NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	
v.	
GERALD WILLIAMS	
Appellant	No. 3404 EDA 2012

Appeal from the Judgment of Sentence July 13, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0008787-2010

BEFORE: GANTMAN, P.J., ALLEN, J., and FITZGERALD, J.*

MEMORANDUM BY GANTMAN, P.J.: **FILED JULY 23, 2014**

Appellant, Gerald Williams, appeals from the judgment of sentence entered in the Philadelphia County Court of Common Pleas, following his jury trial convictions for involuntary deviate sexual intercourse ("IDSI") and sexual assault.[1] We affirm.

The relevant facts and procedural history of this appeal are as follows.

> On the morning of May 20, 1998, at 375 Cliveden Street in the City of Philadelphia, [J.T. ("Victim")] responded to a knock on her front door by [Appellant] asking to use her telephone. [Appellant] gained access to [Victim's] home and soon thereafter [Appellant] stood in her living room, brandishing a butcher knife. [Appellant] ordered [Victim] to remove her jewelry and forced her upstairs. Once upstairs, [Appellant] commanded [Victim] to take off her

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[1] 18 Pa.C.S.A. §§ 3123, 3124.1, respectively.

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*Former Justice specially assigned to the Superior Court.

> clothes. In an attempt to deter [Appellant's] sexual advances, [Victim] stated that she had Chlamydia, but [Appellant] continued by threateningly wielding the knife. [Appellant] then bound [Victim's] wrists and feet behind her back with a telephone cord and while holding the knife to [Victim's] throat, he forcibly put his penis into her mouth and ejaculated on her face, neck and chest. [Appellant] exited the bedroom and rummaged through [Victim's] house before leaving. Upon hearing [Appellant] exit the house, [Victim] hopped to the bedroom window and yelled for a neighbor to call the police. The police arrived at the house and found [Victim] trembling and visibly distraught, with semen residue on her face, neck and chest.

(Trial Court Opinion, filed October 29, 2013, at 2-3).

Following trial, a jury convicted Appellant of IDSI and sexual assault. The jury acquitted Appellant of multiple counts of robbery and burglary. On July 13, 2012, the court sentenced Appellant to an aggregate term of ten (10) to twenty (20) years' imprisonment. The court also classified Appellant as a sexually violent predator. On July 20, 2012, Appellant timely filed a post-sentence motion challenging the weight of the trial evidence. The post-sentence motion was denied by operation of law on November 20, 2012.

Appellant timely filed a notice of appeal on December 7, 2012. On October 3, 2013, the court ordered Appellant to file a concise statement of errors complained of on appeal, pursuant to Pa.R.A.P. 1925(b). Appellant timely filed a Rule 1925(b) statement on October 24, 2013.

Appellant now raises two issues for our review:

> WAS NOT THE JURY'S VERDICT BASED ON SPECULATION AND CONJECTURE, AND WAS NOT SUCH A CAPRICIOUS RESULT IMPROPER?

> WAS NOT EVIDENCE OF APPELLANT'S CUSTODY STATUS, THUS IMPLYING THAT APPELLANT HAD A CRIMINAL RECORD, IMPROPERLY REFERENCED BY A POLICE DETECTIVE AND DID SUCH EVIDENCE DENY APPELLANT A FAIR TRIAL?

(Appellant's Brief at 4).

In his first issue, Appellant asserts his acquittal on robbery and burglary charges demonstrated that the jury found Victim lacking in credibility. Appellant also contends Victim provided inconsistent testimony regarding the assault. Appellant emphasizes Victim's testimony that Appellant held a knife to her throat and bound her with a cord. Appellant insists, however, the investigating officers did not recover a cord from the crime scene or observe bruising on Victim's neck. Further, Appellant questions why Victim did not attempt to call 911 during the assault, even though there was a telephone in her home. Based upon the foregoing, Appellant argues the sexual activity appears to have been consensual. Appellant concludes the jury's verdict was against the weight of the evidence. We disagree.

The following principles apply to our review of a weight of the evidence claim:

> The weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. An appellate court cannot substitute its judgment for that of the finder of fact. Thus, we may only reverse the…verdict if it is so contrary to the evidence as to shock one's sense of justice.

> ***Commonwealth v. Small***, 559 Pa. 423, [435,] 741 A.2d 666, 672-73 (1999). Moreover, 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. Champney, 574 Pa. 435, 444, 832 A.2d 403, 408 (2003), *cert. denied*, 542 U.S. 939, 124 S.Ct. 2906, 159 L.Ed.2d 816 (2004) (most internal citations omitted). "[T]he uncorroborated testimony of the complaining witness is sufficient to convict a defendant of sexual offenses." ***Commonwealth v. Castelhun***, 889 A.2d 1228, 1232 (Pa.Super. 2005) (quoting ***Commonwealth v. Bishop***, 742 A.2d 178, 189 (Pa.Super. 1999), *appeal denied*, 563 Pa. 638, 758 A.2d 1194 (2000)). ***See also Commonwealth v. Tavares***, 555 A.2d 199 (Pa.Super. 1989), *appeal denied*, 524 Pa. 619, 571 A.2d 382 (1989) (reiterating mere existence of conflict in prosecution's evidence is not fatal and resolution of such conflict is left to finder of fact).

Additionally, the Pennsylvania Crimes Code defines IDSI in relevant part as follows:

> **§ 3123. Involuntary Deviate Sexual Intercourse**
>
> **(a) Offense defined.**—A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant:
>
> (1) by forcible compulsion;

* * *

18 Pa.C.S.A. § 3123(a)(1). The Crimes Code also defines sexual assault as follows:

> **§ 3124.1. Sexual Assault**
>
> Except as provided in section 3121 (relating to rape) or 3123 (relating to [IDSI]), a person commits a felony of the second degree when that person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant's consent.

18 Pa.C.S.A. § 3124.1.

Instantly, Victim testified that Appellant forced his way into her home, brandished a butcher knife, and ordered Victim into an upstairs bedroom. Inside the bedroom, Appellant forced Victim to take off her clothes, and he bound her hands and feet with a cord. With Victim tied up, Appellant held a knife to her throat, ordered her to perform oral sex, and threatened to kill her if she did not comply. Police witnesses confirmed that Victim was emotionally distraught when they arrived at the residence, and an officer actually found a cord on the floor of a second floor bedroom. (***See*** N.T. Trial, 9/23/11, at 37.)

Here, the jury was free to believe all, part or none of Victim's testimony, and to assess her credibility. ***See Champney, supra***. The jury credited Victim's version of the facts regarding the assault. The court concluded the jury's verdict was not contrary to the weight of the evidence. (***See*** Trial Court Opinion at 4-5.) We see no abuse of discretion in the

court's conclusion. ***See Champney, supra***. On this record, Appellant is not entitled to relief on his first issue.

In his second issue, Appellant contends a police witness testified that officers arrested Appellant at 3950 D Street. Appellant insists this testimony "was tantamount to informing the jury that Appellant had a prior criminal history, for everyone in the criminal justice system, the community, and presumably the jury knows that that address is the [site] of two locked down re-entry residential facilities run by the Philadelphia Prison System…." (Appellant's Brief at 13-14). Moreover, Appellant asserts the testimony regarding the location of his arrest was irrelevant, because its potential for prejudice outweighed any probative value. Appellant concludes he is entitled to a new trial because the court erred in admitting this testimony about the location of the arrest. We disagree.

"Admission of evidence is within the sound discretion of the trial court and will be reversed only upon a showing that the trial court clearly abused its discretion." ***Commonwealth v. Drumheller***, 570 Pa. 117, 135, 808 A.2d 893, 904 (2002), *cert. denied*, 539 U.S. 919, 123 S.Ct. 2284, 156 L.Ed.2d 137 (2003) (quoting ***Commonwealth v. Stallworth***, 566 Pa. 349, 363, 781 A.2d 110, 117 (2001)).

> Admissibility depends on relevance and probative value. Evidence is relevant if it logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable or supports a reasonable inference or presumption regarding a material fact.

Drumheller, supra at 135, 808 A.2d at 904 (quoting ***Stallworth, supra*** at 363, 781 A.2d at 117-18).

"Evidence of prior crimes or bad acts may not be presented at trial to establish the defendant's criminal character or proclivities." ***Commonwealth v. Hudson***, 955 A.2d 1031, 1034 (Pa.Super. 2008), *appeal denied*, 600 Pa. 739, 964 A.2d 1 (2009).

> This rule is violated where evidence presented to the jury either expressly, or by reasonable implication, indicates that the defendant has engaged in other criminal activity. However, mere passing reference to prior criminal activity is insufficient to establish improper prejudice by itself. The inquiry into whether prejudice has accrued is necessarily a fact specific one.

Id. (internal citations omitted).

Instantly, Detective Kevin Gage testified about the circumstances surrounding Appellant's arrest as follows:

> At the conclusion of receiving the information back, the comparative information, the direct comparison information [regarding Appellant's DNA sample], an arrest warrant was obtained….
>
> At that point, this arrest warrant was served by myself and Detective Marcellino, where we went to, I believe it was, 3950 D Street, and we took [Appellant] into custody, transported him back to our headquarters and continued with the arrest paperwork.

(***See*** N.T. Trial, 9/23/11, at 87.)

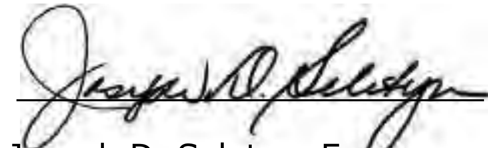
Defense counsel objected to the detective's testimony, explaining that the detective should not have mentioned the specific address where the arrest occurred. Defense counsel insisted that the jury would rely on

Appellant's presence at this address to infer that Appellant was already in custody for another offense. In response, the court noted that the jury did not hear how long Appellant had been at the address or the reason why he was there. Consequently, the court overruled the objection.

Here, the detective's testimony provided nothing more than the location of the arrest. The prosecutor did not ask why Appellant was at the address or what activity occurred there. Absent more, the testimony at issue did not constitute inadmissible prior bad acts evidence.[2] ***See Hudson, supra***. Thus, the court did not abuse its discretion in admitting the testimony. ***See Drumheller, supra***. Accordingly, we affirm the judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/23/2014

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[2] Moreover, the court instructed the jurors not to conduct outside research on matters related to the trial. (***See*** N.T. Trial, 9/22/11, at 166.) Thus, the jurors could not have conducted their own investigation to find more information about the address in question. ***See Commonwealth v. Akbar***, 91 A.3d 227 (Pa.Super. 2014) (stating jury is presumed to have followed trial court's instructions).