

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

JOSE TURBI SANDOVAL,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2774 EDA 2012

Appeal from the Judgment of Sentence entered March 24, 2010
In the Court of Common Pleas of Chester County
Criminal Division at No(s): CP-15-CR-0001001-2009

BEFORE: LAZARUS, OLSON AND FITZGERALD,* JJ.

MEMORANDUM BY OLSON, J.:

FILED MAY 07, 2013

Appellant, Jose Turbi Sandoval, appeals from the judgment of sentence entered on March 24, 2010 following his jury trial convictions for robbery, theft by unlawful taking, and possession of a controlled substance.¹

Upon review, we affirm.

The trial court summarized the facts and procedural history of this case as follows:

On the evening of January 8, 2008, Michael Boyd arrived at the West Chester home of Ricardo Ramos and Julian Trombetti. Mr. Boyd was there to sell marijuana, which he carried with him in a black briefcase. Mr. Ramos testified that while Mr. Boyd was in his home, he, Mr. Ramos, went outside to take out the trash and saw [A]ppellant, who Mr. Ramos knew, standing in the dark behind the trashcans.

¹ 18 Pa.C.S.A. §§ 3701 and 3921; 35 P.S. § 780-113(a)(16).

*Former Justice assigned to the Superior Court.

Appellant asked Mr. Ramos if the man with the "briefcase" was still in the house. Mr. Ramos, aware that something bad might be in the offing, responded by asking [A]ppellant to "please don't do this at my house." Mr. Ramos returned to the house and chose to tell Mr. Boyd nothing of the encounter.

Mr. Boyd remained in the house for an additional thirty to forty minutes before leaving. Within moments of Mr. Boyd leaving the house, Mr. Ramos and Mr. Trombetti heard a gunshot and went outside to investigate. There, they met Mr. Boyd, who told them that he had just been robbed of his briefcase, but that he shot the robber in the back as the robber fled down the street. A short time later [A]ppellant arrived at the Chester County Hospital for treatment of a gunshot wound [to] his back, which brought the police into the matter, and begun the investigation that led to [A]ppellant's arrest and conviction.

On January 21, 2010, a jury found [A]ppellant guilty of robbery, theft by unlawful taking, and possession of a controlled substance. He was sentenced on March 24, 2010, to a period of incarceration of [] twenty-two (22) to ninety-six (96) months. He filed a notice of appeal on April 19, 2010, a concise statement [of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b)] was ordered and untimely filed, a [Rule] 1925(a) opinion was prepared, and the record was transferred to [this] Court on June 4, 2010. On June 14, 2010, [this] Court dismissed his appeal for failure to file a docketing statement pursuant to Pa.R.A.P. 3517.

On December 29, 2010, [A]ppellant filed a *pro se* petition under the Post Conviction Relief Act [(PCRA)]. On February 3, 2011, appointed counsel filed an amended petition. On March 10, 2011, [the trial court] granted relief under the [PCRA], specifically permitting him thirty (30) days in which to file an appeal *nunc pro tunc* from the judgment of sentence entered against him on March 24, 2010. Appellant filed an untimely notice of appeal on April 22, 2011. On June 29, 2012, [this] Court quashed [A]ppellant's appeal as untimely filed.

On September 25, 2012, [the trial court] reinstated Appellant's right to appeal *nunc pro tunc* after finding that a breakdown in the processes of the court caused the office of the Public Defender to be unaware of [the trial court's] March 10, 2011[] order until April 22, 2011. Accordingly, [the trial court] granted [A]ppellant thirty (30) days from September 25, 2012, to file his appeal *nunc pro tunc*. Appellant timely filed his notice of appeal on October 2, 2012, and on October 11, 2012, his statement of errors complained of on appeal.

Trial Court Opinion, 11/1/2012, at 1-3 (record citations and footnotes omitted).

On appeal, Appellant presents the following issues² for our review:

- A. Did the trial court abuse its discretion by restricting defense counsel's cross-examination of Commonwealth witness Ricardo Ramos regarding a prior inconsistent statement? Did the trial court compound its error by [*sua s]ponte* giving a jury instruction regarding prior inconsistent statements that went beyond the standard instruction?
- B. Did the trial court abuse its discretion by allowing the Commonwealth to cross-examine Appellant about his prior convictions for [p]ossession of a [c]ontrolled [s]ubstance with [i]ntent to [d]eliver?

Appellant's Brief at 4.

In his first issue presented, Appellant claims the trial court erred by restricting defense counsel from cross-examining Ricardo Ramos regarding

² Appellant identified another issue in his Rule 1925(b) statement, but he does not present it in his appellate brief. Hence, Appellant has abandoned this claim and waived it on appeal. ***Commonwealth v. Hernandez***, 39 A.3d 406, 412 (Pa. Super. 2012) (failure to develop argument with citation to and analysis of relevant authority waives issue on appeal); Pa.R.A.P. 2119(b).

an alleged prior inconsistent statement. **Id.** at 11. Appellant argues that Ramos testified on direct examination that he knew Appellant from playing basketball together in school. **Id.** However, Ramos told police earlier, in a signed written statement, that he knew Appellant through a man named Juan Terrero. **Id.** at 12. On redirect examination, the Commonwealth established that “Ramos told the police that he and [] Appellant knew each other from playing basketball when they were little kids.” **Id.** at 13. Appellant asserts the trial court interrupted the cross-examination and sharply criticized counsel, in front of the jury, regarding the pertinent law that “may well have caused the jury to believe that the trial court thought defense counsel was doing something underhanded.” **Id.** at 17. Appellant contends that the trial court compounded its error by *sua sponte* issuing a jury instruction regarding prior inconsistent statements because: (1) it went beyond the standard jury instruction, and (2) unduly emphasized that the inconsistency between the prior statement and trial testimony must be substantial. **Id.**

In his second issue presented, Appellant claims the trial court improperly admitted evidence of Appellant’s prior conviction for possession of a controlled substance with intent to deliver. **Id.** at 19. At trial, Appellant “testified that he was not shot by Michael Boyd” but rather, by an unknown male in an alley [] in West Chester. **Id.** at 20. Appellant testified that he walked past the unknown male and “didn’t pay him no mind. I didn’t have no reason to worry about anybody cause I never did nothing wrong.” **Id.**

The Commonwealth requested a ruling regarding whether it could cross-examine Appellant regarding his prior drug conviction. *Id.* The trial court opined that Appellant had opened the door to such evidence by offering evidence of his own good character. *Id.* Appellant, however, argues that his direct testimony was “narrowly confined” and that “he was saying that he never did anything to the person he saw in the alley, and he therefore had no reason to fear this person.” *Id.* at 22. Appellant claims he was prejudiced because the Commonwealth was then able to argue in closing “that Appellant had the motive to steal the briefcase because he is a convicted drug dealer.” *Id.*

Both of Appellant’s issues challenge the trial court’s rulings on the admissibility of evidence. When reviewing a trial court's discretion to make evidentiary rulings, our standard of review is limited:

The admissibility of evidence is a matter of trial court discretion and a ruling thereon will only be reversed upon a showing that the trial court abused that discretion. An abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous.

Commonwealth v. Williams, 58 A.3d 796, 800 (Pa. Super. 2012) (citations and quotations omitted).

Moreover, with regard to jury instructions:

When reviewing jury instructions for error, the charge must be read as a whole to determine whether it was fair or prejudicial. The trial court has broad discretion in phrasing

its instructions, and may choose its own wording so long as the law is clearly, adequately, and accurately presented to the jury for its consideration.

Commonwealth v. Washington, 927 A.2d 586, 603 (Pa. 2007) (citations omitted).

We have reviewed the certified record, the parties' briefs, the relevant law, and the trial court's opinion entered on November 1, 2012. With regard to Appellant's first issue, the trial court determined that Ramos' in-court testimony was legally consistent with his statement to police because "[a]s a youngster, the witness knew [A]ppellant through basketball, and as an adult through Juan Terrero." Trial Court Opinion, 11/1/12, at 6. In the interest of caution, the trial court gave a jury instruction on inconsistent statements for impeachment purposes. ***Id.*** at 7. While the trial court did not read the jury instruction verbatim from the suggested standard jury instruction, the trial court ultimately told jurors that they were the fact-finders and sole assessors of credibility. ***Id.*** Moreover, at trial, Appellant conceded that the instructions were legally accurate. ***Id.*** Next, the trial court determined that Appellant opened the door for the Commonwealth to question him about prior convictions when he volunteered testimony of his good character on direct examination, more specifically, Appellant stated, "I didn't have no reason to worry about anybody cause I never did nothing wrong." ***Id.*** at 8, *citing* N.T., 1/20/10, at 189. Because Appellant had been convicted of possession with intent to deliver controlled substances, the trial court allowed the Commonwealth to question Appellant about the conviction to

refute his assertion that he never did anything wrong. ***Id.*** at 8. Although Appellant has attempted to confine the scope of his statement to the individual he claimed to have encountered in the alley, his own words, specifically his suggestion that he had no reason to worry about **anybody** because he **never** did anything wrong, pointed to a far wider context. It was reasonable, therefore, for the trial court to conclude that Appellant placed his character at issue.

We conclude that there has been no error or abuse of discretion in this case and that the November 1, 2012 opinion meticulously, thoroughly, and accurately disposes of Appellant's issues on appeal. Therefore, we affirm on the basis of the trial court's opinion and adopt it as our own. Because we have adopted the trial court's opinion, we direct the parties to include the trial court's opinion in all future filings relating to our examination of the merits of this appeal, as expressed herein.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambetti", written over a horizontal line.

Prothonotary

Date: 5/7/2013

