

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: No. 99-10,589
	:
vs.	: CRIMINAL DIVISION
	:
DANIEL MACK,	: POST SENTENCE MOTION
Defendant	:

ORDER

AND NOW, this day of February 2000, the Defendant's Post Sentence Motion and Motion for Reconsideration of Sentence are DENIED.

COUNT I

MOTION FOR NEW TRIAL AND IN ARREST OF JUDGEMENT

In Count 1 of his motion, the defendant contends the evidence was insufficient to support the verdict and/or the verdict was against the weight of the evidence. When reviewing a sufficiency claim the court is required to view the evidence in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence. Commonwealth v. Whiteman, 336 Pa.Super. 120, 124-125, 485 A.2d 459, 461 (1984). The evidence clearly was sufficient to establish that the Defendant did not have permission or license to enter the Michelle Mack's house. Succinctly stated, Michelle Mack, the wife of the Defendant, testified that she and the Defendant separated in January 1999 and the Defendant did not live in her home. Further, she testified that on the day and time in question, i.e, the early evening of April 2, 1999, she emphatically told the Defendant he had no permission to enter the home and that he could not enter the home. When the Defendant continued to enter the home she physically tussled with the Defendant to prevent him from entering the home. The Defendant, despite

this, entered the home by force. Clearly, the evidence shows the Defendant entered the home without consent and the Defendant had no license to enter the home.

Further, the evidence was sufficient to establish that the Defendant recklessly endangered victim Earl Byron. Mr. Byron testified he suffered a stab wound from a knife wielded by the Defendant. Michelle Mack testified that as the Defendant left the house she asked him why he "cut" Mr. Byron and the Defendant responded because he cut me. The Defendant then pulled out the knife and told Michelle Mack to get out of his face or he'd kill her. Even if the Jury found that Mr. Byron also had a knife in the confrontation with the Defendant, there is ample evidence to suggest that the Defendant recklessly endangered Mr. Byron by wielding a knife.

The Court also does not believe the guilty verdicts were against the weight of the evidence. A motion for a new trial on the grounds that the verdict is against the weight of the evidence concedes that there is sufficient evidence to sustain the verdict.

Commonwealth v. Whiteman, 336 Pa.Super. 120, 124-125, 485 A.2d 459, 462 (1984).

The role of the trial judge is not to reassess the credibility of the witnesses. Rather, the role of the trial judge is to determine that "notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or give them equal weight with all the facts is to deny justice." Commonwealth v. Widmer, No. 60 MD Appeal Dkt. 99 (Pa., January 20, 2000). Such is not the case here. There was ample evidence to support the defendant's convictions in this case. The evidence in support of the defendant's contentions was not so weighty as to make the award of a new trial imperative to give justice another opportunity to prevail. To award a new trial in this case would be to reassess the credibility

of the witness which this court is not permitted to do.

COUNT II

MOTION FOR RECONSIDERATION OF SENTENCE

The Court applied the deadly weapon enhancement on the recklessly endangering another conviction because the most logical reading of all the evidence indicate a knife was wielded by the Defendant against victim, Earl Byron. As already discussed, two Commonwealth witnesses, Mr. Byron and Michelle Mack, clearly testified the Defendant had a knife. It is hard to discern a reasonable theory of recklessly endangering the victim Earl Byron if the Defendant did not have a knife in commission of this crime, based on the testimony presented.

While the Defendant was acquitted of the assault counts by the Jury, as was their prerogative, this does not mean that the Defendant did not possess a knife. There was ample evidence for applying the deadly weapon enhancement in light of the testimony presented at trial that the Defendant utilized a knife in commission of the crime in question.

By The Court,

Kenneth D. Brown, J.

cc: District Attorney
Public Defender (NS)