NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. STEPHEN R. SPRULL Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2509 EDA 2011

Appeal from the Judgment of Sentence August 26, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0002139-2010

BEFORE: PANELLA, J., OLSON, J., and STRASSBURGER, J.*

MEMORANDUM BY PANELLA, J. **FILED MAY 29, 2013**

Appellant, Stephen R. Sprull, appeals from the judgment of sentence entered August 26, 2011, by the Honorable Rose Marie DeFino-Nastasi, Court of Common Pleas of Philadelphia County. Additionally, Sprull's attorney, Sondra R. Rodrigues, Esquire, has filed an application to withdraw as counsel pursuant to ***Anders v. California***, 386 U.S. 738 (1967), and ***Commonwealth v. Santiago***, 602 Pa. 159, 978 A.2d 349 (2009). After careful review, we affirm Sprull's judgment of sentence and grant the petition to withdraw.

We summarize the pertinent facts of the case set forth in the trial court's opinion as follows. On October 26, 2009, at approximately 9:00

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* Retired Senior Judge assigned to the Superior Court.

p.m., Clinton Zimmerman, Jr., (hereinafter referred to as the Decedent), was watching a football game at home on Dungan Street in Philadelphia with his father, Clinton Zimmerman, Sr. The Decedent received two blocked phone calls on his cell phone approximately ten minutes apart. The Decedent answered the second call, walked out of the room, spoke on the phone for approximately one minute and then left the house. Two minutes later, the Decedent's father heard a loud bang outside. He walked onto his porch and saw his son lying on the sidewalk. Several witnesses on the street observed a man in a dark red hooded sweatshirt jump into the passenger seat of a white Cadillac and take off at a high rate of speed. The Decedent subsequently died from a gunshot wound to the back of the head.

That evening, Sprull told a friend, Maurice Hickaday, that he had shot a man who had robbed him several months previously. Sprull additionally called his girlfriend, Sheana Donnell, and told her to tell anyone who asked that Sprull had been with her that night between 9:50 p.m. and 11:00 p.m.

At approximately 11:50 p.m., police officers stopped a white Cadillac matching the description provided by witnesses following the shooting. Sprull, who was driving the vehicle, was arrested. Analysis of the cell phone discovered on the driver's seat of the vehicle revealed that it was the same phone used to call the Decedent prior to his death that evening.

On August 26, 2011, a jury convicted Sprull of murder of the first degree,[1] criminal conspiracy,[2] firearms not to be carried without a license,[3] and possession of an instrument of crime,[4] in the shooting death of Clinton Zimmerman, Jr. Thereafter, the trial court sentenced Sprull to a mandatory term of life imprisonment. This timely appeal followed.[5]

Preliminarily, we note that Attorney Sondra R. Rodrigues has requested to withdraw and has submitted an ***Anders*** brief in support thereof contending that Sprull's appeal is frivolous. The Pennsylvania Supreme Court has articulated the procedure to be followed when court-appointed counsel seeks to withdraw from representing an appellant on direct appeal:

> [I]n the ***Anders*** brief that accompanies court-appointed counsel's petition to withdraw, counsel must: (1) provide a summary of the procedural history and facts, with citations to the record; (2) refer to anything in the record that counsel arguably believes supports the appeal; (3) set forth counsel's conclusion that the appeal is frivolous; and (4) state counsel's reasons for concluding that the appeal is frivolous. Counsel should articulate the relevant facts of record, controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous.

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[1] 18 PA.CONS.STAT.ANN. § 2502(a).
[2] 18 PA.CONS.STAT.ANN. § 903.
[3] 18 PA.CONS.STAT.ANN. § 6106(a)(1).
[4] 18 PA.CONS.STAT.ANN. § 907(a).
[5] On December 6, 2011, this Court remanded the case and ordered the trial court to conduct a hearing pursuant to ***Commonwealth v. Grazier***, 552 Pa. 9, 713 A.2d 81 (1998), on Sprull's motion to pursue his appeal *pro se*. Following the ***Grazier*** hearing, the trial court determined Sprull's waiver of appellate counsel was not voluntary and intelligent and appointed appellate counsel.

Commonwealth v. Santiago, 602 Pa. 159, 178-79, 978 A.2d 349, 361 (2009).

We note that Attorney Rodrigues has complied with all of the requirements of ***Anders*** as articulated in ***Santiago***.[6] We will now proceed to examine the issue set forth in the ***Anders*** brief, which Sprull believes to be of arguable merit.[7]

Sprull first argues that the trial court erred when it admitted prior bad acts evidence – specifically, evidence that Sprull sold the Decedent drugs for two years prior to his death.[8] ***Anders*** Brief, at 12. The Pennsylvania Rules of Evidence provide that evidence of prior bad acts is not admissible to prove character in order to show action in conformity therewith. ***See*** Pa.R.E., Rule 404(b)(1), 42 PA.CONS.STAT.ANN. The admission of prior bad acts is within the sound discretion of the trial court. ***Commonwealth v. Trippett***, 932 A.2d 188, 199 (Pa. Super. 2007).

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[6] Additionally, Attorney Rodrigues confirms that she sent a copy of the ***Anders*** brief to Sprull as well as a letter explaining to Sprull that he has the right to proceed *pro se* or the right to retain new counsel. Although a copy of the letter was not appended to Attorney Rodrigues' brief, as required by this Court's decision in ***Commonwealth v. Millisock***, 873 A.2d 748, 749 (Pa. Super. 2005), counsel has since provided this Court with a copy of the letter sent advising Sprull of his rights.

[7] Sprull has not filed a response to Attorney Rodrigues' petition to withdraw.

[8] Although not stated with specificity, the ***Anders*** brief refers to evidence of the "the relationship between the appellant and the victim." ***Anders*** Brief, at 12.

Instantly, the Commonwealth produced evidence that Sprull – who had sold the Decedent drugs – believed that the Decedent set Sprull up to be robbed of his money and drugs six months prior to the shooting. N.T., 5/10/11 at 10-11. The trial court ruled the evidence of the relationship between Sprull and the decedent admissible as evidence of motive under Pa.R.E. 404(b)(2). "To be admissible under this exception, there must be a specific 'logical connection' between the other act and the crime at issue which establishes that 'the crime currently being considered grew out of or was in any way caused by the prior set of facts and circumstances.'" ***Commonwealth v. Ross***, 57 A.3d 85, 100 (Pa. Super. 2012) (citation omitted). In a criminal case this evidence is admissible only if the probative value of the evidence outweighs its potential for unfair prejudice. Pa.R.E., Rule 404(b)(3).

After review, we find the trial court properly admitted evidence that Sprull sold drugs to prove both a relationship between Sprull and the Decedent and a motive to murder. We first note that Sprull admitted at trial that he sold the Decedent drugs. N.T., Jury Trial, 8/24/11 at 136. This evidence, combined with testimony produced by the Commonwealth that Sprull believed the Decedent was responsible for his robbery six months prior to the shooting, certainly provided the jury with a basis to conclude that the murder charge "grew out of or was in any way caused by the prior set of facts and circumstances." ***See Ross***, ***supra***. Although certainly

prejudicial, we find no danger that the contested evidence would "stir such passion in the [finder of fact] as to sweep them beyond a rational consideration of guilt or innocence of the crime on trial." ***Commonwealth v. Sherwood***, 603 Pa. 92, 116 n.25, 982 A.2d 483, 498 n. 25 (2009), ***cert. denied***, --- U.S. ---, 130 S.Ct. 2415 (2010) (citation omitted). Therefore, we find the trial court did not abuse its discretion when it admitted evidence of Sprull's relationship with the Decedent.

Lastly, Sprull argues that the evidence at trial was insufficient to support his convictions for first degree murder and criminal conspiracy. Our standard of review is as follows.

> The standard we apply in reviewing the sufficiency of 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 that of 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. Helsel, 53 A.3d 906, 917-918 (Pa. Super. 2012) (citation omitted).

"In order to sustain a conviction for first-degree murder, the Commonwealth must demonstrate that a human being was unlawfully killed; the defendant was responsible for the killing; and the defendant acted with malice and a specific intent to kill, *i.e.,* the killing was performed in an intentional, deliberate, and premeditated manner." ***Commonwealth v. Ramtahal***, 613 Pa. 316, 325, 33 A.3d 602, 607 (2011) (citation omitted). The Commonwealth may meet its burden of proof to show that the accused intentionally killed the victim through the use of wholly circumstantial evidence, such as evidence which shows the use of a deadly weapon by the accused on a vital part of the victim's body. ***Commonwealth v. Chine***, 40 A.3d 1239, 1242 (Pa. Super. 2012) (citation omitted). Likewise, malice may also be inferred from the use of a deadly weapon on a vital portion of the victim's body. ***Id***. (emphasis omitted).

Here, as noted, the Decedent died from a gunshot wound to the back of the head – an undoubtedly vital part of the body. Therefore, the evidence clearly showed that the Decedent was murdered with both specific intent and malice. ***See Commonwealth v. Galvin***, 603 Pa. 625, 637, 985 A.2d 783, 790 (2009) (finding evidence victim died from gunshot wound to the head sufficient to support finding of malice and specific intent to kill). Likewise, the Commonwealth's evidence that Sprull believed the Decedent had set him up to be robbed, in conjunction with the calls placed from Sprull's cell phone to lure the Decedent from his home prior to his execution, provide ample evidence of premeditation. Further, Sprull was discovered that evening

driving the same vehicle witnesses observed speeding from the scene of the crime. Accordingly, we do not hesitate to find the evidence was sufficient to support Sprull's conviction for first degree murder.

We likewise find the evidence sufficient to support the conviction for criminal conspiracy to commit murder. A person is guilty of conspiracy with another person to commit a crime if, with the intent of promoting or facilitating its commission, he agrees to aid another person in the planning or commission of such crime. 18 PA.CONS.STAT.ANN. § 903(a)(2).

> The essence of a criminal conspiracy is a common understanding, no matter how it came into being, that a particular criminal objective be accomplished. Therefore, a conviction for conspiracy requires proof of the existence of a shared criminal intent. An explicit or formal agreement to commit crimes can seldom, if ever, be proved and it need not be, for proof of a criminal partnership is almost invariably extracted from the circumstances that attend its activities. Thus, a conspiracy may be inferred where it is demonstrated that the relation, conduct, or circumstances of the parties, and the overt acts of the co-conspirators sufficiently prove the formation of a criminal confederation.

Commonwealth v. Knox, 50 A.3d 732, 740 (Pa. Super. 2012) (citation omitted).

Instantly, witnesses observed Sprull jump into the passenger seat of a waiting vehicle that then took off at a high rate of speed from the area at which the shooting had occurred. The driver of a getaway car can be found guilty as a co-conspirator if it is reasonable to infer that he was aware of the actual perpetrator's intention. ***Commonwealth v. Davalos***, 779 A.2d 1190, 1194 (Pa. Super. 2001), ***appeal denied***, 567 Pa. 756, 790 A.2d

1013 (2001). Sprull was later discovered driving the same vehicle observed fleeing from the scene of the shooting. Based on the foregoing, we find the jury could have reasonably adduced that Sprull acted in concert with another who agreed to aid in the commission of the crime in the capacity of a getaway driver. Accordingly, we find the evidence sufficient to establish all necessary elements of conspiracy.

After examining the issues contained in the ***Anders*** brief and undertaking our independent review of the record, we concur with counsel's assessment that the appeal is wholly frivolous.

Judgment of sentence affirmed. Permission to withdraw as counsel is granted. Jurisdiction relinquished.
Judgment Entered.

Prothonotary

Date: 5/29/2013