NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
ALBERTO CRUZ	:	
Appellant	:	No. 1711 MDA 2025

Appeal from the Judgment of Sentence Entered May 7, 2025
In the Court of Common Pleas of Lebanon County Criminal Division at
No(s): CP-38-CR-0000726-2024

BEFORE: PANELLA, P.J.E., DUBOW, J., and SULLIVAN, J.

MEMORANDUM BY SULLIVAN, J.: **FILED: NOVEMBER 13, 2026**

Alberto Cruz ("Cruz") appeals from his judgment of sentence following his conviction for aggravated assault and related offenses.[1] Cruz challenges the sufficiency and weight of the evidence supporting his aggravated assault conviction.[2] Finding no merit to Cruz's assertion he did not cause serious bodily injury, we affirm.

We discern the following facts from the trial court's opinion. On May 25, 2024, Cruz arrived unannounced and uninvited at his sister-in-law's party in Lebanon, Pennsylvania. Cruz argued with a number of family members. When only Cruz, his sister-in-law ("the victim"), and his wife remained at the

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[1] ***See*** 18 Pa.C.S.A. § 2702(a)(1).

[2] Cruz does not appeal from his convictions for simple assault, resisting arrest, disorderly conduct, public drunkenness and harassment.

party, Cruz punched the victim in the face, knocking her to the ground. ***See*** Trial Court Opinion, 11/17/25, at 1-2.

When police officers arrived at the scene, Cruz immediately fell to his knees and put his hands in the air. The victim, who had a visible facial injury and was bleeding from the head, told police Cruz had punched her in the face with a closed fist. Cruz resisted arrest even after being handcuffed. Toward the conclusion of the arrest, Cruz, who smelled of alcohol, stated, "I am going to get bailed out and I am going to kill you and your entire family." ***Id***. at 2-3. Maria Jimenez, Cruz's mother-in-law, who had redness and swelling on her chest, told police Cruz had shoved and pushed her to the ground. ***See id***. at 3.

Transported to the hospital, the victim was found to have a non-displaced jaw fracture, which required surgeries to repair teeth that shifted as a result of Cruz's punch. For two months, the victim had an exclusively liquid diet, was unable to talk; she suffered continuing pain from her broken jaw. ***See id***.

In February 2025, the jury convicted Cruz of the above-listed charges. In May 2025, Cruz appeared for sentencing in this case and an unrelated aggravated assault against a police officer during a domestic violence incident. The court imposed a sentence of four to fifteen years of imprisonment for aggravated assault. Cruz filed post-sentence motions challenging the sufficiency and weight of the evidence sustaining his aggravated assault

conviction, which the trial court denied. Cruz timely appealed and he and the trial court complied with Pa.R.A.P. 1925(b).[3]

On appeal, Cruz raises the following issues for our review:

1. Whether the evidence presented in this matter was not sufficient to convict [Cruz] of aggravated assault?

2. Whether weight of the evidence was against a conviction of aggravated assault?

Cruz's Brief at 4 (capitalization standardized).

A determination of evidentiary sufficiency presents a question of law. As such, this Court's standard of review is *de novo*. ***See Commonwealth v. Berrios***, 297 A.3d 798, 803 (Pa. Super. 2023). Our scope of review is limited to considering the evidence of record, viewed in the light most favorable to the Commonwealth as the verdict winner. ***See id***. When viewing the evidence in that light, an appellate court determines whether the evidence and all reasonable inferences therefrom is sufficient to establish every element of the offense beyond a reasonable doubt. ***See Commonwealth v. Ellis***, 313 A.3d 458, 461 (Pa. Super. 2024). "The evidence at trial need not preclude every possibility of innocence and the fact-finder is free to believe all, part, or none of the evidence presented. It is not within the province of the Court to re-weigh the evidence and substitute our judgment for that of the fact-finder." ***Commonwealth v. Bernarsky***, 348 A.3d 304, 320 (Pa. Super. 2025).

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[3] The trial court entered an order stating that its November 17, 2025, opinion addressed Cruz's claims. ***See*** Order, 1/7/26.

A person is guilty of aggravated assault if he, *inter alia*, attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life. ***See*** 18 Pa.C.S.A. § 2702(a)(1). Serious bodily injury is defined as bodily injury "which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." ***See*** 18 Pa.C.S.A. § 2301.

Cruz asserts the injury he inflicted did not pose a risk of death, cause permanent disfigurement, or result in the protracted loss or impairment of the function of any bodily member or organ. ***See*** Cruz's Brief at 9. He asserts that because the victim did not require jaw surgery, having a "temporary liquid foot diet" did not constitute protracted loss or impairment of the function of that part of the body. ***See id***. (citing, *inter alia*, ***Commonwealth v. Stancil***, 334 A.2d 675 (Pa. 1975).

The trial court rejected Cruz's sufficiency challenge. The court noted its "fervent disagree[ment]" that a person does not inflict serious bodily injury when he causes a broken jaw that prevents a person from eating and speaking, requires surgical intervention and causes nine months of pain. ***See*** Trial Court Opinion, 11/17/25, at 8.

Following our review, we conclude the record supports the trial court's determination the evidence was sufficient to sustain Cruz's aggravated assault

conviction. Contrary to Cruz's suggestion, the fact the victim required dental surgery rather than having her jaw wired shut does not negate that she suffered serious bodily injury. ***See Commonwealth v. Nichols***, 692 A.2d 181, 184 (Pa. Super. 1987) (stating that "[s]uffering a broken jaw and being confined to a liquid diet constitutes impairment of the function of a bodily member sufficient to prove aggravated assault under 18 Pa.C.S.A. § 2702(a)(1)). ***See also Commonwealth v. Crumpler***, 245 A.3d 1095 (Pa. 2020) (unpublished memorandum)[4] (same).[5]

Cruz's second claim asserts the verdict is against the weight of the evidence. ***See*** Cruz's Brief at 15-16.

When reviewing a challenge to the weight of the evidence, this Court's standard of review is as follows:

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[4] ***See*** Pa.R.A.P. 126(b) (stating this Court's unpublished memoranda filed after May 1, 2019, are citable for their persuasive value).

[5] ***Stancil***, which Cruz cites, does not compel a different conclusion. That case holds that a beating or stomping shows sufficient recklessness to constitute aggravated assault and that an attempt to cause aggravated assault does not require actual serious injury. ***See Stancil***, 334 A.2d at 677. Here, the evidence proved the infliction of serious bodily injury. ***Stancil*** is thus inapposite. Cruz cites two other cases, ***Commonwealth v. Burton***, 2 A.3d 598 (Pa. Super. 2010) (*en banc*); and ***Commonwealth v. Kinney***, 157 A.3d 968, 973 (Pa. Super. 2017), which he alleges show the evidence was insufficient to prove he inflicted serious bodily injury. ***See*** Cruz's Brief at 13. ***Burton*** held that a single punch can be sufficient to constitute aggravated assault. ***See Burton***, 2 A.3d at 605. ***Kinney*** held the loss of four teeth constitutes serious bodily injury. ***See Kinney***, 157 A.3d at 973. Neither case involved a broken jaw and the question of whether that constitutes serious bodily injury.

> The essence of appellate review for a weight claim appears to lie in ensuring that the trial court's decision has record support. Where the record adequately supports the trial court, the trial court has acted within the limits of its discretion.
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> A motion for a new trial based on a claim 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. Rather, the role of the trial judge is to determine that notwithstanding 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.
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> An appellate court's standard of review when presented with a weight of the evidence challenge is distinct from the standard of review applied by the trial court. Appellate review of a weight claim is a review of the exercise of discretion, not the underlying question of whether the verdict is against the weight of the evidence.

Commonwealth v. Muci, 143 A.3d 399, 410-11 (Pa. Super. 2016) (citation omitted). An abuse of discretion is not merely an error in judgment but involves bias, partiality, prejudice, ill-will, manifest unreasonableness or a misapplication of the law. ***See Commonwealth v. Arnold***, 284 A.3d 1262, 1277 (Pa. Super. 2022) (citation omitted).

One of the least assailable reasons for granting or denying a new trial is the lower 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. ***See Commonwealth v. Juray***, 275 A.3d 1037, 1047 (Pa. Super. 2022) (internal citation and indentation omitted). "Relief on a weight of the evidence claim is reserved for extraordinary circumstances, when the [factfinder's] verdict is so contrary to the evidence as to shock one's sense of justice and

the award of a new trial is imperative so that right may be given another opportunity to prevail." ***Commonwealth v. Sanchez***, 36 A.3d 24, 39 (Pa. 2011) (internal citation and quotations omitted).

It is the exclusive province of the factfinder to weigh inconsistencies in a witness's testimony and to make credibility determinations. ***See Commonwealth v. Izurieta***, 171 A.3d 803, 809 (Pa. Super. 2017). Indeed, this Court has explained that a new trial should not be granted because of a mere conflict in the testimony. ***See Juray***, 275 A.3d at 1047.

Cruz asserts the verdict was against the weight of the evidence because witnesses saw him have a previous altercation with members of the victim's family, and "[t]here was no testimony as to any specific malice [he] directed towards the victim." Cruz's Brief at 16.

The trial court stated that nothing about the jury's verdict shocked its conscience and the evidence was more than enough to sustain Cruz's aggravated assault conviction. ***See*** Trial Court Opinion, 11/17/25, at 9.

Our review discloses the trial court did not abuse its discretion by denying Cruz's weight claim. The evidence of record shows Cruz knowingly and intentionally punched his sister-in-law in the face with enough force to break her jaw. The verdict was consistent with, rather than contrary to, this evidence.

Cruz asks this Court to reweigh the trial evidence; however, as noted, we review only whether the trial court abused its discretion in denying a weight

claim. ***See Muci***, 143 A.3d at 410-11. Moreover, to the extent challenges either the credibility of the witnesses or the sufficiency of the evidence, neither presents a valid weight claim. ***See Izurieta***, 171 A.3d at 809 (this Court will not reweigh credibility in assessing a weight claim); ***Commonwealth v. Widmer***, 744 A.2d 745, 751 (Pa. 2000) (stating that a weight claim concedes there is sufficient evidence to sustain the verdict).

Judgment of sentence affirmed.

Judgment Entered.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/13/2026