

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

EARL REESE

Appellant

No. 1309 EDA 2012

Appeal from the Judgment of Sentence December 15, 2011  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-0005087-2011

BEFORE: BENDER, J., LAZARUS, J., and COLVILLE, J.\*

MEMORANDUM BY LAZARUS, J.

Filed: March 12, 2013

Earl Reese appeals from his judgment of sentence imposed in the Court of Common Pleas of Philadelphia County after a jury convicted him of robbery<sup>1</sup> and conspiracy to commit robbery.<sup>2</sup> Upon review, we affirm.

At approximately 3:30 a.m. on April 19, 2011, Elgin Artis left his home to go to a nearby store. N.T. Trial, 10/18/2011, at 60-61. Reese and Leon Reynolds were across the street when Artis entered the store. Artis testified that while he was paying for donuts and cigarettes with a \$50.00 bill, collecting approximately \$46.00 in change, Reese briefly entered and exited

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> 18 Pa.C.S. § 3701(a)(1)(iv).

<sup>2</sup> 18 Pa.C.S. §§ 903, 3701(a)(1)(iv).

the store. *Id.* As Artis was returning home, Reese and Reynolds approached him, and Reynolds asked him for a light. Artis testified that he began to walk away, when Reynolds grabbed him and punched him. N.T. Trial, 10/18/2011, at 61-63. Artis testified that as he struggled with Reynolds, Reese approached him, as if reaching for his pockets, but never actually touched him. *Id.* at 84. Police heard Artis shouting, and quickly arrived on the scene. *Id.* at 80. Reese remained at the scene, but Reynolds fled and was quickly caught. Police arrested both men. Officer Arturo Yokshan testified that, contrary to Artis' testimony, Reese did strike Artis at least once. *Id.* at 106-7.

Reese was tried by a jury on October 19, 2011. The jury found Reese guilty of robbery and criminal conspiracy, and the trial court sentenced him to three to ten years' incarceration for each conviction, to run concurrently. N.T. Sentencing, 12/15/2011, at 24-25. Reese filed a post-sentence motion on December 27, 2011, which the trial court denied on April 11, 2012. Reese then filed this timely appeal.

Reese argues that the Commonwealth's evidence was insufficient to convict him of robbery and conspiracy, as he was merely present at the scene of the robbery. Appellant's Brief, at 6. We disagree.

"[O]ur standard of review of sufficiency claims requires that we evaluate the record in the light most favorable to the [Commonwealth as] verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence." *Commonwealth v. Stays*, 40 A.3d 160,

167 (Pa. Super. 2012) (internal citations and quotations omitted). Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged was committed by the accused beyond a reasonable doubt. *Id.* The Commonwealth need not establish guilt to a mathematical certainty. *Id.*; *see also Commonwealth v. Aguado*, 760 A.2d 1181, 1185 (Pa. Super. 2000) (“[T]he facts and circumstances established by the Commonwealth need not be absolutely incompatible with the defendant’s innocence.”).

As this Court recognized in *Stays, supra*:

Any doubt about the defendant’s guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances.

The Commonwealth may sustain its burden by means of wholly circumstantial evidence. . . . [W]e may not substitute our judgment for that of the fact finder; thus, so long as the evidence adduced, accepted in the light most favorable to the Commonwealth, demonstrates the respective elements of a defendant’s crimes beyond a reasonable doubt, the appellant’s convictions will be upheld.

*Stays, supra* at 167 (internal citations omitted).

To prove robbery, the Commonwealth must show that “in the course of committing a theft, [the accused] inflicts bodily injury upon another or threatens another with or intentionally puts him in fear of immediate bodily injury.” 18 Pa.C.S. § 3701(a)(1)(iv).<sup>3</sup> Critically, “robbery is complete upon

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<sup>3</sup> One is guilty of theft by unlawful taking where one “unlawfully takes, or exercises unlawful control over, movable property of another with intent to (Footnote Continued Next Page)

commission or threat of violence, and does not depend upon the occurrence of a completed theft." *Commonwealth v. Thompson*, 628 A.2d 315, 319 (Pa. 1994).

The Crimes Code defines the offense of conspiracy, in relevant part, as follows:

**§ 903. Criminal Conspiracy**

(a) **Definition of conspiracy.** A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:

(1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

(2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

\* \* \*

(e) **Overt act.** No person may be convicted of conspiracy to commit a crime unless an overt act in pursuant of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.

18 Pa.C.S. § 903.

We turn first to the robbery conviction. Artis testified, "I think [Reese] was trying to get into my pockets." N.T. Trial, 10/18/2011, at 73. Officer Yokshan testified that Reynolds and Reese "were holding [Artis] down

(Footnote Continued) \_\_\_\_\_

deprive him thereof." 18 Pa.C.S. § 3921. Theft, as defined by 18 Pa.C.S. § 3921, is a lesser included offense to robbery. *Commonwealth v. Stevens*, 352 A.2d 509, 513 (Pa. Super. 1975).

against the gate, punching him, kicking him while Mr. Artis was screaming for help.” *Id.* at 106. Construing this evidence in the Commonwealth’s favor, we conclude that this provides a reasonable ground for the jury to find that Reese attempted a theft by reaching for Artis’ pockets, and committed an act of violence when he struck him, satisfying the elements for robbery. Thus, we may not overturn the jury’s verdict.

As stated above, the key elements of conspiracy are an agreement and an overt act. There is evidence in the record that Reese committed an overt act, either by reaching towards Artis’ pockets while Artis struggled with Reynolds, or by striking Artis. While Reese contests much of this evidence, we must view the evidence in the light most favorable to the Commonwealth as verdict winner, and may not second-guess the fact finder’s credibility determinations.

To prove conspiracy, the Commonwealth must also show that an agreement existed between Reynolds and Reese. “[A] conviction for conspiracy requires proof of the existence of a shared criminal intent.” *Commonwealth v. Sattazahn*, 631 A.2d 597, 602 (Pa. Super. 1993), *appeal denied* 652 A.2d 293 (Pa. 1994). Agreement may be proven by circumstantial evidence. *Commonwealth v. Swerdlow*, 636 A.2d 1173, 1176 (Pa. Super. 1994). Additionally, if the defendant “is also identified as one of the perpetrators of the crime, then the finder of fact may conclude that a criminal agreement existed.” *Commonwealth v. Gordon*, 477 A.2d 1342, 1347 (Pa. Super. 1984). Here, because Reese can be identified as a

perpetrator of the robbery as discussed above, the finder of fact may reasonably conclude that a criminal agreement existed. Thus, we affirm the conspiracy conviction.

Judgment of sentence affirmed.