

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
ANGELA C. WEST-BOGANS	:	
	:	
Appellant	:	No. 485 MDA 2023

Appeal from the Judgment of Sentence Entered January 10, 2023  
In the Court of Common Pleas of Cumberland County Criminal Division at  
No(s): CP-21-CR-0000490-2021

BEFORE: LAZARUS, J., McLAUGHLIN, J., and STEVENS, P.J.E.\*

MEMORANDUM BY LAZARUS, J.:

**FILED: NOVEMBER 22, 2023**

Angela C. West-Bogans appeals, *nunc pro tunc*, from the judgment of sentence, imposed in the Court of Common Pleas of Cumberland County, following her conviction for criminal mischief – damage to property.<sup>1</sup> After careful review, we affirm.

The Honorable Jessica E. Brewbaker set forth the facts of this case as follows:

On January 16, 2020, [West-Bogans] and her ex-husband, Tracy Bogans (hereinafter “Victim”)[,] were in Carlisle for a hearing on their pending divorce litigation. Following the conclusion of that hearing, the parties left the courthouse and, walking in the same direction, arrived at Victim’s vehicle. Victim observed [West-Bogans] walk roughly five to ten feet ahead of him, produce either a key or some other metallic object in her hand, and drag that

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\* Former Justice specially assigned to the Superior Court.

<sup>1</sup> 18 Pa.C.S.A § 3304(a)(5).

object over the rear passenger side panel of his vehicle. After [West-Bogans] walked past the vehicle, Victim observed fresh scratches that were not previously present. Victim then walked into the Cumberland County Domestic Relations Office, which was near where this incident occurred, and reported the matter to security, who summoned the Carlisle Police Department to the scene. Upon arriving at the scene, Corporal Michael Sturm met with Victim, interviewed him, and took several photographs of the damage to his vehicle.

Trial Court Opinion, 4/24/23, at 1-2.

A criminal information was filed against West-Bogans on April 14, 2021, and on June 13, 2022, West-Bogans was formally arraigned.<sup>2</sup> On October 4, 2022, the Commonwealth amended the criminal information,<sup>3</sup> and West-Bogans proceeded to a summary bench trial before Judge Brewbaker. At trial, the Commonwealth presented the testimony of Victim and Corporal Sturm, and West-Bogans presented a stipulation, wherein the parties agreed that numerous witnesses would testify as to West-Bogans' character as a generally peaceful and law-abiding person. The trial court found West-Bogans guilty of the summary offense of criminal mischief – damage to property. The court

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<sup>2</sup> During the approximately one-year delay from when the criminal information was recorded to when she was arraigned, West-Bogans was under consideration for the Accelerated Rehabilitative Disposition (ARD) program. Ultimately, West-Bogans' application for the ARD program was unsuccessful.

<sup>3</sup> On October 4, 2022, the date of West-Bogans' pretrial conference, the Commonwealth amended the information to add the charge of summary criminal mischief and withdraw the charge of criminal mischief graded as a misdemeanor in the second degree. By amending the information, the case became appropriate for a summary bench trial.

ordered her to pay the costs of prosecution, and \$744.34 in restitution to Victim.

On January 19, 2023, West-Bogans filed a post-sentence motion, which the trial court denied on February 8, 2023. On March 6 or 7, 2023, West-Bogans attempted to file a timely notice of appeal before the March 10, 2023, filing deadline; however, due to a breakdown in the court system, the notice of appeal was erroneously not accepted. On March 17, 2023, West-Bogans filed a petition seeking reinstatement of her appellate rights, *nunc pro tunc*, which the trial court granted on March 21, 2023. West-Bogans filed a timely notice of appeal, *nunc pro tunc*, on March 30, 2023, followed by a timely court-ordered Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal.

West-Bogans' sole issue on appeal is that the trial court's verdict was contrary to the weight of the evidence.<sup>4</sup> Our standard of review for evaluating such claims is well-settled:

[This Court's] 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, [this 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

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<sup>4</sup> West-Bogans preserved her weight claim by raising it in her post-sentence motion. **See** Pa.R.Crim.P. 607(A)(3) ("A claim that the verdict was against the weight of the evidence shall be raised with the trial judge in a [post-sentence] motion for a new trial.").

denying a new trial is the [trial] 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.

***Commonwealth v. Clay***, 64 A.3d 1049, 1055 (Pa. 2013) (internal citations omitted).

In a non-jury trial, great deference is "afforded to the trial court judge's discretion to adjudge the credibility of witnesses and to determine whether their testimony, if believed, establishes the elements of the offenses charged." ***See Commonwealth v. Stays***, 70 A.3d 1256, 1267 (Pa. Super. 2013); ***see also Commonwealth v. Lee***, 956 A.2d 1024, 1027 (Pa. Super. 2008) (citation omitted) ("This standard of deference is not altered in cases involving a bench trial, because 'the province of a trial judge sitting without a jury is to do what a jury is required to do.'").

An allegation that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. A new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. A trial judge must do more than reassess the credibility of the witnesses and allege that he would not have assented to the verdict if he were a juror. Trial judges, in reviewing a claim that the verdict is against the weight of the evidence[, ] do not sit as the thirteenth juror. Rather, the role of the trial judge is to determine that notwithstanding all the facts, certain facts are so clearly greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.

***Commonwealth v. Weir***, 201 A.3d 163, 167-68 (Pa. Super 2018), citing ***Commonwealth v. Widmer***, 744 A.2d 745, 751-52 (Pa. 2000). Thus, a verdict will be reversed on a weight of evidence claim, and a new trial will be granted, only where the trial court abused its discretion in declining to find

that the verdict is so contrary to the evidence as to shock one's sense of justice. **Clay**, 64 A.3d at 1054-55.

Mindful of this deferential standard, we can ascertain no basis for relief in West-Bogans' case. The trial court thoroughly examined the evidence and concluded that the verdict did not shock its sense of justice. **See** Trial Court Opinion, 4/24/23, at 6-7. The court specifically credited Victim's testimony that he saw and heard West-Bogans drag her key across the rear passenger side of his vehicle, which had been undamaged prior to the incident. **See Commonwealth v. Weir**, 201 A.3d 163, 167-68 (Pa. Super. 2018) ("The finder of fact is the exclusive judge of the weight of the evidence, and is free to believe all, some or none of the evidence presented, and determines the credibility of witnesses."); **see also Haberern v. Schaffer**, No. 3134 EDA 2014, (Pa. Super. Ct. Apr. 21, 2015) (in a non-jury trial, "our standard of review makes clear that with regard to issues of credibility and weight of the evidence, we must defer to the presiding trial judge who viewed and assessed the witnesses first-hand").

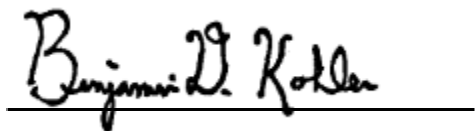
Additionally, although Victim's testimony at trial—that he saw and heard West-Bogans scratch her key across his vehicle—differed slightly from affidavit of probable cause, in which Corporal Sturm stated only that Bogans heard the sound of a key scratching his vehicle, the court concluded any discrepancy was at most trivial, and not something that would shock one's sense of justice. **See** Trial Court Opinion, 4/24/23, at 6-7; **see also**

***Commonwealth v. Davidson***, 860 A.2d 575, 581 (Pa. Super. 2004) (citation and quotation marks omitted) (“When the figure of Justice totters on her pedestal, or when the . . . verdict, at the time of its rendition, causes the trial judge to lose his breath, temporarily, and causes him to almost fall from the bench, then it is truly shocking to the judicial conscience.”).

Finally, the trial court correctly concluded that the parties’ stipulation did not serve to negate Victim’s testimony. Assessments of credibility and conflicts in evidence are for the trial court, as finder of fact, to resolve. ***Gutteridge v. J3 Energy Grp., Inc.***, 165 A.3d 908, 916 (Pa. Super. 2017). Accordingly, we discern no abuse of discretion on the part of the trial court in its determination that the verdict was not against the weight of the evidence. ***See Clay, supra; see also Stokes, supra.***

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.  
Prothonotary

Date: 11/22/2023