

Franklin County Legal Journal

Volume 30, No. 51, pp. 442 - 448

Commonwealth v Rouzer

Commonwealth of Pennsylvania v. Jason Shauf, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action No. 7-2013

HEADNOTES

Criminal Law; Preliminary Hearing Burden

1. At a defendant's Preliminary Hearing, the Commonwealth must establish that a *prima facie* case exists against the defendant.
2. The Commonwealth must show "sufficient probable cause" that the defendant committed the offense, and the evidence should be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go to the jury.
3. When determining whether a *prima facie* case exists, the Court views the evidence in the light most favorable to the Commonwealth and considers all reasonable inferences based on that evidence which could support a guilty verdict.

Criminal Law; First Degree Murder

1. The elements of first degree murder are: 1) a human being was unlawfully killed; 2) the person accused is responsible for the killing; and 3) the accused acted with specific intent to kill.
2. For an individual to be found guilty as an accomplice to Murder of the First Degree, the Commonwealth must prove beyond a reasonable doubt that: 1) the defendant intended that a first-degree murder occur and 2) that the defendant solicited, commanded, encouraged, requested the other person to commit it, or aided, agreed to aid, or attempted to aid the other person in planning or committing it.
3. Evidence of a defendant's consciousness of guilt may be used to prove that the defendant had the specific intent to commit a crime.

Appearances:

Steve Rice, Esq., Counsel for Defendant

Jeremiah D. Zook, Esq., First Assistant District Attorney

OPINION AND ORDER OF COURT

Before Van Horn, J.

STATEMENT OF THE CASE

The above-captioned Defendant is charged with Murder of the First Degree, Murder of the Second Degree, six counts of Robbery, Burglary, Conspiracy to Commit Murder, Conspiracy to Commit Robbery, Conspiracy to Commit Burglary, ten counts of Kidnapping, and Unlawful Restraint.^[1] On January 9, 2013, a Preliminary Hearing was held in the case, all charges were bound over for court, and Arraignment was scheduled for January 23, 2013. Defendant filed an Omnibus Pre-Arraignment Motion on January 22, 2013, which included a Motion for Writ of Habeas Corpus alleging that the evidence presented at his preliminary hearing was not sufficient to prove a *prima facie* case as to the charges of Murder of the First Degree, Murder of the Second Degree, and Burglary. The Commonwealth filed a Brief in Support of Denial of the Defendant's Motion for Writ of Habeas Corpus on March 18, 2013. The Defendant filed a Brief in Support of Motion for Writ of Habeas Corpus on March 19, 2013, and a Supplemental Brief in Support of Motion for Writ of Habeas Corpus on March 20, 2013.

On April 1, 2013, this Court held a hearing on the Defendant's Motion for Writ of Habeas Corpus. At that hearing,

Defendant withdrew his Motion as to the charges of Murder in the Second Degree and Burglary. As a result, this Court heard argument on the Defendant's Motion only as to the charge of Murder in the First Degree. During the hearing, the Commonwealth introduced five cases for the Court's consideration. The Court ordered the Defendant to file written argument as to the Commonwealth's cases, which he did on April 16, 2013. By this Opinion and Order, this Court grants the Defendant's Motion for Writ of Habeas Corpus as to the charge of Murder in the First Degree and dismisses the charge against the Defendant.

DISCUSSION

A. Preliminary Hearing Standard of Review

The Pennsylvania Superior Court has very succinctly stated the well-settled principle of law that is germane to the instant case. In *Commonwealth v. Kowalek*, 647 A.2d 948 (Pa. Super. 1994), the Superior Court summarized:

The method for testing a finding of a *prima facie* case prior to trial, in this Commonwealth, is by a writ of habeas corpus. Thereafter, our scope of review is limited to deciding whether a *prima facie* case was established at the preliminary hearing. Proof of guilt beyond a reasonable doubt is not required at this stage. Rather, the Commonwealth must show "sufficient probable cause" that the defendant committed the offense, and the evidence should be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go to the jury.

Commonwealth v. Kowalek, 647 A.2d at 949, citing *Commonwealth v. Hetherington*, 331 A.2d 205 (Pa. 1975) and *Commonwealth v. Lynch*, 411 A.2d 1224 (Pa. Super. 1979) (internal citations omitted). When deciding whether a *prima facie* case was established, the Court "must view the evidence in the light most favorable to the Commonwealth, and [...] consider all reasonable inferences based on that evidence which could support a guilty verdict." *Commonwealth v. Williams*, 911 A.2d 548, 550 (Pa. Super. 2006) citing *Commonwealth v. James*, 863 A.2d 1179, 1181-82 (Pa. Super. 2004). It is clear, then, that this Court must determine from a review of the transcript whether the evidence presented by the Commonwealth at the Defendant's Preliminary Hearing on January 9, 2013, established the *prima facie* case for Murder of the First Degree.

B. Analysis

The elements of first degree murder are: 1) a human being was unlawfully killed; 2) the person accused is responsible for the killing; and 3) the accused acted with specific intent to kill. See 18 Pa.C.S. § 2502(a), *Commonwealth v. Wright*, 961 A.2d 119, 130 (Pa. 2008). A killing is intentional when the killing is "by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing." 18 Pa.C.S. § 2502(d).

Further, for an individual to be found guilty as an accomplice to Murder of the First Degree, as the Defendant here is charged, the Commonwealth must prove beyond a reasonable doubt that: 1) the Defendant intended that a first-degree murder occur and 2) that the defendant solicited, commanded, encouraged, requested the other person to commit it, or aided, agreed to aid, or attempted to aid the other person in planning or committing it. See Pennsylvania Standard Jury Instruction 8.306(b)(1). In determining whether the Commonwealth has met its burden, the Court should "consider all evidence regarding [the defendant's] words and conduct and the attending circumstances that may show [the defendant's] state of mind." See Pennsylvania Standard Jury Instruction 15.2502A.

The Defendant argues in his Motion for Writ of Habeas Corpus that the Commonwealth has not met its burden because the evidence offered at the preliminary hearing failed to establish that the Defendant had the specific intent to kill the decedent. Specifically, the Defendant argues that there is no evidence that he knew about or approved of the shooting of the decedent before it occurred and that there is no evidence that the murder was planned. He does not challenge the sufficiency of the evidence as to the other elements of the charge of Murder in the First Degree.

The Commonwealth on the other hand argues that the evidence offered at the preliminary hearing was sufficient to establish a *prima facie* case against the Defendant under a totality of the circumstances analysis. According to the Commonwealth, the evidence shows that the incident was a coordinated effort between the Defendant and Varner because both men entered the residence with the purpose of locating "El Gallo," both men took a victim at gun point from the first floor to the second floor, the men then separated the victims and each man conducted robberies of those victims. Further, the Commonwealth argues, the Defendant demonstrated his willingness and intent to use his firearm by pointing the weapon at several of the victims and by firing a round into the ceiling. The Defendant then assisted Varner in preventing and attempting to prevent the escape of two victims.

This evidence of what occurred in the residence, on its own, is not sufficient to find that the Commonwealth has met its burden as to the Defendant's specific intent for First Degree Murder. The coordination between the Defendant and Varner prior to their entry into the residence was for the purpose of finding an individual known as "El Gallo," not the murder victim. However, there was no evidence that at the time the Defendant entered the residence that he intended to kill or knew of Varner's intention to kill the murder victim. The Defendant and Varner then each took individuals captive at gun-point and moved them to the second floor of the residence, at which time the Defendant and Varner went into separate bedrooms with the individuals. While in the bedroom, Defendant pointed his gun at his victims and fired his gun into the ceiling. It would be a reasonable inference, based on his actions, that the Defendant intended to rob the individuals that he took into a room. There is no evidence, however, to connect him with the actions that Varner took in a separate bedroom, including the killing of the murder victim. There is no evidence that the Defendant knew of Varner's plan to kill the victim ahead of time or that the Defendant commanded, encouraged, or requested that Varner kill the murder victim. Likewise, the fact that the Defendant prevented or attempted to prevent other individuals from escaping the residence does not demonstrate that the Defendant knew of Varner's intention to kill the victim or in any way supported him in doing so. Due to the lack of evidence of the Defendant's prior knowledge or support or encouragement of Varner's action, this Court cannot find, on those facts alone, that the Defendant had the specific intent to commit Murder in the First Degree.

The Commonwealth also argues that the Defendant's flight from the scene and the fact that the Defendant told the police various stories of what occurred the night in question is evidence of the Defendant's consciousness of guilt, which goes toward his specific intent to commit Murder in the First Degree. At the hearing on April 1, 2013, the Commonwealth provided to the Court five cases in support of its position that consciousness of guilt can be used to prove that the Defendant had the specific intent to commit Murder in the First Degree.

The Commonwealth's cases are distinguishable from the instant case. In Commonwealth v. Donnelly, the Superior Court stated that "[f]abrication of false and contradictory statements by the accused is evidence from which a jury may infer that they were made with the intent to mislead police and are indicative of guilt." Commonwealth v. Donnelly, 653 A.2d 35, 37 (Pa. Super. 1995). Likewise, our Supreme Court concluded in Commonwealth v. Whiting that the defendant's "hurried exit and subsequent false and misleading statements to the police indicate consciousness of guilt." Commonwealth v. Whiting, 187 A.2d 563, 565 (Pa. 1963). This Court does not disagree. However, unlike the instant case, both the Donnelly and Whiting cases only involve the charge of Murder in the First Degree. Here, the Defendant is charged with multiple crimes and neither the Donnelly nor the Whiting case provides guidance as to consciousness of guilt when that guilt could be directed at any one of multiple charges.

Our Supreme Court in Commonwealth v. Glass held that a false denial of guilt by a defendant is admissible as substantive evidence of his consciousness of guilt. See Commonwealth v. Glass, 405 A.2d 1236, 1242 (Pa. 1979). However, in that case, the Court found that the defendant's statements to police identified him as the killer of the deceased; it did not discuss whether the statements demonstrated premeditation to commit the murder, as is the issue in the instant case.

In Commonwealth v. Karmendi, our Supreme Court determined that the defendant's fabricated story of how the decedent's death occurred was "some evidence of guilt, not sufficient in itself to show she struck the fatal blow, but tending to show participation." Commonwealth v. Karmendi, 195 A. 62, 64-65 (Pa. 1937). Like in Glass, the use of fabricated statements as consciousness of guilt evidence in Karmendi was to demonstrate participation in the crime, not premeditation, like in the instant case. Further, in Karmendi, the Court found that the defendant's close relationship to the deceased and her indifference or calloused behavior regarding the death of her child "may throw light upon [her] intention." Id. at 68. There is no evidence of a close relationship between the Defendant and the deceased in the instant case.

Finally, the Superior Court in Commonwealth v. Huffman, a case in which two men were convicted of Murder in the First Degree after brutally beating the victim's head with a metal pry bar, concluded that "the conduct of appellants before and after the crime, their statements to police and others and the manner of the victim's death combine to establish evidence from which a jury could conclude the specific intent to kill." Commonwealth v. Huffman, 681 A.2d 188, 191 (Pa. Super. 1996). However, as discussed above, the evidence of what happened at the residence did not demonstrate that the Defendant in the instant case had the specific intent to commit Murder in the First Degree and, unlike in Huffman, combining that evidence with the Commonwealth's consciousness of guilt evidence does not change the Court's determination.

This Court does not discount the Commonwealth's contention that evidence of consciousness of guilt can be used to demonstrate that a defendant had the specific intent to commit a crime. However, as discussed briefly above, what the Commonwealth's cases fail to demonstrate is whether, when a defendant faces charges for more than one crime,

evidence of consciousness of guilt can prove the defendant had the specific intent to commit a particular crime. In the instant case, while the Defendant's actions in fleeing the residence and lying to the police may demonstrate his guilty conscious, they do not demonstrate that he had a guilty conscious as to the crime of Murder in the First Degree. The Defendant could have felt guilty that he committed a robbery or for another purpose. The Commonwealth provides no supporting evidence that indicates that the Defendant's guilty conscious is related to the death of the victim. Further, the Defendant's guilty conscious, when considered in light of the actions that occurred at the residence, does not convince this Court that the Commonwealth has demonstrated that the Defendant had the specific intent to commit Murder in the First Degree.

CONCLUSION

At a defendant's preliminary hearing, the Commonwealth must demonstrate that a prima facie case exists against the defendant. In the instant case, the Commonwealth has failed to establish that a prima facie case exists against the Defendant as to the charge of Murder in the First Degree. Specifically, the Commonwealth has not proven that the Defendant had the specific intent necessary for this Court to find that he committed First Degree Murder. Accordingly, the attached Order of Court grants the Defendant's Motion for Writ of Habeas Corpus as to the charge of Murder in the First Degree and dismisses that charge against the Defendant.

ORDER OF COURT

AND NOW THIS 22nd day of May, 2013, the Court having reviewed and considered the Defendant's Motion for Writ of Habeas Corpus filed January 22, 2013, the Commonwealth's Brief in Support of Denial of the Defendant's Motion for Writ of Habeas Corpus filed on March 18, 2013, the Defendant's Brief in Support of Motion for Writ of Habeas Corpus filed on March 19, 2013, the Defendant's Supplemental Brief in Support of Motion for Writ of Habeas Corpus filed on March 20, 2013, and Defendant's Second Supplemental Brief in Support of Motion for Writ of Habeas Corpus filed April 16, 2013; having heard argument at a hearing on April 1, 2013; and having reviewed the applicable law;

IT IS HEREBY ORDERED THAT the Defendant's Motion for Writ of Habeas Corpus is **GRANTED** and the charge of Murder in the First Degree is **DISMISSED**.

^[1]See 18 Pa. C.S.A. §§ 2502(a), 2502(b), 3701(a)(1)(i), 3701(a)(1)(ii), 3701(a)(1)(iii), 3502(a)(1), 2901(a)(2), 2901(a)(3), and 2902(a)(1).