

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

CHRISTOPHER WILSON,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 530 EDA 2012

Appeal from the Judgment of Sentence January 12, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0000818-2010

BEFORE: BOWES, DONOHUE, and MUNDY, JJ.

MEMORANDUM BY BOWES, J.:

FILED JULY 23, 2014

Christopher Wilson appeals from the judgment of sentence of three to ten years incarceration imposed by the trial court after a jury found him guilty of aggravated assault. We affirm.

On January 7, 2010, the victim heard a commotion outside his residence. He observed his sixteen-year-old son in an argument and scuffle with neighbors.¹ The victim retrieved his son and escorted him around the house. A group of people, including Appellant and his co-defendant brother, Tony Wilkins, rushed at the victim, cutting him with an object. The victim retreated into his home and covered his arm with a towel. Police arrived

¹ The dispute was apparently over a 50-inch plasma screen television that had been taken from the victim's home. The victim believed that Appellant had "something to do with the television." N.T., 11/15/11, at 82.

before the victim could call 911. When police responded, the victim's arm was covered in a significant amount of blood. The victim identified his attacker as Appellant, whom he had known for approximately ten years because they were neighbors, and Tony Wilkins. Accordingly, police arrested the men. Appellant admitted to having "fucked [the victim] up," but claimed that he did not stab him. N.T., 11/15/11, at 43. The victim identified Appellant as one of his attackers at the scene, at the hospital in discussing the matter further with police, and at the preliminary hearing. However, the victim later requested that the Commonwealth drop the charges. In addition, at trial, the victim declined to identify Appellant as an assailant and claimed to have a poor memory. Instead, the victim recounted that he did not know who stabbed him. The jury, nonetheless, found Appellant guilty of aggravated assault.² Thereafter, the court sentenced Appellant to three to ten years imprisonment.

Appellant filed a timely post-sentence motion, raising both a sufficiency and weight of the evidence position. The court denied the motion. This timely appeal ensued and the court directed Appellant to file and serve a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. Appellant complied, and the trial court authored its Rule 1925(a)

² The jury also acquitted Appellant of aggravated assault—serious bodily injury and possession of an instrument of crime.

opinion. The matter is now ripe for our review. Appellant presents two issues for this Court's consideration.

1. Was the sufficiency of [the] evidence adequate?
2. Was the burden of the weight of the evidence sufficient?

Appellant's brief at 6.

In analyzing a sufficiency claim, "[w]e must determine whether the evidence admitted at trial, and all reasonable inferences drawn therefrom, when viewed in a light most favorable to the Commonwealth as verdict winner, support the conviction beyond a reasonable doubt." **Commonwealth v. Brown**, 52 A.3d 320, 323 (Pa.Super. 2012). The Commonwealth can meet its burden "by wholly circumstantial evidence and 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." **Id.** This Court cannot "re-weigh the evidence and substitute our judgment for that of the fact-finder." **Id.** Additionally, "the entire record must be evaluated and all evidence actually received must be considered." **Id.**

"Where there is sufficient evidence to enable the trier of fact to find every element of the crime has been established beyond a reasonable doubt, the sufficiency of the evidence claim must fail." **Brown, supra** at 323. "The evidence established at trial need not preclude every possibility of

innocence and the fact-finder is free to believe all, part, or none of the evidence presented.” ***Id.***

Appellant, in derogation of the appellate briefing requirements, fails to divide his position into two separate arguments. The entirety of Appellant’s contentions is one and one-half pages. Appellant contends that the victim testified at trial that he could not see anything due to darkness and did not know that he had been cut or who cut him. Accordingly, he submits that the evidence was insufficient. We disagree.

The jury found Appellant guilty of aggravated assault—bodily injury with a deadly weapon.³ A person is guilty of the aforementioned crime if he “attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon.” 18 Pa.C.S. § 2702(a)(4). Nonetheless, the trial court did not instruct the jury that it could find Appellant guilty based on an attempt, and expressly indicated, after the jury returned with a question, that the Commonwealth was not alleging an attempt to inflict bodily injury. Here, the evidence introduced at trial, when viewed in a light most favorable to the Commonwealth, demonstrates that Appellant stabbed the victim in his arm with an object that caused significant bleeding and sent the victim to the hospital. The victim, prior to trial, consistently identified Appellant as

³ We note that the criminal information is not contained within the certified record; however, the verdict sheet and transcript of the trial confirm the charge on which the jury rendered its guilty verdict.

one of his attackers. The jury was free to credit this evidence and reject the victim's assertion during trial that he could not identify the individuals who assaulted him.

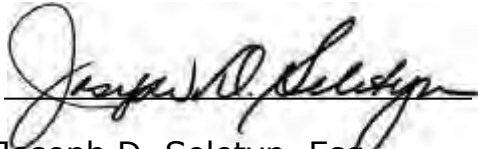
Appellant's second issue is a challenge to the weight of the evidence. "Appellate review of a weight claim *is a review of the exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence.*" **Commonwealth v. Clay**, 64 A.3d 1049, 1055 (Pa. 2013) (italics in original). Accordingly, "[o]ne 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." **Id.**

A trial judge should not grant a new trial due to "a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion." **Id.** Instead, the trial court must examine whether "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." **Id.** Only where the jury verdict "is so contrary to the evidence as to shock one's sense of justice" should a trial court afford a defendant a new trial. **Id.** A weight of the evidence issue concedes that sufficient evidence was introduced. **Commonwealth v. Charlton**, 902 A.2d 554, 561 (Pa.Super. 2006).

Appellant does not meaningfully develop his position nor distinguish it from his sufficiency claim. Accordingly, his position is waived due to inadequate briefing. ***Commonwealth v. Akbar***, 2014 PA Super 89, *6. Further, we find that the trial court did not abuse its discretion in determining that the verdict did not shock its conscience. A conflict between the victim's trial testimony and his earlier consistent statements to police is insufficient to find that the verdict was against the weight of the evidence. The jury was free to reject the victim's alleged memory inabilities at trial. Here, there are not facts that clearly outweigh those used to support Appellant's conviction. Appellant's weight claim is meritless.

Judgment of sentence affirmed.

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: 7/23/2014