NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. GLENN MCDANIEL, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2489 EDA 2012

Appeal from the Judgment of Sentence March 28, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0003322-2011

BEFORE: BOWES, LAZARUS, and WECHT, JJ.

MEMORANDUM BY BOWES, J.: **FILED DECEMBER 04, 2013**

Glenn McDaniel appeals from the judgment of sentence of life imprisonment without parole imposed by the trial court after it found him guilty of first-degree murder and possession of an instrument of crime ("PIC"). We affirm.

The trial court reported the pertinent facts as follows.

> The instant matter had its genesis in a dispute involving employees for rival tow truck companies, Siani's Towing and Straight Up Towing, that occurred during the early morning hours of October 26, 2010, over which company would get to park a tow truck at the intersection of Frankford and Lehigh Avenues in Philadelphia. On the morning of October 26, 2010, defendant and the victim herein, Ray Santiago, employees of the rival tow truck companies, began arguing and then fighting as did several employees of the rival companies. The victim apparently won his fight with [Appellant].
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> Following the fight, [Appellant] got into his truck and instead of leaving, hit the victim repeatedly with his truck causing fatal blunt trauma injuries to his head, chest, lungs, and

lower extremities. During the incident[,] [Appellant] several times reversed the direction of his truck and ran the victim over and over again several times. The entire incident was video-taped by a security camera located at the scene of the incident.

The incident was witnessed by Mr. Jonathan Marrero, who worked with the victim at Siani's Towing and had worked with [Appellant] at Siani's Towing before he was hired by Straight Up Towing. Marrero was present when the dispute began and observed the victim drive his truck across the street to a parking lot. [Appellant] followed him in his truck and parked behind the victim's vehicle. Both men then got out of their trucks and began fighting. When the fight ended, Marrero saw [Appellant] run the victim over three or four times before he drove away.

An examination of the parking lot following the incident showed skid marks caused by sudden braking as well as blood spatter. There was also visible damage to various parts of the lot caused by [Appellant] who hit a wall and other fixtures with his truck as he maneuvered his truck in the lot while running over the victim's body. Police found the truck [Appellant] used to kill the victim near the scene of the incident, about two houses from [Appellant's] residence. It had damage to various parts of it and had paint missing that matched paint found on items in the parking lot. There was also what appeared to be dried blood in the chrome comprising the grill of the truck.

[Appellant] called police following the incident and told the officer who responded to the call that he had been in a fight with another tow truck driver at Frankford and Lehigh Avenues after the male took a swing at his wife. After the fight ended, he then got in his truck and thought he put it in reverse. However, the truck went forward and hit the victim. [Appellant] put the truck in reverse to back the truck off the victim and then drove home. Upon telling the officer about what had occurred, [Appellant] told the officer where he left his tow truck. The officer then drove to the location of the truck and called other officers to secure it before driving [Appellant] to a hospital where he received some stitches.

Trial Court Opinion, 1/25/13, at 1-3.[1]

Police also took a blood sample from Appellant, who was six-foot, two-inches, 280 pounds, at 6:10 a.m. on the date of the incident. Appellant's blood alcohol content at that time was .10%. Appellant testified that he never intended to hit the victim with his truck. The court rejected Appellant's testimony and convicted him of the aforementioned crimes. Thereafter, the court imposed the mandatory sentence of life imprisonment without parole for the murder count. Appellant filed a timely post-sentence motion and an amended post-sentence motion, which were denied by operation of law. This timely appeal ensued. The court and Appellant complied with Pa.R.A.P. 1925. The matter is now ready for this Court's consideration. The sole issue Appellant raises on appeal is "[w]as not the evidence insufficient to convict [A]ppellant of murder in the first degree where the evidence did not prove beyond a reasonable doubt that [A]ppellant manifested a specific intent to kill?" Appellant's brief at 3.

In deciding a sufficiency challenge, "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." ***Commonwealth v. Brown***, 52 A.3d 320, 323 (Pa.Super. 2012). The

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[1] The trial court did not paginate its opinion; accordingly, we have supplied the page numbers.

Commonwealth can meet its burden "by wholly circumstantial evidence and any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances." ***Id***. This Court cannot "re-weigh the evidence and substitute our judgment for that of the fact-finder." ***Id***. Additionally, "the entire record must be evaluated and all evidence actually received must be considered." ***Id***.

Further, we must draw all reasonable inferences from the evidence in favor of the Commonwealth as the verdict-winner. ***Commonwealth v. Hopkins***, 67 A.3d 817, 820 (Pa.Super. 2013). "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." ***Brown***, ***supra*** at 323. "[T]he 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." ***Id***.

Appellant maintains that the Commonwealth failed to prove, even circumstantially, that he had specific intent to kill the victim. He highlights that he was intoxicated at the time of the incident, and that this intoxication diminished his capacity to form the necessary *mens rea*. According to Appellant, he should have been convicted of third-degree murder based on his diminished capacity defense.

Appellant submits that expert testimony indicated that his BAC at the time of the accident was .15%. He continues that the expert testified that Appellant's alcohol consumption would have impaired his cognitive skills, motor skills and problem solving abilities. Appellant also asserts that the small dimensions of the parking lot, in combination with his intoxication, made it difficult for him to maneuver his truck. Accordingly, he reasons that he did not intend to strike the victim with his vehicle.

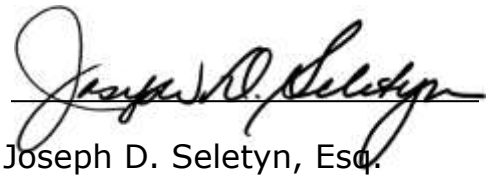
The Commonwealth counters that the video evidence, Mr. Marrero's testimony, and Appellant's own fabrication to police demonstrated that he had the requisite specific intent. It points out that Appellant's expert refused to testify that Appellant did not understand what was transpiring, nor did the expert testify that Appellant was incapable of forming specific intent to kill due to his intoxication.

We agree that Appellant is entitled to no relief. Here, viewing the facts in a light most favorable to the Commonwealth, there was an abundance of evidence to support the court's finding of specific intent. Appellant repeatedly drove a tow truck over the victim. Afterward, he told police that he accidentally struck the victim but when confronted with video evidence of the attack, claimed he could not remember what happened. Further, although Appellant introduced evidence that he was intoxicated, such proof does not *per se* result in a finding of diminished capacity. ***See Commonwealth v. Blakeney***, 946 A.2d 645, 653 (Pa. 2008)

("Intoxication, however, may only reduce murder to a lower degree if the evidence shows that the defendant was 'overwhelmed to the point of losing his faculties and sensibilities.'"); ***Commonwealth v. Hutchinson***, 25 A.3d 277, 312 (Pa. 2011) ("To establish a diminished capacity defense, a defendant must prove that his cognitive abilities of deliberation and premeditation were so compromised, by mental defect or voluntary intoxication, that he was unable to formulate the specific intent to kill. The mere fact of intoxication does not give rise to a diminished capacity defense.") (citations omitted). The intoxication must rise to a level that the defendant cannot form specific intent. ***Hutchinson***, ***supra***. Neither Appellant's BAC nor the expert testimony, even if accepted, supports his overbroad assertion that he could not have formed specific intent.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/4/2013