

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

HAROUN ABDULHAMID ELHADI

Appellant

No. 954 MDA 2015

Appeal from the Judgment of Sentence April 29, 2015
In the Court of Common Pleas of Schuylkill County
Criminal Division at No(s): CP-54-CR-0001296-2014

BEFORE: PANELLA, J., LAZARUS, J., and JENKINS, J.

MEMORANDUM BY LAZARUS, J.:

FILED FEBRUARY 01, 2016

Haroun Abdulhamid Elhadi appeals from the judgment of sentence, entered in Court of Common Pleas of Schuylkill County, following his conviction by a jury for conspiracy to commit burglary¹ and false identification to law enforcement.² After review, we affirm.

The trial court summarized the relevant facts as follows:

On July 16, 2014, the home of Jody Gamrak at 811 West Race Street, Pottsville, was burglarized and a safe she had in a third floor bedroom was stolen. Shortly prior to the incident occurring, Gamrak had taken \$2,500.00 from the safe and had left her house. [Co-defendants Daniel Lopez, Jr., Brent Newman, and Loron Irving] and a juvenile associate of theirs at the time of the burglary – [J.S.] – had been to Gamrak's house

¹ 18 Pa.C.S. § 903.

² 18 Pa.C.S. § 4914.

previously. [J.S.] visited the Gamrak home daily and had been told that Gamrak had \$7,000.00 in the safe.

On July 16, 2014, Gamrak left her house about 1:30 – 1:45 p.m. The safe was then in her bedroom. Video surveillance cameras on a street near Gamrak's house depict the four adult co-defendants and the juvenile walking toward her neighborhood at 2:38 p.m. About the same time, Gamrak's neighbor, Mary Schenck, saw the five individuals walk to the back of Gamrak's house. The rear of Schenck's house faced the rear of Gamrak's house. Schenck saw [J.S.] and [Elhadi] walk along a car in Gamrak's carport. [J.S.] made a gesture with his arm toward Gamrak's house, and then he and [Elhadi] left the area. The other three men went in the carport to the rear of Gamrak's house and descended steps that led to the house.

Within a short time, Schenck saw the three men emerge from the rear of Gamrak's property. One man (Lopez) was carrying a safe. Another (Irving) was running in front of Lopez. Because Schenck thought the events were suspicious, she took a photograph of Lopez carrying the safe with her cell phone and called "911." Her call was placed about five minutes after the men had been depicted on the video walking toward Gamrak's house. When the men saw her, they ran towards North Ninth Street.

Schenck continued to watch Lopez and saw him place something (she assumed the safe) down outside her view by a red car on Speacht Street. She no longer saw the safe but did see Lopez and Irving proceed toward North Ninth Street. Shortly thereafter, a burgundy colored car with Maryland plates came "flying through the alley." Schenck gave "911" the car's license plate number. The car stopped and the item that had been placed by the red car which Schenck assumed was the safe was thrown in the back seat of the burgundy car which then "flew around" Ninth Street. Following the "911" call, police arrived promptly at Schenck's home. As she was speaking to them she again saw the burgundy car and alerted police that it was going down Speacht Street. Later that afternoon, Schenck identified the people she had seen at Gamrak's house – including [Elhadi] – at the police station.

Pottsville Patrolman Grant Yoder was dispatched for a "robbery in progress" at about 2:45 p.m. on July 16, 2014. He met with Schenck who told him that the car with the Maryland plates had

just travelled east on Speacht Street. Yoder left Schenck and found the vehicle parking on the west end of Speacht Street. When its driver saw Yoder, he fled with the vehicle. Upon encountering the street blockaded by police, the driver (Newman) got out of the vehicle and ran. He was found by police hiding in a yard and captured a short time later. Sergeant Mark O'Toole, who was also dispatched for and responded to the incident, detained the burgundy car's right rear passenger (Irving).

During the investigation, police learned that some of the suspects were believed to have fled to the home of Jill Shellhammer which was located around the block from Gamrak's home. After arriving at the home, police were told by Shellhammer that people were not in her home and that police needed a search warrant to look inside. Some police returned to the police station to strategize while other police maintained watch over the perimeter of Shellhammer's house to intercede if anyone attempted to enter or leave. Ten to fifteen minutes after, Shellhammer informed police that she agreed to have two people the police were looking for come out of the house. However, Shellhammer would not allow police to enter her home. [J.S.] and Lopez - the latter being Shellhammer's boyfriend - exited the house. Thereafter, Shellhammer indicated that she would allow the police to search her home. A consent to search form was signed at 4:00 p.m. and police entered the house.

Papers with Gamrak's name, such as bills and receipts, were found by police in [a] trash can in Shellhammer's second[-]floor bedroom. A safe owned by Shellhammer located in that room contained tax forms, social security cards and birth certificates belonging to Gamrak. Sergeant O'Toole searched the basement of the home where he found [Elhadi] lying on the ground covered by a mattress and furniture. Under the mattress and next to [Elhadi] was Gamrak's safe with its door removed. [Elhadi] and the safe had not been visible to O'Toole until the furniture and mattress were moved. O'Toole took [Elhadi] into custody and secured the safe.

Pottsville Patrolman James Englert had also been dispatched to respond to the reported burglary and fleeing suspects. After [Elhadi] was arrested, searched at the scene and taken to the police station at Pottsville City Hall, Englert asked [Elhadi] to identify himself. [Elhadi] said that his name was Pedro

Gonzalez. At the time of his arrest, police had recovered a Pennsylvania driver's license from [Elhadi] in the name of Gonzalez. In response to Englert's questions, [Elhadi] provided – as being his – a date of birth and address matching those on the license of Gonzalez.

However, Englert found that the J-Net records (Pennsylvania driver license records with photo ID's) included a photo of Gonzalez which displayed a different hairline than that of [Elhadi], and depicted a tattoo on the neck, which [Elhadi] did not have. Englert once again asked [Elhadi] whom he was. [Elhadi] again responded saying he was Pedro Gonzalez with the date of birth and address on Gonzalez's license. When the officer mentioned the absence of the tattoo depicted on the J-Net photo of Gonzalez, [Elhadi] responded that it had been removed from his neck. After the officer mentioned the different hairline, [Elhadi] again said he was the "guy" on the license. Eventually, following further investigation, [Elhadi's] true identity was learned.

The only defense witness to testify at trial was Lopez. Lopez claimed that on July 16, 2014, he and his four friends were at Shellhammer's home. Because Shellhammer was sleeping and his friends were making noise, Lopez said that they should go to Gamrak's house. After the five walked to Gamrak's home and received no response to knocks on the doors, Lopez claimed that he saw a safe on the ground outside the home, shook it, heard some rustling of papers and told Irving that the safe was his. Because he saw Schenck looking at him, Lopez testified that he got nervous, put the safe down, found Newman and asked to use Newman's car. However, Newman insisted upon driving and drove Lopez and Irving to the location of the safe. After the safe was put in the car, Lopez claimed that they drove to Shellhammer's house where Lopez pried off its door. Within minutes, police arrived. Lopez testified that he told [J.S.] and [Elhadi] that the police were at the home and when they (police) knocked on the door, Lopez ran upstairs.

Trial Court Opinion, 7/17/15, at 2-6.

Following a jury trial, Elhadi was convicted of the aforementioned charges on February 4, 2015. On April 29, 2015, Elhadi was sentenced to 18 to 36 months' incarceration followed by two years' probation for the

conspiracy conviction³ and a concurrent sentence of four to twelve months' incarceration for the false identification conviction. Elhadi filed a timely notice of appeal and concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). On appeal, Elhadi raises the following issue for our review:

Whether the [t]rial [c]ourt commit[ed] reversible error when it allowed the jury to consider the charge of criminal conspiracy.⁴

Brief for Appellant, at 5.

In considering sufficiency of the evidence claims,

we must determine whether the evidence admitted at trial, and all reasonable inferences drawn therefrom, when viewed in a light most favorable to the Commonwealth as verdict winner, support the conviction beyond a reasonable doubt. . . . Where there is sufficient evidence to enable the trier of fact to find every element of the crime has been established beyond a reasonable doubt, the sufficiency of the evidence claim must fail. Of course, the evidence established at trial need not preclude every possibility of innocence and the fact-finder is free to believe all, part, or none of the evidence presented.

³ This sentence included a Recidivism Risk Reduction Incentive minimum sentence of 13.5 months' incarceration.

⁴ As the trial court noted, "[f]ollowing the close of the Commonwealth's case, [Elhadi] did not move for judgment of acquittal. However, after the receipt of all the evidence, [Elhadi] moved for 'dismissal' of the conspiracy charge." Trial Court Opinion, 7/17/15, at 2. Elhadi stated the issue in his concise statement of errors as "the evidence against him was legally insufficient and the [t]rial [c]ourt should have dismissed his case after the close of the Commonwealth's case." Statement of Matters Complained of on Appeal, 6/24/15, at 1.

Commonwealth v. Watley, 81 A.3d 108, 113 (Pa. Super. 2013) (en banc). The Commonwealth can satisfy its burden via wholly circumstantial evidence. ***Id.***

Elhadi challenges the sufficiency of the evidence regarding his conviction for conspiracy in relation to the underlying crime of burglary. Burglary is defined as: “enter[ing] a building or occupied structure, or separately secured or occupied portion thereof that is adapted for overnight accommodations in which at the time of the offense no person is present” with the intent to commit a crime inside the structure. 18 Pa.C.S. § 3502(a)(2).

To find that a defendant is guilty of conspiracy, the following must be determined by the fact-finder:

- (1) the defendant intended to commit or aid in the commission of the criminal act;
- (2) the defendant entered into an agreement with another (a “co-conspirator”) to engage in the crime; and
- (3) the defendant or one or more of the other co-conspirators committed an overt act in furtherance of the agreed upon crime.

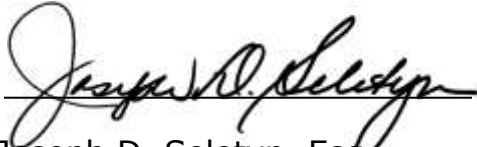
Commonwealth v. Murphy, 844 A.2d 1228, 1238 (Pa. 2004). In most cases, direct evidence of the defendant’s criminal intent or agreement to commit a crime does not exist. ***Id.*** Thus, “the defendant’s intent as well as the agreement is almost always proven through circumstantial evidence, such as by ‘the relations, conduct or circumstances of the parties or overt acts on the part of the co-conspirators.’” ***Id.*** (quoting ***Commonwealth v. Spatz***, 716 A.2d 580, 592 (Pa. 1998)).

In this matter, Elhadi admits that a burglary took place, as proven through video surveillance and Schenck's testimony. Thus, Elhadi's argument is limited to his assertion that he was not involved in a conspiracy to burglarize Gamrak's home. In support of this claim, Elhadi argues that he was not present while the burglary took place. Elhadi points to the evidence adduced at trial that shows that Elhadi initially walked toward Gamrak's house with four other people, but that he and J.S. walked in a different direction as the other three individuals entered Gamrak's house and removed the safe. Additionally, Elhadi asserts that he did not know that the safe had been stolen when he was found hiding in close proximity to it in Shellhammer's basement.

We find Elhadi's argument that he was not present during the burglary to be without merit because his co-conspirators satisfied the overt act element of conspiracy by completing the burglary. **Murphy, supra**. When considered in the light most favorable to the Commonwealth as the verdict winner, Elhadi's approach toward Gamrak's house with the other perpetrators combined with his hiding place in close proximity to the safe provide sufficient circumstantial evidence to demonstrate his intent and agreement with the others to facilitate the burglary of Gamrak's house. **Watley, supra, Murphy, supra**. Thus, the trial court did not err in permitting the jury to consider the criminal conspiracy charge, and the evidence was sufficient to sustain Elhadi's conviction.

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: 2/1/2016