

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	
<b>v.</b>	:	<b>No. 899-2005</b>
	:	<b>CRIMINAL DIVISION</b>
<b>LINDSEY E. WILLIAMS,</b>	:	
<b>Defendant</b>	:	<b>APPEAL</b>

**OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)**  
**OF THE RULES OF APPELLATE PROCEDURE**

The Defendant raises two issues on appeal. First, he contends that the jury lacked sufficient evidence to find, beyond a reasonable doubt, that he was guilty of one count each of conspiracy to commit the offense of robbery, robbery, conspiracy to commit the offense of theft by unlawful taking, theft by unlawful taking, conspiracy to commit the offense of receiving stolen property, and possession of an instrument of crime. Next, he contends that the jury's guilty verdict on each of the aforementioned charges was against the weight of the evidence.

**I. Background**

In the early morning hours of March 27, 2005, the victim, headed east on Park Avenue in Williamsport, passed three people (two males and one identified person thought, by the victim, to be a female) walking west on the opposite side of the street. Within minutes, the two males that had just passed the victim backtracked and approached the victim near Park and Fifth Avenue intersection. One of the men held a gun to the victim's throat and demanded the victim turn over his stuff. After the victim refused, one of the men knocked him to the ground, and during the ensuing scuffle, one or both men removed the victim's wallet, motorcycle keys, and cigarettes from his person. The Defendant and his alleged co-conspirator then fled the scene.

The victim sustained a bloody nose and/or a cut lip but was otherwise able to continue his walk home. Upon arriving at home, his mother, with whom he resides, called the police to report the incident. Officers Eric Houseknecht and Brian Aldinger responded to the call sometime after three o'clock in the morning. The victim relayed the evening's events to the officers, "two boys jumped me and took my stuff." N.T. 12/09/05, p.26. The victim then described his assailants, largely by their clothing; specifically, the victim reported, "one of them was wearing a Dickie suit and the other one was wearing a hoodie." N.T. 12/09/05, p.26.

About twenty minutes after reporting the attack, the police located two men in the 700 block of W. Edwin Street matching the description provided by the victim. The police brought the victim to the scene at W. Edwin Street and asked to identify the men. After the victim positively identified the two men as his attackers, police took the Defendant and his co-conspirator into custody.

On December 9, 2005, a jury convicted the Defendant<sup>1</sup> on one count each of conspiracy to commit the offense of robbery, robbery, conspiracy to commit the offense of theft by unlawful taking, theft by unlawful taking, conspiracy to commit the offense of receiving stolen property, and possession of an instrument of crime. On March 21, 2006, the Court sentenced the Defendant to five to ten years incarceration in a state correctional institution as to Count 2 (robbery); as to Count 1 (conspiracy to commit robbery), twenty years probation to run consecutive to the sentence imposed on Count 2; and one year of probation to run concurrent to the sentence imposed as to Counts 1 and 2 and to run concurrent to each other as to Counts 3-6 (conspiracy to commit theft by unlawful taking, theft by unlawful taking, conspiracy to receive

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<sup>1</sup> The other assailant, Malik Gallashaw, pleaded guilty to the charges levied against him stemming from this incident in February 2006.

stolen property, and possession of an instrument of crime). On April 19, 2006, the Defendant filed his Notice of Appeal, and pursuant to this Court's April 24, 2006 Order, filed his Concise Statement of Matters Complained of on Appeal on May 9, 2006.

## **II. Discussion**

### **A. *The jury did have sufficient evidence, in light of the eyewitness testimony presented at trial, to convict the Defendant on five of the six charges.***

The Defendant first alleges that “the identification testimony presented at trial, viewed in a light most favorable to the Commonwealth, was insufficient to enable a reasonable jury to find beyond a reasonable doubt that [the Defendant] was the guilty party in the case.”<sup>2</sup> At the December 9, 2006 trial in this matter, the Commonwealth presented testimony from the victim's mother, the victim, and from several police officers. The victim testified that two individuals, whom he described as young black men wearing coveralls and a hoodie, accosted, attacked, and robbed him at gunpoint. Then, the victim's mother testified that when her son returned home after the above-described incident, his nose was bleeding and she immediately called the police. Last, five Williamsport police officers testified regarding taking the victim's statement and conducting the victim identification and arrest of the Defendant and his co-conspirator.

For the following reasons, the Court finds that the jury could have concluded, based on the evidence presented at trial, that the Defendant was guilty of the first five charges; however, the Court finds that there was insufficient evidence for the jury to convict the Defendant on the last charge (possession of an instrument of crime).

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<sup>2</sup> The Commonwealth only presented two non-law enforcement witnesses at the trial in this matter – the victim and his mother. The victim was the only eyewitness to the crime and because the Defendant limits his evidentiary challenge to the sufficiency of his testimony, this Court will limit its focus to that issue.

In a criminal matter, the test utilized regarding a contention that there was insufficient evidence to convict the defendant, is “whether the evidence, and all reasonable inferences taken from the evidence, viewed in the light most favorable to the Commonwealth as verdict-winner, were sufficient to establish all the elements of the offense beyond a reasonable doubt.” *Commonwealth v. Maloney*, 2005 PA Super 206, P15, 876 A.2d 1002, 1007 (Pa. Super. Ct. 2005) citing *Commonwealth v. Lawson*, 2000 PA Super 242, 759 A.2d 1 (Pa. Super. 2000).

Instantly, the jury found the guilty of conspiracy to commit robbery, robbery, conspiracy to commit theft by unlawful taking, theft by unlawful taking, conspiracy to receive stolen property, and possession of an instrument of crime. The elements for each of these offenses are as follows:

<b>Crime</b>	<b>Elements</b>
Robbery	In the course of committing a theft, the actor inflicts serious bodily injury, threatens to or intentionally puts another in fear of immediate serious bodily injury, or commits or threatens to immediately commit a first or second degree felony.
Conspiracy to commit robbery	An agreement to commit robbery and an overt act in furtherance of the agreement to commit robbery.
Theft by unlawful taking	The unlawful taking or unlawful exercise of control over the movable property of another with the intent to deprive him/her thereof.
Conspiracy to commit theft by unlawful taking	An agreement to commit a theft by unlawful taking and an over act in furtherance of the agreement to commit a theft by unlawful taking.
Conspiracy to receive stolen property	An agreement to intentionally receive, retain, or dispose of the movable property of another knowing that it has been stolen, or believing that it has probably been stolen and an over act in furtherance of this agreement.
Possession of an instrument of crime	Possession of a certain item that was an instrument of crime, and the possessor had the item with the intent to employ or attempt to employ it criminally.

The Defendant's May 9, 2006 Concise Statement of Matters Complained of on Appeal does not specifically highlight any one charge or element that he contends the Commonwealth failed to provide sufficient evidence for the jury to convict him of, but instead the Defendant roots his sufficiency of the evidence claim in the victim's identification testimony presented trial. Because It is well established that is the sole province of the jury to pass upon the credibility of witnesses and the weight to be accorded the evidence produced, *Commonwealth v. Carson*, 559 Pa. 460, 473, 741 A.2d 686, 693 (Pa. 1999) citing *Commonwealth v. Williams*, 532 Pa. 265, 615 A.2d 716 (Pa. 1992) and *Commonwealth v. Pettus*, 492 Pa. 558, 424 A.2d 1332 (Pa. 1981), and the jury, as was properly instructed by this Court, is free to believe all, part, or none of the evidence. *Commonwealth v. Watkins*, 577 Pa. 194, 208, 843 A.2d 1203, 1211 (Pa. 2003) citing *Commonwealth v. Harper*, 485 Pa. 572, 576-77, 403 A.2d 536, 538-39 (Pa. 1979), this Court finds that the victim's testimony was sufficient evidence for the jury to find, beyond a reasonable doubt, the Defendant guilty of the crimes charged, excepting the possession of an instrument of crime charge.

As to the possession of an instrument of crime charge, there was no evidence presented at trial to support the elements of said charge; in fact, the victim testified that it not the Defendant but the Defendant's co-conspirator who was in possession of a firearm during the attack and robbery. Therefore, the Court respectfully urges that this charge be dismissed.

**B. *The jury's verdict was not against the weight of evidence***

The Defendant next alleges that his conviction on all counts was against the weight of the evidence presented at trial. Under Pa.R.Crim.P. No. 607, all challenges to

the weight of evidence must be raised before the trial judge or they will be waived. Here, the instant review is the first time the Defendant has raised this issue; therefore, this Court respectfully urges that this allegation be dismissed.

**III. Conclusion**

As only one of the Defendant’s contentions appear to have merit (the lack of sufficient evidence to sustain his conviction on the possession of an instrument of crime charge), it is respectfully suggested that the Defendant’s conviction on the first five charges be affirmed and the last charge (possession of an instrument of crime) be dismissed.

By the Court,

Dated: \_\_\_\_\_

\_\_\_\_\_  
Nancy L. Butts, Judge

xc: DA  
PD (GD and WM)  
Judges  
Honorable Nancy L. Butts  
Gary L. Weber, Esq.  
Laura R. Burd, Esq. (Law Clerk)