

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CR-2010-2012</b>
<b>v.</b>	:	
	:	
<b>TIRRELL WILLIAMS,</b>	:	<b>CRIMINAL DIVISION</b>
<b>Defendant</b>	:	

**OPINION AND ORDER**

On April 4, 2014, the Defendant filed a Post-Sentence Motion. A hearing on the motion was held on April 17, 2014.

**I. Background**

On the night of January 5, 2012, MS met AB at a bar, where MS had two pitchers of beer and AB had more than three drinks. After spending some time at the bar, MS and AB went to AB's house. At the house, AB told MS that she wanted marijuana, and MS gave AB money to pay for marijuana. AB used MS's phone to order marijuana. An individual, who was not the Defendant, came to AB's house and sold AB a bag of drugs. About thirteen minutes later, AB and MS realized that the bag contained a drug that was not marijuana. AB again used MS's phone to call the individual who had originally delivered the drugs. AB asked the individual to come back to the house with marijuana. When the individual came back, he was with the Defendant and two other people. The individual, the Defendant, and the two other people will be referred to as the group.

AB testified that she and the Defendant went to the upstairs of the house. A short time later, they returned downstairs, where they saw the three others in the group and MS in the kitchen. AB testified that she again went upstairs, this time alone. AB testified that while she was upstairs, she heard a commotion downstairs. Therefore, she went downstairs, where she saw

the group stomping and punching MS, while he was on the kitchen floor. As mentioned above, the group included the Defendant.

MS testified that the group surrounded him while he was in the kitchen cleaning up hot oil. He testified that while he was talking with one member of the group, another member would start talking to him. MS testified that he was talking to the Defendant when he heard another member of the group say, “Yo partner, let me talk to you.” MS testified that he turned to talk to the member who made the “partner” comment and was then struck in the back of the head by the Defendant. MS testified that the group beat him and punched him. One member of the group hit him in the head with a glass bottle, which caused him to fall to the floor. MS testified that he did not know which member hit him with the bottle. MS testified that while he was on the floor, the group kicked him and stomped him all over his body. MS testified that he rolled up into the fetal position to protect himself.

MS testified that while he was on the floor, one member of the group said, “Stand this mother f----- up, so I can shoot him.” MS did not know which member said this, but he felt the members trying to grab his arms to stand him up. MS testified that he did not let the group stand him up because he was scared that he would be shot and killed. MS testified that one member of the group poured hot oil on him. MS testified that he did not know which member poured the oil on him. After feeling the hot oil, MS got up and ran into the living room.

MS testified that while he was on the floor, he could feel members of the group going through the pockets of his pants. He testified that before the incident, he had his wallet and cell phone in his pockets. MS testified that after the incident, he no longer had his wallet and cell phone.

After the incident, AB called police. Officer Mark Lindauer (Lindauer) of the Williamsport Bureau of Police responded to the call. Lindauer noticed that there was grease and broken glass on the kitchen floor.

MS was taken to the hospital by ambulance. As a result of the incident, he had a one inch laceration on his head and a headache for three to four days. In addition, he was bruised and stiff for a week.

On October 24, 2013, a jury found the Defendant guilty of Count 1 Robbery (threaten another with or intentionally put another in fear of immediate serious bodily injury),<sup>1</sup> Count 3 Robbery (inflicting bodily injury),<sup>2</sup> Theft by Unlawful Taking,<sup>3</sup> and Simple Assault.<sup>4</sup> On March 27, 2014, this Court sentenced the Defendant to a minimum of six years and a maximum of twelve years in a state correctional institution. The Court also sentenced the Defendant to eight years of supervision under the Pennsylvania Board of Probation and Parole to run consecutively to the prison term.

## **II. Discussion**

In the Post-Sentence Motion, the Defendant avers that the evidence presented at trial is insufficient for a jury to find beyond a reasonable doubt that the Defendant threatened MS with or intentionally put MS in fear of immediate serious bodily injury. The Defendant also avers that the jury's determination that the Defendant threatened MS with or intentionally put MS in fear of immediate serious bodily injury is against the weight of the evidence. The Defendant requests that this Court enter a judgment of acquittal or grant a new trial on Count 1 Robbery.

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<sup>1</sup> 18 Pa. C.S. § 3701(a)(1)(ii). "A person is guilty of robbery if, in the course of committing a theft, he . . . threatens another with or intentionally puts him in fear of immediate serious bodily injury . . ." 18 Pa. C.S. § 3701(a)(1)(ii). This type of robbery is a felony of the first degree. 18 Pa. C.S. § 3701(b)(1).

<sup>2</sup> 18 Pa. C.S. § 3701(a)(1)(iv). This type of robbery is a felony of the second degree. 18 Pa. C.S. § 3701(b)(1).

<sup>3</sup> 18 Pa. C.S. § 3921(a). This type of theft is a misdemeanor of the first degree. 18 Pa. C.S. § 3903.

<sup>4</sup> 18 Pa. C.S. § 2701(a)(1). This type of assault is a misdemeanor of the second degree. 18 Pa. C.S. § 2701.

**A. The Evidence is Sufficient to Show beyond a Reasonable Doubt that the Defendant Intentionally Put MS in Fear of Immediate Serious Bodily Injury.**

Evidence is sufficient if the evidence “when viewed in the light most favorable to the Commonwealth as verdict winner, is adequate to enable a reasonable jury to find every element of the crime beyond a reasonable doubt.” Commonwealth v. Markman, 916 A.2d 586, 597 (Pa. 2007).

“[I]ntent may be established by circumstantial evidence since there is rarely any direct evidence of one’s subjective state of mind.” Commonwealth v. Utter, 421 A.2d 339, 341 (1980).

The Defendant argues that the evidence is insufficient for several reasons. First, the Defendant notes that neither MS nor AB could identify who took MS’s belongings. Second, the Defendant notes that both MS and AB testified that they never saw a gun. Third, the Defendant notes that MS did not know which member of the group said, “Stand this mother f----- up, so I can shoot him.” Fourth, the Defendant notes that MS did not know who hit him with the bottle. Fifth, the Defendant notes that MS did not know who poured hot oil on him. Sixth, the Defendant notes that MS was released from the hospital without treatment.

To prove beyond a reasonable doubt that the Defendant intentionally put MS in fear of immediate serious bodily injury, the Commonwealth does not need to show (1) who took MS’s belongings, (2) the presence of a gun, (3) who made the shooting threat, (4) who hit MS with a bottle, (5) who poured oil on MS, or (6) medical treatment on MS. All of these may help the Commonwealth show that the Defendant intentionally put MS in fear of immediate serious bodily injury, but none of these are necessary. Intent to put another in fear of immediate serious bodily injury can be proven through circumstances not noted by the Defendant.

The circumstances show that the Defendant intentionally put MS in fear of immediate serious bodily injury. The Defendant was a member of a group that surrounded MS. The circumstances show that the group meant to intimidate MS. When MS talked with one member of the group, another would start talking to him. One of the members of the group said, “Yo partner, let me talk to you.” The Defendant did not make this “partner” comment, but he was nonetheless a participating member of the group.

The Defendant’s physical attack on MS further shows that the Defendant intentionally put MS in fear of immediate serious bodily injury. The Defendant struck MS in the back of the head. MS was then hit in the head with a bottle and fell to the floor. While MS was on the floor in a defenseless position, the Defendant kicked him and stomped him. MS testified that he was in the fetal position when the group was beating him. This indicates that MS was in fear of immediate serious bodily injury.

Even if the Defendant was not the one who threatened to shoot MS, the Defendant was a member of a group that took action in response to the threat. MS testified that when he heard the shooting threat, he believed his life was in danger. MS testified that members of the group tried to grab his arms to stand him up. The Defendant, therefore, intentionally put MS in fear of immediate serious bodily injury.

**B. The Jury’s Determination that the Defendant Threatened MS with or Intentionally Put MS in Fear of Immediate Serious Bodily Injury is not against the Weight of the Evidence**

“The law in this Commonwealth has long been that a new trial may be ordered ‘on the ground that the verdict is against the weight of the evidence, when the jury’s 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.” Commonwealth v. Murray, 597 A.2d 111, 113 (Pa. Super. 1991).

The Defendant argues that the verdict is against the weight of the evidence for the same reasons he believes that the evidence is insufficient. The Defendant’s argument is not based on evidence that counters the Commonwealth’s evidence; rather, it is based on the Commonwealth not presenting certain evidence. Therefore, the Defendant does not truly make an argument that the verdict is against the weight of the evidence. The Defendant’s argument is truly an insufficiency of evidence argument, which was addressed in the previous section.

Nevertheless, after reviewing the evidence, this Court finds that the verdict does not shock this Court’s sense of justice. As discussed in the previous section, the Commonwealth presented evidence that the Defendant intentionally put MS in fear of immediate serious bodily injury. Therefore, the verdict is not against the weight of the evidence.

### **III. Conclusion**

The Commonwealth presented sufficient evidence to show beyond a reasonable doubt that the Defendant intentionally put MS in fear of immediate serious bodily injury. Additionally, the jury’s determination that Defendant threatened MS with or intentionally put MS in fear of immediate serious bodily injury is not against the weight of the evidence.

Based upon the foregoing, this Court finds no reason to grant the Defendant’s Post-Sentence Motion. Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4)(a), the Defendant is hereby notified of the following: (a) the right to appeal this Order within thirty (30) days of the date of this Order to the Pennsylvania Superior Court; “(b) the right to assistance of counsel in the preparation of the appeal; (c) the rights, if the defendant is indigent, to appeal in forma pauperis and to proceed with assigned counsel as provided in [Pennsylvania Rule of

Criminal Procedure] 122; and (d) the qualified right to bail under [Pennsylvania Rule of Criminal Procedure] 521(B).”

**ORDER**

AND NOW, this \_\_\_\_\_ day of July, 2014, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant’s Post-Sentence Motion be hereby DENIED.

By the Court,

Nancy L. Butts, President Judge