

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

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| COMMONWEALTH OF PENNSYLVANIA | : | IN THE SUPERIOR COURT OF |
| | : | PENNSYLVANIA |
| | : | |
| v. | : | |
| | : | |
| DOUGLAS LOCKETT | : | |
| | : | |
| Appellant | : | No. 1194 WDA 2018 |

Appeal from the Judgment of Sentence Entered July 16, 2018
 In the Court of Common Pleas of Allegheny County Criminal Division at
 No(s): CP-02-CR-0000680-2017

BEFORE: LAZARUS, J., MURRAY, J., and COLINS, J.*

MEMORANDUM BY LAZARUS, J.:

FILED SEPTEMBER 13, 2019

Douglas Lockett appeals from his judgment of sentence, entered in the Court of Common Pleas of Allegheny County, following his conviction for second-degree (felony) murder,¹ robbery (serious bodily injury),² criminal use of a communication facility³ and conspiracy (robbery).⁴ After careful review, we affirm.

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S. § 2502(b).

² 18 Pa.C.S. § 3701(a)(1)(i).

³ 18 Pa.C.S. § 7512(a).

⁴ 18 Pa.C.S. § 903.

The victim, a seventeen-year-old female, was shot and killed at 3:30 p.m. on September 17, 2016. Two days prior to the shooting, the victim and her twin brother decided to arrange to sell what she believed to be a half kilogram of cocaine.⁵ Steven Cansler, the victim's high school classmate, acted as the middle-man for the alleged transaction. Cansler contacted Lockett, who expressed an interest in buying the narcotics from the victim. Lockett, Cansler, the victim, and the victim's brother communicated with each other for two days via text messages and FaceTime to arrange a meeting near the victim's residence.

On the early morning hours of September 17, 2016, police officers responded to a notification that shots had been fired near the intersection of Belmar and Upland Streets in the Homewood section of the City of Pittsburgh. When the officers arrived at the location, they found the victim nearby lying face down at the bottom of a hill; the victim was pronounced dead at the scene. An autopsy determined the victim's cause of death was a perforating gunshot wound to the chest. Investigators found a pink duffle bag near the victim, which contained a baggie with suspected crack cocaine.⁶ A semi-automatic 9-millimeter (mm) Ruger pistol was found next to the victim. A white iPhone, later determined to belong to Lockett, spent 9-mm shell casings,

⁵ The victim's brother testified that the victim had come into possession of a large amount of what she believed to be cocaine and that his sister had stolen the drugs.

⁶ The suspected narcotics tested negative for any controlled substance.

and a spent 9-mm bullet were also found at the scene. Ballistic evidence established that three weapons were discharged during the incident, a Ruger P95 9-mm semi-automatic pistol, a Taurus 9-mm Millennium pistol, and a .38/.357 caliber revolver. An expert determined that three of the 9-mm casings matched each other and had been fired from the Ruger pistol found next to the victim's body.

After the incident, the victim's brother gave officers access to the contents of his cell phone and identified Cansler and Lockett in Facebook photos. Police interviewed Cansler, who provided information about Lockett and the incident, but identified another individual as the actual shooter. Further investigation revealed that Cansler had fabricated the name of the alleged shooter; however, a third unnamed person, later suspected to be Cansler's brother, was also involved in the incident. Cansler gave the police consent to download the contents of his cell phone; based on the new information found in Cansler's phone, the police interviewed him a second time. Cansler admitted to the police it was Lockett's intention to rob the victim of her drugs, that he knew Lockett owned a Taurus Millennium pistol, and that Lockett had the pistol in his possession when he went to meet the victim. Cansler's phone data also revealed that Lockett never actually intended to conduct a drug transaction.⁷ Text message information contained in the

⁷ Cansler admitted to the police that Lockett and a third party intended to rob the victim because they did not have enough money to purchase the drugs. N.T. Jury Trial, 4/11/18, at 479, 496.

various cell phones belonging to Cansler, the victim's brother, and Lockett corroborated the physical evidence and aided officers in creating a timeline of events leading to the victim's homicide.

Although an arrest warrant was issued for Lockett shortly after the murder, Lockett was not apprehended until November 7, 2016, in Michigan, having taken a Greyhound bus from Pittsburgh to Detroit on October 10, 2016. In April 2018, Lockett was tried before a jury. At trial, Cansler recanted his prior statements to police and testified that Lockett had told him he had the money to purchase the drugs from the victim, denied that any robbery occurred and, instead, alleged that it was "just a deal that went wrong." N.T. Jury Trial, 4/11/18, at 424. Ultimately, the jury found Lockett guilty of the above-stated offenses. On July 16, 2018, the trial court sentenced Lockett to life imprisonment for the murder conviction, followed by a consecutive term of 5-10 years in prison for conspiracy. Lockett filed a timely notice of appeal and court-ordered Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. Lockett presents the following issues for our consideration:

- (1) Was the evidence presented insufficient as a matter of law to sustain the convictions for [s]econd-[d]egree [m]urder and [r]obbery insofar as the Commonwealth failed to establish that [] Lockett intended or attempted to commit a theft, or that he engaged in conduct as a principal or an accomplice in the perpetration of a robbery?
- (2) Was the evidence presented insufficient as a matter of law to establish that [] Lockett conspired to commit a robbery, insofar as the Commonwealth failed to prove beyond a reasonable doubt that he intended to commit a robbery or conspired with another to do so?

Appellant's Brief, at 6.

Lockett claims that the evidence was insufficient to find him guilty of second-degree murder and robbery where he merely intended to purchase drugs from the victim, and where an alleged unknown third person acted independently to rob the victim or shot the victim in self-defense. We disagree.

A determination of evidentiary sufficiency presents a question of law. As such, the appellate court's standard of review is *de novo* and its scope of review is plenary. In reviewing the sufficiency of the evidence, we must determine whether the evidence admitted at trial and all reasonable inferences drawn therefrom, viewed in the light most favorable to the Commonwealth as verdict winner, were sufficient to prove every element of the offense beyond a reasonable doubt. The facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. It is within the province of the fact-finder to determine the weight to be accorded to each witness's testimony and to believe all, part, or none of the evidence. The Commonwealth may sustain its burden of proving every element of the crime by means of wholly circumstantial evidence. Moreover, as an appellate court, we may not re-weigh the evidence and substitute our judgment for that of the fact-finder.

Commonwealth v. Russell, 209 A.3d 419, 426 (Pa. Super. 2019) (citations omitted).

Second-degree murder is defined in our Crimes Code as "[a] criminal homicide . . . committed while [the] defendant was engaged as a principal or an accomplice in the perpetration of a felony." 18 Pa.C.S. § 2502(b). Moreover, a person is guilty of robbery under section 3701(a)(1)(i) "if, in the course of committing a theft, he [] inflicts serious bodily injury upon another[.]" 18 Pa.C.S. § 3701(a)(1)(i). Finally, a person is guilty of

conspiracy with another person or persons to commit a crime "if with the intent of promoting or facilitating its commission he:

- (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or
- (2) agrees to aid such other person or persons in the planning or commission of such crime or an attempt at solicitation to commit such crime.

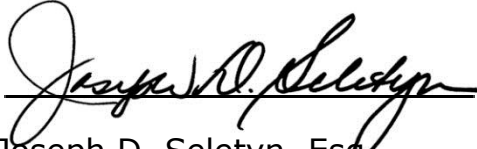
18 Pa.C.S. § 903.

After reviewing the certified record, relevant case law, and the parties' briefs, we find that the trial court properly disposed of Lockett's sufficiency issues on appeal. Specifically, the evidence established that Lockett: conspired with Cansler to rob the victim during the proposed drug transaction; was closely associated with Cansler; had knowledge of the commission of the crime; was present at the scene and participated in the object of the conspiracy, i.e., robbery; was linked to one of the guns fired multiple times at the crime scene; and fled to another state shortly after the shooting.⁸ **See** Trial Court Opinion, 1/17/19, at 14. Accordingly, we rely upon the opinion authored by the Honorable Edward J. Borkowski to affirm Lockett's judgment of sentence. We instruct the parties to attach a copy of Judge Borkowski's decision in the event of further proceedings in the matter.

⁸ "When a person commits a crime, knows that he is wanted therefor, and flees or conceals himself, such conduct is evidence of consciousness of guilt, and may form the basis in connection with other proof from which guilt may be inferred." **Commonwealth v. Babbs**, 499 A.2d 1111, 1113 (Pa. Super. 1985), citing **Commonwealth v. Coyle**, 203 A.2d 782, 789 (Pa. 1964).

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: 9/13/2019