

[J-14-2000]
THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 208 Capital Appeal Docket
	:	
Appellee,	:	Appeal from the Judgment of Sentence
	:	entered December 22, 1997, in the Court
v.	:	of Common Pleas of Philadelphia County,
	:	Criminal Division at No. 9611-0316.
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	:	
RASHEED SIMPSON,	:	
	:	ARGUED: February 1, 2000
Appellant.	:	
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CONCURRING OPINION

MR. JUSTICE CASTILLE

DECIDED: July 20, 2000

I join the majority opinion, except for its discussion of the adequacy of the trial court's charge on specific intent, conspiracy and accomplice liability, under Commonwealth v. Wayne, 553 Pa. 614, 720 A.2d 456 (1998), cert. denied, Wayne v. Pennsylvania, 120 S. Ct. 94 (1999), and Commonwealth v. Huffman, 536 Pa. 196, 638 A.2d 961 (1994). As I explained more fully in my concurring opinion in Commonwealth v. Hannibal, 81 Capital Appeal Docket, (Pa. filed June 20, 2000) (Castille, J., concurring), I disagree with the notion, first embraced in Wayne, that the seriousness of the penalty involved in first degree murder prosecutions requires that the specific intent element should be elevated above principles of conspiratorial liability. There is no reason, in the Crimes Code, in experience,

or in logic, to distinguish first degree murder from other crimes in determining the reach of conspiracy liability.

I would return to pre-Wayne law and reinstate the long-standing principle that, in a conspiracy, “the least degree of concert or collusion between parties to an illegal transaction makes the act of one the act of all.” Commonwealth v. Stranz, 328 Pa. 33, 40, 195 A. 75, 79 (1937) (citing Chief Justice Gibson in Rogers v. Hall, 4 Watts 359, 361 (1835)). The Commonwealth should not need to prove that each participant in a conspiracy had the specific intent to kill for liability to attach. If one actor in a conspiracy acts on a specific intent to kill, and that act furthered the common design, then conspiracy liability should attach to all conspirators. Notwithstanding Wayne, the legislature can reestablish this traditional rule through appropriate modifications of the Crimes Code.¹

In this case, the trial court fully and accurately charged the jury on first degree murder, conspiracy and accomplice liability. That is all I would require.

I would also note that the “Huffman issue” here, under any formulation, is not even invoked. This conspiracy specifically contemplated murder. The threat conveyed by the conspirators to the victim’s friend and brother was to pay a ransom or they would kill the victim -- which is exactly what they did. Even a faulty “Huffman charge,” on these facts, would have been harmless. See Wayne, 553 Pa. at 633, 720 A.2d at 465.

¹ The majority characterizes Wayne as “reconciling the conflict between conspiracy liability and the specific intent requirement of first-degree murder.” Slip Op. at 19. The General Assembly can remove that perceived conflict, should it so choose, by addressing the matter.