

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 01-10,961  
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:  
vs. :  
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:  
ANTHONY WILLIAMS, :  
Defendant :  
:

OPINION IN SUPPORT OF ORDER OF JUNE 4, 2003,  
IN COMPLIANCE WITH RULE 1925(A) OF  
THE RULES OF APPELLATE PROCEDURE

After a jury trial held September 9 through September 20, 2002, Defendant was found not guilty of first degree murder, but was convicted of second degree murder, third degree murder, criminal conspiracy, three counts of robbery, and three firearms offenses, in connection with the death of one Kristopher Harris on November 18, 1999. On November 21, 2002, Defendant was sentenced on the conviction of second degree murder to incarceration for the term of his natural life without the possibility of parole. The conviction of third degree murder was determined to merge for sentencing purposes, and Defendant was sentenced to various other terms of incarceration on the remaining convictions. Defendant filed a post-sentence motion on November 27, 2002, and argument thereon was heard February 18, 2003. The Court determined at that time that a transcript would be necessary for resolution of the issues raised in the motion, but the transcript was not completed in a timely fashion and the motion was therefore denied by operation of law. An order to that effect was entered June 4, 2003, and it is that Order from which Defendant has filed the instant appeal.<sup>1</sup>

In his Statement of Matters Complained of on Appeal, Defendant raises sixteen issues for the Court’s consideration, six of which address the sufficiency of the evidence and the

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<sup>1</sup> The Court wishes to note the delay in directing the filing of a Statement of Matters Complained of on Appeal, and in Defendant’s filing of such a Statement on October 10, 2003, were both occasioned by the delay in

remaining ten of which raise certain contentions of error. The Court will initially address the sufficiency of the evidence, and then speak to each contention of error seriatim.

Defendant first challenges his conviction of second degree murder on the grounds that the evidence was insufficient to support a finding that Defendant was a co-conspirator in the commission of a robbery, that Defendant was engaged as a principal or an accomplice in a robbery, or that any actor intended to commit a robbery. He also challenges his conviction of robbery. A review of the evidence, in the light most favorable to the Commonwealth as verdict winner, does, however, support the findings necessary to conclude that the homicide was “committed while defendant was engaged as a principal or an accomplice in the perpetration” of a robbery, 18 Pa.C.S. Section 2502(b), justifying the convictions for both second degree murder, as well as the three counts of robbery.

The Commonwealth presented the testimony of the victim’s girlfriend, who was with him immediately prior to his death, to the effect that he had received a telephone call from one Curtis Robinson, who was known to both the victim and his girlfriend, asking that he obtain marijuana to sell to two other individuals, that the victim then placed a telephone call, and that they then waited for Robinson to arrive to buy the marijuana. The victim’s girlfriend testified that Robinson then arrived, accompanied by two black males unknown to her, and that she opened the door to them and showed them to the victim’s room in the rooming house in which he resided. She identified Defendant as one of the two unknown males, and indicated that Abdul Clark was the other male. She testified that after showing the three men into the victim’s room, she attempted to leave, found her way out blocked by Clark, who was standing in the doorway, said “excuse me” in an attempt to leave the room, and that Clark looked to Defendant and stepped aside after Defendant nodded to Clark. She then left the room and went upstairs. At the time she left the room, a bag of marijuana was on the bed. When she returned to the room immediately after the shooting, having heard the shot, the bag of marijuana was no longer there.

Curtis Robinson testified that Abdul Clark had asked him to get him some marijuana, that he called Kristopher Harris and asked him if he could get the marijuana, that Harris

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preparation of the transcript, which was finally completed on or about September 11, 2003.

indicated that he could not reach his supplier just then but that he had less than half a pound if they wanted that, that he asked Clark if he wanted to buy that amount, that Clark said he did, that he called Harris back and told him they were coming over to buy the marijuana, and that he and Clark and Defendant then went to Harris' residence. Although Robinson testified that he did not know Defendant prior to this occasion, he identified him at trial as the person having accompanied him and Clark to the Harris residence. Robinson further testified that just after entering Harris' room, he, Robinson, went into the bathroom and that when he came out, he saw Defendant pointing a gun at Harris, and then saw him pull the trigger. Robinson testified that after Harris was shot, both Clark and Defendant ran from the room.

Abdul Clark testified that Robinson came to his house and told him that someone had some of his marijuana and asked Clark to ask somebody to go to that person's house with him to get it back. Clark testified that he and Defendant then accompanied Robinson to Harris' house, but that he had asked Defendant prior to getting into Robinson's car if he, Defendant, had a gun on him and that when he said that he did, told him to take it back into the house. Clark testified that Defendant went into his, Clark's, house, and then came back out and got into the car with him and Robinson. They first drove to Robinson's house, where Robinson apparently placed a call to Harris, and then Robinson returned to the car and indicated to Clark that Harris said that he had some of the marijuana. Clark testified that they then drove to Harris' house and were admitted by a girl, and that after the girl left the room, Robinson asked Harris "do you got that?" and then said "give it to him" and pointed at Clark, and then asked to use the bathroom and went into the bathroom. Clark testified that Harris then went to a cabinet and pulled something out, and asked if they had the money. Clark testified that he said no and asked Harris what he was talking about. Clark testified that Harris told him "to buy the stuff" and then Clark told Harris they had not come to buy marijuana but to get Robinson's marijuana back. Clark testified that at that point Defendant pulled out a gun. Clark testified that he tried to get Defendant to leave and went out the door and on his way out heard a bang, and that Defendant then followed him out the door.

Finally, a paramedic who responded to the scene of the shooting testified that he observed the pockets of the victim's pants pulled inside out, and that a wardrobe in the room appeared to have been ransacked.

The three counts of robbery of which Defendant was convicted required the jury to find beyond a reasonable doubt that Defendant, in the course of committing a theft, (1) inflicted serious bodily injury upon another, (2) threatened another with or intentionally put another in fear of immediate serious bodily injury; and (3) committed or threatened immediately to commit any felony of the first or second degree. 18 Pa.C.S. Sections 3701(a)(1)(i), 3701(a)(1)(ii), and 3701(a)(1)(iii). While the testimony of Robinson and Clark conflicts somewhat as far as the reason for the visit to the Harris residence, the Court believes the evidence, as outlined above, was clearly sufficient to support a finding that Defendant, acting either as a principal or an accomplice of Clark, inflicted serious bodily injury upon the victim, threatened him or put him in fear of serious bodily injury, and committed or threatened to immediately commit a felony of the first or second degree, and that such was done in the course of committing a theft.

Next, Defendant challenges the sufficiency of the evidence with respect to the three firearms offenses of which he was convicted, namely, possessing an instrument of crime, 18 Pa.C.S. Section 907(b), former convict not to possess a firearm, 18 Pa.C.S. Section 6105(a)(1), and firearms not to be carried without a license, 18 Pa.C.S. Section 6106(a)(1).

The subsection of Section 907 with which Defendant was charged requires proof beyond a reasonable doubt that Defendant “possesse[d] a firearm or other weapon concealed upon his person with intent to employ it criminally.” The Court believes the testimony of Abdul Clark that at some point during the encounter between Robinson, Defendant, Clark and Harris, Defendant “pulled out a gun” is sufficient to support a finding that Defendant had a firearm concealed upon his person. Further, the evidence as outlined above clearly shows an intent to employ the firearm criminally.

The subsection of Section 6105 with which Defendant was charged requires proof beyond a reasonable doubt that Defendant had been convicted of an offense enumerated in subsection (b) of that Section or that his conduct meets the criteria in subsection (c) of that Section, and that he possessed a firearm in this Commonwealth. The evidence clearly showed that Defendant possessed a firearm in this Commonwealth on November 18, 1999. Further, the Commonwealth introduced into evidence a stipulation that on March 6, 1998, Defendant pled guilty to three counts of delivery of a controlled substance, thus showing that his conduct meets

the criteria in subsection (c), that is, a conviction under the controlled substance act which may be punishable by imprisonment for more than two years.

The subsection of Section 6106 with which Defendant was charged requires proof beyond a reasonable doubt that Defendant carried a firearm concealed on or about his person without a valid and lawfully issued license. As noted above, the evidence was sufficient to show that Defendant carried a firearm concealed on or about his person, and the stipulation regarding Defendant's conviction for violations of the Controlled Substance Act support a finding that he could not have had, and therefore did not have, a valid and lawfully issued license.

Finally, with respect to Defendant's challenges to the sufficiency of the evidence, Defendant contends the evidence was insufficient to support the conviction of any homicide offense. As noted above, however, the evidence was sufficient to convict Defendant of second degree murder. This challenge will therefore be addressed no further.

With respect to Defendant's contentions of trial court error, Defendant first contends the Court erred by failing to suppress two identifications of Defendant made at the time of the preliminary hearing, one by Curtis Robinson and one by Jessica Kodak. Defendant contends the circumstances of the identifications were unduly suggestive. The Court addressed this contention, originally made in Defendant's Supplemental Suppression Motion, in an Opinion and Order dated April 10, 2002. The Court will rely on that Opinion for purposes of the instant appeal.

Next, Defendant contends he cannot be convicted of both second and third degree murder for the same killing. The Court first notes that the issue has been waived; when the jury asked the Court during deliberations whether Defendant could be convicted of more than one count of murder, counsel agreed the Court could answer "yes." N.T., September 20, 2002 at 65-66. In any event, charges of first, second and third degree murder are not mutually exclusive and there is no inconsistency in convictions of more than one count. See Commonwealth v. Meadows, 787 A.2d 312 (Pa. 2001).

Next, Defendant contends the Court erred by admitting certain portions of recorded telephone calls placed by Defendant from the Lycoming County prison, arguing that the prejudicial effect of the admitted statements outweighed their probative value. Prior to playing

the recordings for the jury, the Court heard argument from Defendant and the Commonwealth on those portions to which Defendant objected, and ruled on each objection based on the arguments offered thereon. The Court will rely on the reasons given for its rulings as found in the transcript of the proceedings, and refers the reader to the Notes of Testimony from September 17, 2002, at pages 22-74.

Next, Defendant contends the Court erred in “admitting evidence of a handgun presented as a facsimile of a handgun allegedly possessed by [Defendant] where no handgun was found, and where the prejudice of the admission outweighs the probative value.” The Court allowed the Commonwealth to show a handgun to one of its witnesses after that witness testified that just before the victim was shot, he saw Defendant holding a gun and described it as “a gray silver gun, like a scope, revolver, pretty big, like Dirty Harry’s.” N.T., September 11, 2002 at 27. The District Attorney explained to the jury that the gun about to be shown was not the murder weapon, that he had purchased it at a local gun shop several days previously and that it was being shown just as would a diagram. *Id.* at 33-34. The witness was then shown the gun, marked as Commonwealth’s Exhibit No. 25, and asked if it looked like the gun he saw in the Defendant’s hand. *Id.* at 34. The witness answered “yes.” *Id.* The Court believes the demonstrative use of the handgun, which was emphasized by the Commonwealth to not be the murder weapon, was not prejudicial and its admission therefore not error. Defendant also contends that this presentation constituted “surprise”, “against the rules of discovery”. Defendant points to no specific rule that has been violated, however, and therefore the matter will not be addressed further.

Next, Defendant contends the Court erred when it allowed the Commonwealth to impeach a defense witness with evidence of a forgery conviction which was more than ten years old. This issue has been waived as no objection to the evidence was made at the time of its introduction. See N.T., September 19, 2002 at 26-27.

Next, Defendant contends the Court erred by allowing the Commonwealth to exercise a peremptory challenge to strike the only African-American in the jury pool. The Court assumes by this contention of error that Defendant is making a Batson claim. At the time of jury selection, the Commonwealth anticipated such a claim and offered as its race-neutral reason for the challenge that it believed the prospective juror was a victim of a sexual assault by a police

officer during a traffic stop and that the matter was under investigation. N.T., September 9, 2001 at 159-175. The Court credited the Commonwealth's explanation and found such reason to be facially valid and without discriminatory intent. Thus, in accordance with the Batson test as outlined in Commonwealth v. Harris, 817 A.2d 1033 (Pa. 2002), the Commonwealth's challenge was upheld. Even upon further review in response to the instant appeal, the Court does not believe Defendant has shown purposeful discrimination such as would have required a denial of the Commonwealth's challenge.

Next, Defendant contends the Court erred in admitting into evidence the videotaped deposition of Diandre Williams, specifically contending that the Court erred in finding the witness unavailable at the time of trial as the subpoena issued and served on Diandre Williams directed him to appear at the District Attorney's office rather than at the Courtroom in which the trial was being held. The Court found the alleged defect in the subpoena to be insignificant and of no moment in the Court's determination of unavailability. Upon further review in connection with the instant appeal, the Court finds no reason to alter its ruling.

Next, Defendant contends the Court erred in failing to grant Defendant's request for a mistrial based on prosecutorial misconduct alleged to have occurred with respect to a potential defense witness, Wesley Smith. The Court notes that defense counsel sought to have the charges dismissed, rather than the declaration of a mistrial, but in any event, offered no evidence to support its claim of prosecutorial misconduct. This contention will therefore be addressed no further.

Finally, Defendant contends the Court erred by not allowing certain documents, which were introduced into evidence, to be sent out with the jury during deliberations. Specifically, Defendant refers to the criminal complaint and affidavit of probable cause in the matters of Commonwealth versus Diandre Williams, No. 00-11,115, and Commonwealth versus Abdul Clark, No. 98-10,843. Defendant contends Rule of Criminal Procedure 646 supports his position. Rule 646 simply permits such exhibits (with certain exceptions not here relevant) "as the trial judge deems proper", however. Pa. R. Crim. P. Rule 646. Inasmuch as the subject matter of the complaints and affidavits at issue here had been the subject of testimony, the Court believed it inappropriate to send them out. See Commonwealth v. Bridges, 757 A.2d 859 (Pa. 2000) (not error to refuse to send out letter the contents of which had been the subject of

testimony).

In conclusion, the Court finds Defendant's claims of error to be without merit, and the evidence to have been sufficient to support all charges of which Defendant was convicted. The Court therefore believes the jury's verdict should be affirmed.

Dated: November 7, 2003

By The Court,

Dudley N. Anderson, Judge

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