IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**
	:
vs.	**: No. CR-1445-2012**
HYSON FREDERICK,	**: Post-Sentence Motion**
Defendant	**: Motion for Judgment of Acquittal/New Trial**

OPINION AND ORDER

The jury trial was held in the above-captioned case before this Court from October 29, 2013 to October 31, 2013. Following the jury trial, Defendant was found guilty of the following offenses: Count 1, a consolidated count of Criminal Conspiracy to Commit Burglary, Robbery, Criminal Trespass, Theft by Unlawful Taking and Receiving Stolen Property, a felony 1offense; Count 9, Robbery, a felony 1 offense; Count 11, Robbery, a felony 2 offense, Count 13, Robbery, a felony 1 offense, Count 15, Robbery, a felony 2 offense; Count 17, Burglary, a felony 1 offense; Count 18, Criminal Trespass, a felony 2 offense; Count 19, Theft by Unlawful Taking or Disposition, a felony 2 offense; Count 20, Receiving Stolen Property, a felony 2 offense; Count 21, Simple Assault by Physical Menace, a misdemeanor 2 offense; Count 22, Simple Assault by Physical Menace, a misdemeanor 2 offense; Count 23, Terroristic Threats, a misdemeanor one offense; Count 24, Terroristic Threats, a misdemeanor 1 offense; Count 25, Possessing Instruments of a Crime, a misdemeanor 1 offense; Count 28, Firearms not to be Carried without a License, a felony 3 offense; and Count 31, Computer Trespass, a misdemeanor 2 offense.

On February 4, 2014, following a hearing, Defendant received a 10 to 20 year sentence on Count 17, Burglary, a felony 1 offense, a consecutive 7 ½ to 15 year sentence on Count 9, Robbery, a felony 1 offense, and a consecutive 7 ½ to 15 year sentence on Count 13, Robbery, a felony 1 offense.

The sentence with respect to Count 5, Conspiracy to Commit Burglary was run concurrent while the Court concluded that Counts 11, 15, 18, 19, 20, 21, 22, 23 and 24 all merged for sentencing purposes.

As well, the sentence with respect to Counts 25 and 28 was concurrent incarceration and the sentence with respect to Count 31 was guilt without further punishment.

The total aggregate sentence under this Information 1445-2012 was a period of state incarceration, the minimum of 25 years and the maximum of 50 years.

Defendant filed a timely Post-Sentence Motion on February 13, 2014 containing a Motion for Judgment of Acquittal and Motion for New Trial. Defendant contends that the evidence was insufficient to support the convictions with respect to Counts 9, 13 and 17. Alternatively, Defendant argues that the conviction on those counts was contrary to the weight of evidence presented at trial.

This Opinion will address the Motion for Judgment of Acquittal and Motion for New Trial.

At the argument in this matter, Defendant's sole contention with respect to both the sufficiency of the evidence as well as the weight of the evidence claims

related to his assertion that he was not involved in the incident and that the evidence was lacking with respect to the identification of him.

The parties obviously concede that in order for the Defendant to be found guilty, there must be sufficient evidence to establish his identity as the perpetrator of the crime. Identity may be established by both direct and circumstantial evidence.

In reviewing the sufficiency of the evidence, the Court considers whether the evidence and all reasonable inferences that may be drawn from that evidence viewed in a light most favorable to the Commonwealth as the verdict winner, would permit the jury to have found every element of the crime beyond a reasonable doubt. Commonwealth v. Davido, 582 Pa. 52, 868 A.2d 431, 435 (2005); Commonwealth v. Murphy, 577 Pa. 275, 844 A.2d 1228, 1233 (2004).

Moreover, the Commonwealth may sustain its burden by only circumstantial evidence and need not disprove every possibility of evidence. Commonwealth v. Orr, 38 A.3d 868, 872 (Pa. 2011), citing Commonwealth v. Hansley, 24 A.3d 410, 416 (Pa. Super. 2011). “Any doubts regarding a Defendant’s guilt may be resolved by the factfinder unless the evidence is so weak and inconclusive that as a matter of law no probability of any facts may be drawn from the combined circumstances.” Id.

The Court finds that there was an abundance of evidence upon which to identify the Defendant as the perpetrator of the in-home invasion, which formed the basis for Defendant’s robbery and burglary convictions.

While the victims could not specifically identify their assailants, they did provide general descriptions, which had some matching characteristics of the Defendant. Specifically, the assailant's height, skin tone and language matched that of the Defendant. Additionally, the "sawed off shotgun", utilized by one of the Defendants was similar to the sawed off shotgun eventually located in Defendant's residence. Moreover, jewelry and other items that were stolen from the victims were eventually recovered in Defendant's residence.

Anthony Rudinski described in detail his involvement in the incident. He initially was contacted by the Defendant for assistance in connection with breaking into an apartment building to get drugs and money. They eventually got together and picked up two other individuals. They drove to an area near the victim's residence.

While Mr. Rudinski waited in the vehicle, the other three left. About 15 to 20 minutes later, they returned indicating that they went to the wrong house. Defendant specifically told Mr. Rudinski that they broke into the wrong house, had their guns drawn, proceeded to rob the residents, that he held a shotgun on the woman, that they took credit cards, made the male disclose his pin number and stole jewelry and cell phones. Defendant actually showed to Mr. Rudinski two cell phones, the jewelry and debit card.

They had further dealings regarding the jewelry. At one time, Defendant instructed Mr. Rudinski to take the earrings and sell them. Mr. Rudinski took the earrings and pawned them at Cillo's. A receipt from Cillo's was entered into evidence.

Darryl Franklin also testified. Around the time of the incident, the Defendant contacted him requesting his assistance in connection with a robbery. Mr. Franklin was not willing to do so at which point, the Defendant indicated that he would try someone again.

The next evening they spoke. The Defendant admitted that the robbery occurred. Specifically, Defendant said he "fucked up and went to the wrong house" although he "got some jewelry."

A weight of an evidence claim enables a Judge to reverse a verdict only when it is so contrary to the evidence as to shock one's sense of justice and the reward of a new trial is imperative so that right may be given another opportunity to prevail. Commonwealth v. Sanchez, 614 Pa. 1, 36 A.3d at 24, 39, citing Commonwealth v. Blakeney, 596 Pa. 510, 946 A.2d 645, 652-53 (Pa. 2008). "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, 672-73 (1999), cert denied, 531 U.S. 829, 121 S. Ct. 80 (2000).

Clearly, the jury's verdict did not shock the Court's conscience. Accordingly, the following Order shall be entered.

ORDER

AND NOW, this ___ day of June 2014 following a hearing and argument, Defendant's Motion for Judgment of Acquittal and Motion for a New Trial are **DENIED**.

By The Court,

____

Marc F. Lovecchio, Judge

cc: DA
Julian Allatt, Esq.
Work File
Gary Weber, Lycoming Reporter