NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. JOSHUA RAHEEM, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 3128 EDA 2015

Appeal from the Judgment of Sentence April 22, 2015
in the Court of Common Pleas of Philadelphia County
Criminal Division at Nos.: CP-51-CR-0002181-2014
CP-51-CR-0002182-2014
CP-51-CR-0002183-2014

BEFORE: BOWES, J., SOLANO, J., and PLATT, J.*

MEMORANDUM BY PLATT, J.: **FILED May 30, 2017**

Appellant, Joshua Raheem, appeals from the judgment of sentence imposed following his jury conviction of one count each of first-degree murder and possession of an instrument of a crime, and two counts each of attempted murder and aggravated assault.[1] We affirm.

We take the following relevant facts and procedural history of this case from our independent review of the certified record. On June 6, 2013, shortly before 8:00 p.m., C.J., John Carrington, and Christopher Haskett were gathered on the front porch of C.J.'s mother's home, playing with his

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* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S.A. §§ 2502(a), 907(a), 901(a), and 2702(a), respectively.

niece.[2] Appellant walked by on the sidewalk in front of the home, wearing a yellow hoodie. Minutes later, Appellant returned to the house and fired twelve gunshots at the victims from the bottom of the porch steps. Appellant then fled the scene. Police responded and transported the victims to the hospital. Carrington sustained seven gunshot wounds, with a bullet hitting his heart and right lung, and he died from his injuries. C.J. sustained a gunshot wound to his back and was hospitalized for two weeks. Haskett was treated for bullet wounds to his left knee and right wrist.

Videotape surveillance cameras at a small grocery store located in close proximity to C.J.'s home captured footage of Appellant on the day of the shooting at 7:45 p.m., wearing a yellow hoodie and carrying a semi-automatic handgun in his right hand. Appellant's cousin, Kenneth Perry, was in the store before the shooting and observed Appellant walk by outside. Perry then heard several gunshots, and, seconds later, observed Appellant run up the street. During the investigation, police learned that Appellant had been shot in the right hand in April of 2013, resulting in the amputation of his ring finger, and he attributed his injury to a man who was friends with Carrington and Haskett.

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[2] C.J. was fifteen years old at the time of the incident. Carrington and Haskett were twenty-one and twenty-two years old, respectively. (***See*** N.T. Trial, 4/15/15, at 116; N.T Trial, 4/16/15, at 87; Trial Court Opinion, 8/26/16, at 2).

Appellant proceeded to trial on April 15, 2015,[3] and the jury found him guilty of the above-referenced offenses on April 22, 2015. On that same day, the trial court sentenced Appellant to a term of life imprisonment without the possibility of parole, and a concurrent aggregate term of not less than forty nor more than eighty years. Appellant's timely post-sentence motions were denied by operation of law on August 31, 2015. This timely appeal followed.[4]

Appellant raises the following issues for our review:

> I. Is [Appellant] entitled to an arrest of judgment on the charge of murder in the first degree and two counts of attempted murder where there is no evidence in this case which would have proved beyond a reasonable doubt that [Appellant] acted with specific intent to kill or premeditation?
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> II. Is [Appellant] entitled to a new trial where the verdict is not supported by the greater weight of the evidence?

(Appellant's Brief, at 3) (unnecessary capitalization omitted).

In his first issue, Appellant challenges the sufficiency of the evidence supporting his first-degree murder and attempted-murder convictions. (***See*** Appellant's Brief, at 8-10). Appellant concedes that, under the relevant standard of review, the evidence showed that he was the individual who

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[3] Appellant's first trial, held in August 2014, ended in a mistrial because of a hung jury.

[4] Appellant timely filed a court-ordered concise statement of errors complained of on appeal on October 20, 2015. The trial court entered an opinion on August 26, 2016. ***See*** Pa.R.A.P. 1925.

fired the gun. (***See id.*** at 10). However, he disputes that the Commonwealth established premeditation or specific intent to kill, and asserts that the evidence demonstrated only that "[he] was walking down the street and then . . . opened fire in an indiscriminate fashion . . . for no clear reason and perhaps in losing his own temper[.]" (***Id.***; ***see id.*** at 8-9). This issue does not merit relief.

> The standard we apply in reviewing the sufficiency of the evidence is whether viewing all 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. Richard, 150 A.3d 504, 516 (Pa. Super. 2016) (citation omitted).

> To sustain a conviction for murder of the first degree, the Commonwealth must prove that: "(1) a human being was unlawfully killed; (2) the person accused is responsible for the killing; and (3) the accused acted with malice and specific intent to kill." ***Commonwealth v. Hitcho***, [633] Pa. [51], 123 A.3d 731, 746 (2015); 18 Pa.C.S.A. § 2502(a). "Section 2502 of the Crimes Code defines murder of the first degree as an 'intentional

> killing.'" ***Commonwealth v. Diamond***, 623 Pa. 475, 487, 83 A.3d 119, 126 (2013)[, *cert. denied*, 135 S.Ct. 145 (2014)] citing 18 Pa.C.S.A. § 2502(a), (d). "[T]he period of reflection required for premeditation to establish the specific intent to kill 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 possessed the conscious purpose to bring about death." ***Hitcho***, ***supra***[], 123 A.3d at 746.

Commonwealth v. Roche, 153 A.3d 1063, 1070–71 (Pa. Super. 2017).

Criminal attempt is defined as follows:

> **(a) Definition of attempt.—**A person commits an attempt when, with intent to commit a specific crime, he does any act which constitutes a substantial step towards the commission of that crime.

18 Pa.C.S. § 901(a). For a defendant to be found guilty of attempted murder, the Commonwealth must establish specific intent to kill. Therefore, if a person takes a substantial step toward the commission of a killing, with the specific intent in mind to commit such an act, he may be convicted of attempted murder. The Commonwealth may establish the *mens rea* required for first-degree murder, specific intent to kill, solely from circumstantial evidence. Further, our Supreme Court has repeatedly determined that [t]he use of a deadly weapon on a vital part of the body is sufficient to establish the specific intent to kill.

Commonwealth v. Tucker, 143 A.3d 955, 964 (Pa. Super. 2016), *appeal denied*, 2017 WL 401331 (Pa. filed Jan. 30, 2017) (quotation marks and case citations omitted).

Here, the evidence shows that Appellant, armed with a semi-automatic handgun, walked by C.J.'s home while the three victims socialized on the front porch. (***See*** N.T. Trial, 4/15/15, at 168; N.T. Trial, 4/16/15, at 90-91). Minutes later, Appellant returned to the home and opened fire on all

three men. (***See*** N.T. Trial, 4/16/15, at 90, 92). Appellant shot at them twelve times from the foot of the porch stairs, striking each of them. (***See id.*** at 92, 155). Carrington sustained gunshot wounds all over his body, and one of the bullets entered the center of his chest, hitting his heart and right lung—vital parts of his body. (***See*** N.T. Trial, 4/15/15, at 116, 118-19, 121-24); ***see also Tucker***, ***supra*** at 964. C.J. and Haskett also sustained serious gunshot wounds requiring extensive treatment. (***See*** N.T. Trial, 4/16/15, at 96, 160; N.T. Trial, 4/17/15, at 63-64). In addition, the Commonwealth presented evidence of a possible motive—that Appellant shot the victims in retaliation for a previous shooting that resulted in the loss of his right ring finger. (***See*** N.T. Trial, 4/15/15, at 102; N.T. Trial, 4/17/15, at 29-30; N.T. Trial, 4/20/15, at 9, 12).

Viewing the evidence admitted at trial in the light most favorable to the Commonwealth, we conclude Appellant's argument that the evidence was insufficient to support his first-degree murder and attempted murder convictions for shooting Carrington, C.J., and Haskett fails. The record clearly demonstrates Appellant's conduct was premeditated and deliberate, and he "possessed the conscious purpose to bring about death" by firing his semiautomatic weapon a dozen times at the three men. ***Roche***, ***supra*** at 1071 (citation omitted). Appellant's first issue does not merit relief.

Appellant next challenges the weight of the evidence supporting his first-degree murder and attempted-murder convictions.[5] (***See*** Appellant's Brief, at 10-13). Appellant re-hashes his sufficiency claim by again arguing that the evidence failed to show that he acted with premeditation or specific intent to kill. (***See id.*** at 11).[6] Appellant also disputes the jury's finding that he was the shooter by pointing to "contradictions" in the evidence, while inexplicably simultaneously acknowledging that he exhibited "bizarre behavior on the day of the incident [emanating] from rage[.]" (***Id.*** at 11-12). This issue does not merit relief.

Our standard of review is as follows:

> The finder of fact is the exclusive judge of the weight of the evidence as the fact finder is free to believe all, part, or none of the evidence presented and determines the credibility of the witnesses.
>
> As an appellate court, we cannot substitute our judgment for that of the finder of fact. Therefore, we will reverse a jury's verdict and grant a new trial only where the verdict is so contrary to the evidence as to shock one's sense of justice. A verdict is said to be contrary to the evidence such that it shocks one's sense of justice when the figure of Justice totters on her pedestal, or when the jury's verdict, at the time of its rendition, causes the trial judge to lose his breath, temporarily, and causes

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[5] Appellant preserved his weight claim by raising it in his post-sentence motions. ***See*** Pa.R.Crim.P. 607(A)(3).

[6] Appellant inappropriately conflates his weight and his sufficiency claims in the weight section of his appellate brief. (***See*** Appellant's Brief at 10-13); ***see also*** Pa.R.A.P. 2119(a).

> him to almost fall from the bench, then it is truly shocking to the judicial conscience.
>
> Furthermore, where the trial court has ruled on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.

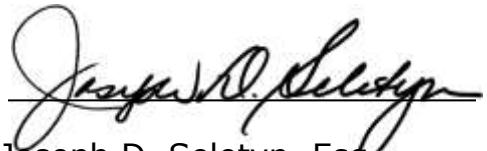
Commonwealth v. Boyd, 73 A.3d 1269, 1274-75 (Pa. Super. 2013) (*en banc*) (citation and quotation marks omitted). "[T]he trial court's denial of a motion for a new trial based on a weight of the evidence claim is the least assailable of its rulings." ***Commonwealth v. Weathers***, 95 A.3d 908, 911 (Pa. Super. 2014), *appeal denied*, 106 A.3d 726 (Pa. 2015) (citation omitted).

Here, at trial, C.J. unequivocally identified Appellant as the man who shot him and his friends. (***See*** N.T. Trial, 4/16/15, at 18, 29, 38, 96-97). Videotape surveillance footage and the testimony of Kenneth Perry placed Appellant in the immediate vicinity of C.J.'s home, with a gun in his hand, minutes before the shooting and seconds after. (***See*** N.T. Trial, 4/15/15, at 166, 168; N.T. Trial, 4/17/15, at 21-23). As discussed above, the record reflects that Appellant deliberately fired a dozen bullets at Carrington, C.J., and Haskett from the foot of the porch while the men unsuspectingly socialized in front of him. (***See*** N.T. Trial, 4/16/15, at 90, 92). The trial court determined that the jury properly performed its function as fact-finder, that the evidence clearly supported its verdict, and that Appellant's weight claim lacked merit. (***See*** Trial Ct. Op., at 11-12). After review of the

record, we conclude that the trial court did not palpably abuse its discretion in ruling on Appellant's weight claim. ***See Boyd***, ***supra*** at 1275. Appellant's final issue on appeal merits no relief. Accordingly, we affirm the judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/30/2017