

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

RONALD ARLINE RICHARDSON

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 913 MDA 2012

Appeal from the Judgment of Sentence February 1, 2012
In the Court of Common Pleas of Lycoming County
Criminal Division at No(s): CP-41-CR-0001039-2011

BEFORE: FORD ELLIOTT, P.J.E., PANELLA, J., and ALLEN, J.

MEMORANDUM BY PANELLA, J.

Filed: February 26, 2013

Appellant, Ronald Arline Richardson, appeals from the judgment of sentence entered February 1, 2012, by the Honorable Marc F. Lovecchio, Court of Common Pleas of Lycoming County. We affirm.

On March 1, 2011, Richardson was charged with one count each of assault by prisoner, aggravated assault, and simple assault. The charges arose from an incident on January 18, 2011, in which Richardson, an inmate at Lycoming County Prison, pulled fellow inmate Thomas Bower from the top bunk of his bed and proceeded to beat, kick and punch him. As a result of the assault, Bower sustained a laceration on the back of his head and to his left eyebrow, a lacerated shin, bumps and scrapes and "bruising" of two vertebrae in his back. Following a waiver trial, the trial court convicted Richardson of assault by prisoner and simple assault. On February 1, 2012,

Richardson was sentenced to 2 to 5 years' imprisonment. This timely appeal followed.

On appeal, Richardson first challenges the sufficiency of the evidence in support of his convictions. Our standard of review is as follows:

The standard we apply in reviewing the sufficiency of 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 that of 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. Helsel, 53 A.3d 906, 917, 917-918 (Pa. Super. 2012) (citation omitted).

Richardson challenges the sufficiency of the evidence to support his conviction of assault by a prisoner under 18 PA.CON.S.TAT.ANN. § 2703. This Section provides in relevant part:

- (a) Offense defined.-A person who is confined in or committed to any ... county detention facility ... located in this Commonwealth is guilty of a felony of the second degree if he, while so confined ... intentionally or knowingly,

commits an assault upon another ... by any means or force likely to produce serious bodily injury.

18 PA.CON.S.TAT.ANN. § 2703. Richardson argues specifically that there was insufficient evidence to show that “the force used was likely to produce serious bodily injury.” Appellant's Brief at 10.¹ 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.CON.S.TAT.ANN. § 2301. The trial court noted that:

[Richardson] clearly approached the victim while the victim was either sleeping or unaware of [Richardson's] presence. He then grabbed the victim around the victim's torso and jerked him off of the top bunk, 4 ½ feet above the concrete floor. Mr. Bower flailed away in vain to prevent the assault. The force used actually pulled Mr. Bower entirely off the bunk, casting him in the air and down onto the concrete floor. While the Court cannot conclude beyond a reasonable doubt that [Richardson] intended to cause serious bodily injury, the force used in pulling Mr. Bower suddenly off of the bed and onto the floor was likely to produce serious bodily injury.

Trial Court Opinion, 11/21/11 at 14. We agree with the trial court's analysis and do not hesitate to find the evidence was sufficient to support a finding that Richardson acted with force likely to produce serious bodily injury when he assaulted Bower.

¹ We note that in order to sustain a conviction under section 2703, it is unnecessary to establish that the victim actually sustained serious bodily injury.

Richardson additionally attacks Bower's identification of Richardson as the perpetrator of the assault. He argues that because Bower testified that he was in and out of consciousness during the assault, "it is unlikely that [Bower's] identification was accurate." Appellant's Brief at 13. This argument attacks the weight, rather than the sufficiency of the evidence in support of Richardson's convictions. Richardson preserved this issue by raising it in his post-sentence motion filed on February 3, 2012. Our standard of review is well-settled:

The finder of fact is the exclusive judge of the weight of the evidence as the fact finder is free to believe all, part, or none of the evidence presented and determines the credibility of the witnesses.

As an appellate court, we cannot substitute our judgment for that of the finder of fact. Therefore, we will reverse a jury's verdict and grant a new trial only where the verdict is so contrary to the evidence as to shock one's sense of justice. A verdict is said to be contrary to the evidence such that it shocks one's sense of justice when "the figure of Justice totters on her pedestal, or when "the jury's verdict, at the time of its rendition, causes the trial judge to lose his breath, temporarily, and causes him to almost fall from the bench, then it is truly shocking to the judicial conscience."

Furthermore,

where the trial court has ruled on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.

Commonwealth v. Cruz, 919 A.2d 279, 281-82 (Pa. Super. 2007) (citations omitted).

At trial, Bower testified he saw Richardson's face when he hit the floor during the attack and that he observed Richardson leaving the cell when the attack ended. N.T., Non-jury Trial, 11/7/11 at 7-8. Lieutenant William McKissick, III, additionally testified that when he observed Bower sitting bloodied and disoriented on his cell floor, Bower immediately identified Richardson as his assailant. ***Id.*** at 42. The trial court, after reviewing the record, concluded that the verdict did not shock its conscience. ***See*** Trial Court Opinion, 5/14/12. Moreover, the trial court clearly credited Bower's testimony identifying Richardson as his assailant. Trial Court Opinion, 11/21/11 at 10. In light of the evidence discussed *supra*, we cannot conclude that this decision was an abuse of the trial court's discretion. Accordingly, we conclude that this issue on appeal merits no relief.

Judgment of sentence affirmed. Jurisdiction relinquished.