

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
SAEED CLARK,	:	
	:	
Appellant	:	No. 1431 EDA 2013

Appeal from the Judgment of Sentence April 23, 2013,
Court of Common Pleas, Philadelphia County,
Criminal Division at No. CP-51-CR-0013846-2007

BEFORE: BOWES, DONOHUE and MUNDY, JJ.

MEMORANDUM BY DONOHUE, J.:

FILED JULY 16, 2014

Appellant, Saeed Clark ("Clark"), appeals from the judgment of sentence of the Court of Common Pleas, Philadelphia County, following a conviction on the following charges: murder in the first degree, 18 Pa.C.S.A. § 2502, possessing instruments of crime, 18 Pa.C.S.A. 907(a), persons not to possess a firearm, 18 Pa.C.S.A. § 6105(a)(1), firearms not to be carried without a license, 18 Pa.C.S.A. § 6106(a)(1), and carrying firearms on public streets or public property in Philadelphia, 18 Pa.C.S.A. § 6108. For the reasons that follow, we affirm.

A brief summary of the relevant facts and procedural history is as follows. In July 2006, Clark and Terrence Hill ("the Victim"), known by the nickname "Shag," engaged in a dispute about a chain necklace. N.T., 4/22/13, at 90. A few days after the dispute between Clark and the Victim,

Clark approached Cedric McMillian ("McMillian"), the Victim's cousin. **Id.** at 91. McMillian hung out with the Victim often. **Id.** at 87. Clark told McMillian "If you're going to be hanging with Shag, be strapped," suggesting that McMillian carry a gun. **Id.** at 93. McMillian told the Victim about the encounter with Clark.

On the night of July 26 – July 27, 2006, McMillian, the Victim, and an individual only identified as Kamil, were outside near the Haddington Home Projects ("Haddington") located on 55th and Vine Streets in Philadelphia. **Id.** at 92, 95. McMillian testified at trial that he and the Victim saw Clark on a bicycle on 55th and Summer Streets. **Id.** at 94-96. The Victim said to McMillian, "Let's go back across the street," suggesting they go towards the back of Haddington, on Pearl Street. **Id.** at 96. McMillian, the Victim, and Kamil walked to the back of Haddington to an area known as the "old driveway." **Id.** at 98-99.

After approximately five minutes had passed, Clark arrived, dropped his bike, pointed his gun, and began to shoot. **Id.** at 101-04. Although the Victim ran from Clark, he was struck by a bullet, causing him to fall forward and fall directly on his face. **Id.** at 102, 109. The Victim died as a result of the gunshot wound. N.T., 4/23/13, at 10.

McMillian fled from the scene because he was wanted by Philadelphia Police on a bench warrant. N.T., 4/22/13, at 110-11. However, in November 2006, McMillian was arrested and taken into custody following a

traffic stop. **Id.** at 114-117. The Victim's family informed Detective James Griffin ("Detective Griffin") of the Philadelphia Police Department that McMillian had information regarding the July 2006 shooting. N.T., 4/23/13, at 69. On November 22, 2006, Detective Griffin interviewed McMillian. **Id.** at 69-70; N.T., 4/22/13, at 117. McMillian provided a statement and identified Clark as the person who shot the Victim. **Id.** at 117-19.

On December 7, 2006, Detective Griffin prepared an arrest warrant for Clark. N.T., 4/23/13, at 71. After two unsuccessful attempts to execute the arrest warrant, Detective Griffin forwarded a fugitive packet to the fugitive squad of the Philadelphia Police Department for further investigation to locate Clark. **Id.** at 73, 77-78. This packet included an activity sheet, an "Attempt to Apprehend log," and a wanted poster for Clark. **Id.** On April 20, 2007, following several attempts to locate Clark, Detective Sean Mellon and members of the U.S. Marshals Fugitive Team were able to apprehend and arrest him. **Id.** at 88-89.

Clark waived his right to a trial by jury on April 22, 2013. N.T., 4/22/13, at 30-31. A bench trial commenced the same day. At trial, the Commonwealth presented the eyewitness testimony of McMillian and Rasheta Adams ("Adams"). McMillian testified that he witnessed Clark drop his bike, point a gun in the direction of the Victim, and shoot. N.T., 3/22/13, at 102-06. After witnessing Clark fire the first shot, McMillian testified that he ran but continued to hear gunshots. **Id.** at 106.

Adams testified that she heard gunshots from inside her home. *Id.* at 35. She then went to her back window facing Pearl Street and saw a man running down Pearl Street towards 54th Street while tucking something under his shirt. *Id.* at 37-39. The man then proceeded to get on a bicycle and flee. *Id.* at 39. Adams testified that she could not see both of the man's hands and did not see a gun at that time. *Id.* at 38-39. However, approximately one month after the incident, Philadelphia Police presented a photo array to Adams. *Id.* at 49-52. Adams identified Clark as the man she saw on the evening of the shooting. *Id.*

At the close of trial, the trial court announced its verdict of guilty on the following charges: murder in the first degree, persons not to possess a firearm, firearms not to be carried without a license, carrying firearms on public streets or public property in Philadelphia, and possessing instruments of crime. N.T., 4/23/13, at 4-5. The trial court sentenced Clark on the same day to a mandatory sentence of life imprisonment without the possibility of parole for first degree murder, to run consecutive to a life sentence he was already serving for an unrelated murder conviction.¹ N.T., 4/23/13, at 23. In addition, the trial court sentenced Clark on the following charges as follows:

Persons not to possess a firearm, 18 Pa.C.S.A. § 6105(a)(1) –
Five to ten years of incarceration

¹ Docket No. CP-51-CR-00103352007.

Firearms not to be carried without a license, 18 Pa.C.S.A. § 6106(a)(1) – Three and one half (3 ½) to seven years of incarceration

Carrying firearms on public streets or public property in Philadelphia, 18 Pa.C.S.A. § 6108 – Two and one half (2 ½) to five years of incarceration

Possessing instruments of crime, 18 Pa.C.S.A. 907(a) – Two and one half (2 ½) to five years of incarceration

Id. at 23-24. The trial court imposed these sentences to run consecutive to each other and consecutive to the life sentence he was serving on the unrelated murder conviction, for an aggregate term of confinement of 13 and one half (13 ½) to 27 years of incarceration. *Id.*

Clark timely filed a notice of appeal and a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b) (“1925(b) Statement”). On appeal, Clark raises the following issues for our review:

1. Is [Clark] entitled to an arrest of judgment on the charge of Murder in the First Degree and related weapons offenses where the verdict is not supported by sufficient evidence and where the Commonwealth did not prove its case beyond a reasonable doubt?
2. Is [Clark] entitled to a new trial where the verdict on the charge of Murder in the First Degree and all related offenses was not supported by the greater weight of the evidence?

Clark’s Brief at 3.

For his first issue on appeal, Clark claims that the evidence was insufficient to sustain his convictions. Specifically, Clark asserts that the Commonwealth failed to prove that he had a weapon or to establish that he

acted with malice or with a specific intent to kill. **Id.** at 9-12; Clark's 1925(b) Statement.

Our standard of review in assessing the sufficiency of the evidence presented is well-settled:

The standard we apply in reviewing the sufficiency of the evidence is whether viewing all of the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Helsel, 53 A.3d 906, 917-18 (Pa. Super. 2012) (citing **Commonwealth v. Bricker**, 41 A.3d 872, 877 (Pa. Super. 2012)). "This standard is equally applicable in cases where the evidence is circumstantial, rather than direct, provided that the combination of evidence links the accused to the crime beyond a reasonable doubt." **Commonwealth v. Orr**,

38 A.3d 868, 873 (citing **Commonwealth v. Cox**, 686 A.2d 1279, 1285 (Pa. 1996), *cert. denied*, 522 U.S. 999 (1997)).

We first address the sufficiency of the evidence to support Clark's convictions on four separate weapons charges, including persons not to possess a firearm, firearms not to be carried without a license, carrying firearms on public streets or public property in Philadelphia, and possessing instruments of crime. 18 Pa.C.S.A. §§ 6105, 6106, 6108, 907. In his brief and 1925(b) Statement, Clark asserts that he "must be awarded an arrest of judgment on the [...] weapons offenses as the evidence is insufficient to sustain the verdict." **See** Clark's 1925(b) Statement; Clark's Brief at 3, 9. However, he does not present any argument in his brief to support his assertion relating to the weapons charges.

As this Court has held:

When briefing the various issues that have been preserved, it is an appellant's duty to present arguments that are sufficiently developed for our review. **Commonwealth v. Gould**, 912 A.2d 869, 873 (Pa. Super. 2006). The brief must support the claims with pertinent discussion, with references to the record and with citations to legal authorities. **Id.**; Pa.R.A.P. 2119(a), (b), (c). Citations to authorities must articulate the principles for which they are cited. Pa.R.A.P. 2119(b).

Commonwealth v. Hardy, 918 A.2d 766, 771 (Pa. Super. 2007).

Clark failed to provide relevant argument and this Court will not develop an argument on his behalf. **Id.**; **Gould**, 912 A.2d at 873. As a result, this issue is waived and we may not review the merits of the claim.

We next address the sufficiency of the evidence to support Clark's conviction for first-degree murder. Under 18 Pa.C.S.A. § 2502(a), (d), "[a] criminal homicide constitutes first-degree murder when the accused commits an intentional killing, which is statutorily defined as 'willful, deliberate, and premeditated.'" **Commonwealth v. Chine**, 40 A.3d 1239, 1242 (Pa. Super. 2012). As this Court has held:

[t]o obtain a conviction for first-degree murder, the Commonwealth must demonstrate that a human being was unlawfully killed; that the defendant did the killing; and that the killing was done in an intentional, deliberate, and premeditated manner, which this Court has construed to mean that the defendant acted with a specific intent to kill.

Commonwealth v. Stokes, 78 A.3d 644, 650 (Pa. Super. 2013); **See also** 18 Pa.C.S.A. §§ 2501, 2502(a).

In this case, there is no dispute that the Victim was unlawfully killed. However, Clark argues that the Commonwealth failed to prove that he killed the Victim or that he had specific intent to kill the victim. We will address these arguments separately.

First, Clark argues that the Commonwealth failed to prove that he killed the Victim because the murder weapon was never recovered. Clark's Brief at 10. However, this Court has held that failing to recover a gun is not dispositive of the sufficiency of the evidence. **See Commonwealth v. Robinson**, 817 A.2d 1153, 1162 (Pa. Super. 2003). Instead, in **Robinson**, this Court deemed a witness's testimony, asserting that the defendant

possessed a gun, to be “all that is necessary” to establish that the defendant possessed a gun. **Id.**

In the case presently before this Court, the Commonwealth presented eyewitness testimony of McMillian and Adams to establish that Clark possessed a gun. McMillian testified to observing Clark possess and use a gun, while Adams testified that after hearing gunshots, she witnessed a man, who she later identified as Clark, running down Pearl Street while tucking something under his shirt. Thus, viewing the evidence in the light most favorable to the Commonwealth as the verdict winner, we conclude that the evidence is sufficient to support an inference that Clark possessed a gun.

Clark also argues that the Commonwealth failed to prove that he killed the Victim because McMillian did not see Clark shoot the Victim. Clark’s Brief at 10. McMillian’s testimony at trial established that he witnessed Clark raise a gun, point it at the Victim, and begin shooting. N.T., 4/22/13, at 101-06. McMillian testified that he observed Clark fire the first gunshot. **Id.** at 106. McMillian began running at that point but continued to hear gunshots being fired. **Id.** He also witnessed the Victim raise his arm and fall in stride as he was running full speed. **Id.** at 109. When he ran to the Victim’s side, he was laying face down with blood coming from his side. **Id.** at 109-11.

As our standard of review provides, “[t]he Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence.” **Helsel**, 53 A.3d at 918. Viewing the evidence in the light most favorable to the Commonwealth as the verdict winner, we conclude that the evidence is sufficient to prove that Clark shot and killed the Victim.

Finally, Clark argues that the Commonwealth failed to prove beyond a reasonable doubt that he had malice or specific intent to kill. With regard to providing evidence that Clark acted with specific intent to kill, this Court has held that “[s]pecific intent to kill can be proven where the defendant knowingly applies deadly force to the person of another.” **Stokes**, 78 A.3d at 650 (citing **Commonwealth v. Hawkins**, 701 A.2d 492, 500 (Pa. 1997)). Furthermore, “[t]his Court has held repeatedly that the use of a deadly weapon on a vital part of a human body is sufficient to establish the specific intent to kill.” **Stokes**, 78 A.3d at 650 (citing **Commonwealth v. Simpson**, 754 A.2d 1264, 1269 (Pa. 2000), *cert. denied*, 533 U.S. 932 (2001)).

In this case, the Commonwealth presented evidence that the Victim died from a single gunshot wound to the chest. N.T., 3/23/13, at 10. The bullet struck the Victim’s left lung, trachea, main pulmonary artery, and right lung. **Id.** These are vital portions of the human body. As a result, we conclude that there is sufficient evidence in the record to support Clark’s

conviction of first degree murder. Clark's first issue on appeal is without merit.

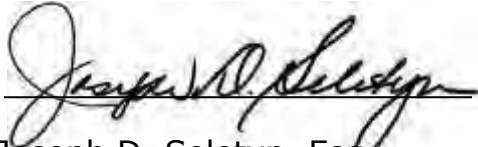
For his second issue on appeal, Clark contends that the trial court's verdict was against the weight of the evidence. Rule 607 of the Pennsylvania Rules of Criminal Procedure provides, in relevant part, that "[a] claim that the verdict was against the weight of the evidence shall be raised with the trial judge in a motion for a new trial' in a written or oral motion before the court prior to sentencing, or in a post-sentence motion." **Commonwealth v. Bryant**, 57 A.3d 191, 196 (Pa. Super. 2012); Pa.R.Crim.P. 607(a)(1)-(3). "Failure to challenge the weight of the evidence presented at trial in an oral or written motion prior to sentencing or in a post-sentence motion will result in waiver of the claim." **Bryant**, 57 A.3d at 196 (citing **Commonwealth v. Bond**, 985 A.2d 810, 820 (Pa. 2009)). In this case, Clark failed to raise a motion for a new trial prior to sentencing and failed to file a post-sentence motion that challenged the weight of the evidence.² Thus, after a review of the record, this issue is waived and we may not review the merits of the claim.

Judgment of sentence affirmed.

² Furthermore, this issue was not raised in Clark's statement of matters complained of on appeal pursuant to Rule 1925(b). "Issues not included in the Statement and/or not raised in accordance with the provisions of this paragraph (b)(4) are waived." Pa.R.A.P. 1925(b)(4)(vii).

J-S41018-14

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: 7/16/2014