J-S16028-14

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
KEVIN LEE GETZ,	:	
	:	
Appellant	:	No. 1344 MDA 2013

Appeal from the Judgment of Sentence February 21, 2013,
Court of Common Pleas, Luzerne County,
Criminal Division at No. CP-40-CR-0000375-2012

BEFORE: BENDER, P.J.E., DONOHUE and STRASSBURGER*, JJ.

MEMORANDUM BY DONOHUE, J.: **FILED APRIL 11, 2014**

Appellant, Kevin Lee Getz ("Getz"), appeals from the judgment of sentence on February 21, 2013 imposed by the Court of Common Pleas of Luzerne County following his convictions for aggravated assault; endangering welfare of children; simple assault; and recklessly endangering another person ("REAP").[1] We affirm.

The facts and procedural history of this case are summarized as follows. On August 24, 2011, Getz and Alyssa Hossage ("Hossage") took their six-week-old son, Bentley Getz ("Bentley"), to the emergency room at Wilkes-Barre General Hospital because Bentley's left leg was swollen. N.T., 12/17/12, at 30-33. While examining Bentley, the triage nurse noted that his left leg was twice the size of his right leg and the charge nurse felt a

[1] 18 Pa.C.S.A. § 2702; 18 Pa.C.S.A. § 4304; 18 Pa.C.S.A. 2701; and 18 Pa.C.S.A. § 2705, respectively.

*Retired Senior Judge assigned to the Superior Court.

"lump underneath the skin" of the left leg. ***Id.*** at 34, 41. As a result, the charge nurse ordered x-rays of Bentley's legs. ***Id.*** at 42. While in the emergency room, the parents indicated that they were unaware of what caused Bentley's injuries. ***Id.*** at 35. Dr. Ronald Richterman ("Dr. Richterman"), the radiologist at Wilkes-Barre General Hospital who examined Bentley's x-rays, found a complete fracture of the left femur and fractures in the right femur and tibia. ***Id.*** at 44, 49-54. After receiving the report of these x-rays, the emergency room ordered more x-rays of Bentley, which revealed further injury. ***Id.*** at 54.

Wilkes-Barre General Hospital then transferred Bentley to Geisinger Medical Center ("Geisinger") for pediatric specialty care. ***Id.*** at 131. While at Geisinger, Bentley was under the care of Dr. Paul Bellino ("Dr. Bellino"), a child abuse expert. ***Id.*** at 124. While examining Bentley, Dr. Bellino discovered bruises on Bentley's cheek and left arm. ***Id.*** at 137-38. Subsequently, Dr. Bellino reviewed x-rays of Bentley's legs and found the same extensive trauma as Dr. Richterman. ***Id.*** at 144-49. Dr. Bellino also examined x-rays of Bentley that revealed several recent rib fractures as well as several healing rib fractures. ***Id.*** at 140-41.

Due to the type injuries Bentley sustained, Wilkes-Barre General Hospital referred the case to Children and Youth Services, who in turn, notified the Luzerne County District Attorney. ***Id.*** at 60. On September 16, 2011, Gary Sworen ("Sworen"), a Luzerne County detective with the District

Attorney's office, interviewed Getz. ***Id.*** at 68. During this interview, Getz admitted to causing most of Bentley's injuries. ***Id.*** at 71. Getz stated that he remembered squeezing Bentley too hard in an attempt to stop him from crying, before hearing a pop. ***Id.*** at 73-74. Getz also made a signed, written statement admitting to "wrapping" Bentley too tightly in a blanket. ***Id.*** at 89.

Based on this interview, authorities arrested Getz on January 18, 2012, and charged him in the above-referenced crimes. On December 17, 2012, Getz was tried before a jury. On December 19, 2012, the jury convicted Getz on all charges. On February 21, 2013, the trial court sentenced Getz to six to twelve years of incarceration. On April 19, 2013, after receiving an extension, Getz timely filed his post-sentence motions. On June 18, 2013, the trial court denied Getz's post-sentence motions. This appeal followed.

On appeal, Getz raises the following two issues for review:

> I. WHETHER THE JURY VERDICT IN THIS MATTER WAS AGAINST THE SUFFICIENCY OF THE EVIDENCE BECAUSE THE COMMONWEALTH FAILED TO ESTABLISH BEYOND A REASONABLE DOUBT THAT DEFENDANT WAS THE CULPRIT OF THE CRIME AT ISSUE?
>
> II. WHETHER THE JURY VERDICT IN THIS MATTER WAS AGAINST THE WEIGHT OF THE EVIDENCE?

Appellant's Brief at 7.

For his first issue on appeal, Getz challenges the sufficiency of the evidence. Getz asserts that the Commonwealth failed to prove that he in fact committed the crimes at issue. When reviewing a challenge to the sufficiency of the evidence, the standard of review is as follows:

> As a general matter, our standard of review of sufficiency claims requires that we evaluate the record in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Nevertheless, the Commonwealth need not establish guilt to a mathematical certainty. Any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances

Commonwealth v. Pettyjohn, 64 A.3d 1072, 1074-75 (Pa. Super. 2013) (quotations and citations omitted).

We find that Getz has waived his challenge to the sufficiency of the evidence in this appeal. In regards to the requirements of a 1925(b) statement, this Court has previously stated that,

> If Appellant wants to preserve a claim that the evidence was insufficient, then the 1925(b) statement needs to specify the element or elements upon which the evidence was insufficient. This Court can then analyze the element or elements on appeal. The instant 1925(b) statement simply does not specify the allegedly unproven elements. Therefore, the sufficiency issue is waived.

Commonwealth v. Flores, 921 A.2d 517, 522 (Pa. Super. 2007); ***see also Commonwealth v. Manley***, 985 A.2d 256, 262 (Pa. Super. 2009); ***Commonwealth v. Williams***, 959 A.2d 1252, 1257 (Pa. Super. 2008). In this case, Getz's 1925(b) statement reads as follows:

> a. The jury's verdict was against the sufficiency of the evidence and the weight of the evidence. The Commonwealth provided insufficient evidence to establish when the alleged victim's injuries in this matter occurred. It failed to show that the infant was in the exclusive custody or control of [Getz]. Therefore, the Commonwealth provided insufficient evidence to prove that it was in fact [Getz] that caused the child's injuries.

1925(b) Statement at 1.

In this case, Getz's has made two errors. First, Getz, like ***Flores***, has failed to articulate the specific elements of the crimes that he believes the evidence presented at trial failed to sufficiently establish. ***See*** 1925(b) Statement at 1. Second, Getz has also failed to name the crimes for which he believes there is insufficient evidence to prove that he committed. ***See id.*** Getz asserts in his 1925(b) statement, "[t]he Commonwealth provided insufficient evidence to establish when the alleged victim's injuries in this matter occurred" and that "[i]t failed to show that the infant was in the exclusive custody or control of [Getz]." ***Id.*** We cannot conclude that either of these assertions even arguably represents one of the elements of the four crimes for which the jury convicted Getz. ***See*** 18 Pa.C.S.A. § 2702; 18

Pa.C.S.A. § 4304; 18 Pa.C.S.A. 2701; and 18 Pa.C.S.A. § 2705. Likewise, Getz's appellate brief fails to remedy these deficiencies by specifying the crimes and their allegedly insufficiently established elements. ***See*** Appellant's Brief at 12-16. Therefore, in light of these inadequacies, we find that Getz has waived his challenge to the sufficiency of the evidence on appeal.

For his second issue on appeal, Getz argues that the jury verdict was against the weight of the evidence. Our standard of review when presented with a weight of the evidence claim is different from that 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.

Commonwealth v. Antidormi, 84 A.3d 736, 758 (Pa. Super. 2014). Therefore, "an appellate court reviews the exercise of the trial court's discretion; it does not answer for itself whether the verdict was against the weight of the evidence." ***Commonwealth v. Houser***, 610 Pa. 264, 276, 18 A.3d 1128, 1135-36 (2011). Importantly, "a new trial based on a weight of

the evidence claim is only warranted where the jury's verdict is so contrary to the evidence that it shocks one's sense of justice." ***Id.***

In his brief, the only argument Getz sets forth in support of his challenge to the weight of the evidence is that, in his view, the trial court never addressed his weight of the evidence challenge in its Pa.R.A.P. 1925(a) opinion. Appellant's Brief at 16-17. Getz cites ***Commonwealth v. Ragan***, 653 A.2d 1286, 1288 (1995) in support of his argument. In ***Ragan***, this Court remanded the case before it back to the trial court because the trial court failed to discuss the appellant's challenge to the weight of the evidence in its opinion. ***Ragan***, 653 A.2d at 1288. Here, Getz asserts that the trial court failed to address his weight of the evidence challenge and that we should remand this case to the trial court with the instruction to discuss his weight of the evidence claim in its opinion. Appellant's Brief at 16-17.

We disagree. In its written opinion, the trial court did address Getz's weight of the evidence issue, stating that, "[w]e do not believe that the verdict reached in this matter would shock the conscience of a reasonable person reviewing the evidence as it was presented to the jury at the time of trial." ***Id.*** at 4. The certified record on appeal amply supports this determination.

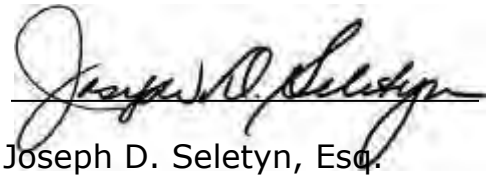
We further find that, after reviewing the evidence, the record supports the trial court's conclusion. As stated previously, the evidence in this case shows that Bentley sustained bruising as well as serious injuries. N.T.,

12/17/12, at 137-38, 140-41, 144-49. While at Geisinger, Dr. Bellino examined x-rays of Bentley that revealed both old and new rib fractures as well as fractures of both of his legs. ***Id.*** Dr. Bellino testified that Bentley's injuries were the hallmark of child abuse, that Bentley was too young to injure himself, and that the injuries were not the result of an accident or medical condition. ***Id.*** at 138, 150, 173-74. Additionally, during his interview with police, Getz signed a written statement admitting that he hurt Bentley and confessed to causing most of Bentley's injuries by squeezing him too hard. ***Id.*** at 71, 73-74, 89. The fact-finder found the foregoing testimony and evidence credible, and we decline to overturn its determination.

Judgment of sentence affirmed.

Strassburger, J. files a Concurring Statement.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/11/2014