

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

CHRISTOPHER MOORE

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 821 EDA 2013

Appeal from the Judgment of Sentence October 1, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0007232-2010

BEFORE: FORD ELLIOTT, P.J.E., LAZARUS, J., and WECHT, J.

MEMORANDUM BY LAZARUS, J.:

FILED JUNE 04, 2014

Christopher Moore appeals from his judgment of sentence, entered in the Court of Common Pleas of Philadelphia County, after he was found guilty by a jury of second-degree murder,¹ robbery² and criminal conspiracy.³ Moore was sentenced to life in prison without the possibility of parole. Post-trial motions were filed and denied by operation of law. This appeal follows. After careful review, we affirm.

On November 21, 2009, Moore fired two shots into a car, killing the woman sitting in the passenger seat. Video surveillance captured Moore

¹ 18 Pa.C.S. § 2502(d).

² 18 Pa.C.S. § 3701.

³ 18 Pa.C.S. § 903.

walking across a street towards the car in which the victim was a passenger. Moments later shots were fired, the car sped away, and Moore ran to and entered a large SUV. After being apprehended, Moore gave a statement to the police regarding his involvement in the robbery and murder, telling a detective that he was promised \$32,000 in exchange for playing the role of a gunman in the robbery of the victim. Moore stated that:

[I]t was only supposed to be a robbery, but it got fuc*ed up. I walked up to the passenger side of the car and tapped on the window with the gun[,] I pointed the gun at them all[,] . . . [t]hen I heard the gas on the car rev up, and . . . I didn't know what [the driver] was doing or if he was reaching for something, so I fired two times at the car.

N.T. Jury Trial, 9/26/12, at 57-59. Moore also admitted that the gun he used in the shooting was a black .357 Magnum with a tan handle.

At trial, a firearms expert testified that the bullet specimen recovered from the victim's left temple was fired from a .38 or .357 or a 9 millimeter weapon.⁴ *Id.* at 109. One of Moore's co-conspirators, Steven Berry, signed a written statement in the presence of the police acknowledging that he saw Moore fire two shots into the passenger side of the car as it began to pull

⁴ A ballistics expert explained at trial why no direct evidence of the specific weapon used in the shooting was available. Specifically, the expert explained that unlike semi-automatic weapons, revolvers do not usually expel fired cartridge casings and that because only fragmented bullets were recovered from the scene and the victim's temple, there was a variance in the type of weapon that could have expelled the bullet. However, he also explained that the diameter of a bullet from a .38 or .357 gun are essentially identical and the bullet distinctions interchangeable. N.T. Jury Trial, 9/25/12, at 114.

away and heard Moore admit to the shooting moments after it occurred when they were in the SUV driven by the man who had provided Moore the gun used to commit the murder.⁵ N.T. Jury Trial, 9/25/12, at 164-67. Other than two bullet fragments, no other ballistics evidence was uncovered from the scene. Additionally, the murder weapon was never located by the police.

On appeal, Moore presents the following issue for our consideration:

Whether appellant is entitled to an arrest of judgment as to the charge of second-degree murder, because the Commonwealth failed to prove beyond a reasonable doubt that the fatal bullet was in fact discharged by the firearm used during the robbery, and thus, failed to establish beyond a reasonable doubt that the death occurred during the course of the commission of the underlying felony (robbery), as is required for second-degree murder.

At the heart of Moore's claim is his argument that the Commonwealth did not prove the link between the robbery and the fatal wound sustained by the victim. Specifically, Moore asserts because no murder weapon was ever recovered, another firearm may have been used in the victim's shooting or an intervening event may have occurred after his firing of the gun that caused the victim's death.

In reviewing a challenge to the sufficiency of the evidence, we must determine whether, viewing the evidence in the light most favorable to the

⁵ Although Berry recanted this on the stand, his signed statement was nonetheless submitted at trial by the Commonwealth.

Commonwealth as verdict winner, together with all reasonable inferences therefrom, the trier of fact could have found that each and every element of the crimes charged was established beyond a reasonable doubt. ***Commonwealth v. Randall***, 758 A.2d 669, 674 (Pa. Super. 2000).

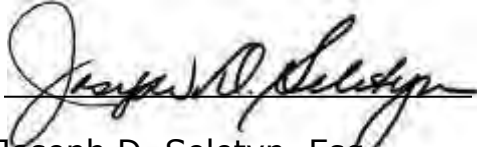
Testimony presented by the driver of the vehicle in which the victim was shot, as well as that from investigating Officer Timothy Esack, corroborates that there was no intervening event between Moore's firing of the shots at the car and the victim's death moments later. ***See*** N.T. Jury Trial, 9/25/12, at 46 (after shooting, driver drove directly to victim's home, a distance of five blocks; on the way to victim's home, victim collapsed on driver and driver's hand became wet with victim's blood); ***Id.*** at 46-48 (within minutes of shooting, officer responded to victim's home where he saw that car had "shot out window," bullet strike mark on passenger side door, and paramedics and firemen unsuccessfully attempting to resuscitate victim).

Moreover, to the extent that Moore claims his murder conviction is infirm because no murder weapon was ever recovered, this argument also fails. Even though the murder weapon may not have been discovered, there is still sufficient evidence to tie Moore to the shooting. Not only did he admit to shooting the victim using a gun whose bullets were of the same type and caliber as those found in the victim's temple, his involvement was captured on video and also corroborated by a co-conspirator. In addition, Moore, himself, testified that he returned the gun to its owner immediately following

the shooting. Because two days passed before the police were able to locate and arrest the owner of the gun, there was sufficient time for the weapon to have been disposed of. ***Randall, supra.***

Judgment of sentence affirmed.

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: 6/4/2014