

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

**COMMONWEALTH OF PENNSYLVANIA** : **CR-1925-2012**  
:   
v. :   
:   
: **CRIMINAL DIVISION**  
**PATRICK WILLITS,** :   
:   
**Defendant** : **1925(a) Opinion**

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

On October 16, 2013, a jury found the Defendant guilty of Burglary,<sup>1</sup> Aggravated Assault,<sup>2</sup> Attempted Robbery,<sup>3</sup> Access Device Fraud,<sup>4</sup> Simple Assault,<sup>5</sup> Theft by Unlawful Taking,<sup>6</sup> Receiving Stolen Property,<sup>7</sup> and False Reports to Law Enforcement Agencies.<sup>8</sup> On December 30, 2013, this Court sentenced the Defendant to an aggregate term of eight to sixteen years in prison with a consecutive two years of probation. On January 9, 2014, the Defendant filed a Post-Sentence Motion. Argument on Defendant's motion was held on February 10, 2014. On July 2, 2014, this Court issued an Order denying the Defendant's motion as more than 120 days had passed since the filing. On July 28, 2014, the Defendant filed notice that he was appealing this Court's Order of July 2, 2014. On August 1, 2014, this Court ordered the Defendant to file a concise statement of matters complained of on appeal. On August 29, 2014, the Defendant filed his concise statement. On appeal, the Defendant argues that the evidence was insufficient to prove that the Defendant was the actor of the crimes. In addition, the

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<sup>1</sup> 18 Pa. C.S. § 3502(a).

<sup>2</sup> 18 Pa. C.S. § 2702(a)(4).

<sup>3</sup> 18 Pa. C.S. § 901(a) and 18 Pa. C.S. § 3701.

<sup>4</sup> 18 Pa. C.S. § 4106(a)(1)(ii).

<sup>5</sup> 18 Pa. C.S. § 2701(a)(1).

<sup>6</sup> 18 Pa. C.S. § 3921(a).

<sup>7</sup> 18 Pa. C.S. § 3925(a).

<sup>8</sup> 18 Pa. C.S. § 4906(a).

Defendant argues that the jury's finding that the Defendant was the actor was against the weight of the evidence.

## **I. Background**

At all relevant times, Thomas Willits (victim) lived at the Harvest Moon Trailer Park in Linden, Pennsylvania. The victim testified that he kept his bank card in his car, which he kept by his home. The victim testified that he never locked his car and his PIN was attached to his bank card. The victim testified that other than his daughter, nobody had permission to access his bank account. Randolph Stahl (Stahl), a friend of the victim, testified that when the victim owed money to a person, the victim gave that person his bank card and PIN.

On March 29, 2012, \$1,260.00 was withdrawn from the victim's bank account. The person who withdrew the money used the victim's bank card at an ATM in Jersey Shore, Pennsylvania. Stahl testified that he did not have the victim's card on March 29, 2012.

On March 29, 2012, a person using the victim's bank card purchased \$36.00 of gasoline at the Sheetz store in Linden, Pennsylvania. Surveillance video from the store showed that the person who purchased the gasoline drove a car with a "for sale" sign on the back. Surveillance video also showed that the person who purchased the gasoline was the same race and around the same age as Patrick Willits (Defendant). Pennsylvania State Police Trooper Tyson Havens (Havens) was familiar with the Defendant's car and testified that he could determine from the video that the Defendant's car was the car driven by the person who purchased the gasoline. The Defendant's ex-girlfriend, Chase Maggs (Maggs), testified that she had made a "for sale" sign for the Defendant's car, and the Defendant had the sign on the back of his car. Maggs testified that Defendant told her that the victim had given the Defendant a card to get gasoline.

The victim testified that around March 31, 2012, he noticed the lights that turn on when he opens his car doors had been removed. He testified that a few days before March 31, 2012, the Defendant was at the victim's home.

On March 31, 2012, around 11:30 P.M., the victim was assaulted in his home. The assailant hit the victim in the side of the head with the claw of a hammer. The victim testified that after the blow, blood began to pour down his face. Blood got on the victim's sweatshirt and on a bed that was close to the location of the assault.

The victim could not see his assailant's face because it was too dark. The victim could not determine whether his assailant was male or female and could not determine the color of the assailant's skin. The victim noticed that his attacker was wearing a gray sweatshirt with a hood. The victim also noticed that the sweatshirt had a zipper.

About fifteen minutes after the assault, the victim heard a loud sound coming from inside the Harvest Moon Trailer Park. The victim recognized the sound as the sound that the Defendant's car makes when it is started. The victim was familiar with the sound of the Defendant's car because the victim is the Defendant's uncle. The victim testified that the Defendant's car had a large muffler and made a distinct sound.

According to cellular phone records, the Defendant's phone was physically in Linden at 11:19 P.M. on March 31, 2012.

On April 1, 2012, at 12:25 A.M., the victim called police to report the assault. Pennsylvania State Police Trooper Christine Fye (Fye) arrived at the trailer park shortly after the call. Fye saw blood that was almost dry on the victim's face. Fye noticed that the victim was upset and distraught.

Maggs testified that she saw the Defendant a little after midnight of April 1, 2012. Maggs saw the Defendant at a mini-mart in Jersey Shore (Jersey Shore Mini-Mart). Maggs testified that the Defendant showed her a gray sweatshirt that had a hood and a zipper. Maggs testified that the sweatshirt had blood on it. Maggs also testified that there were little drops of blood on the Defendant's pants. Tara Litz (Litz) also saw the Defendant at the Jersey Shore Mini-Mart. Litz testified that she saw a gray sweatshirt with a hood in the Defendant's car. Litz also testified that the sweatshirt had blood on it. Unlike Maggs, Litz testified that she saw the Defendant before midnight of April 1, 2012.

According to cellular phone records, the Defendant's phone was not in Jersey Shore at 12:16 A.M. on April 1, 2012. At 12:27 A.M., the Defendant's phone was closer to Jersey Shore than it was at 12:16 A.M. An expert testified that the movement of the Defendant's phone in relation to cellular phone towers was consistent with the phone being in a car that was travelling from Linden to Jersey Shore.

Sergeant Nathan DeRemer (DeRemer) of the Tiadaghton Valley Regional Police Department testified that he saw the Defendant at the Jersey Shore Mini-Mart after midnight of April 1, 2012. Officer Kyle Fera (Fera) of the Tiadaghton Valley Regional Police Department testified that he saw the Defendant at the Jersey Shore Mini-Mart around 1:00 A.M. on April 1, 2012. DeRemer and Fera testified that when they saw the Defendant at the Jersey Shore Mini-Mart, the Defendant did not have any noticeable injuries.

On April 1, 2012, at 3:00 A.M., DeRemer and Fera again saw the Defendant. They saw the Defendant at the emergency room of the Jersey Shore Hospital. The Defendant told them that around 11:30 P.M. on March 31, 2012, he was driving in Jersey Shore. The Defendant said that two individuals in another car followed his car into a gravel parking lot in Jersey Shore. The

Defendant said that the car with the two individuals skidded in the parking lot and cornered his car in the parking lot. The Defendant said that when he got out of his car, one of the individuals slapped him in the face. The Defendant said that after the slap, the other individual took out a pistol and ejected, but did not fire, a round from it. The Defendant said that the individual then pistol-whipped him in the head. At the hospital, DeRemer and Fera did not notice any signs of injury on the Defendant.

Between 3:00 A.M. and 4:00 A.M. on April 1, 2012, DeRemer and Fera went to the gravel parking lot where the Defendant said he was assaulted. DeRemer and Fera looked for an ejected round but did not find one. Additionally, the officers did not find any marks that a skidding car would leave on gravel. DeRemer testified that the parking lot was fairly large, and DeRemer didn't know how a car could have been cornered in the lot.

At 8:55 P.M. on April 1, 2012, Fera interviewed the two individuals who the Defendant said assaulted him. The two individuals denied assaulting the Defendant and told Fera that they were not in Jersey Shore during the time that the Defendant said that he was assaulted. They provided a receipt that supported what they told Fera. Fera did not notice any injuries on the individual who the Defendant said pistol-whipped him.

At 10:00 P.M. on April 1, 2012, DeRemer, Fera, and the Defendant went to the gravel lot to look for an ejected round. The Defendant showed DeRemer and Fera the area where the alleged assault took place. Again, no round was found. Again, no skid marks were found.

On the afternoon of April 1, 2012, Havens interviewed the Defendant. The Defendant gave Havens an account of his whereabouts on March 31, 2012 and April 1, 2012. The Defendant said that on those days, he was only in Jersey Shore and Lock Haven, Pennsylvania. The Defendant told Havens that he was assaulted by two individuals in a gravel parking lot.

Havens did not notice any injuries on the Defendant. Havens spoke with the two individuals that the Defendant said assaulted him. As with DeRemer and Fera, the individuals said they were not in Jersey Shore during the time that the Defendant said he was assaulted.

On April 2, 2012, the Defendant paid \$1,275.00 in cash to a trailer park in order to rent a lot. Maggs testified that the Defendant received about \$700.00 per month in supplemental security income. Maggs testified that the Defendant also bought gold and then sold it for a higher price. Maggs testified that she knew of the Defendant buying gold only from the parents of his sister's boyfriend. Maggs testified that before the Defendant moved into the trailer park, he paid \$400.00 per month to rent an apartment. Maggs testified that the Defendant also paid an electric bill and bought cigarettes. Maggs testified that the Defendant said he got the money to rent the lot by selling two old bicycles that were in his father's basement. Maggs testified that the Defendant said that he sold one of the bicycles for \$600.00, but she thought \$600.00 was too much for the brand of bicycle that the Defendant said he sold.

## **II. Discussion**

The Defendant argues that the evidence was insufficient to establish the Defendant as the actor of the crimes. Additionally, the Defendant argues that the jury's finding that the Defendant was the actor was against the weight of the evidence.

### **A. The Evidence is Sufficient**

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). This Court finds that the evidence is sufficient to enable a reasonable jury to find beyond a reasonable doubt that the Defendant was the actor.

The Commonwealth presented sufficient evidence to show that the Defendant was the person who used the victim's bank card to purchase gasoline on March 29, 2012. The Defendant was at the victim's home a few days before March 31, 2012. Because the victim left his car unlocked, the Defendant had access to the victim's bank card. Maggs testified that the Defendant told her that the victim had given the Defendant a card to get gasoline. Havens testified that the person who purchased the gasoline on March 29, 2012 was driving the Defendant's car. Maggs testified that the Defendant's car had a "for sale" sign on the back of it. Surveillance video showed that the person who purchased the gasoline drove a car with a "for sale" sign on the back. Surveillance video also showed that the person who purchased the gasoline was the same race and around the same age as the Defendant.

The Commonwealth presented sufficient evidence to show that the Defendant was the person who used the victim's card at an ATM on March 29, 2012. As discussed in the previous paragraph, there was evidence that the Defendant had the victim's card on March 29, 2012. Additionally, just four days after March 29, 2012, the Defendant paid \$1,275.00 in cash to rent a lot. The Defendant's income, however, was not enough for him to make this payment. The Defendant had a monthly income of about \$700.00. Before he rented the lot, the Defendant paid \$400.00 per month to rent an apartment. The Defendant also paid an electric bill and bought cigarettes.

The Commonwealth presented sufficient evidence to show that the Defendant was the assailant. The assault of the victim took place in Linden around 11:30 P.M. on March 31, 2012. The Defendant's phone was in Linden at 11:19 P.M. on March 31, 2012. About fifteen minutes

after the assault, the victim testified that he heard the sound of the Defendant's car starting in the trailer park.

The victim testified that blood poured down his face after he was hit with the hammer. He testified that his assailant was wearing a gray sweatshirt with a hood and a zipper. Maggs testified that shortly after the assault, the Defendant showed her a gray sweatshirt with a hood and a zipper. Maggs testified that the sweatshirt had blood on it. Litz testified that she saw a gray sweatshirt with a hood in the Defendant's car. Litz testified that the sweatshirt had blood on it. The Defendant did not have any injuries that would have produced blood. The individual who the Defendant claimed pistol-whipped him did not have any injuries that would have produced blood.

The jury found that the Defendant lied to DeRemer, Fera, and Havens about where he was on March 31, 2012 and April 1, 2012. The Defendant said that he was in only Jersey Shore and Lock Haven. The Defendant's phone, however, was in Linden at 11:19 P.M. on March 31 and was not in Jersey Shore or Lock Haven at 12:16 A.M. on April 1. The Defendant said that he was cornered in a gravel parking lot and then pistol-whipped in the side of the head in Jersey Shore around 11:30 P.M. on March 31, 2012. However, multiple witnesses testified that the Defendant did not have any noticeable injuries on April 1, 2012. In the Jersey Shore Mini-Mart, the Defendant had a chance to tell police officers that he was pistol-whipped, but he did not tell them. There was testimony that a car could not have been cornered in the gravel parking lot. Additionally, after two investigations of the scene of the alleged pistol-whipping, the police did not find a gun round or skid marks from a car. The individuals who allegedly pistol-whipped the Defendant gave the police a receipt that supported their account that they were not in Jersey Shore at the time of the alleged pistol-whipping.



## **B. The Verdict 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 jury’s finding that the Defendant was the actor is not so contrary to the evidence as to shock this Court’s sense of justice.

As discussed in the previous section, there was sufficient evidence supporting the Commonwealth’s contention that the Defendant was the person who used the victim’s bank card on March 29, 2012. To counter this evidence, the Defendant presented the testimony of Stahl. Stahl testified that people other than the Defendant knew about the victim’s card and could access to the victim’s account.

Even with this testimony, the jury’s verdict is not so contrary to the evidence as to shock this Court’s sense of justice. Stahl testified that he did not have the victim’s card on March 29, 2012. There was no testimony that anybody other than the Defendant had access to the victim’s card around March 29, 2012. Additionally, Haven’s testified that a person driving the Defendant’s car used the victim’s card on March 29, 2012. Maggs testified that the Defendant’s car had a “for sale” sign on the back of it. Surveillance video showed that the person who used the victim’s card on March 29, 2012 drove a car with a “for sale” sign on the back. Surveillance video also showed that the person who used the victim’s card on March 29, 2012 was the same race and around the same age as the Defendant.

As discussed in the previous section, there was testimony supporting the Commonwealth’s contention that the Defendant’s income was not enough for him to rent the lot

in the trailer park. To counter this testimony, the Defendant elicited certain testimony from Maggs. Maggs testified that the Defendant bought gold and then sold it for a higher price. Additionally, Maggs testified that the Defendant said he got the money to rent the lot by selling two old bicycles from his father's basement. Maggs testified that the Defendant told her that he sold one of the bicycles for \$600.00. Through this testimony, the Defendant implied that he had enough money to pay \$1,275.00 to rent the lot.

Even with this testimony, the jury's verdict is not so contrary to the evidence as to shock this Court's sense of justice. Maggs testified that she knew of the Defendant buying gold only from one couple. There was no testimony that the Defendant sold the gold that he bought from this couple. Additionally, the Defendant told Maggs that he got the money to rent the lot from selling bicycles. However, Maggs testified that she thought \$600.00 was too much for the brand of bicycle that the Defendant said he sold.

As discussed in the previous section, there was sufficient evidence to support the Commonwealth's contention that the Defendant was the person who assaulted the victim. To counter this evidence, the Defendant elicited certain testimony from the victim. The victim testified that he did not see his attacker's face, did not know the sex of the assaulter, and did not know the color of the assaulter's skin.

Even with this testimony, the jury's verdict is not so contrary to the evidence as to shock this Court's sense of justice. The victim testified that blood poured down his face as a result of the assault. The victim also testified that the attacker was wearing a gray sweatshirt with a hood and zipper. Shortly after the assault, the Defendant had a gray sweatshirt with a hood and a zipper. The sweatshirt had blood on it. Additionally, the victim said that around fifteen minutes after the assault, he heard the sound of the Defendant's car starting in the Harvest Moon Trailer

Park. Furthermore, there was evidence showing that the Defendant lied to police about where he was around the time of the assault of the victim.

The testimony of Litz did not support the Commonwealth's timeline. The Commonwealth contended that the Defendant was at the Jersey Shore Mini-Mart after midnight of April 1, 2012, but Litz testified that she saw the Defendant at the mini-mart before midnight. Even with this testimony, the jury's verdict is not so contrary as to shock this Court's sense of justice. The testimony of Litz was refuted by other evidence and testimony. At 11:19 P.M. on March 31, 2012 and 12:16 A.M. on April 1, 2012, the Defendant's phone was not in Jersey Shore. At 12:27 A.M. on April 1, 2012, the Defendant's phone was moving towards Jersey Shore. Additionally, three witnesses testified that they saw the Defendant at the Jersey Shore Mini-Mart after midnight of April 1, 2012.

### **III. Conclusion**

The jury's verdict is supported by sufficient evidence. Additionally, the jury's verdict is not against the weight of the evidence. This Court, therefore, respectfully submits that its Order of July 2, 2014 be affirmed.

DATE: \_\_\_\_\_

By the Court,

Nancy L. Butts, President Judge