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SJC-13281

MATTHEW DAVIS vs. COMMONWEALTH.

January 12, 2023.

Supreme Judicial Court, Superintendence of inferior courts.
Constitutional Law, Double jeopardy. Practice, Criminal,
Mistrial, Double jeopardy. Armed Assault with Intent to
Murder. Evidence, Identity. Global Positioning System
Device.

The petitioner, Matthew Davis, appeals from a judgment of a single justice of this court denying his petition for extraordinary relief pursuant to G. L. c. 211, § 3, in which he sought a determination that a third trial in the underlying criminal cases against him impermissibly would violate his protections against double jeopardy, where, he contends, the evidence presented at his second trial, which ended in a mistrial, was insufficient to convict him. For the reasons below, we affirm the decision of the single justice.

Prior proceedings. Davis was convicted by a jury of armed assault with intent to murder, G. L. c. 265, § 18 (b), and related charges, in connection with a shooting that occurred on September 15, 2015. See Commonwealth v. Davis, 487 Mass. 448, 449 (2021). The Appeals Court initially affirmed the convictions. See Commonwealth v. Davis, 97 Mass. App. Ct. 633, 646 (2020). On further appellate review, this court held that the evidence was sufficient to support Davis's conviction, and further, that it was permissible to admit location data from the global positioning system (GPS) device worn by him at the time in connection with his probation on a Federal drug charge. Davis, 487 Mass. at 449, 459-460, 461-464. Nevertheless, this court held that it was an abuse of discretion amounting to prejudicial error for the trial court to admit evidence of speed

data from the particular GPS device worn by Davis¹ based on the insufficient proffer made below. Id. at 456-459, 460-461. Specifically, because Davis's speed, in tandem with other evidence in the trial record, was used to correlate his movements to the time and place of the shooting, this court set aside the verdicts against Davis and remanded the case for a new trial in the Superior Court. Id. at 461, 469.

After remand, the trial judge rejected a further proffer from the Commonwealth as to the GPS speed data, and Davis was retried without it; but the jury could not reach a decision, and so a mistrial resulted. Davis then filed a posttrial motion asking for a required finding of not guilty or, alternatively, for dismissal. He argued that the evidence produced at the second trial was not sufficient to convict him, and therefore, a third trial would impermissibly violate his protections against double jeopardy. The trial judge denied the motion.

Davis then sought relief by petition to a single justice of this court under G. L. c. 211, § 3. Specifically, he sought allowance of his motion to dismiss on double jeopardy grounds due to insufficient evidence. The petition was denied, and he appealed. Pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), Davis filed a memorandum in this court, arguing that review of the trial judge's denial of his motion on double jeopardy grounds could not adequately be obtained on appeal from any final adverse judgment in a further trial or by other available means. We agreed and issued an order permitting the appeal to proceed to full briefing in the ordinary course. The appeal is now before us for decision.

Summary of relevant facts. "Because [Davis] raises a sufficiency challenge, we recite the facts the jury could have

¹ The "ExactuTrack 1" (ET1), manufactured by BI, Inc., purported to show both the location of Davis and the speed at which he was traveling. See Davis, 487 Mass. at 449. We held that the judge did not abuse his discretion in admitting the location data because said data was the product of a reliable testing protocol. Id. at 460. As to the ET1's ability to measure speed, however, we noted that the device had "never been formally tested" for that purpose. Id. at 457. Consequently, there was "no known error rate" for speed measurements taken on the ET1, nor had those measurements been subject to any form of peer review. Id. We therefore concluded that, as to speed, the Commonwealth had not shown sufficiently the reliability of the device. Id. at 457-458.

found, in the light most favorable to the Commonwealth, reserving certain details for later discussion." Davis, 487 Mass. at 450. As in Davis's first trial, in his second trial "[t]he Commonwealth primarily relied on three pieces of evidence to establish the defendant's guilt:" the GPS data, a surveillance video recording, and the testimony of eyewitness Ilene Rock. See id. at 462. This time, for the reasons stated above, the GPS evidence was limited to GPS location data because GPS speed data was excluded.

Here, in the light most favorable to the Commonwealth, the jury could have found the following facts. The GPS location evidence placed Davis at Quincy Street and Baker Avenue at 10:27 A.M. on the day of the shooting.² At 10:28 A.M., a 911 call received in connection with this incident reported "shots fired." At approximately 10:28 A.M. or 10:29 A.M., a dispatcher informed Boston police via radio that shots had been fired and called responding officers to Quincy Street and Baker Avenue, the site of the shooting. Video evidence from a home security camera showed that the shooter was a Black man with long braids or dreadlocks wearing a red or pink shirt or sweatshirt.

The video evidence further showed that after firing a gun, the shooter in the red shirt immediately fled on Baker Avenue in the direction of Bodwell Street. The GPS location evidence places Davis at the corner of Baker Avenue and Bodwell Street at 10:28 A.M.

Rock testified that a little bit before 10:30 A.M., she was standing at the corner of Bodwell Street and Columbia Road when someone ran past her very quickly. This person was only five feet from her as he passed, running from the direction of Bodwell Street to Columbia Road. This direction of travel matches the reported location points from Davis's GPS device for 10:28 A.M. and 10:29 A.M.

Rock described the runner as a tall, thin Black man wearing a long-sleeved red shirt whose hair was in thin braids "that were sort of pulled back in a ponytail." He was running very quickly even though he was not wearing running shoes, and though

² Regarding the accuracy of the ET1 device, the manager of product development at BI, Inc., James Buck, testified at trial that the ET1 reports the longitude and latitude of the wearer once every minute using GPS technology. Buck also testified that according to BI, Inc.'s product manual, the ET1 generally is accurate to within thirty meters, or ninety feet.

running, his right hand was tucked into his shirt or pocket such that it was hidden, and this fact struck the witness as peculiar. Rock did not see anyone else running in that area at the time. The GPS location evidence placed Davis on Columbia Road at 10:29 A.M.

Davis was arrested the day after the shooting. A week later, detectives executed a search warrant at his residence and recovered a red sweatshirt in a pile of clothing. The sweatshirt tested negative for the presence of gunshot primer residue.

Discussion. "We review a decision of a single justice pursuant to G. L. c. 211, § 3, for clear error of law or abuse of discretion." Nicholas-Taylor v. Commonwealth, 490 Mass. 552, 556 (2022).

"Following a mistrial, double jeopardy precludes the Commonwealth from retrying a defendant for the same offense where the evidence presented at the [previous] trial was legally insufficient to warrant a conviction." Baxter v. Commonwealth, 489 Mass. 504, 507 (2022). "[T]he Commonwealth may retry a defendant only if it has presented evidence at the [previous] trial that, if viewed in the light most favorable to the Commonwealth, would be sufficient for a rational trier of fact to find the defendant guilty of the crime charged beyond a reasonable doubt" (alteration and citation omitted). Pinney v. Commonwealth, 479 Mass. 1001, 1001-1002 (2018). See Commonwealth v. Latimore, 378 Mass. 671, 676-677 (1979). The Commonwealth does not need to introduce direct evidence to meet this standard. See Davis, 487 Mass. at 462. "Circumstantial evidence is sufficient to find someone guilty beyond a reasonable doubt and inferences drawn from such circumstantial evidence 'need only be reasonable and possible; [they] need not be necessary or inescapable.'" Id., quoting Commonwealth v. Grandison, 433 Mass. 135, 141 (2001). Where the evidence is circumstantial, all reasonable inferences must be drawn in favor of the Commonwealth. See Commonwealth v. Jones, 477 Mass. 307, 316 (2017). Even so, a conviction may not be based on "speculation" or "conjecture," Commonwealth v. Ayala, 481 Mass. 46, 51 (2018), or "inference piled upon inference," Jones, supra.

Here, the only question is the identity of the assailant. And the evidence was not direct but circumstantial. Therefore, we ask whether, in the light most favorable to the Commonwealth, a rational trier of fact could reasonably infer from the

evidence that Davis was the shooter. See Baxter, 489 Mass. at 509; Ayala, 481 Mass. at 51-53; Jones, 477 Mass. at 316-318.

In this case, a rational trier of fact reasonably could infer that Davis was the shooter. From the 911 and radio calls, a rational trier of fact could reasonably infer that the shooting occurred at about 10:28 A.M., or immediately before, at Quincy Street and Baker Avenue. From the video, a rational trier of fact could conclude that the shooter then fled on Baker Avenue toward Bodwell Street. Moreover, just before 10:30 A.M., when Rock saw a man at Bodwell Street and Columbia Road, a rational trier of fact reasonably could conclude that this was the shooter, as he was a Black man with his hair in braids and wearing a red shirt, he was running, and he was concealing what her testimony suggests was a firearm.

The time-stamped GPS location evidence with respect to each of these three times and locations supports an inference that Davis was the shooter. First, it places Davis at Quincy Street and Baker Avenue at 10:27 A.M. This puts him at the scene of the shooting at what reasonably can be inferred to be the time of the shooting.

Second, the GPS location evidence places Davis at the corner of Baker Avenue and Bodwell Street at 10:28 A.M. Importantly, the video shows that after firing his gun, the shooter in the red shirt immediately fled on Baker Avenue in the direction of Bodwell Street.

Third, the GPS location evidence places Davis on Columbia Road at 10:29 A.M. To reach this location most directly from the intersection of Baker Avenue and Bodwell Street, a person would need to travel on Bodwell Street to Columbia Road, passing through the intersection where Rock encountered the shooter wearing the red shirt. See Davis, 487 Mass. at 463 ("The runner's path matched the defendant's GPS device's tracked movements").³

Last, investigators searching Davis's residence following the shooting recovered a red sweatshirt. That sweatshirt was

³ There is a slight margin of error for the GPS location data such that the actual time might be within the forty-five seconds preceding the time recorded by the GPS. But this time difference does nothing to undermine the above inferences, which the jury might reasonably have drawn. See Davis, 487 Mass. at 462 n.17.

introduced in evidence and is consistent with the shirt worn by the shooter as depicted in the video surveillance footage.

In sum, a rational trier of fact could reasonably infer that Davis was the shooter because he was at the scene of the crime at the time it was committed, he traveled on the same street and in the same direction in which the shooter fled, and he ended up on Columbia Road, which suggests that he used Bodwell Street to get there and that he was the person in the red shirt with "thin braids" encountered by Rock.⁴ While each piece of circumstantial evidence, standing in isolation, may not constitute overwhelming evidence of his guilt, when presented sequentially, the "evidence of identification" in the instant matter is more than "sufficient to support a reasonable inference that the defendant was the [shooter]." Baxter, 489 Mass. at 509. We reach this conclusion not by "piling inference upon inference," but through consideration of each discrete piece of evidence in a logical order, such as it might be presented to the trier of fact by a prosecutor (quotation and citation omitted). Commonwealth v. Merry, 453 Mass. 653, 661 (2009).

To be sure, Rock failed to directly identify Davis as the shooter. She explained that she did not get a good look at the man's face as he ran by her. But even conflicting evidence, much less the piecemeal evidence here at issue, "does not demand a required finding of not guilty." Pinney, 479 Mass. at 1003, quoting Merry, 453 Mass. at 461.

In these circumstances, a rational trier of fact could reasonably infer from the evidence that Davis was the shooter, and the single justice did not commit a clear error of law or abuse his discretion in denying relief.

Judgment affirmed.

Matthew Spurlock, Committee for Public Counsel Services, for the petitioner.

Ian MacLean, Assistant District Attorney, for the Commonwealth.

⁴ At trial, Davis's probation officer described him as having "dreads" around the time of the shooting that were "a little longer than shoulder length." Subsequently, the officer positively identified a photograph of Davis at booking that showed him having a hairstyle of long thin braids.