

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
DARNELL QUINN,	:	
	:	
Appellant	:	No. 1502 EDA 2013

Appeal from the Judgment of Sentence Entered May 1, 2013,
In the Court of Common Pleas of Philadelphia County,
Criminal Division, at No. CP-51-CR-0010058-2012.

BEFORE: SHOGAN, OTT and PLATT*, JJ.

MEMORANDUM BY SHOGAN, J.:

FILED MAY 15, 2014

Appellant, Darnell Quinn, appeals from the judgment of sentence entered on May 1, 2013, following his conviction at a bench trial of robbery, attempted theft, simple assault, and conspiracy. We affirm.

The trial court summarized the factual history as follows:

On April 7, 2012, at approximately 9:30 pm., Police Officer Joseph Luce and his partner, Police Officer Kuzowsky (first name not given) were in a semi-marked car (no visible lights on the outside of the vehicle) on routine highway patrol when Officer Luce observed three (3) black males approach a white male (later identified as William Riffe) walking northbound on the 3100 block of Kensington Avenue and G Street. Officer Luce observed [Appellant] and one of the other males (a juvenile) walk up to the white male. The juvenile grabbed Mr. Riffe by the collar and punched him in the eye. As Mr. Riffe was hunched over, [Appellant] and the juvenile began ripping the pocket of Mr. Riffe’s hoodie. At that time, the third male (who was standing on the corner in front of a Chinese store), looked in the direction of the officers and began yelling, “Yo! Cops, Cops,

*Retired Senior Judge assigned to the Superior Court.

Cops.” [Appellant] and the juvenile stopped grabbing at Mr. Riffe’s pocket. All three males were arrested at the scene. (N.T. 3/15/12, pp. 22–38). [Appellant] did not testify.

Trial Court Opinion, 8/15/13, at 2.

The trial court sentenced Appellant on May 1, 2013, to a term of incarceration of twenty-one to forty-two months for robbery and ten years of probation for conspiracy. No further penalty was imposed for attempted theft or simple assault. N.T. (Sentencing), 5/1/09, at 23–24. Appellant filed post-sentence motions, which were denied on May 9, 2013. This timely appeal followed. Both the trial court and Appellant complied with Pa.R.A.P. 1925.

Appellant raises one issue for our review:

1. Whether the lower court abused its discretion by refusing to grant appellant’s post-sentence motion requesting arrest of judgment, where the evidence was insufficient to support the guilty verdicts?

Appellant’s Brief at 2.¹

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

¹ While Appellant assails the sufficiency of the evidence of all four crimes of which he was convicted, he confined his statement of errors pursuant to Pa.R.A.P. 1925(b) to the sufficiency of the evidence supporting robbery and simple assault. While the trial court referred to the elements of all four crimes, its analysis related only to the claim as raised, and we do, as well. Pa.R.A.P. 1925(b)(4)(vii) (issues not included in statement of errors are waived).

verdict winner, were sufficient to prove every element of the offense beyond a reasonable doubt. **Commonwealth v. Diamond**, 83 A.3d 119 (Pa. 2013). 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. **Commonwealth v. James**, 46 A.3d 776 (Pa. Super. 2012). The Commonwealth may sustain its burden of proving every element of the crime by means of wholly circumstantial evidence. **Commonwealth v. Vogelsong**, ___ A.3d ___, 2014 PA Super 63 (filed April 3, 2014). Moreover, as an appellate court, we may not re-weigh the evidence and substitute our judgment for that of the fact-finder. **Commonwealth v. Ratsamy**, 934 A.2d 1233 (Pa. 2007). In addition, courts have noted that "evidence of identification need not be positive and certain to sustain a conviction." **In re K.A.T., Jr.**, 69 A.3d 691, 696 (Pa. Super. 2013), appeal denied, 81 A.3d 78 (Pa. 2013); **Commonwealth v. Orr**, 38 A.3d 868 (Pa. Super. 2011). "[A]ny indefiniteness and uncertainty in the identification testimony goes to its weight." **Id.** at 874.

Appellant asserts that the evidence was insufficient because the Commonwealth "did not establish [A]ppellant's identity" in that the victim

did not testify at trial² and failed to prove the existence of a robbery. Appellant's Brief at 5, 7. We disagree.

The trial court determined that the absence of the victim's testimony did not render the evidence insufficient, as it relied upon the testimony of Officer Luce, an eyewitness to the incident, who testified at trial. Trial Court Opinion, 8/15/13, at 5; N.T., 3/5/13, at 22–27. The trial court held that as the trier of fact, the credibility of the witness was within its purview, and it found Officer Luce to be a credible witness. Trial Court Opinion, 8/15/13, at 6.

To sustain a conviction for simple assault, the Commonwealth must prove beyond a reasonable doubt that the defendant attempted to cause or intentionally, knowingly, or recklessly caused bodily injury to another or attempted by physical menace to put another in fear of imminent serious bodily injury. 18 Pa.C.S.A. § 2701(1) and (3). A person is guilty of conspiracy to commit a crime if, with the intent of promoting or facilitating its commission, he agrees with another person(s) that one or more of them

² The trial court explained that this matter originally was a "co-defendant case." Trial Court Opinion, 8/15/13, at 6 n.7. The matter originally was scheduled before a different judge for trial on March 5, 2013. On March 4, 2013, the co-defendant's counsel requested a continuance. On March 5, 2013, the Commonwealth, appearing before the instant trial court and believing that this first continuance request would be granted, sent the victim home. Appellant's counsel then informed the court that he desired to move forward; thus, the trial court "*sua sponte* severed the matter and [Appellant] proceeded to trial." *Id.*; N.T., 3/5/13, at 3–7.

will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime, or agrees to aid such other person(s) in the planning or commission of such crime or of an attempt or solicitation to commit such crime. 18 Pa.C.S.A. § 903.

A person is guilty of robbery graded as a second-degree felony if he threatens another with, or intentionally puts another in fear of, immediate bodily injury while attempting to commit a theft. 18 Pa.C.S.A. § 3701(a)(1)(iv). An act shall be deemed in the course of committing a theft if it occurs in an attempt to commit theft or in flight after the attempt or commission. 18 Pa.C.S.A. § 3701(a)(2). "A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, moveable property of another with intent to deprive him thereof". 18 Pa.C.S.A. § 3921(a). "That circumstances made it such that appellant and his accomplices failed to obtain and remove money (or other valuables) is irrelevant because proof of an attempted theft is sufficient to establish the 'in the course of committing a theft' element of robbery." ***Commonwealth v. Sanchez***, 36 A.3d 24, 41-42 (Pa. 2011).

We agree with the trial court that the evidence presented at trial was sufficient to support the verdict. Officer Luce personally observed the entire incident and described it in detail. Officer Luce and his partner, Officer

Kuzowsky, were in a semi-marked police vehicle³ on April 7, 2012, at approximately 9:30 p.m. traveling southbound on Kensington Avenue in Philadelphia. N.T., 3/5/13, at 22–23. Appellant and two companions approached the victim as he walked northbound on Kensington Avenue at G Street. **Id.** at 23. One of Appellant’s companions grabbed the victim’s collar and punched him in the face. **Id.** at 24. As the victim hunched over from the blow, Appellant “proceeded to rip at the [victim’s] pocket . . . ripped it down trying to get into the pocket.” **Id.** When a fourth man standing on the corner yelled, “Yoh, cops, cops, cops,” Appellant interrupted his actions. **Id.** The officers immediately exited the vehicle and apprehended Appellant and one of his cohorts. **Id.** The Commonwealth also introduced into evidence the victim’s statement, in which he described his attackers. **Id.** at 41–43.

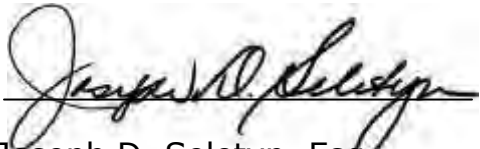
Evidence that a co-conspirator punched the victim to disable him followed by Appellant’s act of grabbing the victim’s pocket to obtain its contents was sufficient to support an inference that Appellant had the intent to commit theft and took a substantial step toward the commission of the crime. **See Commonwealth v. Ebo**, 421 A.2d 465 (Pa. Super. 1980) (defendant’s opening of car door during the course of an attack was sufficient to support an inference that the attackers had the intent to commit

³ Officer Luce testified that his vehicle had the city seal on the door but no other markings and no bar lights on the roof. N.T., 3/5/13, at 23, 36.

a theft; opening of the car door was a substantial step toward the commission of that crime). We concur with the trial court and conclude the evidence, when viewed in the light most favorable to the Commonwealth, as the verdict winner, was sufficient to support Appellant's convictions.

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: 5/15/2014