

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

RYAN WANSLEY

Appellant

No. 3497 EDA 2012

Appeal from the Judgment of Sentence August 23, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0000051-2012

BEFORE: BOWES, J., LAZARUS, J., and WECHT, J.

MEMORANDUM BY LAZARUS, J.

FILED DECEMBER 17, 2013

Ryan Wansley appeals from his judgment of sentence, imposed in the Court of Common Pleas of Philadelphia County, following his conviction for aggravated assault,¹ simple assault,² possession of an instrument of crime (PIC),³ and recklessly endangering another person (REAP).⁴ The trial court sentenced Wansley to four years' reporting probation, along with mandatory anger management classes and drug screenings. On appeal, Wansley

¹ 18 Pa.C.S. § 2702.

² 18 Pa.C.S. § 2701.

³ 18 Pa.C.S. § 907.

⁴ 18 Pa.C.S. § 2705.

challenges the sufficiency of the evidence to support his convictions.

Wansley raises the following issues on appeal:⁵

1. Is [Wansley] entitled to an arrest of judgment on the charge of aggravated assault, PIC, and all related offenses because the evidence is insufficient to support the verdict?
2. Is [Wansley] entitled to an arrest of judgment or a new trial on the charge of aggravated assault, PIC, and all related offenses because the verdict was against the weight of the evidence?

Brief of Appellant, at 3. After careful review, we reverse.

The facts of this case are not in dispute. Philadelphia Police Officer Daisy Medycki testified that on December 15, 2011, at approximately 2:30 p.m., she saw a man sitting on the sidewalk at 5623 Germantown Avenue with what appeared to be a single stab wound to his abdomen. Officer Medycki was directed to enter Mr. Hook Fish and Chicken (“Mr. Hook”), a restaurant across the street. Once inside, Officer Medycki saw Wansley, who had a knife with a 3.5 inch blade sticking out of his pocket. Officer Medycki handcuffed him. Wansley told Officer Medycki that he had been in an altercation with the man outside, later identified as Deandre Newby.

⁵ In his appellate brief, Wansley also claims that the trial court erred in denying his motion for acquittal following the close of the Commonwealth’s case. This is, essentially, a sufficiency claim and will not be separately addressed. **See, e.g. Commonwealth v. Hutchinson**, 947 A.2d 800, 805–06 (Pa. Super. 2008) (“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[.]”).

Wansley stated that he had stabbed Newby in the stomach in self-defense after Newby punched him in the face. Officer Medycki testified that Wansley was fully cooperative at the scene.

Wansley later gave a statement to detectives, also indicating that he had acted in self-defense. In his statement, Wansley related that he had entered Mr. Hook with his then-girlfriend, Ashley Saunders. Once they were inside, an altercation broke out between Wansley and Newby, who was there with Jashea Edwards, Wansley's former girlfriend. Newby told Wansley he wanted to "see" him outside. When Wansley refused to leave the restaurant, Newby grabbed him with both hands and punched him twice in the back of the head. At that point, Wansley pulled out a knife, which he carries for his job, and stabbed Newby once in the stomach.

The Commonwealth presented Newby's medical records by stipulation. The records indicated that on December 15, 2011, Newby was admitted to Albert Einstein Medical Center with a four-centimeter stab wound to the abdomen. He was subsequently discharged on December 20, 2011. Newby did not testify at trial and the Commonwealth offered no out-of-court statements from him.

At the close of the Commonwealth's case, Wansley moved for judgment of acquittal on all charges. The trial court denied the motion.

Ashley Saunders testified for the defense. She stated that, on the day in question, she and Wansley went to Mr. Hook to order food and that there was a group of four or five men and one woman inside. Upon entering,

Wansley briefly spoke to his ex-girlfriend's cousin, who was also present. Thereafter, the cousin left the store and returned with Wansley's ex-girlfriend, Edwards, who proceeded to take off her coat and tie up her hair as if she wanted to fight Saunders. Saunders believed Edwards wanted to fight her because prior to that day, the two of them had exchanged text messages in which Edwards had threatened to beat her up when she saw her. Edwards then stepped outside with Newby for a couple of minutes and came back inside. Upon his return, Newby approached Wansley and tried to grab him and pull him outside. Wansley refused to leave and as he tried to push Newby off, Newby punched him twice in the temple. Saunders testified that she tried to break up the fight, and when the two separated, she noticed that Newby had been stabbed. Saunders testified that she never saw the actual stabbing, but that Newby was stabbed by the time she had broken the fight up. Saunders and Wansley remained at the scene and waited for police to arrive.

Wansley testified that, roughly a week prior to the day in question, Edwards had been texting his and Saunders' phones claiming that she was going to get someone to "F" the two of them up when she saw them next. He stated that, when he arrived at Mr. Hook, he ran into Edwards' cousin and:

. . . We said hi to each other. She came back with [Edwards]. My ex is [Edwards]. [Edwards] entered the store and started taking off her jacket and tying up her hair as if she wanted to fight my girlfriend. Then this guy came over to her. They went

outside to talk. He came back in and said, "Did you disrespect my sister?" I said, "No." He said, "Step outside with me." I said, "No, I'll see you when I get out there." Then he comes—I turned back around to order my food and he comes behind me and hits me twice and grabs me. That's when I turned around and I stabbed him.

N.T. Trial, 8/23/12, at 34. Wansley testified that he responded to the attack by stabbing Newby because of Edwards' previous threats.

On cross-examination, Wansley testified that he did not initially realize Newby wanted to fight when he asked him to step outside. Wansley first thought Newby wanted to talk to him, and that he did not begin fearing for his safety until Newby struck him in the head. Wansley testified that, "Once he hit me, I realized she sent him to 'F' me up." *Id.* at 36. Wansley acknowledged that he did not see a weapon in Newby's hand.

Last, Wansley presented the testimony of Sheila Bennett. Bennett had known Wansley since his birth, and testified to his excellent character and reputation in the community as a peaceful, honest, and law abiding citizen.

On appeal, Wansley first claims that the Commonwealth failed to present sufficient evidence to support his convictions.

When reviewing a sufficiency of the evidence claim, this Court must view the evidence and all reasonable inferences to be drawn from the evidence in the light most favorable to the Commonwealth as verdict winner, and we must determine if the evidence, thus viewed, is sufficient to prove guilt beyond a reasonable doubt. This Court may not substitute its judgment for that of the factfinder. If the record contains support for the verdict, it may not be disturbed.

Commonwealth v. Burns, 765 A.2d 1144, 1148 (Pa. Super. 2000).

At trial, Wansley asserted the affirmative defense of self-defense. “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.” 18 Pa.C.S. § 505(a). The use of deadly force is justified only if the actor believes that such force is necessary to protect himself against death or serious bodily injury. 18 Pa.C.S. § 505(b)(2). Deadly force is defined as “[f]orce which, under the circumstances in which it is used, is readily capable of causing death or serious bodily injury.” 18 Pa.C.S. § 501. Serious bodily injury is defined as “[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” 18 Pa.C.S. § 2301.

Generally, a defendant has no burden to prove self-defense. However, “before the defense is properly in issue, there must be some evidence, from whatever source, to justify such a finding.” ***Commonwealth v. Mouzon***, 53 A.3d 738, 740 (Pa. 2012). Once the defense is properly raised, “the burden is upon the Commonwealth to prove beyond a reasonable doubt that the defendant was not acting in self-defense.” ***Id.*** The Commonwealth may disprove a claim of self-defense by establishing any one of the following three elements:

- (1) That the defendant did not reasonably believe deadly force was necessary to protect himself from imminent danger of death or serious bodily injury;
- (2) The defender provoked the incident; or
- (3) The defender violated a duty to retreat and retreat was possible with safety.

Id.*; Commonwealth v. Chine**, 40 A.3d 1239, 1243 (Pa. Super. 2012); ***Commonwealth v. Burns, 765 A.2d 1144, 1149 (Pa. Super. 2000). “If the Commonwealth establishes any one of these three elements beyond a reasonable doubt, then the conviction is insulated from a defense challenge to the sufficiency of the evidence where self-protection is at issue.” ***Burns***, 765 A.2d at 1149.

Here, Wansley asserts that Newby came at him unprovoked, tried to pull him out of the store, and punched him twice in the temple. Wansley responded by stabbing Newby one time in the stomach with a three-and-a-half inch blade. This assertion properly places the claim of self-defense before the court, and the remaining question is whether sufficient evidence exists to find that the self-defense claim is disproved beyond a reasonable doubt. ***Id.***

The trial court concluded that “[Wansley] did not prove by a preponderance of the evidence that he had a reasonable belief that his use of a knife was necessary to protect himself against serious bodily injury,” and that his use of the knife was excessive under the circumstances. Trial Court Opinion, 4/15/2013, at 12. However, as our Supreme Court has

recently reiterated, the burden in self-defense cases is on the Commonwealth, which must disprove the claim beyond a reasonable doubt. **See Mouzon**, 53 A.3d at 741–43 (explaining the changes in burden requirements for affirmative defenses specifically with regard to self-defense claims). Accordingly, Wansley was not required to prove by a preponderance of the evidence that he acted with all of the required elements of a self-defense claim, and the trial court’s application of such a standard was erroneous. Rather, the Commonwealth was required to disprove Wansley’s self-defense claim beyond a reasonable doubt.

Here, the Commonwealth’s evidence consisted of three parts: (1) Officer Medycki’s testimony, including her recounting of Wansley’s statements to her; (2) Wansley’s official statement to detectives, which corroborated his statements to Officer Medycki; and (3) Deandre Newby’s medical report. This case is analogous to **Commonwealth v. Torres**, 766 A.2d 342 (Pa. 2001).

Torres was convicted of simple assault. Similar to the present case, the complainant did not testify at trial. Torres claimed that he had punched the complainant in self-defense after the complainant had punched him in the face. As a result of Torres’ punch, the complainant fell and injured his head. The only evidence presented by the Commonwealth was the testimony of the responding police officer, who recounted the statements made at the scene, and the medical records of the complainant.

Based upon the foregoing, our Supreme Court held that the Commonwealth failed to present sufficient evidence to disprove the claim of self-defense. Rather, the evidence served only to establish what the Torres had conceded, that an altercation had occurred between him and complainant. Torres' explanation of the cause of the violence remained uncontradicted, and the fact finder's mere disbelief of Torres' testimony was not sufficient to sustain the Commonwealth's burden to disprove self-defense beyond a reasonable doubt. "The 'disbelief of a denial does not, taken alone, afford affirmative proof that the denied fact existed so as to satisfy a proponent's burden of proving the fact.'" **Id.** (quoting **Commonwealth v. Graham**, 596 A.2d 1117, 1118 (Pa. 1991)). Therefore, the Supreme Court reversed Torres' conviction.

Like in **Torres**, the Commonwealth's evidence in this case "serves only to establish what [Wansley] concedes," that an altercation occurred between him and Newby. The Commonwealth presented no statement from Newby or any other eyewitness, and there is no other evidence of record to rebut Wansley's account of the events.

Moreover, as in **Torres**, the trial court stated that it did not find Wansley's testimony regarding his alleged fear at the time of the stabbing to be either "convincing or credible." Trial Court Opinion, 4/15/2013, at 9. The judge, sitting as fact finder, is certainly entitled to disbelieve all, part, or none of the testimony of a witness at trial. **Commonwealth v. Adams**,

882 A.2d 496, 499 (Pa. Super. 2005). However, there must be other evidence or testimony of record to disprove self-defense. The Commonwealth cannot sustain its burden of proof solely on the fact finder's disbelief of the defendant's testimony. ***Id.*** Again, the Commonwealth presented no evidence to disprove beyond a reasonable doubt that Wansley reasonably feared he was in danger of imminent serious bodily injury.

The trial court also reasoned that Wansley's response of stabbing Newby was excessive. However, there is no other evidence of record to demonstrate that he did not reasonably believe he was in imminent danger of serious bodily injury. Rather, Wansley stated specifically that he feared for his life after he was struck because his ex-girlfriend had been threatening him via text-messages the week before. Likewise, the Commonwealth presented to no evidence to suggest that Wansley provoked the incident, or that, once he was in Newby's grasp and being punched, he could reasonably retreat.

The Commonwealth also argues that Wansley's response of introducing a knife into the altercation forecloses his claim of self-defense. The Commonwealth asserts that Wansley responded with deadly force to an attack of non-deadly force, which was excessive, and thus negated any claim of self-defense. However, the law does not foreclose the use of a knife in response to an unarmed attack with fists. Self-defense simply requires that for one to employ deadly force, he must believe the force is necessary to

protect himself against death or serious bodily injury. 18 Pa.C.S.A. § 505(b)(2). Further, the affirmative defense cannot be claimed if the defendant provoked the altercation, or he violated a duty to retreat. **Id.** If the defendant subjectively believes that his use of a knife is necessary to protect against serious bodily injury, the use is permissible. However, as discussed **supra**, the Commonwealth failed to provide sufficient evidence to prove beyond a reasonable doubt that Wansley did not reasonably have such a belief.

The trial court's reliance on **Commonwealth v. Jones**, 332 A.2d 464 (Pa. Super. 1974), to determine that use of a knife in a fistfight is excessive, is factually inapposite. In that case, which was decided before the burden of proof was placed on the Commonwealth in self-defense claims, the court determined that the defendant's use of a knife was excessive. In **Jones**, the defendant was aware of an impending attack by his girlfriend's son and cousin, who were driving to his house. Jones instructed his girlfriend to call the police and while he waited for police, he grabbed a kitchen knife and waited for the son to arrive. Once the son arrived, Jones left the security of his house to confront the youths with his knife.

Unlike the matter *sub judice*, Jones was at fault in violating his duty to retreat because he actually confronted the attackers, and he "continued the difficulty" while knowing police were on their way. **Id.** Thus, the use of the knife was not immediately necessary in that case. Here, however, Wansley

neither provoked the confrontation nor violated a duty to retreat by leaving a secure environment.

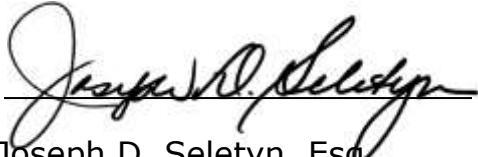
In summary, the trial court received three identical accounts of the incident in this case: First, Wansley's statements to police; second, Saunders' testimony; and third, Wansley's trial testimony. All of these accounts related that Wansley was attacked by Newby, was punched twice in the side of his head, and responded by stabbing Newby once in self-defense. No further evidence was presented to enable the fact finder to conclude otherwise. Any evidence could have sufficed, such as testimony that Wansley provoked Newby's attack, that the punches were not very strong, that Newby backed off or disengaged when he saw the knife, or even that Wansley lunged at Newby with the knife. However, the Commonwealth presented nothing to rebut Wansley's claim of self-defense. Accordingly, the evidence was insufficient to disprove Wansley's claim of self-defense beyond a reasonable doubt.⁶

Judgment of sentence reversed. Jurisdiction relinquished.

⁶ Because we grant relief based on Wansley's sufficiency claim, it is unnecessary to address his weight of the evidence claim.

J-S62023-13

Judgment Entered.

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to read "Joseph D. Seletyn".

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/17/2013