NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. CORRINE L. HOUSTON Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1123 EDA 2013

Appeal from the Judgment of Sentence April 19, 2010
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0003659-2008

BEFORE: GANTMAN, P.J., JENKINS, J., and FITZGERALD, J.*

MEMORANDUM BY GANTMAN, P.J.: **FILED JUNE 17, 2014**

Appellant, Corrine L. Houston, appeals *nunc pro tunc* from the judgment of sentence entered in the Philadelphia County Court of Common Pleas, following her jury trial convictions for first-degree murder and possessing instruments of crime.[1] We affirm.

In its opinion, the trial court fully and correctly set forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.[2]

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[1] 18 Pa.C.S.A. §§ 2502 and 907, respectively.

[2] We make the following corrections to the facts and procedural history set forth in the trial court's opinion: Appellant filed her initial Rule 1925(b) statement on June 30, 2010 (not July 20, 2010); Appellant timely filed a *pro*

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*Former Justice specially assigned to the Superior Court.

Appellant raises one issue for our review:

> WHETHER THE EVIDENCE WAS SUFFICIENT TO PROVE THAT [APPELLANT] WAS GUILTY BUT MENTALLY ILL OF FIRST DEGREE MURDER BECAUSE [APPELLANT] HAD A DIMINISHED CAPACITY DEFENSE THAT DID NOT EXCULPATE HER FROM CRIMINAL LIABILITY ENTIRELY, BUT INSTEAD NEGATED THE ELEMENT OF SPECIFIC INTENT. [APPELLANT] ESTABLISHED A DIMINISHED CAPACITY DEFENSE AND PROVED THAT HER COGNITIVE ABILITIES OF DELIBERATION AND PREMEDITATION WERE SO COMPROMISED, BY MENTAL DEFECT AND VOLUNTARY INTOXICATION (COCAINE ABUSE), SO THAT SHE WAS UNABLE TO FORMULATE THE SPECIFIC INTENT TO KILL[,] AN ELEMENT OF FIRST DEGREE MURDER.

(Appellant's Brief at 2).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Glenn B. Bronson, we conclude Appellant's issue merits no relief. The trial court opinion comprehensively discusses and properly disposes of the question presented. (**See** Trial Court Opinion, filed June 28, 2013, at 4-8) (finding: regarding Appellant's claim of diminished capacity by mental defect, Appellant presented expert testimony of Dr. Russell, who explained Appellant suffered from mental health problems, which caused her to experience "command hallucinations" to use extreme violence, precluding her from thinking rationally and with intent to kill; in rebuttal,

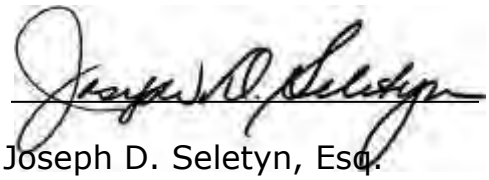
(Footnote Continued) ———————————

se PCRA petition seeking reinstatement of her direct appeal rights *nunc pro tunc* on September 13, 2011 (not September 19, 2011); and the events which gave rise to Appellant's convictions took place on August 31, 2007 and September 1, 2007 (not September 1, 2010).

Commonwealth presented expert testimony of Dr. O'Brien, who opined that neither Appellant's borderline personality disorder nor substance abuse had compromised her abilities as to render Appellant incapable of forming intent to kill; Dr. O'Brien explained Appellant was fully capable of forming specific intent to kill at time of murder, evidenced by Appellant's confession to police in which Appellant described why she killed Victim, how she searched house for weapon to accomplish killing, and how Appellant repeatedly stabbed, beat, and strangled Victim before throwing her out window; Appellant also told police she committed killing because she was angry with herself for spending money on drugs and angry with Victim for not letting Appellant go to sleep; Dr. O'Brien said Appellant exaggerated "command hallucinations" to mitigate her culpability; jury was free to accept testimony of Commonwealth's expert and reject defense expert's testimony; with respect to Appellant's claim of diminished capacity by voluntary intoxication, Appellant presented no testimony at trial to support that defense; Appellant told police she was not high and was sober at time of murder; Appellant's own expert testified that Appellant's drug use did not cause her to commit murder; thus, Commonwealth presented sufficient evidence to sustain Appellant's first-degree murder conviction). Accordingly, we affirm on the basis of the trial court's opinion.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/17/2014

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA : CP-51-CR-0003699-2010

v. :

CORRINE HOUSTON :

OPINION

BRONSON, J. June 28, 2013

I. PROCEDURAL BACKGROUND

On January 26, 2010, following a jury trial before the Honorable Carolyn Engel Temin, defendant Corrine Houston was found guilty but mentally ill of one count of murder of the first degree (18 Pa.C.S. § 2502(a)). Defendant was also found guilty of one count of possessing an instrument of crime ("PIC") (18 Pa.C.S. § 907(a)). Sentencing was deferred so that a mental health evaluation, pre-sentence report, and drug and alcohol evaluation could be prepared. On April 19, 2010, the Court imposed the mandatory sentence of life in prison for the murder charge (18 Pa.C.S. § 1102(a)(1)). The Court entered a sentence of no further penalty on the PIC charge. On that date, the Court also denied defendant's Motion for Extraordinary Relief with regard to the murder charge.

Defendant did not file post-sentence motions. On May 18, 2010, defendant filed a notice of appeal to Superior Court. On July 20, 2010, defendant filed a 1925(b) Statement of Errors Complained of on Appeal. On August 2, 2010, Judge Temin filed a 1925(a) Opinion. On October 22, 2010, the Superior Court dismissed defendant's appeal for failure to file a brief.

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On September 19, 2011, defendant filed a timely *pro se* petition pursuant to the Post-Conviction Relief Act ("PCRA"), in which she sought reinstatement of her right to a direct appeal, *nunc pro tunc*. On February 28, 2012, Elayne Bryn, Esquire, was appointed to represent defendant. On September 26, 2012, Ms. Bryn filed an Amended PCRA Petition on behalf of defendant. Judge Temin having retired from the bench, the case was then assigned to the undersigned trial judge. The Commonwealth did not oppose defendant's petition, and on March 28, 2013, the Court ordered reinstatement of defendant's right to a direct appeal.

Defendant has now appealed from the judgment of sentence entered by the Court on the grounds that: 1) the evidence was insufficient to support the verdict of guilty but mentally ill for the charge of first-degree murder, because defendant's diminished capacity negated the requisite specific intent; and 2) the verdict of guilty but mentally ill for the charge of first-degree murder was against the weight of the evidence because of defendant's diminished capacity. Concise Statement of Matters Complained of on Appeal Pursuant to Pa.R.A.P. 1925(b) ("Statement of Errors") at ¶¶ 1-2. For the reasons set forth below, defendant's claims are without merit and the judgment of sentence should be affirmed.

II. FACTUAL BACKGROUND

At trial, the Commonwealth presented the testimony of Philadelphia Police Officers Michael Perkins, William Davis, John Taggart, and Cyrus Pollard, Philadelphia Police Detective Crystal Williams, Dr. Gary Lincoln Collins, Dr. John O'Brien, and, by stipulation, the testimony of Philadelphia Police Officer Tonia Rice and Nijah Latney. Defendant presented the testimony of Dr. William Russell. Viewed in the light most favorable to the Commonwealth as the verdict winner, their testimony established the following.

On August 31, 2007, at approximately 11:30 p.m., defendant was in a deli at 15th Street and Federal Street when she ran into Heather Brasure, whom she knew from around the neighborhood. N.T. 1/20/2010 at 46, 48-49. Ms. Brasure asked defendant how she had been doing, and asked her if she wanted to do drugs with her. N.T. 1/20/2010 at 46. Defendant responded that she did, and the two women went to 1405 Reed Street, which was an apartment belonging to one of defendant's friends. N.T. 1/20/2010 at 46. Over the course of the next day, September 1, 2010, the two women ate, drank alcohol, and smoked crack cocaine together. N.T. 1/19/2010 at 55; 1/20/2010 at 46-47. As the day progressed, defendant wanted to go to sleep, but Ms. Brasure wanted to stay awake. N.T. 1/20/2010 at 46-47.

At approximately 9:30 p.m., Ms. Brasure had fallen asleep and defendant became "agitated," thinking about the money that she had spent on the drugs. N.T. 1/20/2010 at 47. As Ms. Brasure slept, defendant sat on the couch in the living room and "thought about what [she] should do." N.T. 1/20/2010 at 47. She barricaded the apartment door from the inside, opened the front window of the apartment overlooking the sidewalk, and got a knife and an extension cord from the kitchen. N.T. 1/20/2010 at 47, 49. Defendant then went to the bedroom where Ms. Brasure was sleeping and stabbed her in the head, chest, and back. N.T. 1/20/2010 at 47-48. Defendant also tied the extension cord around Ms. Brasure's hands, punched her, slapped her, and choked her. N.T. 1/20/2010 at 47-48. She dragged Ms. Brasure out of the bedroom and threw her out of an open window from the third-floor apartment. N.T. 1/20/2010 at 47-48.

Defendant retrieved a bottle of water from the refrigerator, went outside, and yelled at Ms. Brasure, "[b]itch, you better be dead." N.T. 1/20/2010 at 48. Defendant took a chain from a trash can and beat Ms. Brasure with it, and hit her with her water bottle. N.T. 1/20/2010 at 48. Defendant then sat down on the front steps of the apartment building to wait for the police to

arrive. N.T. 1/20/2010 at 48. When the police arrived, defendant told one of the police officers that "[she] did it," and told another officer that she "didn't mean to do it" and that she "had a bad childhood." N.T. 1/19/2010 at 48; 1/20/2010 at 31.

Ms. Brasure was transported to Thomas Jefferson University Hospital, where she was pronounced dead. N.T. 1/19/2010 at 43-44; 1/20/2010 at 79. The cause of her death was two stab wounds to the chest, which caused her to bleed to death. N.T. 1/20/2010 at 80-84.

III. DISCUSSION

A. Sufficiency of the Evidence

Defendant first claims that the evidence was not sufficient "to prove that the defendant was guilty but mentally ill of first degree murder because the defendant had a diminished capacity defense that did not exculpate her from criminal liability entirely, but instead negated the element of specific intent. This defendant established a diminished capacity defense and proved that her cognitive abilities of deliberation and premeditation were so compromised, by mental defect and voluntary intoxication (cocaine abuse), so that she was unable to formulate the specific intent to kill an element of first degree murder [*sic*]. (N.T. Motion for Extraordinary relief, 4/19/10, pp.2-4; Trial 1/20/10, pp. 46-47, 1/25/10, pp. 108-142, 1/25/10, pp. 185-195, 1/25/10, pp. 110-116, 1/26/10, pp. 3-7)." This claim is without merit.

In considering a challenge to the sufficiency of the evidence, the Court must decide whether the evidence at trial, viewed in the light most favorable to the Commonwealth, together with all reasonable inferences therefrom, could enable the fact-finder to find every element of the crimes charged beyond a reasonable doubt. *Commonwealth v. Walsh*, 36 A.3d 613, 618 (Pa. Super. 2012) (quoting *Commonwealth v. Brumbraugh*, 932 A.2d 108, 109 (Pa. Super. 2007)). In making this assessment, a reviewing court may not weigh the evidence and substitute its own

judgment for that of the fact-finder, who is free to believe all, part, or none of the evidence. *Commonwealth v. Ramtahal*, 33 A.3d 602, 607 (Pa. 2011). "[A] mere conflict in the testimony of the witnesses does not render the evidence insufficient..." *Commonwealth v. Montini*, 712 A.2d 761, 767 (Pa. Super. 1998). The Commonwealth may satisfy its burden of proof entirely by circumstantial evidence. *Ramtahal*, 33 A.3d at 607. "If the record contains support for the verdict, it may not be disturbed." *Commonwealth v. Adams*, 882 A.2d 496, 499 (Pa. Super. 2005) (quoting *Commonwealth v. Burns*, 765 A.2d 1144, 1148 (Pa. Super. 2000), *appeal denied*, 782 A.2d 542 (Pa. 2001)).

"The evidence is sufficient to establish first-degree murder where the Commonwealth proves that (1) a human being was unlawfully killed; (2) the person accused is responsible for the killing; and (3) the accused acted with the specific intent to kill." *Commonwealth v. Edwards*, 903 A.2d 1139, 1146 (Pa. 2006) (quoting 18 Pa.C.S. § 2502(d)). The factfinder may infer specific intent to kill by the defendant's use of a deadly weapon on a vital part of the victim's body. *Commonwealth v. Cruz*, 919 A.2d 279, 281 (Pa. Super. 2007).

Diminished capacity, the defense here at issue, has recently been described by our Superior Court as follows:

> A defense of diminished capacity, whether grounded in mental defect or voluntary intoxication, is an extremely limited defense available only to those defendants who admit criminal liability but contest the degree of culpability based upon an inability to formulate the specific intent to kill....A diminished capacity defense does not exculpate the defendant from criminal liability entirely, but instead negates the element of specific intent. For a defendant who proves a diminished capacity defense, first-degree murder is mitigated to third-degree murder. To establish a diminished capacity defense, a defendant must prove that his cognitive abilities of deliberation and premeditation were so compromised, by mental defect or voluntary intoxication, that he was unable to formulate the specific intent to kill.

Commonwealth v. Hutchinson, 25 A.3d 277, 312 (Pa. 2011) (internal citations and quotations omitted).

1. Mental Defect

In order to successfully assert a diminished capacity defense based on a mental defect, a defendant must prove that a mental disorder affected his abilities of deliberation and premeditation to a point where he could not form criminal intent. *Hutchinson*, 25 A.3d at 312. Here, defendant presented the expert testimony of Dr. William Russell, a forensic psychologist, in support of defendant's claims that she was legally insane, and that she was unable to formulate specific intent to kill due to diminished capacity.[1] Dr. Russell testified that defendant suffered from mental health problems that caused her to experience "command hallucinations" that caused her to use extreme violence. N.T. 1/20/2010 at 117-119. According to Dr. Russell, these hallucinations and delusions caused defendant to be unable to think logically and coherently. N.T. 1/20/2010 at 121-122. She was, therefore, unable to think rationally and with intent to kill. N.T. 1/20/2010 at 134-35.

In rebuttal, the Commonwealth presented the expert testimony of Dr. John O'Brien, a forensic psychiatrist. N.T. 1/21/2010 at 5-74. Dr. O'Brien testified that, while he diagnosed defendant with borderline personality disorder and substance abuse, neither of these conditions compromised her cognitive abilities to a point that would render her incapable of forming the intent to kill. N.T. 1/21/2010 at 15, 30, 37, 55. Dr. O'Brien testified that, at the time of the murder, defendant was fully capable of forming the specific intent to kill. N.T. 1/21/2010 at 15, 54-55. He testified that defendant's confession to the police after the murder indicated that her

[1] In defendant's first appeal, which was dismissed for failing to file a brief, she claimed that the evidence was insufficient to disprove defendant's insanity defense. That claim has now been abandoned on appeal in favor of defendant's claim that the evidence failed to refute the diminished capacity defense. Statement of Errors at ¶¶ 1-2. In any event, defendant's original sufficiency claim regarding the insanity defense was fully addressed in the 1925(a) opinion written by Judge Temin. *See* Trial Court Opinion, filed 8/2/2010, at pp. 2-8.

motive for killing Ms. Brasure was anger, and that defendant had a history of acting out when she was angry. N.T. 1/21/2010 at 40, 44-45. Her confession further demonstrated that although she was mentally ill, she was fully capable of thinking, planning, and making decisions. She described why she killed Ms. Brasure, how she searched the house for a weapon to accomplish the killing, and how she repeatedly stabbed, beat, and strangled the victim before throwing her out of a window. N.T. 1/20/2010 at 46-48. Defendant also told the police why she committed the killing, which was because she was angry with herself for spending money on drugs, and angry with Ms. Brasure for not allowing her to sleep. N.T. 1/20/2010 at 46. As for Dr. Russell's belief that defendant was hearing voices, or "command hallucinations," at the time of the killing, Dr. O'Brien testified that defendant exaggerated those voices in order to mitigate her culpability for the murder. N.T. 1/20/2010 at 121-127; 1/21/2010 at 39-40. The jury, as finder of fact, was entitled to accept the Commonwealth's expert testimony, to reject the testimony presented by the defense, and to conclude that defendant's mental defect did not render her incapable of formulating an intent to kill.

2. Voluntary Intoxication

"The mere fact of intoxication does not give rise to a diminished capacity defense." *Hutchinson*, 25 A.3d at 312 (citation omitted). Rather, a defendant must be "overwhelmed to the point of losing his faculties and sensibilities to prove a voluntary intoxication defense." *Id.*

Here, there was no evidence presented at trial that supported the theory that defendant was intoxicated at the time that she killed Ms. Brasure. In her confession, defendant told the police that she had taken drugs earlier in the day on the date of the murder. N.T. 1/20/2010 at 46. However, she specifically denied being high at the time of the murder, telling the detective who interviewed her, "I wasn't high. I was sober." N.T. 1/20/2010 at 50. One of the first police

officers who arrived at the crime scene and encountered defendant, within minutes after the murder had occurred, testified that defendant did not appear to be intoxicated. N.T. 1/19/2010 at 49-50. Defendant's own expert testified that, even if defendant was under the influence of crack cocaine at the time of the killing, it was not intoxication, but the voices in defendant's head, that caused her to commit the murder. N.T. 1/20/2010 at 137. Accordingly, the record refutes defendant's claim that the Commonwealth failed to disprove a diminished capacity defense premised upon voluntary intoxication.

B. Weight of the Evidence

Defendant next claims that the verdict of guilty but mentally ill for the charge of first-degree murder "was against the weight of the evidence because the defendant had a diminished capacity defense that did not exculpate her from criminal liability entirely, but instead negated the element of specific intent. This defendant established a diminished capacity defense and proved that her cognitive abilities of deliberation and premeditation were so compromised, by mental defect and voluntary intoxication (cocaine abuse), so that she was unable to formulate the specific intent to kill an element of first degree murder [*sic*]. (N.T. Motion for Extraordinary relief, 4/19/10, pp.2-4; Trial 1/20/10, pp. 46-47, 1/25/10, pp. 108-142, 1/25/10, pp. 185-195, 1/25/10, pp. 110-116, 1/26/10, pp. 3-7)." Statement of Errors at ¶ 2.

Defendant did not raise her weight of the evidence claim with Judge Temin, having failed to file any post-sentence motions. In her Amended Petition before the PCRA court, defendant requested that she be awarded a direct appeal *nunc pro tunc*. Amended PCRA Petition, filed 9/26/2012, at p. 4. However, there was no request for permission to file a post-sentence motion that would have raised in the trial court, and therefore preserved on appeal, a claim that the jury's verdict was against the weight of the evidence. Because defendant's weight claim was not

raised at any time in the trial court, it is waived. *See Commonwealth v. Burkett*, 830 A.2d 1034, 1037 (Pa. Super. 2003).

IV. CONCLUSION

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

BY THE COURT:

GLENN B. BRONSON, J.