

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

RAHEIM HUNTER,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1852 EDA 2011

Appeal from the Judgment of Sentence July 13, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0010817-2010

BEFORE: BOWES, WECHT, and FITZGERALD,* ** JJ.

MEMORANDUM BY BOWES, J.:

FILED JULY 23, 2014

Raheim Hunter appeals from the judgment of sentence imposed after he was convicted at a bench trial of aggravated assault of a police officer, disorderly conduct, simple assault, reckless endangerment and resisting arrest. Appellant received eighteen to thirty-six months incarceration following by five years probation. We affirm.

The trial court provided an apt summary of the evidence presented at Appellant's non-jury trial:

At a waiver trial, the Commonwealth presented the testimony of Philadelphia Police Officer Andrew Gerdeman. Additionally, they admitted into evidence a video capturing a

* Former Justice specially assigned to the Superior Court.

** Justice Fitzgerald did not participate in the consideration or decision of this case.

portion of Appellant's arrest by Officer Gerdeman and his fellow officers.

On August 10, 2010, at approximately 7:50 p.m., Officer Gerdeman was on duty on the 400 block of Busti Street in the city and county of Philadelphia. (Notes of Testimony at 8). Officer Gerdeman received a call on his radio that there was a person screaming in the area and arrived on the scene. Upon arrival, Officer Gerdeman observed his fellow Officer Harris speaking with a female who had allegedly been in a fight with another female. At that time, Officer Gerdeman observed Appellant push Officer Harris in his face. Officer Gerdeman and his fellow Officer Jackson attempted to arrest Appellant, who became irate and began screaming and kicking them numerous times. Officer Gerdeman told Appellant to stop resisting numerous times and attempted to subdue him by striking him with his asp. Appellant continued to resist and punched Officer Gerdeman three times on the shoulder. Officer Harris then pulled out his tazer and warned Appellant to stop resisting. Appellant continued to resist and was tazed by Officer Harris. Appellant was still resisting after being tazed, so Officer Harris tazed him a second time, at which point Appellant stopped resisting and was arrested.

Trial Court Opinion, 2/5/14, at 2.

Appellant presents one issue on appeal:

1. Was the evidence sufficient to convict Appellant Raheim Hunter of aggravated assault (18 Pa.[C.S.] §2702§§A), disorderly conduct hazardous/physical off. (18 Pa.[C.S.] §2701§§A4), simple assault (18 Pa.[C.S.] §2701§§A), recklessly endangering another person (18 Pa.[C.S.] §2705), and resisting arrest/other law enforcement (18 Pa. [C.S.] §5103)?

Appellant's brief at 3.

Appellant's argument is framed as one involving the sufficiency of the evidence. However, its substance is actually a challenge to the credibility of Officer Gerdeman. We outline the entirety of Appellant's position on appeal:

In this case there was two types of evidence: The testimony of Police Officer Andrew Gerdeman and the video.

The video is totally inconsistent with [what] Police Officer Andrew Gerdeman testified to. The demeanor of Appellant Raheim Hunter on the video is in sharp contrast to Officer Gerdeman's testimony as to what happened before the scene depicted in the video. In the video Appellant Hunter is not violent at all. The non-violent scene in the video contrasts much too sharply with the testimony of Officer Gerdeman whereupon Gerdeman stated that he used his asp on Hunter and that Appellant Hunter punched Officer Gerdeman three times on the shoulder.

Appellant's brief at 8-9.

Thus, Appellant's position on appeal is straightforward: Officer Gerdeman was not credible since the tape depicting part of the incident was inconsistent with his testimony. It is well-established that when a defendant claims that a witness was not credible, that claim involves the weight rather than sufficiency of the evidence. ***Commonwealth v. Montalvo***, 956 A.2d 926, 932 n.6 (Pa. 2008) (defendant's position that witness was not credible "challenges the weight, and not the sufficiency, of the evidence"); ***Commonwealth v. Lewis***, 45 A.3d 405, 409 (Pa.Super. 2012) ("Lewis's argument that his version of the events was more credible than the Commonwealth's version goes to the weight of the evidence, not its sufficiency."); ***Commonwealth v. W.H.M., Jr.***, 932 A.2d 155, 160 (Pa.Super. 2007) (defendant's position that victim was not credible related to "weight, not sufficiency, of the evidence").

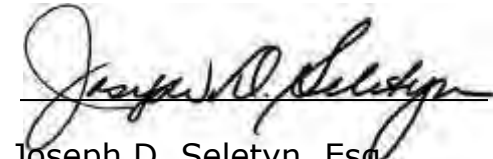
Appellant's issue, which pertains to the weight of the evidence, is not preserved since "[i]n order to preserve a claim of weight of the evidence for

appellate review, the issue must be raised with the trial judge in a motion for a new trial either orally prior to sentencing, by written motion prior to sentencing, or in a post-sentence motion.” **Lewis, supra** at 410; Pa.R.Crim.P. 607(A) (“A claim that the verdict was against the weight of the evidence shall be raised with the trial judge in a motion for a new trial: (1) orally, on the record, at any time before sentencing; (2) by written motion at any time before sentencing; or (3) in a post-sentence motion.”). Our review of the record reveals that Appellant did not raise this claim either orally or in writing before the trial court.. Therefore, the present contention is not preserved for purposes of this appeal.

Additionally, the trier of fact articulated its finding that Officer Gerdeman was credible. It stated, “The testimony of Officer Gerdeman was credible and believable. This Court chose to believe his version of events, which was also the only version presented by either party.” Trial Court Opinion, 2/5/14, at 4-5. It is beyond cavil that “A determination of credibility lies solely within the province of the factfinder.” **Commonwealth v. Page**, 59 A.3d 1118, 1130 (Pa.Super. 2013) (citation omitted). Thus, even if not waived, we, as an appellate court, could not reverse Appellant’s convictions based upon a finding that Officer Gerdeman lacked credulity.

Judgment of sentence affirmed.

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/23/2014