IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	
	:	
vs.	**:**	**No. CR-1069-2011**
	:	
LARRY D TRAVERS, JR.	**:**	
Defendant	**:**	

OPINION AND ORDER

This matter came before the Court on Defendant's post sentence motion. The relevant facts follow.

On June 17, 2011, the victim pulled up in front of Defendant's residence and inquired about purchasing drugs. The victim knew Defendant as "Juney." The victim told Defendant he was willing to buy a half-ounce of cocaine for $500 or less. Defendant said he would make a couple of phone calls.

Defendant returned, got into the victim's vehicle and said they needed to take a ride. Defendant directed the victim to an area near the intersection of Sixth and Isabella streets. Defendant got out of the victim's vehicle and entered a blue minivan. Defendant came back to the victim's vehicle to make sure the victim had the money. The victim pulled an envelope out of the glove box and flashed nearly $2500 in cash, consisting mostly of $100 bills. Defendant then had the victim take him back to his residence to get some shoes, because he was barefoot.

The victim drove Defendant home to get some shoes and then they went back to Sixth and Isabella streets. Defendant directed the victim to follow the blue minivan. They drove to an area near Glynn Avenue and Arnold Street. A tall black male got out of the blue minivan and got into the back seat of the victim's vehicle. The victim turned towards the

back seat and asked the black male if he had what he wanted. The black male asked the victim how much money he had. The victim had the envelope of money out and told the black male he had $500. The black male said it looks like you have more than $500 in there. When the victim began to explain that he only intended to spend $500 for the drugs, he felt a prick in his neck. The victim looked over and he saw a knife in Defendant's right hand and his left hand was on the envelope of money. Defendant then said, "Give it up."

When the victim realized he had been stabbed, he panicked. He didn't care about the money, he just struggled to free himself of his seatbelt and get out of the car. During the process, he got stabbed a second time. The victim eventually freed himself from the vehicle and began running across a grassy field yelling "please don't hurt me" as Defendant chased him.

Merle Wilcox and his son were visiting a residence on Glynn Avenue. While they were outside waiting for the boy's mother to pick him up, Mr. Wilcox saw the victim and Defendant running across the field. Mr. Wilcox initially thought they were horsing around. Then he heard the victim yell, "Please don't hurt me." Mr. Wilcox thought they were about to get into a fight in his son's presence so he ran towards them to tell them to break it up.

When Mr. Wilcox was about 20 yards away from them, the victim fell down and Defendant pounced on him. He grabbed the victim by the chin, pulled his head to the side and stabbed the victim twice in the neck. Then Defendant looked up, saw Mr. Wilcox with his cell phone out, ran to the victim's vehicle, got in the vehicle and drove away. When

he reached the end of a dead end street, Defendant abandoned the victim's vehicle and fled on foot. While he was running through back yards in the neighborhood, Defendant tore off his outer shirt and threw it in someone's garbage can.

Mr. Wilcox called 911. Before the victim was transported to the hospital, he told the police he was stabbed by "Juney," a black male, approximately six foot two inches tall and about 230 pounds. One of the officers knew Defendant Larry Travers went by the nickname "Juney" and matched that description.

Trooper Jeffrey Vilello, who had just completed a traffic stop on the highway near this neighborhood, heard the dispatch regarding the stabbing and responded. He saw Defendant, who matched the description of the perpetrator broadcast over the dispatch, walking on Linn Street. Trooper Vilello approached Defendant and asked him if his name was Larry Travers. When Defendant answered in the affirmative, Trooper Vilello immediately took him into custody. The police then took Mr. Wilcox to Linn Street and he identified Defendant as the individual who stabbed the victim.

Defendant was charged with attempted homicide, two counts of aggravated assault, three counts of robbery, robbery of a motor vehicle, theft by unlawful taking, receiving stolen property, possession of an instrument of crime, two counts of simple assault, and tampering with physical evidence.

A jury trial was held January 24-25, 2013. Defendant was convicted of attempted homicide, aggravated assault (causing serious bodily injury), robbery (inflicting serious bodily injury), robbery of a motor vehicle, possession of an instrument of crime and

tampering with physical evidence.[1]

On March 7, 2013, the Court sentenced Defendant to an aggregate term of 32 to 64 years of incarceration in a state correctional institution, consisting of 20 to 40 years for attempted homicide, 6 to 12 years for robbery, and 6 to 12 years for robbery of a motor vehicle.

On March 15, 2012, Defendant filed his post sentence motion in which he asserts that: (1) the guilty verdict was against the weight of the evidence because his claim of self-defense was not given enough weight, the intent to deprive the victim of the vehicle and/or the items in the vehicle was not established for the crimes of robbery and robbery of a motor vehicle, and the victim was not credible given his history of drug use and the fact that he was likely under the influence at the time of the incident; (2) the court erred in admitting inflammatory photographs that were unduly prejudicial to Defendant; (3) the sentence imposed was excessive in light of Defendant's history, prior record score and the circumstances surrounding the incident.

Defendant first asserts that the jury's guilty verdict was against the weight of the evidence. The Court cannot agree.

An allegation that the verdict is against the weight of the evidence is addressed to the sound discretion of the trial court. Commonwealth v. Sullivan, 820 A.2d 795, 805-806 (Pa. Super. 2003). A challenge to the weight of the evidence concedes that there is sufficient evidence to support the verdict. Commonwealth v. Widmer, 560 Pa. 308,

[1] The Commonwealth elected not to submit the other charges to the jury because they were lesser included offenses.

774 A.2d 745, 751(2000). Therefore, the court is not obligated to view the evidence in the light most favorable to the verdict winner. Id. Nevertheless, a new trial is awarded only when the "verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail." Sullivan, 820 A.2d at 806 (citation omitted). The evidence must be so tenuous, vague and uncertain that the verdict shocks the conscience of the court. Id.

A defendant is not entitled to relief on a weight claim merely because there is a conflict in testimony. Commonwealth v. Sanchez, 614 Pa. 1, 36 A.2d 24, 39 (2011). "Conflicts in the evidence and contradictions in the testimony of any witnesses are for the factfinder to resolve." Commonwealth v. Lofton, 57 A.3d 1270, 1273 (Pa. Super. 2012), citing Commonwealth v. Tharp, 574 Pa. 202, 830 A.2d 519, 528 (2003). Indeed, the "weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses." Commonwealth v. Small, 559 Pa. 423, 435, 741 A.2d 666, 672 (1999), citing Commonwealth v. Johnson, 542 Pa. 384, 394, 668 A.2d 97, 101 (1995), cert. denied, 519 U.S. 827, 117 S. Ct. 90 (1996). Simply put, the role of the court in a weight claim is to determine whether "notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or give them equal weight with all the other facts is to deny justice." Lofton, 57 A.3d at 1273, citing Commonwealth v. Widmer, 560 Pa. 308, 744 A.2d 745, 752 (2000).

The jury's verdict did not shock the Court's conscience. Defendant did not testify at trial. Instead, he relied on the statements he made to police during interviews that

were conducted on June 17, 2011 and June 20, 2011, which were played for the jury during the Commonwealth's case-in-chief. There were numerous inconsistencies in Defendant's statements.

Defendant initially claimed that he did not know the victim and he was at a carnival when the victim was stabbed. Knowing that he had discarded the green shirt he was wearing during the incident (which he later admitted doing), Defendant asked the police what color shirt the victim said he had on and how did the police know he was present. After the police told him that the victim knew him and a witness had identified him, Defendant admitted that he knew the victim as Kev, but he claimed that the victim pulled the knife on him.

More specifically, Defendant indicated that he was really broke and needed money to pay the bills. The victim wanted a half-ounce of cocaine for $500 and showed Defendant a whole bunch of $100 bills in an envelope. When the victim took Defendant back to the house to get his shoes, Defendant also got baking soda to pass off as the drugs. Defendant did not want to conduct the transaction around the kids, so they got into the vehicle and the victim made a bunch of kooky turns. The victim asked to see the drugs, and Defendant threw them at him. The victim gave him the money but then said it wasn't the right weight of drugs. He accused Defendant of gypping him and then pulled out a knife. Defendant punched the victim and tried to get out of the vehicle but the victim grabbed him. Defendant then threw the money at the victim and tried to get away. The victim swung the knife at Defendant but missed and Defendant got the knife. Then Defendant blacked out and

when he came back to awareness he was in the grassy field and there was a whole bunch of blood on the grass. He hopped back into the car and took off. When he reached the dead end, he ran on foot. He tore off his shirt and threw it in someone's garbage can. Defendant claimed he didn't know where the bag of baking soda was; he gave it to the victim so it should still have been in the car or in the area. He also asked whether someone could get in trouble for trying to sell fake drugs and the officers told him there was a provision for counterfeit substances but they were interested in the stabbing, not the drugs. Defendant also asked whether he could press charges against the victim for assaulting him first. The officers had Defendant remove his shirt and they looked for any marks on Defendant's upper body but did not find any.

During the second interview, the police told Defendant that they did not find any bag of baking soda and they spoke to his wife and she said they didn't have any baking soda or baking powder and that Defendant didn't even go into the kitchen when he came back to get his shoes. Defendant first told the officers to check the area closer, there should be something there. He also claimed that his wife didn't know about the baking soda. He got the baking soda from another person, but he wouldn't tell the police who. Later in the second interview, Defendant stated "I'm just putting lies on top of lies and that's not cool. I'm just trying to find a way out of doing all this time. I have to lie to find another way out of it." Defendant said there was no baking soda, but a few minutes later he claimed he threw the bag of baking soda out of the vehicle onto a blue vehicle. Initially, Defendant could not describe that vehicle, but later in the interview he claimed it was a newer model, dark blue

minivan with tinted windows and a for sale sign. He made statements that he threw the fake drugs because he didn't want to get in trouble for them, but the police confronted him that he didn't even know that he could get in trouble for fake drugs until he asked the police about it in the first interview. Defendant then said he just didn't want the police to be aware of what he knew. Defendant asked the officers, "If I tell you people who sell big weight, can I get out of trouble?" He also made statements such as "I'm trying to beat this case, because this case isn't me" and "I'm trying to get out of it the best way I can."

Quite simply, Defendant's claim of self-defense was utterly unbelievable and the Court was not shocked in the least that the jury rejected it. Even if one were to accept Defendant's contention that the victim was the initial aggressor and came at him with a knife, once the victim no longer had possession of the knife and fled from his own vehicle any claim of justification ceased. Defendant was no longer in danger of deadly force being used against him. At that point there was absolutely no reason for Defendant to chase the victim through the field and repeatedly stab him in the neck.

Defendant also alleges that the verdicts for robbery and robbery of a motor vehicle were against the weight of the evidence because the intent to deprive the victim of the items and/or the vehicle was not established. Again, the Court cannot agree.

The Court assumes that Defendant is arguing these verdicts were against the weight of the evidence because the vehicle was recovered and the envelope of cash was still inside of it. First, the court questions whether an intent to permanently deprive is required for robbery of a motor vehicle. The statute does not require a theft. Instead, the crime is

committed when a person takes a motor vehicle from another person in the presence of that person or any other person in lawful possession of the vehicle. 18 Pa.C.S.A. §3702(a); see also Commonwealth v. George, 705 A.2d 916 (Pa. Super. 1998)(the Commonwealth must prove: (1) the stealing, taking or exercise of unlawful control over a motor vehicle; (2) from another person in the presence of that person or any other person in lawful possession of the vehicle; and (3) the taking must be accomplished by the use of force, intimidation or the inducement of fear in the victim).

Second, a defendant need not successfully complete a theft in order to be guilty of robbery. As charged in this case, a robbery occurs when a person inflicts serious bodily injury on another in the course of committing a theft. 18 Pa. C.S.A. §3701(a)(1)(i). The phrase "in the course of committing a theft" includes acts that occur in an attempt to commit a theft or in flight after the attempt or commission. 18 Pa.C.S.A. §3701(a)(2). Clearly, when Defendant initially stabbed the victim in the neck, grabbed the envelope of money and said "give it up," he intended to steal the money from the victim and, at the very least, attempted to commit a theft. Since the phrase "in the course of committing a theft" includes attempts, the fact that Defendant ultimately abandoned the property is of no moment.

Finally, even if a completed theft were required, the crimes were completed when Defendant left the scene in the victim's vehicle. By Defendant's own admissions, he was broke and needed money to pay his bills. When Defendant took unlawful possession or control over the items, he intended to permanently deprive the lawful owner of them.

Defendant only abandoned his ill-gotten gains, because he panicked when he wound up at the end of a dead end street and was afraid he would be caught red-handed. From that point onward, Defendant was trying to conceive of ways he could avoid apprehension. This is corroborated by the fact that he tore off his green, outer shirt and discarded it in a trash can as he ran through someone's yard and he asked the police on more than one occasion early in the first interview what color shirt the witnesses said the perpetrator was wearing.

Defendant also contends the verdict is against the weight of the evidence because the victim had a drug history and was likely under the influence at the time of the incident. The Court cannot agree.

The jury was free to believe all, part or none of the victim's testimony. While the victim admitted that he had used bath salts earlier in the day, he testified that he was not under their influence at the time of the incident. Moreover, significant portions of the victim's testimony was corroborated by the testimony of Mr. Wilcox, who was an unbiased third party, and other evidence such as the amount of money recovered, the blood found on the driver's side of the vehicle, and the absence of any injuries or marks on Defendant.

Defendant next alleges that the court erred in admitting photographs of Defendant's injuries. The Court cannot agree.

Although blood could be seen on the victim's skin near or around his injuries in a couple of the pictures, the photographs were not gruesome or inflammatory. One of the issues in this case was whether the victim suffered serious bodily injury. The photographs were relevant and admissible to show the jury the nature and extent of the victim's injuries.

The photographs also were not unduly prejudicial. Evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice. Pa.R.E. 403. Unfair prejudice, however, does not mean harmful to a defendant's case or position. "'Unfair prejudice' means a tendency to suggest decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially." Pa.R.E. 403, comment. These photographs did not inflame the passions of the jury; the pictures helped the jury understand the victim's injuries. It is much easier to comprehend the size and scope of an injury by viewing a picture than trying to visualize it based solely on a description of its location and measurements.

Finally, Defendant claims that the sentence imposed was excessive in light of Defendant's history, prior record score and the circumstances surrounding the incident. Again, the Court cannot agree.

Although Defendant only had a prior record score of a one, it consisted of two simple assaults, one of which originally was charged as an aggravated assault and involved breaking his wife's jaw. He committed the current offenses later on the same day that he was placed on probation for assaulting his wife.

The circumstances surrounding the incident were horrendous. It wasn't bad enough that this incident arose out of a drug transaction or that once Defendant saw the victim's envelope of cash he decided to rob him. Instead of simply taking the money and running when the victim fled from the vehicle, Defendant chased the victim down like an animal. When the victim fell down, Defendant grabbed his head, pulled it to the side and

stabbed the victim at least twice in the neck. Defendant was just lucky that he didn't hit the victim's carotid artery or jugular vein. The victim did, however, suffer an injury to his trachea that caused swelling and breathing difficulties, and resulted in him being transferred to Geisinger Medical Center by a Life Flight helicopter. N.T., January 25, 2013, at pp. 10-14. Clearly, the impact on the victim was significant.

The Court also felt the need to protect the community from Defendant's assaultive behavior. Defendant couldn't even control his behavior while he was in the county jail. He had numerous write ups and served a total of 150 days in disciplinary lockup.

Defendant did not take any responsibility for his actions in this case. He even had the audacity to ask the police if he could press charges against the victim.

Overall, this was one of the worst cases that did not result in a death that the court has ever seen. The robbery and robbery of a motor vehicle offenses did not merge because they involved different elements and different items of the victim's property. Once the victim fled his vehicle, Defendant had control of the victim's cash and there was absolutely no reason for the other offenses to occur. Such pointless violence in our communities needs to be stopped. The only way to stop it with this Defendant was to impose a lengthy prison sentence. See also N.T., March 7, 2013, at pp. 15-20.

ORDER

AND NOW, this ___ day of July 2013, the Court DENIES Defendant's post sentence motion.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)
Kathryn Bellfy, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)