NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

CLIFFORD HAINES, ESQ.	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellant	:	
v.	:	
DOES 1 -5 (FIVE UNKNOWN SHERIFF'S DEPUTIES)	:	
Appellees	:	No. 1027 EDA 2022

Appeal from the Judgment Entered June 13, 2022
In the Court of Common Pleas of Philadelphia County
Civil Division at No(s): 171202397

BEFORE: LAZARUS, J., KING, J., and STEVENS, P.J.E.*

MEMORANDUM BY KING, J.: **FILED JANUARY 18, 2024**

Appellant, Clifford Haines, Esq., appeals *pro se* from the judgment entered in the Philadelphia County Court of Common Pleas, in favor of Appellant and against Appellees, Deputy Sheriff's Officer Samuel Frank ("Officer Frank") and Deputy Sheriff's Officer Edwin Lopez ("Officer Lopez"), and in favor of Appellees, Deputy Sheriff's Officer Jason Kolody ("Officer Kolody") and Deputy Sheriff's Officer Branden Broadbent ("Officer Broadbent"), following a jury trial.[1] We affirm.

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

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* Former Justice specially assigned to the Superior Court.

[1] Prior to submission of the case to the jury, Appellant withdrew his claims against the final defendant, Deputy Sheriff Officer Lavelle Thomas ("Officer Thomas").

Appellant was injured on August 22, 2017, in the course of his arrest for assaulting a law enforcement officer at the Justice Juanita Kidd Stout Criminal Justice Center in Philadelphia ("CJC"). Appellant commenced this action by filing a complaint on December 18, 2017. He filed an amended complaint on January 23, 2018, and a second amended complaint on June 5, 2018, which included counts of assault and false arrest against Officers Frank, Lopez, Kolody, Thomas, and Broadbent, and a count of intentional infliction of emotional distress ("IIED") against Inspector Anthony Laforet who was responsible for security of the CJC.[2]

On January 27, 2021, Appellees informed Appellant that they intended to subpoena Appellant's treating psychologists, Dr. Robert Garfield and Dr. Robert Heasley, for records concerning diagnosis and treatment of Appellant. On January 29, 2021, Appellant unilaterally withdrew the IIED claim against Inspector Laforet. Appellant objected to the subpoenas on February 8, 2021. On February 12, 2021, Appellees filed a motion for extraordinary relief requesting that the court permit Appellees to depose Drs. Garfield and Heasley, arguing that Drs. Garfield and Heasley possessed information relevant to Appellant's psychological state on the date of the incident and how the incident affected Appellant. Appellant again objected to Appellees'

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[2] Appellant filed a related second lawsuit alleging, *inter alia*, defamation on the part of sheriff's office officials. The parties stipulated to dismiss that lawsuit with prejudice on November 4, 2020.

proposed subpoenas and Appellees filed a motion to strike Appellant's objections. On March 15, 2021, the trial court denied Appellees' motion to strike Appellant's objections without prejudice for Appellees to request depositions or documents if Appellant placed his emotional status at issue. (***See*** Order, dated 3/15/21).

On December 15, 2021, Appellant filed several motions *in limine*, including a motion *in limine* to preclude Appellees from eliciting evidence from Drs. Garfield and Heasley. The trial court denied the order on December 28, 2021,[3] reasoning that "despite having voluntarily dismissed the count in his complaint for [IIED]," Appellant "is seeking to claim damages for anxiety and other emotional injuries." (Order, dated 12/28/21) (unnecessary capitalization omitted). Therefore, the court denied Appellant's motion unless Appellant "entered into a stipulation that no damages are being sought for anxiety, emotional distress, or any mental injuries that [Appellant's] expert has opined were the direct manifestation of a physical injury that occurred as a result of the incident." (***Id.***)

The case proceeded to a jury trial on January 3, 2022. At trial, Appellant introduced evidence that he was at the CJC on August 22, 2017, while representing a client in an unrelated criminal matter. Appellant did not bring

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[3] The trial court's order was dated December 28, 2021, and was docketed on January 5, 2022. The court explained that it submitted a courtesy copy of the ruling at the time it submitted the order for docketing on December 28, 2021.

his official court attorney ID with him that day; therefore, he had to place his cell phone in a locked pouch and enter the CJC through the main entrance where he was required to pass through a metal detector and have his possessions x-rayed and his cell phone locked.[4] Prior to the start of the hearing, Appellant returned to the CJC lobby in order to access his phone. He attempted to exit through the screening entrance and was redirected by Officer Frank, who told him he needed to exit on the other side. (N.T. Trial, 1/3/22, at 157).

After exiting, Appellant approached Officer Rosalind Mason and asked how to remove his phone from the pouch. Appellant testified at trial that Officer Mason was rude and not particularly helpful to him and did not smile at him when he approached. (N.T. Trial, 1/4/22, at 98-99). Appellant explained that he was trying to find out if the officer could help get the YondR bag opened quicker, and Officer Mason simply directed him to the YondR desk. (***Id.*** at 105). Appellant further testified that Officer Mason was not "being particularly polite or helpful to a member of the public." (***Id.*** at 115). Appellant elaborated that Officer Mason was not helpful because "she was not

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[4] At the time of the incident, the CJC had a policy requiring securing of electronic devices in a YondR pouch. A YondR pouch is a form fitting lockable pouch, into which an individual places his or her cell phone upon entering the phone-free space. The pouch remains locked so that individuals may maintain possession of their phones, but they may not access them in the phone-free space. In order to access their phones, the individual must tap the pouch on an unlocking base outside of the phone-free zone. ***See*** https://www.courts.phila.gov/pdf/notices/2017/cjc-cell-phone%20policy.pdf.

warm. She was not gracious. She was abrupt. She didn't smile. All the things that…officers are supposed to do when they interact with the public." (***Id.*** at 117).

At trial, Officer Mason testified that Appellant approached her and asked her "how to f***ing get his phone out of the pouch." (N.T. Trial, 1/5/22, at 152). She explained that Appellant was very aggressive and very upset. (***Id.*** at 153). During the encounter, Appellant waved his business card in her face and stated "here is my card. How can I get this the eff out?" (***Id.***)

Finally, Appellant proceeded to the YondR desk where he was able to retrieve his phone. After leaving the YondR desk, Appellant re-entered through the main security entrance. After passing through the metal detectors, Appellant initially began to walk away; however, he then turned around and confronted Officer Frank. At trial, Officer Frank testified that Appellant advanced toward him and said: "Thanks for your f***ing help." (N.T. Trial, 1/3/22, at 170, 217-18). Officer Frank told Appellant to back up, but Appellant did not comply and continued forward. Officer Frank stepped backwards four times and told Appellant three times to back up; however, Appellant continued to advance closer to Officer Frank. (***Id.*** at 219-21). Officer Frank testified that he put his arm up to create a safe distance, and Appellant struck Officer Frank's arm away. (***Id.*** at 174, 225-26). Officer Frank explained that after Appellant "smacked [his] hand" he told Appellant: "Give me your hand, you are under arrest." (***Id.*** at 178, 228). Appellant

stated: "I'm not giving you s**t," and pulled his arm up close to his body. (***Id.*** at 228).

Security video of the encounter was played for the jury numerous times at trial. In addition, the officers attempted to explain what ensued as Officer Frank arrested Appellant. Officer Frank testified that he attempted to grab Appellant's arm and bring it behind Appellant's back to place him under arrest; however, Appellant kept resisting and pulling his arms away. Officer Frank explained that Officers Lopez, Kolody, Broadbent and Thomas joined in the struggle to handcuff Appellant. Appellant was initially leaning over the conveyor belt; but then he stood back up and pulled forward, pulling Officer Frank on top of him on the conveyor belt. Officer Frank explained that the momentum of the rollers of the conveyor belt then took everybody off the belt and onto the floor. (***Id.*** at 235). Finally, the officers were able to get the handcuffs onto Appellant's hands and attempted to escort him out of the public area. (***Id.*** at 238-39).

Officer Thomas testified that he rushed over to assist when he first noticed the encounter between Appellant and Officer Frank. Officer Thomas explained that he grabbed Appellant's feet, which were swinging around because Appellant was on top of the conveyer belt rollers and his feet were swinging around the other officers. (N.T. Trial, 1/3/22, at 96-104). Officer Thomas explained that he did not take any actions with the intent to injure Appellant, but he acted to control the situation and still maintain a secure

area. (***Id.*** at 125).

Officer Lopez testified that he was working at the x-ray machine on the morning of the incident. After Appellant passed through security, Officer Frank told him that some "old guy" just cursed him out. Officer Lopez suggested that Officer Frank let it go, and the two continued working until Appellant reappeared. When Appellant passed through security the second time, Officer Frank pointed Appellant out to Officer Lopez. Shortly thereafter, Officer Lopez noticed a physical confrontation between the two and, coming to the aid of his fellow officer, he reached out and grabbed Appellant, pulling him away from Officer Frank and toward the conveyor belt, which was in between them. (N.T., 1/4/22, at 16, 19). Ultimately, everybody who was on the conveyor belt fell off the end onto Appellant. (***Id.*** at 23).

Appellant testified at trial that after he arrived at the CJC he gave his cell phone to a woman who sealed it in the YondR bag. Appellant explained that when he appeared in the courtroom, he realized that he had not turned his phone off prior to placing it in the bag, so he returned to the lobby to have the bag opened so that he could turn off his phone. Appellant stated that he attempted to go through the same entrance that he had come in because the woman who sealed the YondR bags was there. (N.T. Trial, 1/4/22, at 55-56). Appellant explained that Officer Frank told him to "Go the other way," so Appellant turned around and went out the other exit area. (***Id.*** at 57). Appellant said that as he exited, he approached Officer Mason and asked her

to open the pouch for him, and she "wasn't particularly helpful" and told him he had to go to the line for the YondR bags. (***Id.***)

Appellant then went back through the main entrance and saw Officer Frank. Appellant testified that he turned back to him to say "'Thanks for your help.' And [he] wasn't being appreciative." (***Id.*** at 60). Appellant explained:

> I was—I was put off by what I thought was his discourteous "Go the other way." He had no idea who I was. He had no idea whether I was the victim of a crime or any idea.
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> * * *
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> I turned back to say to him, "Look, this is the public that comes into this building. They have every right to be here. My view is that your job is to be courteous and polite to people. And the way you talked to me, you had no reason to talk to me the way you did."
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> * * *
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> But I do know that the officer said something to the effect that, "You are in my space," or "Get out of my space." I thought, I'm not quite sure what that's all about. But I am making, I think, trying to say something to you, and I didn't see a need to move and I didn't. And I don't know how much of what I've described to you that I actually got out of my mouth to him. But he then put his hand on my shoulder.
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> * * *
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> And he put his arm up on my—on my shoulder and pushed back. I did not think he had any basis to put a hand on me for any reason, to put a hand on me.
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> And I—and I part company with the video here to this extent because I was very, very mindful at the moment what I was doing.
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> I came up and **pushed his arm away**. I didn't strike him. I didn't hit him hard. It was a pushing his hand off of me.

(***Id.*** at 62-63) (emphasis added). On cross-examination, Appellant admitted to striking Officer Frank intentionally to send him a message. (***Id.*** at 150-51).

Appellant denied that Officer Frank ever told him that he was under arrest and denied that Officer Frank ever asked for his hand. (***Id.*** at 66, 138-42). Appellant maintained that he had initially raised his hands in supplication and was not threatening Officer Frank. Appellant insisted that Officer Frank was the aggressor in the interaction.

Appellant claimed that Officer Frank "came at [him] and right into [his] chest." (***Id.*** at 67). He then stated that "other people, officers, were on top" of him, and he "was not fighting back." (***Id.***) Appellant contended that his "body tensed because—it tensed up when [he] got hit and [he] went backwards." (***Id.***) Appellant stated that after falling off the conveyor belt he screamed and then was handcuffed. (***Id.*** at 68). After the fall, Appellant was taken to the hospital where he received medical care for a dislocated and fractured shoulder, a torn rotator cuff, and soft tissue damage in his shoulder. Appellant was taken to the police station after his treatment in the hospital.

Following his initial medical treatment, Appellant underwent approximately eight weeks of physical therapy to improve the motion and stability in his shoulder. When Appellant continued to experience high pain levels even after physical therapy, he underwent shoulder surgery on March 5, 2018. Following the surgery, Appellant again continued with physical

therapy. Appellant's expert, Gary N. Goldstein, M.D., opined that Appellant's limited range of motion and weakness in his right shoulder would worsen with time and that he may ultimately need a surgical shoulder replacement. The parties stipulated that Appellant's medical expenses to date were $23,560.36. (N.T. Trial, 1/5/22, at 38).

At the close of Appellant's case-in-chief, Appellees moved for a compulsory nonsuit on the false arrest claim against all defendants, arguing that based on Appellant's admissions, probable cause existed to justify the arrest. Appellees also moved for nonsuit on the assault and battery claims against Officer Thomas, and Appellant did not oppose the entry of a nonsuit in favor of Officer Thomas. Appellees further moved for nonsuit on Appellant's claims for punitive damages. (N.T. Trial, 1/5/22, at 80). The court took the motions under advisement and continued with Appellees' presentation of evidence.

The court ruled on the pending motions the next day after all evidence had been presented. The court granted nonsuit on the false arrest claims and punitive damages claims against all defendants. The court determined that based on the totality of the circumstances, including Appellant's admission of striking Officer Frank intentionally to "send him a message" while he was performing his official duties, probable cause existed for the officers to arrest Appellant. (N.T. Trial, 1/6/22, at 5-6).

The court submitted to the jury the remaining claims of assault and

battery by Officers Kolody, Broadbent, Frank and Lopez. Appellant agreed to a verdict slip that asked the jurors to assess liability against these defendants individually on a percentage basis. During deliberations, the jury asked for the video to be played in real time—not slowed down—and without narration. (N.T. Trial, 1/10/22, at 14). The jury returned its verdict on January 10, 2022. The jury found that Officers Frank and Lopez had used excessive force, such that they were liable for assault and battery. Conversely, the jury found that Officers Kolody and Broadbent did not use excessive force and were not liable. The jury further found that Appellant had suffered actual damages and awarded Appellant $23,560.35, which was one cent less than the undisputed medical costs.

On January 19, 2022, Appellant timely filed a post-trial motion for reconsideration, challenging the court's order denying Appellant's motion *in limine* to preclude Appellees from introducing evidence from Appellant's psychologists, Drs. Garfield and Heasey. On January 20, 2022, Appellant filed another motion for post-trial relief seeking a new trial for both liability and damages, and requesting delay damages.[5] On February 14, 2022, the court denied Appellant's motion for reconsideration concerning the denial of

[5] Appellant raised six claims of error in his post-trial motion, challenging the amount of the damages, the court's ruling on the admissibility of his mental health treatment, the exclusion of newspaper articles, the nonsuit on punitive damages, the court's denial of Appellant's request to testify on rebuttal, and the nonsuit on the false arrest claim.

Appellant's motion *in limine*. (***See*** Order, dated 2/14/22). On March 9, 2022, the court granted Appellant's request for delay damages[6] but denied Appellant's motion for post-trial relief in all other respects. (***See*** Order, dated 3/9/22). Appellant filed a notice of appeal on April 8, 2022.[7] Pursuant to the court's order, Appellant filed a concise statement of errors complained of on appeal under Pa.R.A.P. 1925(b), on May 16, 2022.

Appellant raises three issues for our review:

> 1. Did the trial court err in determining, as a matter of law, that probable cause existed to arrest [Appellant], granting a compulsory non-suit on his False Arrest claim in Count II, and denying [Appellant] a new trial, to correct that error?
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> 2. Did the trial court err by denying [Appellant] a new trial on damages, when the jury's verdict found [Appellant] had suffered physical injury, but awarded only out of pocket medical costs, and was therefore contrary to the weight of the evidence?
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> 3. Did the trial court err when it (i) denied [Appellant's] motion *in limine* seeking to preclude [Appellees] from introducing evidence of his confidential mental health information; (ii) entered its January 1, 2022 Order on reconsideration, foreclosing [Appellant's] ability to provide evidence supporting the anguish of his experience without

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[6] The court awarded $1,929.39 in delay damages.

[7] Appellant purported to appeal from the order denying post-trial relief in this case. Nevertheless, an appeal is properly taken from the entry of judgment. ***See Johnston the Florist, Inc. v. TEDCO Const. Corp.***, 657 A.2d 511, 514 (Pa.Super. 1995). On June 7, 2022, this Court directed Appellant to *praecipe* the trial court for entry of judgment, which the court entered on June 13, 2022. We can relate Appellant's notice of appeal forward to that date. ***See*** Pa.R.A.P. 905(a)(5) (providing that notice of appeal filed after decision but before entry of appealable order shall be treated as filed after such entry and on day thereof).

> "opening the door" to the introduction of his confidential mental health information; and (iii) denied [Appellant] a new trial to correct those errors?

(Appellant's Brief at 5).

In his first issue, Appellant argues that the evidence introduced during his case-in-chief was sufficient to support his claim that the officers did not have probable cause, or at least that there were conflicts concerning whether probable cause existed that should have been presented to the jury. Appellant insists that the trial court applied the incorrect standard for nonsuit and, when the evidence was properly viewed in his favor, it did not support a finding that Appellant had assaulted Officer Frank. Appellant claims the evidence did not establish that he intentionally caused or attempted to cause bodily injury. Appellant maintains that he was not attempting to cause a harmful or offensive contact, and his act of pushing Officer Frank's hand away did not constitute aggravated assault on an officer. Appellant further alleges that there were questions of fact that needed to be determined by the jury, such as whether Officer Frank ever told Appellant that he was under arrest. Appellant suggests that if Officer Frank had told Appellant that he was under arrest, Appellant would have complied with the officer's directives and been escorted away willingly. Appellant concludes the trial court erred in finding the existence of probable cause to arrest Appellant, and in granting compulsory nonsuit on the false arrest claims. We disagree.

Our standard of review of an order granting compulsory nonsuit is well

settled:

> A trial court may enter a compulsory nonsuit on any and all causes of action if, at the close of the plaintiff's case against all defendants on liability, the court finds that the plaintiff has failed to establish a right to relief. Pa.R.C.P. No. 230.1(a), (c); ***see Commonwealth v. Janssen Pharmaceutica, Inc.***, 607 Pa. 406, 8 A.3d 267, 269 n.2 (2010). Absent such finding, the trial court shall deny the application for a nonsuit. On appeal, entry of a compulsory nonsuit is affirmed only if no liability exists based on the relevant facts and circumstances, with appellant receiving "the benefit of every reasonable inference and resolving all evidentiary conflicts in [appellant's] favor." ***Agnew v. Dupler***, 553 Pa. 33, 717 A.2d 519, 523 (1998). The compulsory nonsuit is otherwise properly removed and the matter remanded for a new trial.

Baird v. Smiley, 169 A.3d 120, 124 (Pa.Super. 2017) (quoting ***Scampone v. Highland Park Care Ctr.***, 618 Pa. 363, 385-86, 57 A.3d 582, 595-96 (2012)). "An order denying a motion to remove a compulsory nonsuit will be reversed on appeal only for an abuse of discretion or error of law." ***Alfonsi v. Huntington Hosp., Inc.***, 798 A.2d 216, 218 (Pa.Super. 2002) (*en banc*).

Our Supreme Court has explained:

> "Assault is an intentional attempt by force to do an injury to the person of another, and a battery is committed whenever the violence menaced in an assault is actually done, though in ever so small a degree, upon the person." ***Cohen v. Lit Brothers***, 70 A.2d 419, 421 (Pa.Super. 1950) (citation omitted). A police officer may use reasonable force to prevent interference with the exercise of his authority or the performance of his duty. In making a lawful arrest, a police officer may use such force as is necessary under the circumstances to effectuate the arrest. The reasonableness of the force used in making the arrest determines whether the police officer's conduct constitutes an assault and battery.

Renk v. City of Pittsburgh, 537 Pa. 68, 76, 641 A.2d 289, 293 (1994) (citation formatting provided). "An arrest based upon probable cause would be justified, regardless of whether the individual arrested was guilty or not." ***Id.***

> Probable cause exists when the facts and circumstances which are within the knowledge of the police officer at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime.

Id.

Instantly, the trial court reasoned:

> Here, the issue is…whether, having admittedly struck a police officer, there was a basis, in the totality of the known circumstances and the split seconds while the incident was ongoing, for the officer to believe that he was being assaulted and that [Appellant's] dangerous and escalatory actions were a basis to effectuate an immediate "sight" arrest. Based upon the fact that [Appellant's] own counsel had to concede the unwanted contact, the prismatic mischaracterizations as "*de minimus*" or "slight" do not address the salient issue, the state of mind of firsthand sight, hearing and physical experience of the arresting officer. The video shows [Appellant's] truculent relentless pursuit of the uniformed officer in the court security area of the CJC, with [Appellant] belligerently getting in the officer's fac[e], jabbing his finger, crowding and moving aggressively forward in his direction, leading up to the actual intended physical contact by him with the officer. Whether the prosecutor would elect to take such a case to trial or whether a conviction where no severe impact occurred would stand were not the issue for [the trial] court in determining probable cause.

(Trial Court Opinion, filed 7/18/22, at 8).

Upon review, we conclude that the trial court did not err or abuse its

discretion in deciding that Officer Frank had probable cause to arrest Appellant. Viewing the evidence with every reasonable inference in Appellant's favor, we agree with the trial court that, where Appellant admitted to striking Officer Frank, there existed probable cause for Appellant's arrest, regardless of Appellant's intent in striking the officer, and regardless of the force used in striking. ***See Baird, supra***. Because there was probable cause to make the arrest, Appellant's claim of false arrest fails as a matter of law and the trial court did not err or abuse its discretion in granting Appellees' motion for compulsory nonsuit for the claims of false arrest. ***See Alfonsi, supra***. Thus, Appellant's first issue merits no relief.

In his second issue, Appellant argues the jury's damages verdict was against the weight of the evidence. Appellant claims that where the jury found Officers Frank and Lopez used excessive force to arrest him, the damages verdict of one cent less than the medical costs was contrary to the weight of the evidence. Appellant insists the evidence at trial established that he suffered serious injuries and significant pain and suffering as a result of Appellees' actions, and Appellant will likely need shoulder replacement surgery that will cost about $100,000. Appellant maintains the jury disregarded substantial evidence when it did not compensate him for either pain and suffering or for future medical costs. Appellant contends that the lack of any award for pain and suffering was contrary to the weight of the evidence because it had no reasonable relation to his injuries. Although Appellant

acknowledges that the jury's verdict was not allocated between medical costs and pain and suffering, Appellant suggests that the fact that the total damages award was approximately the same as the medical expenses implies that the verdict did not include any damages for pain and suffering. Appellant concludes the court erred by failing to award him a new trial on damages, and this Court must grant relief. We disagree.

> In reviewing a trial court's denial of a motion for a new trial, the standard of review for an appellate court is as follows:
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> > [I]t is well-established law that, absent a clear abuse of discretion by the trial court, appellate courts must not interfere with the trial court's authority to grant or deny a new trial.
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> > Thus, when analyzing a decision by a trial court to grant or deny a new trial, the proper standard of review, ultimately, is whether the trial court abused its discretion.

ACE Am. Ins. Co. v. Underwriters at Lloyds & Companies, 939 A.2d 935, 939 (Pa.Super. 2007), *aff'd*, 601 Pa. 95, 971 A.2d 1121 (2009) (citation omitted). Moreover, our review must be tailored to the following analysis:

> We must review the court's alleged mistake and determine whether the court erred and, if so, whether the error resulted in prejudice necessitating a new trial. If the alleged mistake concerned an error of law, we will scrutinize for legal error. Once we determine whether an error occurred, we must then determine whether the trial court abused its discretion in ruling on the request for a new trial.

Id. (citation omitted).

"[A] verdict that is against the weight of the evidence is a verdict that

shocks the conscience of the trial court in light of the evidence presented. When this occurs, the trial court should—if a party timely raises the issue in post-trial motions—order a new trial." ***Avery v. Cercone***, 225 A.3d 873, 877 (Pa.Super. 2019). As this Court has observed, "[i]n light of the wide latitude afforded juries on the pain-and-suffering question, a jury is always free to award $0 for pain and suffering. The question then becomes whether such a verdict is against the weight of the evidence such that it shocks the conscience of the trial court." ***Id.*** at 879.

Instantly, after finding that Officers Frank and Lopez had used excessive force and were liable for assault and battery, the jury awarded damages in the amount of $23,560.35. In accordance with the verdict slip, the jury awarded damages as a lump sum, rather than separating the damages into discrete categories. In denying Appellant's motion for a new trial on damages as against the weight of the evidence, the trial court explained that "[w]hile the amount of the verdict is similar to the amount of claimed medical costs put in evidence, costs that were not disputed by the defense, the evidence in this case travels no direct line between liability, defenses and damages." (Trial Court Opinion, dated 3/9/22, at 5). The court reasoned that the damages were not against the weight of the evidence, noting that Appellant did not prevail on all of his claims and had not "made an incontrovertibly convincing case for recovery of any or all of any specific type of damage." (***Id.*** at 8). Ultimately, the trial court decided that "[i]n light of all the foregoing

considerations, the court concludes that the [j]ury had ample evidence within the facts before it and through a robust deliberative process to issue a verdict for less than the full amount that [Appellant] was seeking to what it concluded was fair and just." (***Id.*** at 14). Therefore, the court found the verdict did not shock its sense of justice. (***Id.***)

On this record, we see no abuse of discretion in the court's ruling on Appellant's challenge to the weight of the evidence concerning damages. After finding some liability for two out of the five defendant officers, the jury awarded damages in the amount of $23,560.35. Given the "the wide latitude afforded juries," we cannot say the court abused its discretion in finding that this amount did not shock its sense of justice. ***See Avery, supra***. ***See also ACE Am. Ins. Co., supra***. Thus, Appellant's second issue merits no relief.

In his final issue, Appellant argues the court erred by excluding testimony from his treating psychologists to support his claim of mental anguish, embarrassment, and humiliation, without opening the door to evidence of confidential communications with his psychologists. Relying on ***Gormley v. Edgar***, 995 A.2d 1197 (Pa.Super. 2010), Appellant contends that although a waiver of therapeutic privilege may occur where a plaintiff places his mental health at issue, here, his general claims of mental anguish did not place his mental condition at issue. Appellant asserts that he did not place his mental condition at issue because he was not claiming that the incident caused him to suffer from a diagnosable condition. Appellant insists that his

mental health records should have remained confidential, even if he offered evidence of mental anguish, embarrassment, and humiliation. Appellant concludes the trial court erred in denying his motion *in limine*, and this Court must grant relief. We disagree.

"[W]hether evidence is admissible is a determination that rests within the sound discretion of the trial court and will not be reversed on appeal absent a showing that the court clearly abused its discretion." ***Fisher v. Central Cab Co.***, 945 A.2d 215, 218 (Pa.Super. 2008). "To constitute reversible error, an evidentiary ruling must not only be erroneous, but also harmful or [unduly] prejudicial to the complaining party." ***Ettinger v. Triangle–Pacific Corp.***, 799 A.2d 95, 110 (Pa.Super. 2002), *appeal denied*, 572 Pa. 742, 815 A.2d 1042 (2003). "A party suffers prejudice when the trial court's error could have affected the verdict." ***Gaudio v. Ford Motor Co.***, 976 A.2d 524, 535 (Pa.Super. 2009).

The psychologist-patient privilege protects confidential relations and communications between a psychologist and his client. 42 Pa.C.S.A. § 5944. This Court has explained that the "purpose of the psychiatrist/psychologist-patient privilege is 'to aid in the effective treatment of the client by encouraging the patient to disclose information fully and freely without fear of public disclosure.'" ***Tavella-Zirilli v. Ratner Companies, L.C.***, 266 A.3d 696, 701 (Pa.Super. 2021) (quoting ***Gormley, supra*** at 1204).

Nevertheless, an individual may waive this privilege by placing the

confidential information in a case. In ***Gormley***, this Court analyzed waiver of the psychologist-patient privilege, holding that the plaintiff waived the privilege in a personal injury action where she "directly placed her mental condition at issue when she alleged that she suffered from anxiety as a result of [a motor vehicle] accident." ***Gormley, supra*** at 1206. This Court stated that the psychologist-privilege "may be waived in civil actions where the client places the confidential information at issue in the case," and "[i]t would clearly be unfair for a party to seek recovery for anxiety if that mental health issue predated the accident. Moreover, where a party seeks recovery for aggravation of a pre-existing mental health condition, records of prior treatment for that condition are discoverable." ***Id.*** at 1204, 1206 (citation, quotation marks, and footnote omitted).

Instantly, in ruling on Appellant's motion *in limine* to preclude Appellees from eliciting evidence from Appellant's psychologists, Drs. Garfield and Heasley, the trial court explained that "it appear[ed] from [Appellant's] pretrial memorandum that [Appellant] is seeking to claim damages for anxiety and other emotional injuries." (Order, dated 12/28/21). Therefore, the court ordered that Appellant's motion to preclude was "DENIED unless and until [Appellant] enters into a stipulation that no damages are being sought for anxiety, emotional distress, or any mental injuries that [Appellant's] expert has opined were the direct manifestations of a physical injury that occurred as a result of the incident." (***Id.***)

In its 1925(a) opinion, the court explained its decision as follows:

> [Appellant] offered no authority for the proposition that only medical treatment for a "diagnosable" condition is admissible at trial. Here, [Appellant] admitted he had been undergoing treatment with a mental health provider for years (including treatment for anger management), both before and after the incident. [Appellant] hoped to now testify before the jury that the only reason that he could have mental anguish was solely related to the incident and that [Appellees] should be precluded from suggesting any other source for his claims or using the voluntarily produced records to properly cross examine to undermine his credibility before the jury. In fact, [Appellant] preemptively raised the issue and filed a motion *in limine* to prevent [Appellees] from bringing up his ongoing treatment.
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> The court determined that, as long as [Appellant] was seeking damages based upon the claim that the only reason, he had mental anguish was this incident, he could not obtain a gag order to prevent proper cross-examination. However, the court gave [Appellant] the option of what evidence to introduce, to the jury what damages to claim and concluded that preclusion would depend upon whether [Appellant] testified at trial as to mental anguish and claimed its only cause was the incident in question. Rather than risk "opening the door," [Appellant] tactically elected to not introduce any evidence as to mental anguish.
>
> The court's ruling was entirely proper. At its essence, [Appellant's] motion to preclude [Appellees] from seeking to raise evidence about previous mental health treatment was an invitation for the court to declare such evidence wholly irrelevant….
>
> [Appellant's] application in this case would potentially have resulted in the unjustified exclusion of probative, relevant and admissible evidence relevant to the origins of [Appellant's] mental distress, in the abstract and in advance of hearing the testimony. The court declined to make a trial evidence ruling in the abstract, leading it to forewarn [Appellant] that his claim might potentially open the door to cross-examination based upon his voluntarily produced records.

(Trial Court Opinion, dated 7/18/22, at 4-5).

The record supports the court's analysis. Appellant's motion *in limine* sought to preclude Appellees from introducing evidence based on the psychologist-patient privilege. The trial court explained that it would not preemptively preclude the evidence. Rather, the court stated that if Appellant introduced evidence or testimony that placed his mental condition at issue and resulted in waiver of the privilege, Appellees may then be able to rebut the testimony with evidence from Appellant's psychologists. We see no abuse of discretion in the court's decision. ***See Gormley, supra***. ***See also Fisher, supra***. Therefore, Appellant's third issue is meritless. Accordingly, we affirm.

Judgment affirmed.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

Date: 1/18/2024