

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

DAMIEN D. HARPER

Appellant

No. 1876 EDA 2012

Appeal from the Judgment of Sentence June 16, 2011
In the Court of Common Pleas of Bucks County
Criminal Division at No(s): CP-09-CR-0007465-2010

BEFORE: DONOHUE, J., MUNDY, J., and OLSON, J.

MEMORANDUM BY MUNDY, J.:

FILED JUNE 20, 2013

Appellant, Damien D. Harper, appeals from the June 16, 2011 judgment of sentence of seven to 15 years' incarceration imposed after a jury found him guilty of robbery (threatening serious bodily injury), robbery (threatening to commit murder and/or aggravated assault), simple assault, recklessly endangering another person, theft by unlawful taking, fleeing or attempting to elude officer, reckless driving, and careless driving.¹ After careful review, we affirm.

The trial court set forth the relevant facts and procedural history as follows.

¹ 18 Pa.C.S.A. §§ 3701(a)(1)(ii), 3701(a)(1)(iii), 2701(a)(3), 2705, 3921(a), 75 Pa.C.S.A. §§ 3733, 3736(a), and 3714(a), respectively.

At 9:53 a.m. on September 10th 2010, the Falls Township Police Department received a complaint of a suspicious black male who was possibly involved in drug sales near an apartment complex on Nolan Avenue in Falls Township, Bucks County. This male was operating a 1999 black Audi with a New Jersey license plate WDE11X. Sergeant Christopher Clark, an officer with thirteen years' experience in the Falls Township Police Department, was assigned to investigate this individual. After checking the license plate through the New Jersey Department of Motor Vehicles database, Sergeant Clark determined that the car was registered to Appellant. Sergeant Clark proceeded to contact Officer Michael Callahan for assistance with the investigation. Both officers observed Appellant pacing around and leaning against the car, he did not appear to be doing anything of note. The officers observed that Appellant was wearing a light-colored plaid, zippered-up hooded sweatshirt, a gray wool cap, and dark-colored pants. Sergeant Clark and Officer Callahan got out of their vehicles to observe Appellant on foot, and at this time Appellant entered his vehicle and exited the apartment complex. The officers did not follow Appellant.

Later that morning, at approximately 11:26 a.m., Sergeant Clark was driving and saw Appellant's black Audi in a Dunkin' Donuts parking lot on West Trenton Avenue, a short distance from the apartment complex. Appellant was standing outside of the vehicle, wearing the same clothes. Sergeant Clark confirmed that this was the same person and car by matching the license plate. Sergeant Clark and Officer Callahan continued to pursue the initial complaint of possible drug activity by returning to the police station to switch into civilian clothes and an unmarked police vehicle to continue surveillance. They located Appellant and the black Audi in the rear parking lot of a Giant grocery store at 2:00 p.m. approximately a tenth of a mile away from the Dunkin' Donuts. Sergeant Clark and Officer Callahan parked their unmarked police vehicle in the parking lot of the Plaza One Shopping Center, a strip mall

approximately 225 feet away from the Giant Grocery store. They observed Appellant through binoculars.

The officers observed Appellant walk from his car and enter the Plaza One shopping center. Appellant then stood for approximately twenty to twenty five minutes in front of the Euro Deli, a store located in the Plaza One shopping center. During this time, Appellant appeared to be making calls on his cellular phone. At approximately 2:30 p.m. Appellant returned to his car and drove the car from the Giant grocery store parking lot to the Plaza One parking lot. Appellant parked approximately 60 feet away from the officers in their vehicle. Detective Corporal Victoria Crosier, a Falls township police officer for thirteen years, joined the investigation and observed Appellant return to standing in front of the Euro Deli after parking the same black Audi in the parking lot. Appellant then pulled the hood of his sweatshirt up and walked from the Euro Deli over to [t]he Smoke and Glitter, a retail store that sells lottery tickets, cigarettes, snacks and soda. Video surveillance of the Smoke and Glitter, shows that at approximately 2:44 p.m. Appellant entered the store wearing sunglasses, a gray knit cap, and the hood of his gray plaid sweatshirt pulled over his head. Appellant brandished a gun, put it up toward an employee's face, and told her "Give it up." The gun was approximately one foot away from her face. The employee opened the lottery register drawer and handed him the money. Appellant then pointed the gun at another employee and demanded money. This employee gave him the money from the store register. Following the receipt of the cash, Appellant told the first employee to turn around, and he exited [t]he Smoke and Glitter. The second employee witnessed [] Appellant get into a black car and drive away. The entire robbery lasted less than two minutes.

Following the robbery of [t]he Smoke and Glitter, the officers conducting surveillance observed Appellant briskly walking across part of the parking lot, and then jogging to his car. He then proceeded

to drive out onto Plaza Boulevard, with Corporal Crosier following him. While following Appellant, Corporal Crosier heard on Bucks County police radio that an armed robbery had just occurred at [t]he Smoke and Glitter. Corporal Crosier made a radio transmission to the police department informing them that she was behind the car with the robbery suspect driving. Appellant pulled the car onto the shoulder of Route 1 and activated his four-way hazard lights. Corporal Crosier also stopped her car, rather than passing the black Audi, at which point Appellant accelerated at a high rate of speed away from Corporal Crosier. Appellant continued to accelerate away from Corporal Crosier after she activated the light package in her unmarked car, consisting of red and white flashing lights, strobe lights, and a siren. Officer Erica McIntyre, a police officer [with] Morrisville Borough Police Department for nine years, was in a marked police car along Route 1 when she heard over the police radio that Falls Township police were in pursuit of a vehicle involved in an armed robbery. Officer McIntyre pulled out directly behind the black Audi with police lights and sirens activated. Appellant failed to stop the black Audi and continued at a high rate of speed. Corporal Crosier and Officer McIntyre followed [] Appellant in the black Audi in a high-speed pursuit along Route 1 North. Corporal Crosier observed Appellant weaving in and out of busy traffic and have several near collisions as it neared the toll bridge to New Jersey. Corporal Crosier and Officer McIntyre were unable to maintain visual contact with the vehicle once it crossed the bridge and entered Trenton, New Jersey, despite the fact that [] both police cars were travelling between 80 and 90 mph.

At 3:12 [p.m.] on September 10th 2010, Officer Brian Davis of Hamilton Township, New Jersey received a radio call from Falls Township, alerting him of the armed robbery and the perpetrator's flight into Trenton. Officer Davis was instructed to go to Appellant's prior address, 328 Park Lane in Hamilton Township, in an effort to find Appellant or the black Audi. As Officer Davis turned

onto Park Lane, he saw the black Audi with the license plate WDE11X and pulled the vehicle over. Officer Davis arrested the driver of the vehicle, Daniel Harper, who is related to Appellant. Following this arrest, and based on the vehicle registration, a warrant was issued for the arrest of Appellant. Appellant then turned himself in to the authorities.

A search of the 1999 black Audi with the license plate WDE11X was conducted after the vehicle was taken into custody and Appellant turned himself in. The search turned up the gray knit cap matching the description of the one worn by the Appellant, sunglasses as worn in the armed robbery, paperwork with Appellant's name on it, and various other articles of clothing. A DNA test was performed on the gray knit cap, and was compared to buccal swabs that were later taken from Appellant. The result of the DNA laboratory test performed on the cap matched that of the Appellant.

Additionally, cell phone records confirmed that Appellant was in the Plaza Boulevard Area at the same time and place that the armed robbery occurred. The number of calls that Appellant attempted in a short period of time corroborates the testimony presented by all of the officers who observed Appellant throughout the morning. Furthermore, cell phone calls were placed by [] Appellant after the armed robbery and tracked to the location where the black Audi was found in New Jersey later in the day.

Following a two day jury trial, Appellant was found guilty on March 10, 2011. He was sentenced on June 16, 2011. Appellant filed a timely Motion for Reconsideration of Sentence on June 24, 2011, and a hearing was held on August 25, 2011. The Motion for Reconsideration of Sentence was denied on June 8, 2012[.]

Trial Court Opinion, 9/18/12, at 2-6 (citations to notes of testimony omitted). This timely appeal followed.²

On appeal, Appellant raises the following issue for our review.

[Whether] Appellant's conviction was not supported by sufficient evidence in that the Commonwealth failed to prove beyond a reasonable doubt that Appellant committed the crimes of Robbery – Threatening to Commit Murder and/or Aggravated Assault, Simple Assault, Recklessly Endangering Another Person, Theft by Unlawful Taking, Fleeing or Attempting to Elude, Reckless Driving and Careless Driving[?]

Appellant's Brief at 4. Specifically, Appellant avers that the evidence was insufficient "due to the victims' failure to identify Appellant as the perpetrator of said crimes and a lack of sufficient corroborating evidence."

Id. at 11.

"The standard we apply in reviewing the sufficiency of the 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."

Commonwealth v. O'Brien, 939 A.2d 912, 913 (Pa. Super. 2007) (citation omitted). "Any doubts concerning an appellant's guilt [are] to be resolved by the trier of fact unless the evidence was so weak and inconclusive that no probability of fact could be drawn therefrom." ***Commonwealth v. West***,

² Appellant and the trial court have complied with Pa.R.A.P. 1925.

937 A.2d 516, 523 (Pa. Super. 2007), *appeal denied*, 947 A.2d 737 (Pa. 2008). Moreover, “[t]he Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence.” ***Commonwealth v. Perez***, 931 A.2d 703, 707 (Pa. Super. 2007) (citations omitted).

Instantly, rather than contesting the sufficiency of the evidence in regard to the specific elements of the crimes for which he was convicted, Appellant argues that the evidence presented at trial was insufficient to establish his identity as the person who committed the crimes. “In addition to proving the statutory elements of the crimes charged beyond a reasonable doubt, the Commonwealth must also establish the identity of the defendant as the perpetrator of the crimes.” ***Commonwealth v. Brooks***, 7 A.3d 852, 857 (Pa. Super. 2010).

Viewing the evidence in the light most favorable to the Commonwealth as the verdict winner, the record reveals the following evidence was presented to prove Appellant perpetrated the aforementioned crimes. Specifically, Sergeant Christopher Clark testified that on September 10, 2010, he was “investigating a complaint of a suspicious black male, possibly involved in drug sales in the area of Nolan Park Apartments[.]” N.T., 3/9/11, a 27. After receiving the information, Sergeant Clark located Appellant and began observing him through binoculars. ***Id.*** at 28. Sergeant Clark testified that the officers “were specifically looking at [] various area[s]

of his face to identify him.” *Id.* at 52. When asked if the person he “saw at the Nolan Park apartment complex, Dunkin Donuts, and for those 40 or so minutes outside the Smoke and Glitter store, is that the person seated in the courtroom today?” Sergeant Clark replied that it was, identifying Appellant as the perpetrator. *Id.* at 54. Similarly, Officer Michael Callahan of the Falls Township Police Department testified that he observed Appellant for 40-45 minutes through binoculars, and that for the majority of the time, the officers “had an unobstructed view of the subject.” *Id.* at 101-102. Officer Callahan testified that he was able to get a clear look at the subject’s face, and he also was able to make an in court identification of Appellant. *Id.* at 102-103. Finally, Corporal Victoria Crosier testified that she parked on the other side of the plaza from where Appellant stood and observed him through binoculars. *Id.* at 153. Corporal Crosier then proceeded to make an in court identification of Appellant. *Id.* at 154.

Additionally, Patricia Demaio, one of the victims who was working at the cash register at the Smoke and Glitter testified that the man that robbed her at gun point was wearing a gray plaid hooded sweatshirt and jeans. *Id.* This description matched the clothing the officers observed Appellant wearing just prior to losing sight of him for two minutes around the location of the Smoke and Glitter, and the clothing they observed Appellant wearing as he jogged away from the Smoke and Glitter. *Id.* at 29, 95-96. Demaio was unable to make an identification because she testified she never looked

at the perpetrators face, rather she “[j]ust watched the gun. Just had my eyes on the gun. ... The gun was in my face. I was scared.” **Id.** at 131. Footage from the surveillance video showing a man in a gray plaid hooded sweatshirt was also admitted into evidence, and identified by Ms. Demaio as the perpetrator. **Id.** at 134. Sung Kim, another employee of Smoke and Glitter corroborated Demaio’s testimony. **Id.** at 141-143.

Finally, Sergeant Clark testified that during the time the officers were observing Appellant he was making or receiving phone calls on his cell phone. **Id.** at 44. At trial, Detective Joseph Coffman testified that Appellant’s cell phone records indicate his cell phone made 10 calls using the tower near the Dunkin’ Donuts Appellant was observed standing near, at the time of the officers observations. N.T., 3/10/11, at 20. Utilizing a power point, Detective Coffman showed the jury calls made by Appellant throughout the day on September 10, 2010, corresponding to the locations the officers had testified observing him in. **Id.** at 18-23.

Based on the foregoing, we conclude the Commonwealth presented sufficient evidence to prove Appellant was the perpetrator. Accordingly, we affirm Appellant’s June 16, 2011 judgment of sentence.

Judgment of sentence affirmed.

J-S29019-13

Judgment Entered.

A handwritten signature in black ink, appearing to read "Kevin Gambetti", written over a horizontal line.

Prothonotary

Date: 6/20/2013