NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
JIMEL KING,	:	
Appellant	:	No. 2883 EDA 2016

Appeal from the Judgment of Sentence August 31, 2016
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0007769-2015

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

MEMORANDUM BY PANELLA, J. **FILED SEPTEMBER 07, 2018**

Jimel King appeals from the judgment of sentence of thirty-five to seventy years of incarceration and five years of probation, imposed August 31, 2016, following a jury trial that resulted in his conviction for attempted murder, aggravated assault, conspiracy to commit attempted murder and aggravated assault, carrying a firearm without a license, carrying a firearm in Philadelphia, possession of a firearm by a prohibited person, and possession of an instrument of crime.[1] We reverse Appellant's conviction and sentence for carrying a firearm on public streets in Philadelphia, but otherwise affirm his judgment of sentence.

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* Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S.A. §§ 901, 2702, 903, 6106(a)(1), 6108, 6105(a)(1), 907(b), respectively.

In June 2015, Arielle Banks knew Appellant from her neighborhood and considered him a friend; they would speak when running into each other on the street, as well as by phone and text message. ***See*** N.T., 5/24/16, at 71-72, 134-136, 167-168. Ms. Banks knew Appellant by the nickname "Smell." ***Id***., at 75-76, 87.

Their friendly acquaintance ended on June 17, 2015, when the two met in the vicinity of 25th and Allegheny Streets in Philadelphia, where Appellant lived. ***See id***., at 73-78, 87, 130, 144. Appellant demanded to know why Ms. Banks was not answering his calls. ***See id***. She responded that she had not appreciated his disrespectful, aggressive conversation the last time they had spoken. ***See id***. Appellant told Ms. Banks that she had better leave the block and not be there when he got back. ***See id***., at 77-80, 141-142; N.T., 5/25/16, at 24-25. After Appellant left, Ms. Banks remained in the area and spoke with friends and acquaintances from the neighborhood. ***See*** N.T., 5/25/16, at 77-79, 85-86, 139-140, 169.

As Ms. Banks prepared to leave, Appellant ran by her and got into a silver, four-door Infiniti driven by Ramir Porter. ***See*** N.T., 5/24/16, at 81-84, 133-34, 137, 154, 173-174. The car drove towards Ms. Banks as Appellant jumped out of the passenger seat with an "Uzi-like" gun in his hand. ***See id***., at 82, 87-92, 132-33, 158-159; N.T., 5/25/16 at 24. Ms. Banks fled, weaving between parked cars, as Appellant chased her and fired the gun thirteen to fourteen times. ***See*** N.T., 5/24/16, at 89-97. Ms. Banks was shot in the foot, lower back/buttocks, and hip. ***See id***., at 93-95. The gunshots shattered her

ankle and hip. ***See*** N.T., 5/25/16, at 171-172. While trying to call 911, Ms. Banks dropped her phone, but managed to hide in nearby bushes. ***See id***., at 98-99. Appellant fled the scene as Ms. Banks flagged down a passing car for help and got into the back seat. ***See id***., at 99, 117.

Police officers responded to the scene, where a bystander indicated the location of the shooting and provided them with a license plate number of the Infiniti. ***See id***., at 24-25. The officers were then flagged down by the driver of the car into which Ms. Banks had collapsed. ***See id***., at 24-27, 51-52, 99-100, 101-102. They removed her, carried her to the police car, and drove her to Temple University Hospital. ***See id***., at 24-27, 53-55, 99-100, 101-102. On the drive, Ms. Banks informed the officers that she had been shot by "Smell." ***Id***., at 27, 61-62, 101-102.

Detectives interviewed Ms. Banks at the hospital before she was taken for surgery, where she again identified the shooter as "Smell." ***Id***., at 123-124; N.T., 5/25/16, at 9-13. In total, Ms. Banks had, by the time of trial, undergone two surgeries related to the injuries sustained in the shooting, and was scheduled for a third surgery to replace her shattered hip. ***See*** N.T., 5/24/16, at 163-164; N.T., 5/25/16, at 171-172. Following her initial surgery, Ms. Banks gave statements and two follow-up interviews to detectives. ***See*** N.T., 5/24/16, at 121-128; 150-151; N.T., 5/25/16, at 17-19. Police brought a man from the neighborhood to the room for possible identification, and although Ms. Banks recognized him as "Will," he was not present during the shooting. ***See*** N.T., 5/24/16, at 125-127, 136-137, 154-155; N.T., 5/25/16,

at 17-19. Ms. Banks was shown a photo array and identified Appellant as the shooter and Ramir Porter as the driver. ***See*** N.T., 5/24/16, at 128-129; N.T., 5/25/16, at 24-26.

Police investigation had identified "Will" as William Respes, to whom the silver Infiniti was registered. ***See*** N.T., 5/24/16, at 223-224; N.T., 5/25/16, at 15-19. Mr. Respes had previously provided Mr. Porter with access to cars he had owned, and Mr. Porter had been stopped by police while driving Mr. Respes' car. ***See*** N.T., 5/24/16, at 223-225; N.T., 5/25/16, at 15-19.

Appellant was indicted by a grand jury. The case proceeded to jury trial. The jury convicted Appellant of all charges on the verdict sheet. The trial court then proceeded to a waiver trial on the possession of a firearm prohibited charge, and convicted Appellant of that count.

On August 31, 2016, the court sentenced Appellant to consecutive sentences of twenty to forty years of incarceration for attempted murder, ten to twenty years of incarceration for conspiracy to commit murder,[2] and five to ten years of incarceration for possession of a firearm by a prohibited person. Appellant received concurrent terms of five years of probation on the firearms not to be carried without a license and carrying a firearm on public streets in Philadelphia, consecutive to his incarceration. Appellant's sentence for aggravated assault merged with the attempted murder conviction and he

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[2] The court corrected this sentence to no further penalty for conspiracy to commit murder and ten to twenty years for conspiracy to commit aggravated assault. ***See*** Corrected Sentencing Order, 8/31/16, at 1.

received no further penalty on his other charges. This resulted in an aggregate sentence of thirty-five to seventy years of incarceration and five years of probation.

This timely appeal follows. Appellant raises the following questions for our review:

> 1. Did not the trial court impose an illegal sentence of 20 to 40 years on the charge of attempted murder where appellant was not charged with "attempted murder causing serious bodily injury" and where the Commonwealth did not give formal notice of its intent to seek an aggravated offense?
>
> 2. Did not the trial court impose illegal sentences where it imposed consecutive sentences on the charge of attempted murder and 10 to 20 years on the charge of conspiracy to commit murder, in violation of 18 Pa.C.S. § 906, which prohibits sentences for more than one inchoate crime related to the same crime?
>
> 3. Did not the trial court impose an illegal sentence of 5 years of probation on the charge of carrying a firearm on public streets, where appellant was never indicted for, informed against, or arraigned on this charge?
>
> 4. Was not the evidence insufficient to sustain convictions for conspiracy, where the evidence was insufficient to prove beyond a reasonable doubt that appellant formed a conspiratorial agreement on the underlying charges?
>
> 5. Was not the evidence insufficient to sustain a conviction for attempted murder, where the evidence was insufficient to prove beyond a reasonable doubt that appellant possessed specific intent to kill the victim?

Appellant's Brief, at 3 (answers of the court omitted).

Appellant's first three issues challenge the legality of his sentence. Such a challenge is a question of law and accordingly, our standard of review is *de novo* and our scope of review is plenary. ***See Commonwealth v. Barnes***,

167 A.3d 110, 116 (Pa. Super. 2017) (*en banc*). Additionally, challenges to the legality of a sentence may not generally be waived despite the appellant's failure to raise them before the trial court. ***See Commonwealth v. Berry***, 877 A.2d 479, 482 (Pa. Super. 2005).

Appellant first argues that the court imposed an illegal sentence of twenty to forty years of incarceration on the charge of attempted murder, where he was not charged with "attempted murder causing serious bodily injury" and where the Commonwealth did not give him notice it intended to seek an aggravated offense. Appellant maintains that the Commonwealth was required to give written notice of its intent to seek the aggravated sentence under 18 Pa.C.S.A. § 1102(c), and because it did not, his sentence is illegal.

With regard to sentences for inchoate crimes related to murder, the Crimes Code provides that

> a person who has been convicted of attempt, solicitation or conspiracy to commit murder . . . where serious bodily injury results may be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years. Where serious bodily injury does not result, the person may be sentenced to a term of imprisonment which shall be fixed by the court at not more than 20 years.

18 Pa.C.S.A. § 1102(c). Serious bodily injury is defined as "[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." 18 Pa.C.S.A. § 2301.

The serious bodily injury must have resulted from the attempted murder and is a fact that must be proven before the sentence may be imposed. ***See Commonwealth v. Johnson***, 910 A.2d 60, 66-67 (Pa. Super. 2006); ***Commonwealth v. Reid***, 867 A.2d 1280, 1281 (Pa. Super. 2005). Additionally, the defendant must be put on notice when the Commonwealth is seeking the forty-year maximum sentence. ***See id***., at 1284.

In ***Reid***, the defendant pleaded *nolo contendere* to attempted murder after stabbing the victim eleven times and slashing her throat. ***See*** 867 A.2d at 1280. Following a colloquy, he was sentenced to eighteen to forty years of incarceration on the attempted murder charge. ***See id***., at 1281. On appeal, the defendant argued that he had not been noticed of the Commonwealth's intent to assert the "serious bodily injury" provision that would trigger the maximum sentence. ***See id***. In making his plea, the defendant did not contest the prosecution's statement of facts, and by entering the plea, acknowledged the Commonwealth could prove every element of attempted criminal homicide. ***See id***. Further, this Court concluded that the defendant was on notice because the criminal information and criminal complaint charged the defendant with attempt to commit homicide as a first-degree felony, apprised the defendant that he faced forty years of imprisonment, and included details that established the victim had suffered serious bodily injury. ***See id***., at 1284.

Commonwealth v. Johnson, 910 A.2d 60 (Pa. Super. 2006), distinguished ***Reid***. In ***Johnson***, the defendant fired a gun at the victim's head, missed, and after firing several more shots, shot her in the heel of the

foot. ***See id***., at 62. The defendant was charged with, among other counts, attempted murder. ***See id***., at 63. He was convicted of attempted murder and sentenced to seventeen and one-half to forty years of imprisonment on that charge. ***See id***., at 63. Additionally, the defendant was convicted of aggravated assault. ***See id***.

On appeal, the defendant argued that there was insufficient evidence that the victim suffered serious bodily injury such that it triggered the forty-year maximum sentence. ***See id***., at 63. This Court vacated his sentence on different grounds, finding that it was not the prerogative of the trial court, but solely the responsibility of the jury to determine beyond a reasonable doubt whether a serious bodily injury had resulted from the shooting. ***See id***., at 67.

In so finding, the panel noted that (1) the defendant was not charged with attempted murder resulting in serious bodily injury; (2) the defendant was not on notice that the Commonwealth sought to either prove that a serious bodily injury resulted *or* to invoke a greater maximum sentence; (3) the jury was not presented with or rendered a decision on the question of whether serious bodily injury had resulted from the attempted murder. ***See id***. ***Cf***. ***Reid***, 867 A.2d at 1284. Even though the defendant had also been convicted of aggravated assault, the panel concluded that because there was no evidence that serious bodily injury had actually occurred, the jury could have convicted the defendant of aggravated assault on an attempt to commit serious bodily injury.

Accordingly, the aggravated assault conviction did not support the serious bodily injury requirement for attempted murder. ***See id***., at 68 n.10. Thus, the panel concluded that the jury was limited to a finding of guilt for attempted murder generally, and the sentence capped at a maximum of twenty years. ***See id***., at 67-68.

In ***Commonwealth v. Barnes***, 167 A.3d 110 (Pa. Super. 2017) (*en banc*), the defendant strangled the victim, broke a vertebra in her neck, and dumped her unconscious body into a recycling dumpster. ***See id***., at 114. The defendant was charged with attempted murder, convicted of that charge, and sentenced to twenty to forty years of incarceration for it. ***See id***., at 114-115. On appeal, the defendant challenged the trial court's imposition of the twenty to forty-year sentence where the question was not submitted to the jury. ***See id***., at 115.

The *en banc* panel vacated the defendant's sentence, noting that (1) the docket sheet did not show that the defendant was charged with attempted murder resulting in serious bodily injury and was not on notice the Commonwealth sought to prove serious bodily injury; (2) the complaint and information did not allege that the defendant caused serious bodily injury to the victim when he attempted to kill her; (3) the verdict sheet was bereft of any mention of serious bodily injury with respect to the murder charge; and (4) the jury was not instructed to render a finding on whether serious bodily injury had resulted from the criminal attempt. ***See id***., at 117-118.

In so finding, the panel rejected the Commonwealth's argument that the serious bodily injury resulting from aggravated assault could be used to infer serious bodily injury for the attempted murder charge. ***See id***., at 119.

Here, the record reveals the following information regarding the manner in which Appellant was charged, convicted, and sentenced. The indictment produced by the grand jury found *prima facie* evidence to charge Appellant with:

> ATTEMPTED MURDER IN THE FIRST DEGREE, in violation of Crimes Code § 901/2502, committed as follows:
>
> The defendant, in the County of Philadelphia, on or about June 17, 2015, with intent to kill the complainant, Arielle Banks, by shooting at her with a loaded firearm, striking her multiple times about the body.

Indictment, 7/30/15, at 1.

The criminal information, as filed, charged Appellant with attempted murder, graded as a felony of the first degree, "intentionally and with malice attempted to cause the death of another human being." Criminal Information, 8/14/15 at 1. At a pre-trial hearing, the Commonwealth indicated that the guideline range for attempted murder was seventeen and one-half years, indicating that it would seek the maximum forty-year sentence, as opposed to the general twenty-year maximum. ***See*** N.T., 5/23/16, at 6.

Following the close of testimony, counsel for Appellant and the Commonwealth went over the charges to be read to the jury. ***See*** N.T., 5/25/16, at 174-175. The court's charge to the jury regarding attempted

murder did not specifically define serious bodily injury. The charge for attempted murder, as read to the jury, was as follows:

> The defendant is charged with attempted murder.
>
> To find the defendant guilty of this offense, you must find the following three elements have been proven beyond a reasonable doubt.
>
> First, the defendant did a certain act, that is that he shot Arielle Banks.
>
> Second, that at the time of this alleged act, the defendant had the specific intent to kill Arielle Banks. That is, he had a fully formed intent to kill and was conscious of his own intentions.
>
> And third, that the act constituted a substantial step towards the commission of the killing of the defendant – of the killing the defendant intended to bring about.
>
> Let me explain the purpose of a substantial step. A person cannot be guilty of an intent to commit a crime unless he or she does an act that constitutes a substantial step towards the commission of that crime. An act is a substantial step, if it is a major step towards the commission of that crime. An act is a substantial step, if it is a major step towards the commission of a crime, and also strongly corroborates the jury's belief that the person at the time he or she did the act had a firm intent to commit that crime.
>
> An act can be a substantial step either by other steps before the crime could be carried out. If you are satisfied that the three elements of attempted murder have been proven beyond a reasonable doubt, you should find the defendant guilty. Otherwise, you must find the defendant not guilty of this crime.

N.T., 5/25/16, at 187-188. Additionally, the trial court instructed the jury on serious bodily injury in the context of aggravated assault. ***See id***., at 188-190.

The verdict slip indicates that the jury found Appellant guilty of attempted murder, and specifically found beyond a reasonable doubt that the victim had suffered serious bodily injury in connection with the attempted murder. ***See*** Verdict Report, 5/27/16, at 1. Additionally, Appellant was convicted of aggravated assault that caused serious bodily injury. ***See id***. In its sentencing memorandum, the Commonwealth indicated that the maximum sentence for attempted murder was forty years and recommended a sentence of twenty to forty years. ***See*** Sentencing Memorandum, 8/17/16, at 2-4. At sentencing, the Commonwealth again requested a twenty to forty-year sentence on the attempted murder charge. ***See*** N.T., 8/31/16, at 21, 24.

Based on the above, we conclude that Appellant was provided with sufficient notice that the Commonwealth intended to invoke 18 Pa.C.S.A. § 1102(c). The indictment noted that Appellant had shot Ms. Banks multiple times and the criminal information charged him with attempted homicide as a first-degree felony. And Appellant stipulated to the extent and severity of the victim's injuries and was informed he faced a minimum sentence of seventeen and one-half years on the attempted murder charge. ***See***, ***e.g.***, ***Reid***, 867 A.2d at 1281-1284 (noting that defendant was on notice where he stipulated to facts, was charged with attempted murder as a first degree felony, and was apprised of a maximum forty-year sentence); ***Barnes***, 167 A.3d at 117-119. The jury made the determination, beyond a reasonable doubt, that Appellant had inflicted serious bodily injury on Ms. Banks, and also convicted him of aggravated assault that caused serious bodily injury. ***See Johnson***, 910 A.2d

at 67; ***Barnes***, 167 A.3d at 117-119. Thus, the court's twenty to forty-year sentence for attempted murder was lawfully imposed, and Appellant is not entitled to relief.[3] ***See Reid***, 867 A.2d at 1285.

Next, Appellant argues that his sentence of ten to twenty years for conspiracy to commit murder violated 18 Pa.C.S.A. § 906, which prohibits the imposition of separate sentences on more than one inchoate crime. Appellant avers that, at the sentencing hearing, the court illegally sentenced him to consecutive sentences for criminal attempted murder and conspiracy to commit murder.

However, the corrected sentencing order as entered by the court reflects that Appellant was sentenced to twenty to forty years of incarceration for criminal attempted murder and a consecutive ten to twenty years of incarceration for conspiracy to commit aggravated assault. ***See*** Order of Sentence, 8/31/16, at 1. He was given no further penalty on conspiracy to commit murder. ***See id***. Accordingly, Appellant's argument regarding the attempted murder and conspiracy to commit murder sentences is unavailing. ***See Commonwealth v. Willis***, 68 A.3d 997, 1010 (Pa. Super. 2013).

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[3] Appellant also argues that his sentence runs afoul of ***United States v. Alleyne***, 133 S. Ct. 2151 (2013), and ***Commonwealth v. Hopkins***, 117 A.3d 247, 258-262 (Pa. 2015), because he was not given formal notice of a "new aggravated offense." Appellant's Brief at 14-15. However, ***Alleyne*** and ***Hopkins*** concern mandatory minimum sentences, and statutes that were ultimately held to be unconstitutional as a result. The Pennsylvania Supreme Court declined to cure the unconstitutionality of the statutes by severing the unconstitutional components and directing juries to answer interrogatories regarding the remaining provisions. The sentencing scheme as outlined in 18 Pa.C.S.A. § 1102(c) is not a mandatory minimum. ***Alleyne*** is not implicated.

Nevertheless, Appellant argues that even if the court corrected its sentence, he cannot be found guilty of multiple conspiracies pursuant to 18 Pa.C.S.A. §§ 903(c) and 906, which provide as follows:

> **(c) Conspiracy with multiple criminal objectives.—**If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

18 Pa.C.S.A. § 903(c).

> A person may not be convicted of more than one of the inchoate crimes of criminal attempt, criminal solicitation or criminal conspiracy for conduct designed to commit or to culminate in the commission of the same crime.

18 Pa.C.S.A. § 906.

Essentially, Appellant argues that the multiple crimes were the object of the same agreement or conspiratorial relationship, and designed to culminate in the commission of the same crime. However, our Court has previously held that a defendant may be sentenced for conspiracy to commit aggravated assault and attempted murder, because the two offenses "are not designed to culminate in the commission of the same crime, *i.e.*, murder . . . Specifically, attempted murder requires a specific intent to kill, which conspiracy to commit aggravated assault does not, and the conspiracy crime requires an agreement that is not included in attempted murder." ***Commonwealth v. Kelly***, 78 A.3d 1136, 1144-1145 (Pa. Super. 2013) (citations omitted). Accordingly, Appellant's sentence was not illegal, and we decline to grant him relief. ***See id***., at 1144-1145.

Third, Appellant contends that the court imposed an illegal sentence of five years of probation on the charge of carrying a firearm on a public street in Philadelphia, 18 Pa.C.S.A. § 6108. Appellant argues he was never indicted on, informed against, or arraigned on this charge. Thus, Appellant argues his sentence should be vacated.

As Appellant correctly notes, a defendant may not be "convicted of an offense which is not the accusation made against him" and where he is not confronted with a formal and specific accusation of the crimes charged. ***See*** Appellant's Brief at 24 (citing ***Commonwealth v. Komatowski***, 32 A.2d 905, 909 (Pa. 1943); ***Commonwealth v. Speller***, 458 A.2d 198, 204 (Pa. Super. 1983); ***Commonwealth v. Longo***, 410 A.2d 368, 369 (Pa. Super. 1979); ***Commonwealth v. Little***, 314 A.2d 270, 273 (Pa. 1974)). Indeed, neither the grand jury indictment nor the criminal information indicated that the shooting had taken place on public streets in Philadelphia, and while the Commonwealth requested that the defendant be arraigned on the § 6108 charge, the court did not so arraign him. ***See*** N.T., 5/24/16, at 6-8; Indictment, 7/27/15, at 1-3; Criminal Information, 8/14/15, 1-2.

Accordingly, we reverse Appellant's conviction for carrying a firearm on public streets in Philadelphia, 18 Pa.C.S.A. § 6108, and his sentence of five years of probation for that offense. However, because this sentence was concurrent to a lawfully imposed sentence of the same length—five years of probation for firearms not to be carried without a license, 18 Pa.C.S.A. § 6106, consecutive to his incarceration—we need not remand for resentencing.

Appellant's remaining issues are challenges to the sufficiency of the evidence to support his convictions. With regard to such challenges,

> [i]n determining whether there was sufficient evidentiary support for a jury's finding …, the reviewing court inquires whether the proofs, considered in the light most favorable to the Commonwealth as a verdict winner, are sufficient to enable a reasonable jury to find every element of the crime beyond a reasonable doubt. The court bears in mind that: the Commonwealth may sustain its burden by means of wholly circumstantial evidence; the entire trial record should be evaluated and all evidence received considered, whether or not the trial court's rulings thereon were correct; and the trier of fact, while passing upon the credibility of witnesses and the weight of the evidence, is free to believe all, part, or none of the evidence.

Commonwealth v. Diggs, 949 A.2d 873, 877 (Pa. 2008) (citations omitted).

First, Appellant contends that the evidence is insufficient to support his conviction for conspiracy to commit murder and conspiracy to commit aggravated assault, because the Commonwealth never established there was a shared criminal objective or agreement to commit either crime. Specifically, he argues the evidence was insufficient to establish that Appellant and Ramir Porter shared the criminal objective to inflict serious bodily injury upon Ms. Banks or that they shared the specific intent to murder her.

To sustain a conviction for conspiracy, "the Commonwealth must establish that the defendant (1) entered into an agreement to commit or aid in an unlawful act with another person or persons, (2) with a shared criminal intent and (3) an overt act was done in furtherance of the conspiracy." ***Commonwealth v. McCall***, 911 A.2d 992, 996 (Pa. Super. 2006) (citation omitted).

> 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. The conduct of the parties and the circumstances surrounding their conduct may create a web of evidence linking the accused to the alleged conspiracy beyond a reasonable doubt. Even if the conspirator did not act as a principal in committing the underlying crime, he is still criminally liable for the actions of his co-conspirators in furtherance of the conspiracy.

Id., at 996–997 (quoting ***Commonwealth v. Johnson***, 719 A.2d 778, 784-785 (Pa. Super. 1998) (*en banc*)). Additionally, our Court has upheld conspiracy convictions for the drivers of getaway cars where it is reasonable to infer that he was aware of the perpetrator's intentions. ***See Commonwealth v. Davalos***, 779 A.2d 1190, 1194 (Pa. Super. 2001); ***Commonwealth v. Azim***, 459 A.2d 1244, 1247 (Pa. Super. 1983); ***Commonwealth v. Esposito***, 344 A.2d 655 (Pa. Super. 1975).

Here, viewing the evidence in the light most favorable to the Commonwealth, the jury could have reasonably decided that Mr. Porter not only agreed to, but aided Appellant in the commission of the shooting. ***See***, ***e.g.***, ***Davalos***, 779 A.2d at 1194. The trial court summarized the following relevant evidence:

> after threatening Ms. Banks, Appellant returned to his home, exiting shortly thereafter, running to and entering a car parked in

> front of his house and being operated by Ramir Porter. The video shows the car accelerating rapidly off the block where Appellant lives, heading toward where Ms. Banks was still on the corner. As the car was coming toward her, Ms. Banks saw Ramir Porter driving and Appellant was the passenger. Appellant jumped out of the front passenger seat with a gun in his hand. The gun was an [Uzi] type gun, with a long magazine, long bottom, like a little machine gun. [Ms. Banks] began to run weaving between cars to avoid being shot. Appellant pursued her, firing the gun. Appellant then left the chase and Porter drove from the scene . . .

Trial Court Opinion, 5/15/17, at 10 (internal citations to the record omitted). The court further noted that there was a close proximity between the confrontation between the victim and Appellant, Appellant leaving the scene, and Appellant returning in the car driven by Mr. Porter and jumping out of it holding a large, not easily concealed weapon. ***See id***., at 11. Accordingly, based on the above, it was reasonable for the jury to infer that there was a shared criminal intent between Appellant and Mr. Porter. ***See Davalos***, 779 A.2d at 1194.

Finally, Appellant contends that the evidence was insufficient to convict him of attempted murder because the Commonwealth failed to prove beyond a reasonable doubt that he had a specific intent to kill the victim. He argues that the victim was shot in non-vital body parts, including her foot and lower back, and that Appellant ran away even though the victim was wounded and vulnerable.

With regard to attempted murder, our Court has stated that

> [u]nder the Crimes Code, "[a] person commits an attempt when with intent to commit a specific crime, he does any act which constitutes a substantial step towards the commission of the crime." 18 [Pa.C.S.A.] § 901(a). A person may be convicted of

> attempted murder if he takes a substantial step toward the commission of a killing, with the specific intent in mind to commit such an act. ***See*** 18 [Pa.C.S.A.] §§ 901, 2502. The substantial step test broadens the scope of attempt liability by concentrating on the acts the defendant has done and does not any longer focus on the acts remaining to be done before the actual commission of the crime. The *mens rea* required for first-degree murder, specific intent to kill, may be established solely from circumstantial evidence. [T]he law permits the fact finder to infer that one intends the natural and probable consequences of his acts.

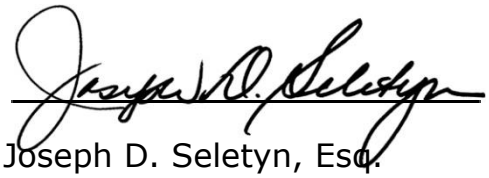
Commonwealth v. Jackson, 955 A.2d 441, 444 (Pa. Super. 2008) (most internal citations and quotation marks omitted). Further, "the finder of fact may infer malice and specific intent to kill based on the defendant's use of a deadly weapon on a vital part of the victim's body." ***Commonwealth v. Faurelus***, 147 A.3d 905, 912 (Pa. Super. 2016) (quotation marks and citations omitted). The back is considered a vital area of the body. ***See Commonwealth v. Dick***, 978 A.2d 956, 959-960 (Pa. 2009).

Here, viewing the evidence in a light most favorable to the Commonwealth, testimony established that Appellant chased Ms. Banks down the street, firing what she believed to be thirteen to fourteen times from an Uzi-style gun as she dodged and weaved in an attempt to escape him. Appellant shot her in the back, a vital part of the body. Thus, Appellant's argument that he did not shoot Ms. Banks again as she hid in the bushes is immaterial. Accordingly, the evidence was sufficient to show that Appellant had the specific intent to kill, and we affirm. ***See Jackson***, 955 A.2d at 444; ***Faurelus***, 147 A.3d at 912; ***Dick***, 978 A.2d at 959-960.

In summary, we reverse Appellant's conviction and sentence for carrying a firearm on public streets in Philadelphia. We affirm, however, the other convictions and sentences.

Judgment of sentence affirmed in part and reversed in part. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 9/7/18