SJC-12525

COMMONWEALTH vs. JEAN CARLOS LOPEZ.

Bristol. November 8, 2019. - March 3, 2020.

Present: Gants, C.J., Lenk, Gaziano, Lowy, & Budd, JJ.

Homicide. Joint Enterprise. Evidence, Joint venturer. Practice, Criminal, Capital case, Motion for a required finding.

Indictment found and returned in the Superior Court Department on October 27, 2010.

The case was tried before Robert J. Kane, J.

Robert F. Shaw, Jr., for the defendant.
Stephen C. Nadeau, Jr., Assistant District Attorney, for the Commonwealth.

BUDD, J. Late at night on June 25, 2010, Tigan Hollingsworth was killed when he was chased into the back yard of a home in Taunton and stabbed thirteen times. The defendant, Jean Carlos Lopez, was convicted as a joint venturer of murder in the first degree on the theory of extreme atrocity or cruelty in connection with the death. On appeal, the defendant argues,

among other things, that the trial judge erred in denying the defendant's motion for a required finding of not guilty because the evidence presented to the jury was insufficient to establish the defendant's knowing participation in the killing with the required intent beyond a reasonable doubt. We agree, and we therefore reverse the judgment, set aside the defendant's conviction, and remand the case to the Superior Court for entry of a judgment of not guilty.

Background. We present the facts in the light most favorable to the Commonwealth, leaving some details for our discussion of the sufficiency of the evidence.

At approximately 11:30 P.M. on the night of the killing, a group of individuals, including Etnid Lopez (the defendant's brother), Kayla Lawrence (Etnid's[1] girlfriend), Jared Brown-Garnham (Garnham), and Michelle Torrey, congregated at a convenience store in Taunton. Etnid wore a white T-shirt, and Garnham wore dark clothes with a blue bandana. The victim, wearing a black jacket with gold lettering on the back, also was there. Lawrence knew the victim through mutual acquaintances and had witnessed the victim, along with a group of other people, "jump" the defendant approximately two years earlier. While Etnid went into the convenience store, Lawrence and the

[1] We refer to Etnid Lopez by his first name because he shares a last name with the defendant.

victim had a heated exchange. Etnid then came out of the store and, with a knife in his hand and swearing, began chasing the victim around the parking lot.[2]

In the meantime, the defendant drove into the parking lot accompanied by his uncle, Erving Cruz. The defendant was wearing a light blue sweatshirt; Cruz was wearing a black tank top and black pants. The two men got out of the vehicle, and Cruz shouted to Etnid, "Is that him? Is that him? Get him. Get him." Cruz and the defendant, together with Garnham, joined the chase.[3] The victim then ran out of the parking lot and down the street.

Witnesses Matthew D'Alessandro and Brittany Machado observed events unfold from their vehicle as they stopped at a traffic light across the street from the convenience store and then continued toward their nearby home. Both saw the victim being chased down the street by two men: one in a white T-shirt (whom it is reasonable to infer was Etnid), and a second man who

---

[2] Only one witness for the Commonwealth testified to having seen Etnid with a knife while he chased the victim around the parking lot. That witness did not see the defendant in the parking lot when Etnid wielded the knife.

[3] Surveillance footage from the convenience store parking lot captured the defendant and Cruz getting out of the defendant's vehicle and running quickly out of the camera's frame. Sixty-eight seconds later, the video shows Cruz return to the vehicle, followed fourteen seconds later by the defendant, and then they drive away.

had just gotten out of a vehicle in the parking lot wearing black pants and a black tank top (whom it is reasonable to infer was Cruz). As Machado made a left turn into her driveway, the victim, who was running toward Machado's vehicle, quickly doubled back to avoid running into her vehicle, ducked away from the two men chasing him, and ran down a nearby driveway.[4] The two men followed.

Machado drove her vehicle to the end of her driveway and parked. As they parked, D'Alessandro and Machado heard sounds consistent with a chain-link fence that was located to their left being climbed. From the vehicle, D'Alessandro observed the victim jump to the ground from the fence into the back yard next door, followed closely by the two men who were chasing him. D'Alessandro heard one of the pursuers say, "Get him, get him. Don't let him go." D'Alessandro then saw the man in the white T-shirt and the man in the black tank top attack the man in the black jacket, hitting him repeatedly. The victim fell to the ground, and the two attackers climbed back over the fence and fled.[5]

---

[4] Machado was unable to specify which driveway they ran down. D'Alessandro testified that it was the driveway two houses to the left of their house.

[5] In separate trials Etnid Lopez was found guilty of murder in the first degree and Erving Cruz was found guilty of murder in the second degree for the stabbing of the victim.

Janet Dinneen, who lived in the house to the right of D'Alessandro and Machado's home (i.e., two houses to the right of where the stabbing occurred), made contemporaneous observations from her kitchen window. She saw the attack take place in the back yard next to D'Alessandro and Machado's house, near the fence bordering D'Alessandro and Machado's yard. She observed three men hovering over a fourth with their "hands flailing . . . they kept pummeling him." She testified that one attacker wore white and the two others wore dark clothing. The victim repeatedly attempted to get up from the ground but was unable to do so. She saw the three assailants flee with a woman who called from the driveway for the men to get into a vehicle.

As soon as the men fled, D'Alessandro got out of his vehicle, climbed the fence into his neighbor's back yard where the victim lay, called police, and yelled for his mother to bring towels from their home. He comforted the victim until the police arrived, using the towels to staunch the bleeding from the victim's head. Machado joined D'Alessandro in the back yard and put her work shirt under the victim's head to cushion it. When she did so, she noticed that the victim was bleeding from his head and back. Once Machado heard the sound of police cruisers down the street, she ran down the driveway, to the left toward the convenience store, and led police officers to the victim in the back yard.

Lawrence testified for the Commonwealth under a grant of immunity.[6] She told the jury that when the victim ran out of the convenience store parking lot, down a side street, and eventually into a driveway, he was followed by Etnid, Cruz, Garnham, and the defendant. She followed behind them. Lawrence testified that, as she stood near the top of the driveway, she saw "fighting" involving the victim, Etnid, Cruz, Garnham, and the defendant taking place in the driveway. At some point, she saw the defendant kick the victim. Torrey then drove up and called for everyone to get in her car. Lawrence testified that when she turned to leave, the victim was still alive and groaning in pain on the ground. Etnid, Garnham, and Lawrence got into Torrey's vehicle and they drove away. On direct and cross-examination, Lawrence testified that she never went into the back yard. On cross-examination she stated that she could not see into the back yard and did not see a chain-link fence.

The Commonwealth advanced the theory that the victim was attacked and stabbed in that back yard by the defendant, Etnid, and Cruz, after which Etnid left by the driveway (joining Lawrence and Garnham in the vehicle driven by Torrey) while the defendant and Cruz jumped over the back yard fence.

---

[6] Lawrence was charged with misleading the police based on allegedly false information she provided to them, and with accessory after the fact for allegedly disposing of the murder weapon.

The defendant moved for a required finding of not guilty at the close of the Commonwealth's case and at the close of all evidence. Both motions were denied. The jury thereafter convicted the defendant of murder in the first degree as a joint venturer under a theory of extreme atrocity or cruelty.

Discussion. The defendant raises three issues on appeal and requests relief pursuant to G. L. c. 278, § 33E. However, we address only defendant's claim that there was insufficient evidence to support his conviction of murder in the first degree as a joint venturer, and we reverse his conviction on that basis.[7]

For a defendant to be convicted of murder in the first degree as a joint venturer, the Commonwealth must prove beyond a reasonable doubt that the defendant "knowingly participated in the commission of the crime charged, alone or with others, with the intent required for the offense." Commonwealth v. Rakes, 478 Mass. 22, 32 (2017).

When reviewing a motion for a required finding of not guilty for insufficiency of the evidence, we view the evidence in the light most favorable to the Commonwealth to determine whether that evidence is sufficient to satisfy a rational trier

[7] The defendant's additional claims are that statements made by the defendant's coventurers were erroneously admitted in evidence and that the judge's instructions to the jury were prejudicial.

of fact that each element of the crime charged could be found beyond a reasonable doubt. Commonwealth v. Deane, 458 Mass. 43, 50 (2010), quoting Commonwealth v. Garuti, 454 Mass. 48, 54 (2009). Where, as here, the evidence in the case centers on conflicting testimony, issues of credibility are resolved in favor of the Commonwealth. Commonwealth v. Platt, 440 Mass. 396, 401 (2003), citing Commonwealth v. James, 424 Mass. 770, 785 (1997). "If the evidence lends itself to several conflicting interpretations, it is the province of the jury to resolve the discrepancy and 'determine where the truth lies.'" Platt, supra, quoting Commonwealth v. Lydon, 413 Mass. 309, 312 (1992).

The defendant argues that the judge erred in denying his motions for a required finding of not guilty because the evidence did not demonstrate beyond a reasonable doubt that he participated in, or was even present during, the stabbing. The Commonwealth contends that the evidence, viewed in the light most favorable to it, establishes the defendant's presence at the scene of the murder and his continued participation in the attack, and that, given the brutality of the attack, the jury were entitled to infer that the participants acted with extreme atrocity and cruelty.

To determine whether the Commonwealth proved the defendant's guilt beyond a reasonable doubt, we review

Lawrence's testimony with care, as it is the only evidence that places the defendant at (or near) the scene of the murder. Lawrence testified that she arrived at the convenience store with Torrey, Etnid, and Garnham. She noticed the victim and told Etnid that the victim was present; Etnid then went into the convenience store. After Lawrence and the victim exchanged words, Etnid came out of the store and began chasing the victim around the parking lot. As he did so, the defendant drove up with Cruz. Both men got out of the vehicle and joined the chase.

Lawrence testified that the victim, Etnid, Cruz, Garnham, and the defendant all left the convenience store parking lot, ran down a side street, and then ran into a nearby driveway.[8] Lawrence followed the group and when she reached the driveway, she walked "a little bit in" so that she stood between two houses on either side of the driveway. Lawrence also testified that she did not go into the back yard, could not see into the back yard, and did not observe any obvious features of the back yard, including the chain-link fence. She testified that she saw the defendant, Etnid, Cruz, and Garnham also in the driveway fighting the victim and that the defendant participated in the

[8] The victim was discovered in the back yard of a home bordered by a driveway on either side. Lawrence was unable to identify which driveway the men ran down.

fight by kicking the victim. The victim eventually fell to the ground. Torrey arrived and called for the group to get into her vehicle. Lawrence turned and ran to Torrey's vehicle, with Etnid next to her and Garnham following them; Torrey then drove from the area.

According to Lawrence, the attack took place in a driveway and the victim was prone in that driveway when she left with Etnid and Garnham. Yet the victim was found and tended to by multiple witnesses on the other side of a chain-link fence in a back yard. Given this discrepancy, in order to bridge the evidentiary gap left by Lawrence's account, the jury would have to reject the Commonwealth's own theory, either of who participated in the killing of the victim (the defendant, Etnid and Cruz) or of where the stabbing occurred, and conclude either that (1) two attacks occurred in succession (only one of which Lawrence observed and Etnid participated in); or that (2) after the victim was stabbed in the driveway, he somehow made it to the back yard where he was found. We conclude that there is insufficient evidence to prove the defendant guilty of murder beyond a reasonable doubt under either scenario.

"[I]t is not enough for the appellate court to find that there was some record evidence, however slight, to support each essential element of the offense; it must find that there was enough evidence that could have satisfied a rational trier of

fact of each such element beyond a reasonable doubt." Commonwealth v. Latimore, 378 Mass. 671, 677-678 (1979). Further, although "[t]he jury are permitted to draw rational inferences from the evidence, . . . no essential element of the crime may rest in surmise, conjecture, or guesswork." Commonwealth v. Kelley, 359 Mass. 77, 88 (1971), and cases cited. That is, a conviction may not "rest upon the piling of inference upon inference or conjecture and speculation." Commonwealth v. Mandile, 403 Mass. 93, 94 (1988), citing Commonwealth v. Ferguson, 384 Mass. 13, 18 (1981). With these principles in mind, we examine each scenario in turn.

With regard to the first scenario, Lawrence testified that she witnessed the first attack in the driveway, where she saw "everyone," including the defendant, beating the victim. The second attack would have had to occur in the back yard, where D'Alessandro and Dinneen saw the victim being stabbed. In this scenario, after the first attack when Lawrence, Etnid, and Garnham ran to Torrey's vehicle, Cruz and the defendant remained behind and chased the victim into the back yard where they overtook him and stabbed him to death. The attackers then quickly returned to the convenience store to retrieve the defendant's car.

To accept this version of events, the jury would have had to infer that after Etnid and Garnham left the driveway area,

the victim was able to rise from his position on the ground where he had been beaten and kicked, somehow briefly elude the defendant and Cruz who remained behind, and scale the chain-link fence to get to the back yard before he was stabbed. The jury also would have had to disregard integral portions of the testimony of two eyewitnesses to the attack in the back yard. D'Alessandro repeatedly testified that one of the two attackers he saw wore a white T-shirt and the other wore a black tank top.[9] Dinneen testified that she saw three attackers, one in white, and two others in dark clothing. Although D'Alessandro observed two attackers and Dinneen said she saw three, neither witness saw anyone in a light blue sweatshirt. "While it is true that the jury may believe part of a witness's testimony and reject part or believe all or reject all, the jury's right to selective credibility does not permit [them] to distort or mutilate any integral portion of the testimony to permit them to believe an unfounded hypothesis." Commonwealth v. Perez, 390 Mass. 308, 314 (1983), S.C., 442 Mass. 1019 (2004).

[9] D'Alessandro also testified that the two men (Etnid and Cruz) seen on the surveillance footage chasing the victim around the convenience store parking lot were the same men who chased the victim down the street, almost hit Machado's vehicle as they were running, chased the victim down a driveway, and then attacked the victim in the back yard of the home next to his. Although Machado did not witness the attack, she too saw Etnid and Cruz chasing the victim in the street.

In addition, the jury would have had to engage in impermissible conjecture regarding the murder weapon. The only knife admitted in evidence was discovered by police in a storm drain after Garnham led them to it.[10] However, assuming that there were two attacks, if the knife presented to the jury was the murder weapon, the jury would have had to guess at how either Garnham or Lawrence, who both left the area with Etnid, came to possess the knife. Alternatively, the jury would have had to assume that a different knife was used in the second attack, despite there being no evidence that either Cruz or the defendant possessed a knife that night.

In sum, the inferences necessary to place the defendant in the back yard at the time of the stabbing in the two-attack scenario require impermissible surmise and conjecture. "If a rational jury 'necessarily would have had to employ conjecture' in choosing among the possible inferences from the evidence presented, the evidence is insufficient to sustain the Commonwealth's burden of proving guilt beyond a reasonable doubt." Commonwealth v. Rodriguez, 456 Mass. 578, 582 (2010), quoting Commonwealth v. Croft, 345 Mass. 143, 145 (1962).

---

[10] Garnham told police that after they fled the scene, Lawrence got out of Torrey's vehicle to dispose of the knife. In contrast, Lawrence testified that, upon fleeing the scene, Garnham had the knife. At one point, she and Garnham got out of Torrey's vehicle and Garnham briefly disappeared by himself in the area where the weapon was later discovered.

The only other scenario, if we assume that Lawrence testified truthfully, is that there was only one attack which occurred in the driveway, during which the victim was stabbed. This scenario, like the first, required the jury to make impermissible inferential leaps to guess at how the mortally wounded victim got from the driveway to the back yard, where he was found immediately after the attackers fled. See Commonwealth v. Mazza, 399 Mass. 395, 399 (1987) (no rational trier of fact could find defendant guilty where case built on impermissible conjecture); Commonwealth v. Salemme, 395 Mass. 594, 599-600 (1985) ("[I]f, upon all the evidence, the question of the guilt of the defendant is left to conjecture or surmise and has no solid foundation in established facts, a verdict of guilty cannot stand" [citation omitted]).

First, based on the testimony of the first people to reach the victim in the back yard (D'Alessandro, Machado, and Dinneen) the victim attempted to move, but could not. A medical examiner testified that the victim had been stabbed once in the head and six times in the chest cavity with four stab wounds entering the lungs, and that six of the twelve stab wounds were "immediately life-threatening." The first police officer on the scene testified that the victim, through labored breathing, told the officer that he could not breathe. Given the victim's severe injuries and eyewitness testimony regarding his lack of

mobility, it strains credulity to believe that he would have been able to make his way down a driveway, past a vehicle,[11] and climb over a fence in order to be in the back yard by the time the witnesses found him there. See Commonwealth v. Giang, 402 Mass. 604, 609 (1988) ("Whether an inference is warranted or is impermissibly remote must be determined, not by hard and fast rules of law, but by experience and common sense" [citation omitted]).

In addition, the physical evidence was not consistent with this theory. The only blood found at the scene was in the back yard. D'Alessandro, who reached the victim just after the attackers fled, saw a pool of blood under the victim's head. Machado likewise testified that once she joined D'Alessandro, she also noticed a large amount of blood around the victim. As soon as she touched the back of his head, her hand was covered in blood. When Dinneen approached the victim minutes later, she too saw that he was "bloody." A police officer responding to the scene found the victim with a "large pool of blood under his back," and blood on the ground on either side of his head. Police also discovered a pool of blood on the ground where the

[11] As mentioned supra, Lawrence was not sure which driveway she stood in; however, each of the two possible driveways had cars or a truck parked in them on the night of the stabbing.

victim's clothing was found.[12] The physical evidence therefore suggests that the victim bled quickly and heavily, including from his head. However, there was no testimony that blood was found in the driveway.[13,14]

Generally it is for a jury to decide whether to credit the testimony of a witness. Commonwealth v. Barbosa, 477 Mass. 658, 666 (2017), quoting Commonwealth v. Miranda, 458 Mass. 100, 113 (2010), cert. denied, 565 U.S. 1013 (2011), S.C., 474 Mass. 1008 (2016). However, in these unique circumstances, it is impossible to reconcile Lawrence's testimony not only with the

---

[12] No blood trail was found leading from either driveway into the back yard. Although a lone blood stain was found on top of the open gate between the back yard and the driveway, D'Alessandro testified that Machado likely opened the gate when she ran to summon the police after her hands were covered in the victim's blood.

[13] For the same reasons, an inference that the defendant and Cruz carried the victim to the chain-link fence and placed him in the back yard before the witnesses arrived similarly would require an impermissible piling of inference upon inference.

[14] Although the jury are free to disbelieve the testimony of any trial witness, see, e.g., Commonwealth v. Zanetti, 454 Mass. 449, 457 (2009), in order to accept this version of events, the jury would have had to reject the testimony of two witnesses, D'Alessandro and Dinneen, upon whom the Commonwealth relied, in addition to rejecting the Commonwealth's own theory of how the murder happened. Both D'Alessandro and Dinneen testified that they saw the victim being attacked in the back yard. D'Alessandro further testified that, as soon as the attackers fled the back yard, he got out of his vehicle, jumped over the back yard fence between his driveway and the victim, and went to the victim's side to help him.

testimony of each of the other witnesses, but also with the location of the body and the uncontroverted testimony that no witness observed anyone wearing a light blue sweatshirt in the back yard that night.

We also point out that neither of the alternative scenarios aligns with the Commonwealth's theory at trial, which is that one attack occurred in the back yard, perpetrated by the defendant, Etnid, and Cruz. The prosecutor claimed during her closing argument that Dinneen observed the defendant, Cruz, and Etnid attack the victim in the back yard, and that after Etnid left in Torrey's vehicle, D'Alessandro observed the defendant and Cruz continue the attack and then flee.[15] See Commonwealth

[15] Although not dispositive given our holding regarding the sufficiency of the evidence, we note that in making this argument, the Commonwealth misstated Lawrence's testimony in a fairly significant way. During closing argument, the prosecutor inaccurately told the jury that Lawrence testified that she saw the defendant, Etnid, Garnham, and Cruz in the back yard punching and kicking the victim. However, Lawrence repeatedly testified that the attack occurred in the driveway and denied being able to see into the back yard. Lawrence even corrected the prosecutor when she suggested that Lawrence saw an attack in the back yard. Based on Lawrence's description of where she stood, her view of the back yard indeed would have been obstructed either by a house or by a large pickup truck parked in the driveway.

Moreover, the prosecutor also suggested in closing that D'Alessandro saw the defendant in the back yard, contradicting D'Alessandro's testimony that the men chasing the victim in the surveillance footage, identified as Etnid and Cruz, were the same men he saw attacking the defendant. D'Alessandro also repeatedly testified that the attackers wore clothing consistent

v. O'Laughlin, 446 Mass. 188, 203 (2006), quoting Kater v. Commonwealth, 421 Mass. 17, 20 (1995) (deterioration of Commonwealth's case occurs where evidence of necessary elements "is later shown to be incredible or conclusively incorrect").

Although evidence was presented that the defendant had a motive to retaliate against the victim and that the defendant was one of a group of people who chased the victim, there was insufficient evidence to demonstrate beyond a reasonable doubt that the defendant stabbed the victim or was present at the time of the stabbing. See Commonwealth v. Gonzalez, 475 Mass. 396, 414 (2016); Commonwealth v. Swafford, 441 Mass. 329, 339 (2004).

Because the Commonwealth's evidence was insufficient to demonstrate beyond a reasonable doubt the defendant's presence when the victim was stabbed, the conviction cannot stand. Commonwealth v. Amado, 387 Mass. 179, 189 (1982). Moreover, retrial of the defendant is barred by the principles of double jeopardy. Id. at 190, quoting Burks v. United States, 437 U.S. 1, 11 (1978) ("The Double Jeopardy Clause forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding").

---

with the clothing worn by Etnid and Cruz and inconsistent with the light blue sweatshirt the defendant was wearing that night. See Commonwealth v. Perez, 390 Mass. 308, 314 (1983), S.C., 442 Mass. 1019 (2004).

Conclusion. The defendant's conviction is reversed, the verdict is set aside, and the case is remanded to the Superior Court for entry of a judgment of not guilty.

So ordered.