife — but none of those people came to court to testify, which makes little sense if their role in the fight was as purely innocent as Ms. Boone claimed, but makes much more sense if they were in fact her co-conspirators as the testimony of Ms. Walker and her mother showed (as backed up by the hospital records of Ms. Walker, which were introduced at trial and showed contusions and lacerations to her face and head). Finally, Ms. Walker's testimony was corroborated in all relevant parts by that of her mother, and while the Commonwealth understandably tried to argue bias, Ms. Boone's testimony was corroborated by nothing at all.

Id. at 18–19, 21 (record citations omitted). In addition, Walker claims the evidence of Ms. Walker's good character "does not even appear to have been considered by the court" **Id.** at 21.

Our standard of review is as follows:

A motion for a new trial based on a claim that the verdict is against the weight of the evidence is addressed to the discretion

⁷ In her brief, Walker identifies Louis Murphy as the father of Boone's children, as well as her child. **See** Walker's Brief at 6. The trial transcript shows his name as "Louis Moore (ph)". **See** N.T., 3/2/2012, at 31. **See also, id.** at 84.

of the trial court. A new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. Rather, "the role of the trial judge is to determine that notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice." It has often been stated that "a new trial should be awarded when the jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail." An appellate court's standard of review when presented with a weight of the evidence claim is distinct from the standard of review applied by the trial court:

Appellate 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. Because the trial judge has had the opportunity to hear and see the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court's determination that the verdict is against the weight of the evidence. One of the least assailable reasons for granting or denying a new trial is the lower court's conviction that the verdict was or was not against the weight of the evidence and that a new trial should be granted in the interest of justice.

This does not mean that the exercise of discretion by the trial court in granting or denying a motion for a new trial based on a challenge to the weight of the evidence is unfettered. In describing the limits of a trial court's discretion, we have explained:

The term "discretion" imports the exercise of judgment, wisdom and skill so as to reach a dispassionate conclusion within the framework of the law, and is not exercised for the purpose of giving effect to the will of the judge. Discretion must be exercised on the foundation of reason, as opposed to prejudice, personal motivations, caprice or arbitrary actions. Discretion is abused where the course pursued represents not merely an error of judgment, but where the judgment is manifestly

unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias or ill-will.

Commonwealth v. Clay, 64 A.3d 1049, 1055 (Pa. 2013) (citations and emphasis omitted).

The trial judge rejected Walker's post sentence motion for a new trial for the following reasons:

This trial involved a "he said/she said" situation where the trial court found the testimony of the Complaining Witness to be credible and the testimony of [Walker] and her mother not to be credible. ...

The Complaining Witness' testimony was logical and her demeanor indicated that she was testifying truthfully. The court found credible the Complaining Witness' rendition of the facts that she was arguing with [Walker's] Mother when [Walker] came up behind the Complaining Witness with a stick and hit her on the shoulder. [Walker] and the Complaining Witness punched each other until [Walker] "was [crouched] down like this, and she came out with a knife and she stabbed me in my leg and twice here." (N.T. p. 17). The Complaining Witness' testimony about the stab wounds w[as] corroborated by photograph[s] of the injuries.² (N.T. p. 21).

² The trial court has no doubt that after [Walker] struck the Complaining Witness with a stick, the Complaining Witness and possibly others punched [Walker]. The court, however, is only addressing the charges against [Walker] and not against anyone else involved in the fight.

In contrast, the court did not find the testimony of [Walker's] mother or [Walker] to be credible. Their testimony contained inconsistencies, was evasive and full of hostility towards the Complaining Witness.

Therefore, there was sufficient evidence to support the convictions and the court's verdict is not against the weight to such a degree that "it shocks the conscience."

Trial Court Opinion, *supra*, at 2-3.

Walker's argument in this appeal is that the trial judge should have afforded more weight to the testimony presented by her and her mother, and the evidence of her good character. This argument fails to warrant relief.

The trier of fact is free to believe all, part or none of the evidence and must determine the credibility of the witnesses. **See Commonwealth v. Champney**, 832 A.2d 403, 408 (Pa. 2003). Here, the trial judge, sitting as the factfinder, heard the testimony and made her credibility determinations. **See Commonwealth v. Hopkins**, 747 A.2d 910, 917 (Pa. Super. 2000) ("Resolving contradictory testimony and questions of credibility are matters for the factfinder."). In this regard, we are not persuaded by Walker's citation to **Commonwealth v. Karkaria**, 535 Pa. 412, 625 A.2d 1167 (1993) (holding evidence insufficient as a matter of law where it is so unreliable and contradictory that it is incapable of supporting a verdict of guilty). We note that **Karkaria** involved a sufficiency claim, but, even assuming **Karkaria** applies to a weight claim, the evidence in the present case is not as inherently unreliable or contradictory as that described in

Karkaria. Finally, the introduction of testimony regarding Walker's good character does not render the Commonwealth's evidence unbelievable.⁸

The trial judge had the opportunity to observe the demeanor and deportments of all the witnesses, listen to their testimony, and review documentary evidence, including photographs and a recording of multiple calls made by Walker to 911. After weighing and evaluating the Commonwealth's evidence, the trial judge found this case was not one in which a new trial should be awarded on a weight of the evidence challenge. Having carefully reviewed the record and the trial judge's reasoning, we discern no abuse of discretion in the trial judge's decision to deny Walker's request for a new trial.

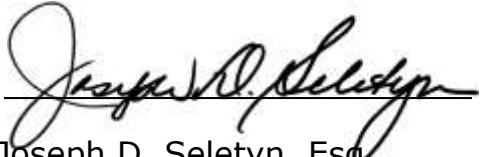
Accordingly, we affirm.

Judgment of sentence affirmed. All outstanding motions are dismissed.

⁸ The trial court's opinion does not mention the evidence regarding Walker's good character. However, there is no basis upon which to conclude that the court did not consider this evidence in reaching its decision.

J-S56019-13

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: 11/22/2013