

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
v.	:	
CHRISTOPHER GOODWIN,	:	
Appellant	:	No. 2009 EDA 2013

Appeal from the Judgment of Sentence May 28, 2013
In the Court of Common Pleas of Philadelphia County
Criminal Division No(s): CP-51-CR-0012214-2011

BEFORE: GANTMAN, P.J., ALLEN, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.:

FILED JULY 14, 2014

Appellant, Christopher Goodwin, appeals from the judgment of sentence entered in the Philadelphia County Court of Common Pleas following a jury trial and his convictions for first-degree murder,¹ carrying a firearm on public streets or public property in Philadelphia,² and possession of an instrument of crime.³ Appellant challenges the sufficiency and weight of the evidence for first-degree murder. We affirm.

* Former Justice specially assigned to the Superior Court.

¹ 18 Pa.C.S. § 2502.

² 18 Pa.C.S. § 6108.

³ 18 Pa.C.S. § 907.

We adopt the facts set forth by the trial court's opinion. **See** Trial Ct. Op., 9/11/13, at 1-4. On May 28, 2013, a jury convicted Appellant of the above crimes. The court sentenced Appellant that day to a mandatory sentence of life imprisonment without parole. Appellant timely filed a post-sentence motion challenge the sufficiency and weight of the evidence. The court denied same on June 14, 2013. Appellant timely appealed and timely filed a Pa.R.A.P. 1925(b) statement.

Appellant raises the following issues:

Is [Appellant] entitled to an arrest of judgment on the charge of murder in the first degree as the verdict is not supported by sufficient evidence as the Commonwealth did not prove that [Appellant] acted with a specific intent to kill, nor did the commonwealth prove that [Appellant] was aware of that intention to kill at the time of the shooting, and where the Commonwealth did not prove malice?

Is [Appellant] entitled to a new trial on all charges as the verdict is not supported by the greater weight of the evidence?

Appellant's Brief at 3.

Appellant contends the Commonwealth failed to meet its burden because one witness was unsure Appellant was the culprit and another witness lied under oath. Appellant similarly maintains that given the quantum of evidence, the verdict should shock the court's conscience. We hold Appellant is not entitled to relief.

"A claim challenging the sufficiency of the evidence is a question of law." **Commonwealth v. Widmer**, 744 A.2d 745, 751 (Pa. 2000).

[T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction . . . does not require a court to ask itself whether **it** believes that the evidence at the trial established guilt beyond a reasonable doubt. Instead, it must determine simply whether the evidence believed by the fact-finder was sufficient to support the verdict.

Commonwealth v. Ratsamy, 934 A.2d 1233, 1235-36 (Pa. 2007) (citations and quotation marks omitted). “When reviewing the sufficiency of the evidence, an appellate court must determine whether the evidence, and all reasonable inferences deducible from that, viewed in the light most favorable to the Commonwealth as verdict winner, are sufficient to establish all of the elements of the offense beyond a reasonable doubt.” **Id.** at 1237 (citations omitted).

We will sustain a conviction of first-degree murder where the Commonwealth has established “that the defendant acted with the specific intent to kill, that a human being was unlawfully killed, that the person accused did the killing, and that the killing was done with premeditation or deliberation.” **Commonwealth v. Spatz**, 759 A.2d 1280, 1283 (Pa. 2000); **see also** 18 Pa.C.S. § 2502(a). “The period of reflection necessary to constitute premeditation may be very brief; in fact the design to kill can be formulated in a fraction of a second. Premeditation and deliberation exist whenever the assailant possesses the conscious purpose to bring about death.” **Commonwealth v. Fisher**, 769 A.2d 1116, 1124 (Pa. 2001). The Commonwealth may establish the specific intent to kill through

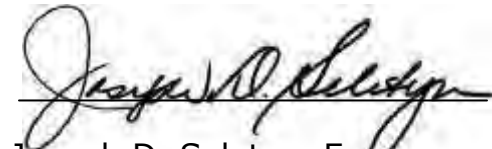
circumstantial evidence. **See Commonwealth v. Randall**, 758 A.2d 669, 674 (Pa. Super. 2000). The **Randall** Court held that the repeated, deliberate firing of a deadly weapon at a vital part of the victim's body may demonstrate specific intent. **See id.** at 674-75.

On the issue of whether the jury's verdict is contrary to the weight of the evidence, our Supreme Court has held that "[t]he decision to grant or deny a motion for a new trial on the ground that the verdict is against the weight of the evidence is committed to the sound discretion of the trial court." **Commonwealth v. Pronkoskie**, 445 A.2d 1203, 1206 (Pa. 1982). In such circumstances, "[t]he role of an appellate court in reviewing the weight of the evidence is very limited." **Commonwealth v. Sanders**, 627 A.2d 183, 185 (Pa. Super. 1993). "Relief on a weight of the evidence claim is reserved for extraordinary circumstances, when the jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail." **Commonwealth v. Sanchez**, 36 A.3d 24, 39 (Pa. 2011) (quotation marks and citation omitted). An argument that witnesses are not credible is an argument challenging the weight of the evidence. **Commonwealth v. Lewis**, 911 A.2d 558, 566 (Pa. Super. 2006). The evaluation of the credibility of witnesses is the domain of the fact-finder. **Commonwealth v. Akers**, 572 A.2d 746, 752 (Pa. Super. 1990).

Instantly, after carefully reviewing the parties' briefs, the certified record including the trial transcript, and the decision of the Honorable Barbara A. McDermott, we affirm on the basis of the trial court's opinion. **See** Trial Ct. Op. at 2-4 (summarizing trial testimony and holding (1) evidence, viewed in light most favorable to Commonwealth, established that eyewitnesses identified Appellant as culprit; and (2) jury elected to disbelieve Appellant's alibi testimony). We also discern no abuse of discretion in the trial court's determination that the verdict was not against the weight of the evidence. **See Pronkoskie**, 445 A.2d at 1206. Accordingly, having discerned no error of law, we affirm the judgment of sentence. **See Ratsamy**, 934 A.2d at 1235.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/14/2014

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

COMMONWEALTH OF PENNSYLVANIA : CP-51-CR-0012214-2011
: :
: :
v. : 2009 EDA 2013
: :
CHRISTOPHER GOODWIN : :
: :
: :

FILED
SEP 11 2013
Criminal Appeals Unit
First Judicial District of PA

OPINION

McDermott, J.

September 11, 2013

Procedural History

On August 2, 2011, the defendant, Christopher Goodwin, was arrested and charged with Murder, Carrying a Firearm without a License, Carrying a Firearm in Philadelphia, Persons not to Possess Firearms, and Possessing an Instrument of Crime (PIC).

On May 17, 2013, the defendant appeared before this Court and elected to be tried by jury. On May 28, 2013, the jury found the defendant guilty of Murder of the First Degree, Carrying a Firearm in Philadelphia, and PIC.¹ That same day the Court sentenced the defendant to a term of imprisonment of life without the possibility of parole for Murder in the First Degree and concurrent terms of imprisonment of one to two years for both PIC and Carrying a Firearm in Philadelphia.

On June 4, 2013, the Commonwealth filed a Motion for Restitution for the decedent's funeral expenses. On June 7, 2013, the defendant filed Post-Sentence Motions. On June 14,

¹ All other charges were nolle prossed.

2013, this Court granted the Commonwealth's Motion for Restitution. That same day, this Court denied the defendant's Post-Sentence Motions and permitted trial counsel to withdraw.

On June 17, 2013, appellate counsel was appointed. On July 14, 2013, the defendant filed a Notice of Appeal. On July 22, 2013, this Court ordered the defendant to submit a Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. 1925(b). On August 8, 2013, the defendant filed a timely Statement.

Facts

On June 24, 2011, Lekkir Brown was shot during a home invasion in his house located just outside of the Wilson Park project in Philadelphia. According to Lisa Hall² there was a rumor in the Wilson Park neighborhood that her nephew, Rashul Isaacs, was the shooter because a few days before Lekkir Brown was shot, Brown had shot at Rashul Isaacs. N.T. 5.21.2013 at 261, 263, 269-270.

On June 26, 2011, at about 12:18 a.m., in response to a radio call, Police Officer Thomas Bimble arrived at the 2600 block of Jackson Street in the Wilson Park project. A group of people had formed at the corner of Jackson and 27th Streets where there is a small circular park. Officer Bimble found Dwayne Isaacs lying in the circle park, unresponsive, with blood coming from his head. Medics arrived within minutes and pronounced Mr. Isaacs dead on the scene at 12:31 a.m. N.T. 5.21.2013 at 46-48; N.T. 5.20.2013 at 74.

A little over an hour after the murder, Police Officer Brian Stark of the Crime Scene Unit located two bullet jacket fragments and two bullet strike marks in the ground under Mr. Isaacs' body. The bullet strike marks indicated a weapon was fired down toward the ground. N.T. 5.20.2013 at 110.

² Dwayne Isaacs' sister.

According to Dr. Marlon Osbourne, an expert in forensic pathology, Mr. Isaacs suffered seven gunshot wounds and had an abrasion on his forehead. The abrasion on Mr. Isaacs' forehead was consistent with falling to the ground. Mr. Isaacs was shot in the neck, chest, flank, forearm, hand, and finger. The gunshots severed Mr. Isaacs' spinal cord, and hit his kidney and liver. Because the wound to the finger and the anterior neck were possibly reentry wounds, Dr. Osbourne concluded that Mr. Isaacs was shot with either five or six bullets. Dr. Osbourne recovered two bullet fragments from Mr. Isaacs' neck and a bullet from Mr. Isaacs' abdomen. N.T. 5.20.2013 at 75, 77-87, 96-97.

According to Police Officer Ernest Bottomer, an expert in the area of ballistics and firearms identification, the two bullet jackets recovered from the scene, and the bullet, bullet core, and bullet jacket recovered by the medical examiner's office from the decedent's body were either .38 or 9-millimeter caliber and were likely fired from a revolver. The bullet jackets recovered from the scene and the bullet recovered by the medical examiner's office were fired from the same firearm, which Officer Bottomer concluded was most likely a .38-caliber revolver. N.T. 5.21.2013 at 237, 241-244, 246-249, 251.

On July 21, 2011, Andre Cunningham gave a statement to police. In his statement, Cunningham explained that on June 26, 2011, he had just left a speakeasy and was walking near the circle park. The defendant hopped a fence by the alleyway, walked into the park, and asked Raheem Zachary and Aaron Respes if they had any "Xannies." As Mr. Isaacs walked down the pathway of the park, Cunningham saw the defendant shoot Mr. Isaacs in the head. Mr. Isaacs fell to the ground and while the defendant walked away he continued shooting Mr. Isaacs about four more times. Cunningham ran off and when he returned he saw Mr. Isaacs still lying in the park surrounded by blood. N.T. 5.20.2013 at 168, 177-178, 184-185; N.T. 5.22.2013 at 22.

On June 3, 2013, Cunningham gave an inconsistent statement to a defense investigator. In this statement, Cunningham claimed that he did not see the murder, but only told the police what they wanted to hear. At trial, Cunningham denied witnessing the murder, but stated that he was a couple blocks away on Taney Terrace when he heard gunshots. N.T. 5.20.2013 at 153-154, 179, 232; N.T. 5.21.2013 at 21.

At the time of the murder, Aaron Respes was walking past the circle park on the corner of 27th and Jackson Streets when he heard a single gunshot. Respes turned and saw the defendant and Mr. Isaacs standing in the circle park. While running away, Respes heard six or seven more shots. Respes identified the defendant as Mr. Isaacs' shooter in his statement given to police on July 22, 2011 and at the preliminary hearing on October 25, 2011. However, at trial Respes said he was unsure who shot Mr. Isaacs. After the preliminary hearing, Respes and his mother accepted relocation services from the District Attorney's office because he had been threatened. N.T. 5.21.2013 at 86-92, 94, 96, 113, 126-129, 135, 154-155, 200-208.

According to Anara Brown, a defense alibi witness, on June 25, 2011, from about 10:00 p.m. until around midnight, she was with the defendant and about ten other people at 2620 Jackson Street, less than a block away from where Mr. Isaacs was shot, having a party in the street. While Ms. Brown and the defendant were at 2620 Jackson Street, they heard gunshots and Ms. Brown ran inside the house. When Ms. Brown came back outside, the defendant was still there. They then walked to the circle park to see who was shot. N.T. 5.22.2013 at 240-250.

Although the jury did not credit Ms. Brown's alibi testimony, she did confirm the motive for the murder. Ms. Brown corroborated Ms. Hall's testimony that a few days prior to the murder, Ms. Brown's house was burglarized during which Lekkir Brown was shot. N.T. 5.22.2013 at 240-241, 264-267.

Issues

The defendant challenges the sufficiency and the weight of the evidence claiming the Commonwealth did not prove the defendant was the perpetrator of the murder or that the defendant had the specific intent to kill.

Evidence presented at trial is sufficient when, viewed in the light most favorable to the Commonwealth as verdict winner, the evidence and all reasonable inferences derived therefrom are sufficient to establish all elements of the offense beyond a reasonable doubt. *Commonwealth v. Baumhammers*, 960 A.2d 59, 68 (Pa. 2008). The fact-finder is free to believe all, part, or none of the evidence, and credibility determinations rest solely within the purview of the fact-finder. *Commonwealth v. Treiber*, 874 A.2d 26, 30 (Pa. 2005). Moreover, the entire record must be evaluated and all evidence actually received must be considered. *Commonwealth v. Hansley*, 24 A.3d 410, 416 (Pa. Super. 2011).

The defendant asserts the evidence was insufficient to establish the defendant was the perpetrator, an accomplice, or a conspirator. “[E]vidence of identification need not be positive and certain to sustain a conviction.” *Commonwealth v. Orr*, 38 A.3d 868, 874 (Pa. Super. 2011)(quoting *Commonwealth v. S. Jones*, 954 A.2d 1194, 1197 (Pa. Super. 2008), *appeal denied*, 962 A.2d 1196 (2008)).

Here, two eyewitnesses who knew the defendant identified the defendant as the shooter within weeks of the murder. Cunningham, who had known the defendant for twelve years, identified the defendant in his statement to police less than a month after the shooting. N.T. 5.20.2013 at 184. Respes, who had known the defendant for five years, identified the defendant in both his statement to police less than a month after the shooting and again at the preliminary hearing. N.T. 5.21.2013 at 96, 113, 126-129, 135.

Although neither witness identified the defendant at trial, both witnesses identified the defendant in sworn statements given to the police under reliable circumstances. Otherwise admissible prior inconsistent statements of a declarant who is a witness in a judicial proceeding and is available for cross-examination may be used as substantive evidence to prove the truth of the matters asserted therein. *Commonwealth v. Brady*, 507 A.2d 66, 70 (Pa. 1986) abrogated by *Commonwealth v. Wilson*, 707 A.2d 1114 (Pa. 1998); *Commonwealth v. Jones*, 644 A.2d 177, 179-180 (Pa. 1994)(witness' identification of the defendant in a statement to the police was properly allowed as substantive evidence at trial when the witness denied seeing the defendant commit the murder). The Commonwealth provided an explanation for why Respes did not identify the defendant at trial, specifically because he had been threatened regarding his testimony. N.T. 5.21.2013 at 200-208.

In its final jury instruction this Court gave the Pennsylvania Suggested Standard Criminal Jury Instruction 4.07(A) which informs the jury on how to consider identification testimony. N.T. 5.28.2013 at 107-109. The Court further instructed the jury pursuant Instruction 4.07(B) on the circumstances in which the jury must receive identification testimony with caution. *Id.* at 109-111. The jury chose to believe the identifications made by Cunningham and Respes weeks after the murder. This evidence is sufficient to identify the defendant as Mr. Isaacs' murderer.

The defendant alleges that the evidence is insufficient to prove the defendant acted with the specific intent to kill, malice or premeditation. 18 Pa.C.S. § 2502 establishes that Murder in the First Degree is a criminal homicide committed by an intentional killing. In order to support a charge of murder of the first degree, the Commonwealth must prove that "the defendant acted with a specific intent to kill; that a human being was unlawfully killed; that the person accused did the killing; and that the killing was done with deliberation." *Commonwealth v. Smith*, 861

A.2d 892, 895 (Pa. 2004). Specific intent may be established through circumstantial evidence, such as the use of a deadly weapon on a vital part of the victim's body. *Commonwealth v. Ramtahal*, 33 A.3d 602, 607 (Pa. 2011)(citing *Commonwealth v. Smith*, 985 A.2d 886, 895 (Pa. 2009)). Malice also may be inferred from the use of a deadly weapon upon a vital part of the victim's body. *Commonwealth v. Ramtahal*, 33 A.3d 602, 607-608 (Pa. 2011); *Commonwealth v. Smith*, 985 A.2d 886, 896 (Pa. 2009)(defendant had specific intent where victim suffered seven separate gunshot wounds to his body, including wounds to his left and right lungs, his spleen, his liver, his left shoulder, his arms, and his head).

Here, the defendant shot Mr. Isaacs five or six times. N.T. 5.20.2013 at 97. Mr. Isaacs was shot in his neck, chest, flank, forearm, hand, and fingers. *Id.* at 77-87. His spinal cord was severed and his kidney and liver were injured. *Id.* The defendant used a deadly weapon on multiple vital parts of Mr. Isaacs's body. *Id.* at 82, 86. Police officers found two bullet fragments and strike marks on the ground under Mr. Isaacs' body, indicating the defendant continued to shoot Mr. Isaacs while he was lying defenseless on the ground. *Id.* at 110. The evidence is more than sufficient to establish the defendant acted with specific intent and malice.

18 Pa.C.S. § 6108 provides “[n]o person shall carry a firearm, rifle or shotgun at any time upon the public streets or upon any public property in a city of the first class unless: (1) such person is licensed to carry a firearm; or (2) such person is exempt from licensing under section 6106(b) of this title.” In order to secure a conviction for PIC, the Commonwealth must show that the defendant possessed an instrument of crime with the intent to employ it criminally. 18 Pa.C.S. § 907(a). An instrument of crime is “[a]nything used for criminal purposes and possessed by the actor under circumstances not manifestly appropriate for lawful uses it may have.” 18 Pa.C.S. § 907(d)(2); *see also Commonwealth v. Robertson*, 874 A.2d 1200, 1208-09 (Pa. Super.

2005). The Certificate of Nonlicensure submitted by the Commonwealth conclusively established that the defendant was not licensed to carry a firearm on June 26, 2011. N.T.

5.21.2013 at 280-281. The defendant carried a firearm in the park located on the 2600 block of Jackson Street which he used to shoot and kill Mr. Isaacs. This evidence is sufficient to establish the defendant carried a firearm in Philadelphia in violation of 18 Pa.C.S. § 6108 and possessed and instrument of crime in violation of 18 Pa.C.S. § 907(a).

Weight of the evidence and sufficiency of the evidence are discrete inquiries. An argument that the verdict is contrary to the weight of the evidence concedes that there is sufficient evidence to sustain the verdict but contends, nevertheless, that the verdict is against the weight of the evidence. *Commonwealth v. Davis*, 799 A.2d 860, 865 (Pa. Super. 2002). An allegation that the verdict is against the weight of the evidence is addressed to the sound discretion of the trial court. *Commonwealth v. Dupre*, 866 A.2d 1089, 1101 (Pa. Super. 2005)(citing *Commonwealth v. Sullivan*, 820 A.2d 795, 805-806 (Pa. Super. 2003); *Commonwealth v. Widmer*, 744 A.2d 745, 751-752 (Pa. 2000). “The factfinder is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses.” *Commonwealth v. Diggs*, 949 A.2d 873, 879 (Pa. 2008). The Superior Court has explained that the test is whether the evidence is “so tenuous, vague and uncertain that the verdict shocks the conscience of the court.” *Commonwealth v. Sullivan*, 820 A.2d 795, 806 (Pa. Super. 2003). For one to prevail on a challenge of the weight of the evidence, the jury's verdict must be so contrary to the evidence as to shock one's sense of justice. *Id.* (citing *Commonwealth v. Goodwine*, 692 A.2d 233, 236 (Pa. Super. 1997).

Here, two eyewitnesses identified the defendant as Mr. Isaacs' murderer. N.T. 5.20.2013 at 184; N.T. 5.21.2013 at 96, 113, 126-129, 135. Further, although the Commonwealth has no

obligation to do so, the Commonwealth established the motive in this case. The day before the murder, Mr. Isaacs' nephew, Rashul Isaacs, shot the defendant's friend Lekkir Brown. N.T. 5.21.2013 at 151, 194-195, 240-241, 261. In retaliation, the defendant shot an unsuspecting Mr. Isaacs five or six times while he was walking through the circle park. N.T. 5.20.2013 at 97, 177. Although the defendant presented alibi testimony that he was on the same block as the circle park where the murder took place at the time of the murder, the jury chose to disregard this evidence. This Court's conscience is not shocked where the evidence clearly established the defendant's guilt.

For the foregoing reasons, the decision of this Court should be affirmed.

BY THE COURT,


Barbara A. McDermott, J.

Commonwealth v. Christopher Goodwin
CP-51-CR-0012214-2011

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing Opinion upon the person(s), and in the manner indicated below, which service satisfies the requirements of Pa. R. Crim. P. 114:

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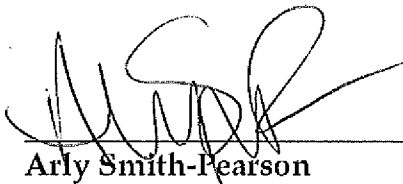
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Dated: September 11, 2013



Arly Smith-Pearson
Law Clerk to the
Honorable Barbara A. McDermott