

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

TARIK BAGLEY

Appellant

No. 878 EDA 2013

Appeal from the Judgment of Sentence March 11, 2013
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0000553-2011
CP-51-CR-0009928-2010

BEFORE: FORD ELLIOTT, P.J.E., BOWES, J., and OTT, J.

MEMORANDUM BY OTT, J.:

FILED APRIL 30, 2014

Tarik Bagley appeals the judgment of sentence entered March 11, 2013, in the Philadelphia County Court of Common Pleas, following his jury conviction on charges of first degree murder, conspiracy, possessing an instrument of crime (PIC), recklessly endangering another person (REAP), and carrying a firearm without a license.¹ The charges arose from Bagley's participation in three separate shootings that occurred on March 7, 2010. The trial court imposed an aggregate sentence of life imprisonment. On appeal, Bagley raises 13 allegations of error including challenges to the consolidation of the charges, the admissibility of evidence, the closing

¹ 18 Pa.C.S. §§ 2502(a), 903, 907, 2705, and 6106(a)(1), respectively.

remarks of the Commonwealth, the trial court's instructions to the jury and the sufficiency of the evidence. For the reasons that follow, we affirm.

The facts underlying Bagley's arrest and conviction are aptly summarized by the trial court as follows:

On March 7th, 2010, at around 12:28 a.m., police officers, in response to a radio call, arrived at 19th Street and Snyder Avenue in Philadelphia and found a man, later identified as Azzim Dukes, lying on the ground bleeding from the head. Azzim Dukes was pronounced dead at the scene from a single gunshot wound to the head at 12:33 a.m.

Lee Parker, a friend of Dukes, gave a statement to police indicating that a few weeks before his death, Dukes was having a problem with individuals from the area of 18th and Cleveland Streets. While speaking with Dukes and Parker [Bagley] pulled a black automatic handgun out of his waist and placed it in his pocket. After this incident, Parker and Dukes discussed shooting [Bagley] in retaliation, and Dukes obtained a .380-caliber handgun.

On March 7th, 2010, Dukes was with a group of friends at his friend's home on 16th and Mifflin Streets. At around midnight, Daud Riley, aware that [Bagley] was in the neighborhood and looking for him, asked Dukes to walk him home because he was afraid. When they were walking in the area of 19th Street and Snyder Avenue, [Bagley] pulled up in his car and got out. Riley ran when he saw [Bagley] pull out a firearm and start shooting. Riley heard about three gunshots.

Officers found Dukes lying on the northwest corner of the intersection of 19th Street and Snyder Avenue with a fully loaded .380-caliber handgun about two and a half feet from him. Officers also recovered one .45-caliber fired cartridge case from the curb line of the 1900-block of Snyder Avenue, one bullet specimen from the Southeast corner of the intersection, and a live .45-caliber cartridge on Snyder Avenue just west of 19th Street. According to Firearms Identification Expert Officer Gregory Welsh, a bullet recovered from Dukes and the bullet fragment recovered from the crime scene had been fired from

the same firearm, but not the .380-caliber handgun recovered from the scene.

That same day, at around 6:00 p.m., about sixty to one hundred individuals from the neighborhood held a vigil for Dukes in the area of 19th Street and Snyder Avenue. According to Sabrina Johnson, at around 6:30 p.m., [Bagley] and his brother Malik Johnson drove up to the vigil in a green mini-van. From the van, [Bagley] shot about five times into the crowd of people attending the vigil. [No one was harmed.]

Later that evening, Sabrina Johnson, along with her sister and two children, were walking in the area of 16th and Mifflin Streets when [Bagley] and his brother Malik Johnson drove up in a green mini-van. [Bagley] asked Sabrina Johnson about an individual she did not know and pulled out a silver and black automatic handgun. As Sabrina Johnson began to run away from [Bagley] she heard gun shots. Police Officer Joseph Cosgrove, who had been at 16th and McKean Streets, responded to the scene within a minute after he heard gunshots. Sabrina Johnson directed Officer Cosgrove to [] South 18th Street, where she believed [Bagley] lived.

Officers recovered surveillance video from the 1600 block of Mifflin Street that confirmed Sabrina Johnson's account of the shooting. The video showed [Bagley] on the night of the shooting at 7:51 p.m. exit a mini-van with a firearm and talk to Sabrina Johnson. The video also showed Sabrina Johnson and her sister react in a startled manner to an occurrence off the camera.

That same night, at around 8:30 p.m. at [] South 18th Street, officers pulled over a green mini-van meeting the description of the one involved in the murder and later shootings. [Bagley's] mother, Jeanetta Bagley, was driving the mini-van and Deana Parks was a passenger. The mini-van had a bullet hole in the driver's side rear window. Jeanetta Bagley gave officers consent to search her home, located at [] South 18th Street, where officers recovered thirty[-]six live .45-caliber rounds, nine live .32-caliber rounds, and forty[-]three live .22-caliber rounds.

After the shooting at the vigil, officers recovered two nine-millimeter fired cartridge casings and a bullet jacket fragment from the area of 19th Street and Snyder Avenue. From the area of 16th and Mifflin Streets, officers recovered three nine-

millimeter fired cartridge casings and two .380-caliber cartridge casings. All seven fired cartridge casings, the two recovered from 19th Street and Snyder Avenue after the shooting at the vigil and the five recovered from 16th and Mifflin Streets, were fired from the same firearm.

On March 16, 2010, the day before the preliminary hearing in this matter, [Bagley] called Christine Leeper, Sabrina Johnson's mother, and offered her \$2,000 if she and Ms. Johnson did not appear in court the next day.

Trial Court Opinion, 6/6/2013, at 2-5 (record citations omitted).

On May 10, 2010, Bagley was charged with all three shootings in two separate criminal complaints.² On March 4, 2011, the Commonwealth filed a motion to consolidate the cases for trial. Following a hearing on April 26, 2011, the pretrial court granted the Commonwealth's motion for consolidation. On January 22, 2013, a jury returned a verdict of guilty on the following charges: (1) at docket number 533-2011, murder, PIC, and carrying a firearm without a license, and (2) at docket number 9928-2010, two counts each of conspiracy, carrying a firearm without a license, PIC, and

² At docket number 533-2011, Bagley was charged in connection with the murder of Dukes. At docket number 9928-2010, he was charged in connection with the shooting at Dukes's vigil at 19th Street and Snyder Avenue, and the later shooting at 16th and Mifflin Streets.

REAP.³ Bagley was sentenced to an aggregate term of life imprisonment on March 11, 2013.⁴ This timely appeal follows.⁵

On appeal, Bagley contends that he is entitled to either a new trial or an arrest of judgment. He raises the following 13 allegations of error, which we have renumbered for purposes of disposition:

- 1) The pretrial court erred in granting the Commonwealth's motion for consolidation of the cases since the facts of the shootings demonstrated more differences than similarities;
- 2) The trial court erred in permitting the Commonwealth to present evidence of Bagley's prior possession of a gun and his threat to others since it constituted evidence of prior unrelated criminal activity;

³ All of the remaining charges were either quashed or *nolle prosequed*.

⁴ At docket number 533-2011, Bagley was sentenced to life imprisonment for the first degree murder charge, and a concurrent term of one to two years' imprisonment for the firearms charge. At docket number 9928-2010, Bagley was sentenced to a term of two to four years' imprisonment for a firearms charge, and concurrent terms of one to two years' imprisonment for both charges of REAP. The REAP charges were ordered to run consecutively to the firearms charge for an aggregate term of three to six years' imprisonment. In addition, the three to six year term of imprisonment at docket number 9928-2010 was ordered to run consecutive to the term of life imprisonment at docket number 533-2011. No further penalty was imposed on the remaining charges.

⁵ On March 15, 2013, the trial court ordered Bagley to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). After receiving several extensions of time due to the unavailability of the trial transcript, Bagley finally complied with the court's directive on May 20, 2013.

- 3) The trial court erred in permitting the Commonwealth to present irrelevant, hearsay evidence that Bagley admitted he had a problem with witness Daud Riley;
- 4) The trial court erred in permitting the Commonwealth to present irrelevant evidence of ammunition recovered from Bagley's residence;
- 5) The trial court erred in permitting the Commonwealth to present hearsay statements of Riley, which were included in witness Bernard Bryant's police statement;
- 6) The trial court erred in permitting the Commonwealth to present hearsay statements of Sabrina Johnson, identifying Bagley as the shooter, which were made to two police officers on the night of the shootings;
- 7) The trial court erred in permitting the Commonwealth to present the testimony of Detective Thomas Gaul that Bryant was scared when he gave a statement to police;
- 8) The trial court erred in permitting the Commonwealth to present ballistics testimony from Detective Kenneth Fleming who was not qualified as a ballistics expert;
- 9) The trial court erred, and impermissibly shifted the burden of proof to the defense, when it permitted the Commonwealth to cross-examine defense alibi witness Ronald Johnson concerning whether he had telephone records to support his testimony that he called Bagley for a ride on the night of the murder;
- 10) The trial court erred in permitting the Commonwealth to argue, during closing arguments, (a) that Bagley could have dropped a live .45 caliber round at the murder scene, (b) that Bagley unlawfully possessed a gun several weeks before the murder; (c) that Sabrina Johnson was reluctant to testify in a packed courtroom, and (d) that Bagley did not challenge the ballistics evidence;
- 11) The trial court erred in refusing Bagley's request for a jury charge on self-defense;
- 12) The trial court erred in instructing the jury on the concept of transferred intent when there was no definitive evidence that Bagley intended to kill Riley, as opposed to the murder victim, on the night of the shooting; and

13) The evidence was insufficient to support the verdict.

See Bagley's Brief, at 20-74.

The trial court, in its Rule 1925(a) opinion, provided a thorough summary of the applicable statutory and case law, and a well-reasoned discussion of the issues raised by Bagley on appeal. **See** Trial Court Opinion, 6/6/2013, at 6-24 (finding (1) consolidation of the cases was proper under Pa.R.Crim.P. 582; (2) evidence that, a few weeks prior to the murder, Bagley had threatened the murder victim and another witness with a firearm, similar to the one used in the murder, was admissible to demonstrate Bagley had access to weapons similar to the murder weapon; (3) evidence that Bagley had a problem with Riley was relevant as part of the natural history of the case since the victim was killed after he agreed to walk Riley home; (4) evidence of the ammunition uncovered at Bagley's residence was relevant because it "showed that [Bagley] has ammunition for the exact weapon used in the murder as well as weapons similar to the ones used in the perpetration of the crime;"⁶ (5) the statements of Riley (a) that he asked the murder victim to walk him home because he was afraid and (b) that Bagley shot the murder victim, which were included in Bryant's police statement, were admissible under the present sense impression and excited utterance exceptions to the hearsay rule; (6) the statements of Sabrina Johnson to police officers at the scene of the third shooting were admissible

⁶ **Id.** at 10.

under the excited utterance exception to the hearsay rule;⁷ (7) the testimony of Detective Gaul that Bryant was scared when he gave his police statement was permissible because it was based on the detective's own personal observations; (8) the testimony of Detective Fleming, that a nine millimeter firearm would not be able to fire a .32-caliber or .22-caliber round was admissible based on the detective's personal knowledge and use of a nine millimeter service weapon; (9) the Commonwealth's cross-examination of Ronald Johnson regarding whether he had any telephone records to support his testimony that he called Bagley for a ride on the night of the murder was permissible and did not shift the burden of production to the defense; (10) the alleged objectionable statements of the Commonwealth during closing argument were based upon reasonable inferences drawn from the evidence presented at trial; (11) the trial court was not required to give a charge on self-defense when Bagley presented an alibi defense, and, therefore, denied that he used deadly force; (12) the charge on transferred intent was proper where the facts raised a permissible inference that Bagley intended to shoot Riley, rather than the murder victim, on the night in question; and (13) the evidence was sufficient to prove (a) that Bagley was

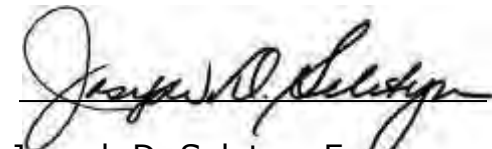
⁷ Although, in its opinion, the trial court only mentions the testimony of Officer Joseph Cosgrove, Bagley contends Officer Jason Troccoli also testified to hearsay statements made by Johnson. Our review of the record, however, reveals that Sabrina Johnson's statements, like those recalled by Officer Cosgrove, were made shortly after the third shooting and, also constituted excited utterances. **See** N.T., 1/17/2013, at 71-74.

the shooter in all three incidents, (b) that he possessed the specific intent to kill when he shot the murder victim, and (c) that he recklessly endangered the lives of many people when he fired shots into a crowd at the murder vigil and near pedestrians later that evening).

Our independent review of the record reveals ample support for the trial court's conclusions. Therefore, we adopt the sound reasoning of the Honorable Barbara A. McDermott as dispositive of Bagley's claims raised on direct appeal, and affirm the judgment of sentence.

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: 4/30/2014