

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

YVONNE HILLER

Appellant

No. 2724 EDA 2012

Appeal from the Judgment of Sentence September 24, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0015197-2010;
CP-51-CR-0015198-2010; CP-51-CR-0015199-2010

BEFORE: GANTMAN, J., OLSON, J., and WECHT, J.

MEMORANDUM BY GANTMAN, J.:

FILED DECEMBER 09, 2013

Appellant, Yvonne Hiller, appeals from the judgment of sentence entered in the Philadelphia County Court of Common Pleas, following her bench trial convictions for first-degree murder, attempted murder, recklessly endangering another person ("REAP"), and simple assault.¹ We affirm.

In its opinion, the trial court fully and correctly set forth the relevant facts of this case. Therefore, we have no reason to restate them. Procedurally, on September 10, 2012, the court convicted Appellant of first-degree murder, attempted murder, REAP, and simple assault. The court sentenced Appellant on September 24, 2012, to an aggregate term of life

¹ 18 Pa.C.S.A. §§ 2502(a); 901 (2502 related); 2705; 2701, respectively.

imprisonment without the possibility of parole. Appellant timely filed a notice of appeal on September 25, 2012. On September 28, 2012, the court ordered Appellant to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant filed an initial concise statement on October 26, 2012, and after the court granted Appellant an extension of time to file a supplemental statement, Appellant filed a supplemental concise statement on February 13, 2012.

Appellant raises one issue for our review:

WAS NOT THE EVIDENCE INSUFFICIENT TO CONVICT APPELLANT OF [REAP] AS TO COMPLAINANT OFFICER MICHAEL MURPHY, AS THE COMMONWEALTH FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT HE WAS ACTUALLY ENDANGERED BY APPELLANT'S CONDUCT?

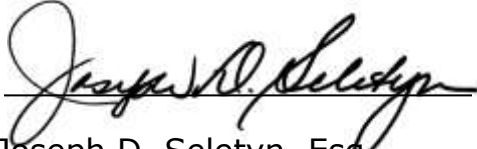
(Appellant's Brief at 3).

After a thorough review of the record, the briefs of the parties, the applicable law, and the comprehensive opinion of the Honorable Benjamin Lerner, we conclude Appellant's issue merits no relief. The trial court opinion discusses and properly disposes of the claim presented. (**See** Trial Court Opinion, filed March 11, 2013, at 4-5; 7-9) (finding: Officer Black testified that Appellant shot at officers, including Officer Murphy, from distance of 20 yards and bullet hit to their left; Appellant's act of firing loaded gun in Officer Murphy's direction satisfies elements of REAP; fact that bullet did not strike Officer Murphy is immaterial; Commonwealth presented

sufficient evidence to sustain Appellant's REAP conviction as to Officer Murphy). Accordingly, we affirm on the basis of the trial court's opinion.

Judgment of sentence affirmed.

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/9/2013

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH

VS.

YVONNE HILLER

FILED

MAR 11 2013

Criminal Appeals Unit
First Judicial District of PA

CP-51-CR-0015197-2010

CP-51-CR-0015198-2010

CP-51-CR-0015199-2010

SUPERIOR COURT

NO. 2724 EDA 2012

OPINION

By: The Honorable Benjamin Lerner

PROCEDURAL HISTORY

On September 10, 2012, this court, sitting without a jury, found appellant guilty of murder in the first degree (two counts), attempted murder, reckless endangerment (five counts) and simple assault. On September 24, 2012, the court sentenced appellant to consecutive terms of life imprisonment on both murder bills followed by a ten (10) to twenty (20) year prison term on the attempted murder bill. The court also imposed concurrent prison terms of one (1) to two (2) years on the simple assault bill and one reckless endangerment bill. No further penalty was imposed on the remaining bills. This timely appeal followed.

CP-51-CR-0015197-2010 Comm. v. Hiller, Yvonne
Opinion



7002855551

FACTS

This case arose from a tragic workplace shooting at the Kraft/Nabisco plant located at 12000 Roosevelt Boulevard in Philadelphia. On September 9, 2010, at approximately 7:00 p.m., Bryant Dalton, a mixer at the plant, was exiting the men's room on the third floor when appellant, a co-worker at the plant, spoke to him, LaTonya Brown and Tanya Wilson, both also co-workers, and accused them of spraying her with poisonous chemicals. Mr. Dalton had no idea what appellant was

talking about. Appellant continued to rant and rave and threatened to “fuck them up”.

Hearing appellant’s threats, union steward Frederick Capps immediately alerted supervisor Wade Murphy and shift manager Carl Rivers about the escalating situation. Mr. Murphy tried to diffuse the situation by separating appellant from the involved employees and taking their statements about what had happened. Appellant attempted to come into the room where the statements were being taken, but was asked to wait outside. After Dalton, Wilson and Brown gave their statements, appellant was invited inside and gave her statement. Appellant had complained about being sprayed by chemicals on prior occasions and had filed complaints with OSHA in the past. OSHA had investigated the complaints but found nothing to substantiate them. On the day in question, appellant continued to curse, make threats and complain about the imaginary “spraying” until she was ordered to leave. She was escorted out of the building and into the parking lot. (N.T. 9-10-12, pp. 24-36, 49-53, 61-66, 124-125).

Mark Bentley was the security guard on duty at the plant entrance where appellant was escorted off the premises. A short time later, appellant returned to the entrance gate and drove up to Bentley’s guard booth. She got out of her car, pointed a gun at Bentley and ordered him to open the gate to the plant. Bentley, who was unarmed, complied, and appellant entered the plant. (N.T. 9-10-12, pp. 81-87, 92-95).

Appellant went to the third floor, where she encountered fellow employees Matthew Rockenbach and John Burns. Appellant was approximately 40 to 50 feet away from Rockenbach and Burns when she pointed her gun at them. Rockenbach and Burns ran and hid behind a large mixer. The men heard three to four shots before heading down the stairs. N.T. 9-10-12, pp. 71-75, 97-99.

Bryant Dalton, Tanya Wilson, LaTonya Brown and two other employees were in the lounge on the third floor when the door swung open and appellant shouted that she had lost her job because of them. Appellant then shot Mr. Dalton in the right side of his neck. He fell to the floor. While on the ground, Mr. Dalton saw appellant shoot Ms. Brown. Appellant then pointed the gun at another employee, Ms. Tucker, and told her to get out. Ms. Wilson attempted to escape by holding onto Ms. Tucker as she left, but appellant shot Ms. Wilson after Ms. Tucker tripped and fell. (N.T. 9-10-12, pp. 38-43). Both Ms. Wilson and Ms. Brown died as a result of their gunshot wounds. (N.T. 9-10-12, pp. 128-134; see Medical Examiners Report). Mr. Dalton survived but spent two weeks in the hospital. The bullet that entered his neck is still lodged in his shoulder. (N.T. 9-10-12, pp. 41-42).

After hearing the shots, Mr. Capps, a mixer at the plant, told another employee, Barbara Brock, that appellant had a gun and to go downstairs. Mr. Capps was behind Ms. Brock when he looked to his left and saw appellant on the other side of an oven. (N.T. 9-10-12, pp. 55-56).

David Ciarlante, a mechanic at the plant, encountered appellant on the second floor after she had shot Dalton, Brown and Wilson. Appellant walked toward him, gun in hand, and told him to get out of her way. After warning several others to get out of the building, Mr. Ciarlante followed appellant. He saw a female employee, Carolyn Morse, plead with appellant to stop what she was doing. Appellant told Ms. Morse that she was tired of everything. She then pointed the gun at Mr. Carliante and fired a shot at him. Fortunately, the shot missed Mr. Carliante and hit the wall behind him. (N.T. 9-10-12, pp. 108-115, 120).

By this time, police had been called, and several officers were at the scene. Philadelphia Police Officer Terrence Black proceeded to the hallway of the second floor of the plant with Officers Murphy and Boccalupo. When the officers entered the hallway appellant fired a shot in their

direction. The bullet missed the officers, hitting to the left of them. The officers did not return fire because there were other people in the hallway at the time. Appellant then went into a second floor office. Philadelphia Police SWAT team members entered the office, took appellant into custody and recovered from her a .357 caliber hand gun containing six live rounds. (N.T. 9-10-12, pp. 143-145, 152-153). A subsequent search of her person revealed an additional eleven live rounds of .38 caliber special ammunition. (N.T. 9-10-12, pp. 152-153).

ISSUE(S)

Appellant makes the following claims:

1. The trial court erred in convicting appellant of first degree murder and attempted murder rather than voluntary manslaughter, because the Commonwealth allegedly failed to disprove that she acted in imperfect self-defense; and
2. The evidence did not support appellant's conviction for reckless endangerment with regard to complainants Matthew Rockenbach, John Burns, Mark Bentley and Michael Murphy,

See appellant's Supplemental Concise Statement of Matters Complained of on Appeal.

DISCUSSION

I. First Degree Murder and Voluntary Manslaughter

In considering a challenge to the sufficiency of the evidence, the reviewing court must determine whether, viewing all the evidence at trial and the reasonable inferences therefrom in the light most favorable to the Commonwealth, the trier of fact could have found that each element of

the offense charged was proven beyond a reasonable doubt. Commonwealth v. Marinelli, 547 Pa. 294, 690 A.2d 203, 210-11 (1997); Commonwealth v. Gaskins, 692 A.2d 224, 227 (Pa. Super. 1997). This standard is applicable whether the evidence presented is circumstantial or direct, provided the evidence links the accused to the crime beyond a reasonable doubt. Commonwealth v. Morales, 669 A.2d 1003, 1005 (Pa. Super. 1996). Furthermore, questions of witness credibility and the weight to be afforded the evidence are within the sole province of the finder of fact, who is free to believe all, part, or none of the evidence. Commonwealth v. Woods, 432 Pa. Super. 428, 638 A.2d 1013, 1015 (1994); Commonwealth v. Mayfield, 401 Pa. Super. 560, 585 A.2d 1069 (1991). Analyzing the evidence by these standards, it is apparent that appellant's arguments have no merit.

To sustain a conviction for first-degree murder, the Commonwealth must establish beyond a reasonable doubt that the defendant acted with a specific intent to kill, that the victim was unlawfully killed, that the defendant did the killing, and that the killing was done deliberately with premeditation. Commonwealth v. Hall, 549 Pa. 269, 701 A.2d, 190, 196 (1997), *cert. denied*, 523 U.S. 1082, 118 S. Ct. 1534, 140, L.Ed.2d 684 (1998); Commonwealth v. LaCava, 542 Pa. 160, 171, 666 A.2d 221, 226 (1995). It is the specific intent to kill that distinguishes first-degree murder from lesser grades of murder. Commonwealth v. Smith, 548 Pa. 65, 68-70, 694 A.2d 1086, 1088 (1997), *cert. denied*, 525 U.S. 847, 119 S. Ct. 118, 142 L.Ed.2d 92 (1998). "The specific intent to kill needed to support a first-degree murder conviction can be proven by the use of a deadly weapon on a vital part of the victim's body." Commonwealth v. Rivers, 537 Pa. 394, 399, 644 A.2d 710, 712 (1994). The Commonwealth may establish the specific intent to kill from circumstantial evidence. Commonwealth v. Brown, 551 Pa. 465, 711 A.2d 444 (1998).

A person is guilty of voluntary manslaughter if, at the time of the killing, she acted under a

sudden and intense passion resulting from serious provocation by the individual killed, or she “knowingly and intentionally” killed another under the unreasonable belief that the killing was justified. 18 Pa.C.S. § 2503(a) and (b). In order to obtain a conviction for voluntary manslaughter the Commonwealth must prove beyond a reasonable doubt that the killing was not justified. Commonwealth v. Mehmeti, 501 Pa. 589, 462 A.2d 657 (Pa. 1983). A killing that occurs under the mistaken belief that it was justified constitutes imperfect self-defense voluntary manslaughter if the other requirements for self-defense are met. Commonwealth v. Weston, 561 Pa 199, 749 A.2d 258 (2000).

In order to establish self-defense, a defendant must show three elements: (1) that she was free from provoking or continuing the difficulty which resulted in the use of deadly force; (2) she reasonably believed that she was in danger of death or serious bodily injury, and that it was necessary to use such force in order to save herself or others therefrom; and (3) she did not violate a duty to retreat or to avoid the danger. Commonwealth v. Myrick, 468 Pa. 155, 360 A.2d 598 (1976); Commonwealth v. Cropper, 463 Pa. 529, 345 A.2d 645 (1975); 18 Pa.C.S. § 505.

In the instant case, appellant’s claim that she acted in imperfect self-defense at the time she fired her weapon is not supported by the evidence¹. Appellant violated a duty to retreat by reentering the plant after she had been escorted out to the parking lot. Moreover, the evidence is clear that

¹ Even assuming *arguendo* appellant actually believed that she had been sprayed with poisonous chemicals by her co-workers, there is no objective evidence to support such a belief. Appellant had complained to Kraft-Nabisco on numerous occasions prior to the shooting that she was being poisoned or sprayed with a chemical that smelled like deer urine. The company investigated and found no support for this claim. (N.T., 9/10/12, pp61-63). OSHA also investigated appellant’s claims and concluded that they were unfounded. (N.T., 9/10/12, pp. 63-64). Kraft-Nabisco even provided professional counseling for appellant. (See Appellant’s statement to police, docketed as Commonwealth Exhibit C-15

appellant was the aggressor from the beginning of this incident. She first threatened Ms. Wilson, Ms. Brown and Mr. Dalton. Then, after leaving the workplace, she armed herself and threatened a security guard to re-gain entrance to the building where she hunted down and shot all of her intended victims, killing two of them.

The evidence shows beyond a reasonable doubt that appellant formulated and carried out a premeditated, intentional plan to shoot and kill three people on the evening of September 9, 2010. Appellant's actions in this case do not constitute imperfect self-defense by any stretch of the imagination, and her claim that the killings rise no higher than voluntary manslaughter must fail.

II. Reckless Endangerment

Next, appellant claims that the evidence did not support her convictions for reckless endangerment. Specifically, appellant argues that she never endangered complainants Matthew Rockenbach, John Burns or Mark Bentley because there was no proof that her gun was loaded and cocked when she pointed it at these men. With regard to complainant Officer Michael Murphy, appellant argues that the shot she fired at him, which struck approximately twenty yards from Officer Murphy, did not endanger him. These claims have no merit.

The law provides that "[a] person commits a misdemeanor of the second degree if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury." 18 Pa.C.S.A. § 2705. "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." *Id.* To sustain a conviction under Section 2705, the Commonwealth must prove that the defendant had an actual present ability

to inflict harm and not merely the apparent ability to do so. Danger, not merely the apprehension of danger, must be created. Finally, the *mens rea* for recklessly endangering another person is a conscious disregard of a known risk of death or great bodily harm to another person. Commonwealth v. Hopkins, 2000 PA Super 47, 747 A.2d 910, 915-916 (Pa.Super. 2000) (citations and quotation omitted).

Appellant's own statement to police (Exhibit C-15) shows that her gun was loaded at the time she pointed it at security guard Mark Bentley to gain entrance into the plant. Appellant told police that she took the gun from under the seat of her car and pointed it at Mr. Bentley. She stated that she immediately went to the third floor where she pointed the gun at Mr. Burns and Mr. Rockenbach and actually fired one shot. The shot did not hit them. At no time did appellant state that she took time to load the gun before firing this first shot. This fact is particularly telling since appellant specifically did tell police that she reloaded her gun before going downstairs to the second floor. The clear implication is that her gun was loaded from the time she re-entered the premises until she needed to re-load it on her way to the second floor.

Appellant's statement proves beyond a reasonable doubt that she pointed a loaded gun at Bentley, Rockenbach and Burns, thus creating a substantial risk of death or serious bodily injury. Moreover, her statement is consistent with the other evidence in the case. Rockenbach and Burns heard the fatal shots that were fired in the lounge just moments after appellant had pointed the gun at them. The only reasonable inference from this evidence is that the gun was already loaded and ready to fire when she pointed it at them. Accordingly, the evidence was sufficient to sustain appellant's convictions under 18 Pa.C.S.A. § 2705 in regard to Bentley, Rockenbach and Burns.

With regard to Officer Murphy, appellant misinterprets Officer Black's testimony as saying

that appellant's bullet missed the officers by 20 yards. The officer said that appellant shot at them from a distance of 20 yards, and that the bullet hit to their left. (N.T. 9-10-12, p. 144). Under either version, however, appellant's act of firing a loaded gun in Officer Murphy's direction clearly constituted reckless endangerment despite the fact that the bullet missed its target. The evidence was sufficient to sustain appellant's conviction under 18 Pa.C.S.A. § 2705 in regard to Officer Murphy.

For the foregoing reasons, appellant's judgment of sentence should be affirmed.

DATE

March 8, 2013

BY THE COURT:

Benjamin Jerner