IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	**CR-1969-2012**
v.	:	
	:	
RAYMARR DAQUAN ALFORD,	:	**CRIMINAL DIVISION**
Defendant	:	

OPINION AND ORDER

On November 12, 2014, the Defendant filed a timely Post-Sentence Motion. A hearing on the motion was held on December 29, 2014.

I. Background

On July 9, 2012, Kevan Connelly was shot in Flanagan Park in Williamsport, Pennsylvania. He died later that same day. On April 30, 2014, a jury found Raymarr Alford (Defendant) guilty of First Degree Murder,[1] Conspiracy to Commit Murder,[2] Possessing an Instrument of Crime,[3] Recklessly Endangering Another Person,[4] and Firearms not to be Carried without a License.[5] For First Degree Murder, the Court used 18 Pa.C.S. § 1102.1 and sentenced the Defendant to incarceration for a minimum of 50 years and a maximum of life. For Conspiracy to Commit Murder, the Court sentenced the Defendant to incarceration for a minimum of 9.5 years and a maximum of 40 years. The sentence for conspiracy is consecutive to the sentence for murder.

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[1] 18 Pa.C.S. §§ 2501, 2502(a).
[2] 18 Pa.C.S. § 903(a)(1).
[3] 18 Pa.C.S. § 907(b).
[4] 18 Pa.C.S. § 2705.
[5] 18 Pa.C.S. § 6106.

A. Witnesses Called by the Commonwealth

1. Officer Joshua Bell's Testimony

Joshua Bell (Bell) is an officer with the Williamsport Bureau of Police. On July 9, 2012, he was stopped by a woman, who pointed to Flanagan Park and said that somebody had been shot. Bell went to the area where the woman had pointed. He saw 150 to 200 people in a half circle around a person lying on the ground.

2. Officer Eric Houseknecht's Testimony

Eric Houseknecht (Houseknecht) is an officer with the Williamsport Bureau of Police. On July 9, 2012, he saw a crowd in Flanagan Park. In the crowd, he saw a man trying to lift up another man, who was lying on the ground. Houseknecht did a brief medical examination of the man on the ground. The man's eyes were rolled back, and Houseknecht felt a very faint pulse. He could not tell if the man was breathing. Houseknecht noticed that there was a wound on the man's abdomen. An ambulance came and took the man to the hospital.

3. Corporal Dustin Reeder's Testimony

Dustin Reeder (Reeder) is an officer with the Williamsport Bureau of Police. On July 9, 2012, Reeder saw a crowd around person lying on the ground in Flanagan Park. A person led Reeder to an area next to fenced-in tennis courts. The person pointed out shell casings on the ground. Reeder found six shell cases in total. Four cases were .45 caliber. Two were .40 caliber. Reeder also found a bullet on a basketball court.

4. Braheem Connelly's Testimony

Braheem Connelly is the younger brother of Kevan Connelly. Braheem Connelly met a girl and was told that the girl's ex-boyfriend was looking for him. He asked the girl to get her

ex-boyfriend on the phone. On the phone, Braheem Connelly argued with the ex-boyfriend, Qu Mar Moore.

On July 7, 2012, Kevan Connelly and Braheem Connelly were walking on High Street in Williamsport. Braheem Connelly noticed that a group of approximately eight males were following them. Both the Defendant and Qu Mar Moore were in the group. There was an argument, and Kevan Connelly and Qu Mar Moore started fighting. When Braheem Connelly went to help Kevan Connelly, everybody started fighting. The Defendant waved a silver and black gun and hit Kevan Connelly in the face with the gun. When the police arrived, everybody ran.

On July 9, 2012, Braheem Connelly got off work around 6:30 P.M. He spoke with Kevan Connelly and agreed to meet him at Flanagan Park. When Braheem Connelly got to the park around 6:40 P.M., Kevan Connelly was already there playing basketball. Braheem Connelly started playing basketball. About 10 to 15 minutes after Braheem Connelly got to the park, Kevan Connelly and Braheem Connelly were approached by four males. The Defendant and Qu Mar Moore were in the group of four. A light-skinned black person with cornrows was also in the group. The Defendant was wearing a white shirt and blue jeans. Qu Mar Moore was wearing a black shirt and black jeans. The Defendant and Qu Mar Moore were patting their waists as they approached the Connelly's.

Braheem Connelly and Qu Mar Moore argued for a minute or two. When Braheem Connelly realized that the Defendant and Qu Mar Moore had guns, he tried to pull Kevan Connelly away from them. Braheem Connelly saw the Defendant pull a silver and black gun from his waist. It was the same gun that the Defendant waved on High Street on July 7, 2012. He also saw Qu Mar Moore pull a black revolver from his waist. The Defendant pointed his gun

at Braheem Connelly and Kevan Connelly and fired the gun three or four times. Braheem Connelly saw a bullet hit Kevan Connelly in the chest. Qu Mar Moore also fired his gun two or three times at Braheem Connelly and Kevan Connelly. After the shots, the Defendant, Qu Mar Moore, and the two other males in the group ran away.

5. KW's Testimony

KW knew Kevan Connelly, Braheem Connelly, Qu Mar Moore, and the Defendant. On July 7, 2012, Kevan Connelly and Braheem Connelly went to KW's house, where Kevan Connelly told KW about the fight on High Street.

On July 9, 2012, Kevan Connelly left KW's house around 6:15 P.M. to go to Flanagan Park to play basketball. Braheem Connelly came to KW's house around 6:25 P.M. Braheem Connelly asked to use KW's phone to call Kevan Connelly. After Kevan Connelly told Braheem Connelly about an altercation, Braheem Connelly went to Flanagan Park to see if Kevan Connelly was alright and to play basketball.

KW left for the park shortly after Braheem Connelly left. KW saw Kevan Connelly at the park. KW played basketball on one half of a court while Braheem Connelly and Kevan Connelly played on the other half. KW heard an argument while he was playing basketball. Kevan Connelly and Braheem Connelly were arguing with the Defendant, Qu Mar Moore, Stacey Cooley (Cooley), and a light-skinned black male with twisties in his hair. The Defendant was wearing a gray shirt, and Qu Mar Moore was wearing a black shirt. The male with twisties was wearing a white shirt. The Defendant and Qu Mar Moore wanted Kevan Connelly and Braheem Connelly to go into an alley, but the Connelly's said no. Kevan Connelly threw a punch at the male with twisties. KW saw the Defendant pull an all black semi-automatic gun from his waist. The gun was not silver and black. Immediately after the Defendant pulled the

gun, he fired shots towards Kevan Connelly, Braheem Connelly, and KW. KW did not see anybody else with a gun.

6. ST's Testimony

ST knew the Defendant, Qu Mar Moore, Cooley, and Rayvonne Enty (Enty). Shakeem Taylor (Taylor) gave ST a Chrysler Town and Country mini-van, so ST could use it to sell drugs.

On July 9, 2012, ST picked up Enty at a hotel and went to the Defendant's house. ST, Enty, the Defendant, and Cooley left the Defendant's house. The Defendant, Enty, and Cooley were passengers in the van as ST drove around the area. At about 6:00 P.M., ST parked the van at Flanagan Park. ST, the Defendant, Cooley, and Enty exited the van. As they were entering the park, Kevan Connelly approached them. Kevan Connelly was yelling that the Defendant had pulled a gun on him, and Kevan Connelly wanted to fight. TB came over and told them not to fight. People were still arguing as ST got back into the van. ST was in driver's seat when the Defendant came to passenger side, opened a dashboard compartment, and grabbed a gun from the compartment. As the Defendant was pulling the gun from the compartment, ST saw a man on a porch, so ST took the gun from the Defendant and put it in between the van seats. ST told everybody to get back in the van because a man had seen the Defendant with a gun. The Defendant, Cooley, and Enty entered the van, and ST drove from the park. The four went to 619 Second Street, which is a two to four minute drive from Flanagan Park. Once on Second Street, everybody got out of the van. Enty went to the back of the van and used a t-shirt to wipe the gun that the Defendant had grabbed.

ST did not stay long at Second Street. He entered the van and left to sell drugs. ST called Qu Mar Moore and told him that there was a confrontation in Flanagan Park and Moore needed to go to the park. ST returned to Second Street about 25 minutes after he left. The

Defendant, Cooley, and Enty asked ST to drive them back to Flanagan Park. Enty sat in the front passenger seat. The Defendant sat in the seat in the second row of the van. Cooley sat in the third row of the van. ST then drove to the park.

The Defendant, Cooley, and Enty exited the van at Flanagan Park. The Defendant was wearing a white t-shirt and jeans. Cooley was wearing a dark shirt. Enty was wearing a white shirt and had braids. As the Defendant exited the van, he put an all black semi-automatic handgun in his waist. The gun was the same gun that the Defendant had grabbed earlier and Enty had wiped. ST then drove from the park to sell drugs.

About 10 to 15 minutes later, ST drove by Flanagan Park. He saw a police officer running to a body on the ground by the park's gate. He thought, "They did it." ST then drove to Second Street. He took the drugs out of the van and gave them to his sister in 619 Second Street. ST's grandmother saw ST hand the drugs to his sister. ST left house, drove the van down the street, and made a U-turn. He saw Enty riding on the handlebars of another person's bicycle. ST picked up Enty and drove back towards 619 Second Street. ST's grandmother was in the street, so ST stopped and let his grandmother in the van. ST drove to the Defendant's house and knocked on the door, but nobody answered. ST drove back to 619 Second Street, where he and his grandmother exited the van. ST went into 619 Second Street to get drugs to sell. He then left Second Street with Enty to sell drugs. While ST was driving the van, Enty was making calls to find out where the Defendant, Cooley, and Qu Mar Moore were.

ST and Enty arrived at the house of DM at about 7:30 or 7:40 P.M. on July 9, 2012. The Defendant, Cooley, and Qu Mar Moore also arrived at DM's house. The Defendant told ST, "Bro, I caught my first body, and I'll do it again." ST, the Defendant, Cooley, Qu Mar Moore, and Enty left DM's house. At about 8:30 or 9:00 P.M., they arrived at the house of MC. While

at MC's house, Enty called Taylor because the Defendant and Cooley wanted to leave Williamsport. Taylor came MC's house, and the group agreed to meet Taylor later at the Walmart in Montoursville, Pennsylvania. Enty left MC's house with Taylor. At about 11:00 P.M. on July 9, 2012, ST, the Defendant, Cooley, and Qu Mar Moore met Taylor and Enty at the Walmart. The Defendant entered Taylor's vehicle and left with Taylor and Enty. ST, Qu Mar Moore, and Cooley returned to MC's house. ST gave MC $50 in cash and about $100 worth or heroin, so she would stay calm and not talk. ST and Cooley left MC's house, but Qu Mar Moore stayed there.

On July 10, 2012, MC sent text messages to ST. She told ST to get Qu Mar Moore out of her house because she had seen his picture in the paper. Qu Mar Moore left MC's house with Taylor's brother.

7. AJ's Testimony

AJ knew Kevan Connelly, Braheem Connelly, the Defendant, and Qu Mar Moore. On July 9, 2012, AJ took her son to Flanagan Park so he could play. AJ was sitting on a bench in the park with CH. Kevan Connelly and Braheem Connelly were arguing with the Defendant, Qu Mar Moore, and two males who AJ did not know. One of the unknown males had twisties in his hair. Kevan Connelly and the person with the twisties punched each other. She heard gun shots and saw a flash but did not see who fired the gun. She did not see the Defendant with a gun.

8. AM's Testimony

Qu Mar Moore frequently came to the house of AM. Qu Mar Moore would often let himself in AM's house. Kadeem Alford also spent a lot of time in AM's house. Kadeem Alford basically lived at AM's house. The Defendant came to AM's house but not often.

On March 2, 2012, AM bought a silver and black Taurus .45 caliber semi-automatic handgun. He kept the gun in different places in his house. AM believed that Kadeem Alford knew that AM had a gun. At one point, Qu Mar Moore saw the gun. Qu Mar Moore was at AM's house on July 8, 2012.

On July 10, 2012, AM heard that the Defendant and Qu Mar Moore were wanted by police. AM had last seen his gun on July 5, 2012. He checked the shelf where he had left his gun, but the gun was not on the shelf. He went to the police to report that his gun was missing.

9. Agent Kevin Stiles' Testimony

Kevin Stiles (Stiles) is a detective in the Williamsport Bureau of Police. Stiles reviewed footage from a camera on Second Street in Williamsport and a camera on a city bus. The footage was played for the jury. According to Stiles, the footage showed the following. At 6:31 P.M. on July 9, 2012, a gray Chrysler Town and Country mini-van parked on Second Street. ST exited the van using the driver's door. A male exited the van using the front passenger seat. The van's sliding door opened, but the footage did not show if anybody exited the van from the back. The person from the front passenger seat touched his waist and opened the van's truck. He grabbed something white from the truck and manipulated something else with the white object. At 6:32 P.M., ST went to the front passenger side of the van and lifted a dashboard panel. At 6:35 P.M., ST entered the van and drove from Second Street. At 6:54 P.M., the van returned and was parked on Second Street. ST exited the van, walked on Second Street, and then entered an apartment. He exited the apartment at 6:58 P.M.

Four males other than ST walked onto Second Street. One entered the back of the van by opening the driver-side sliding door. One entered the van by using the front passenger-side door. One walked down Second Street and did not get into the van. ST entered 619 Second Street.

The fourth male entered the van by using the driver-side sliding door. ST returned to the van at 7:01 P.M. At 7:02 P.M., the van left Second Street.

At 7:13 P.M., a city bus was in the area of Flanagan Park. People were running from the park. The right hand of one male was "held down to the right side of his waist." Stiles believed this male was one of the males who entered the van on Second Street. Another male's "left hand [was] holding onto his left side of his waist." Stiles believed this other male was another one of the males who entered the van on Second Street. Stiles believed that the video showed a third male from Second Street running from Flanagan Park.

At 7:19 P.M., the Chrysler van parked on Second Street. ST entered 619 Second Street. At 7:20 P.M., ST exited 619 Second Street and entered the van using the driver's door. The van went east on Second Street. ST's grandmother exited 619 Second Street and went onto the street. The van was headed west on Second Street but stopped. At 7:21 P.M., ST's grandmother entered the van, and it left Second Street. At 7:31 P.M., the van returned to Second Street, where ST and his grandmother exited the van. ST's grandmother entered 619 Second Street. At 7:32 P.M., ST entered the van using the driver's door. The van went west on Second Street.

10. Agent Trent Peacock's Testimony

Trent Peacock (Peacock) is a detective with the Williamsport Bureau of Police. Peacock watched the footage from the camera on the city bus. According to Peacock, the footage showed that three people had one of their hands at their waist and had only one of their arms swinging as they ran. Peacock testified that it is difficult to run with a gun. As a result of his training and experience, he formed the opinion that three individuals in the footage were carrying guns at their waists. Peacock also testified that the Defendant was 17 years old on July 9, 2012.

11. Agent Raymond Kontz's Testimony

Raymond Kontz (Kontz) is a detective with the Williamsport Bureau of Police. He was off duty on July 7, 2012 when he saw a large group of people in the middle of High Street in Williamsport. Kontz heard a lot of yelling, and the group appeared to be fighting. He heard one person say, "Give me a jawn." In Kontz's experience, "jawn" is a slang word for gun. At one point, the person who said "give me a jawn" was knocked down. Kontz believed that Kevan Connelly was the person who said "give me a jawn."

12. Officer Brian Aldinger's Testimony

Brian Aldinger (Aldinger) is an officer with the Williamsport Bureau of Police. On July 7, 2012, he was dispatched to a disturbance on High Street. It was reported that two men who may have been involved in the disturbance were walking on Park Avenue. Aldinger approached the two men on Park Avenue. They were Kevan Connelly and Braheem Connelly. Kevan Connelly had a cut on his chin and was bleeding. He told Aldinger that he was elbowed during a basketball game.

13. Lieutenant Arnold Duck's Testimony

Arnold Duck (Duck) is an officer with the Williamsport Bureau of Police currently assigned to the Forensics Unit. Duck marked potential evidence in Flanagan Park after the shooting on July 9, 2012. Duck found four .45 caliber casings and two .40 caliber casings. He also found a .45 caliber bullet.

Duck collected potential evidence from the Chrysler van driven by ST. Duck noticed a compartment in the dashboard of the van. A dashboard panel could be lifted and under the panel

there was a space. Duck testified that vans are not normally manufactured in a way that dashboard panels can be lifted.

14. Julia Brolley's Testimony

Julia Brolley (Brolley) is an expert in DNA analysis and currently employed by the Pennsylvania State Police – Greensburg. She received two swabs from .40 caliber casings and four swabs from .45 caliber casings. Brolley was unable to generate a DNA profile for any of the swabs.

15. Corporal Elwood Spencer's Testimony

Elwood Spencer (Spencer) is a forensic firearm examiner employed by the Pennsylvania State Police. Elwood received two discharged Winchester .40 Smith and Wesson cartridge cases. He also received four discharged Winchester .45 auto cartridge cases. In addition, he received four discharged bullets; three were from Kevan Connelly's autopsy, and one was from Flanagan Park.

Spencer determined that both .40 cases were discharged from the same firearm. He also determined that all of the .45 cases were discharged from same firearm.

Spencer determined that the four .45 cases, the bullet from Flanagan Park, and one bullet from the autopsy came from a silver and black Taurus semi-automatic PT 145 Millennium Pro Caliber .45 auto. Spencer could not determine whether the two other bullets came from the same gun, but he did determine that they did not come from the Taurus semi-automatic PT 145 Millennium Pro Caliber .45 auto.

16. Dr. Rameen Starling-Roney's Testimony

Dr. Starling-Roney is a board certified physician and the forensic pathologist who performed the autopsy of Kevan Connelly. Kevan Connelly was shot once in left shoulder, once in the right arm, and twice in the back. Dr. Starling-Roney determined that the cause of Kevan Connelly's death was multiple gunshot wounds.

B. Witnesses Called by the Defendant

1. Tramane Moore's Testimony

Tramane Moore is the brother of Qu Mar Moore. Tramane Moore was in Flanagan Park on July 9, 2012. He saw Qu Mar Moore, the Defendant, Enty, and Cooley arguing with Kevan Connelly and Braheem Connelly. Tramane Moore saw Kevan Connelly and Enty punch each other. Tramane Moore heard gun shots, but he did not see who was shooting because people had walked up to the group and surrounded them.

2. CH's Testimony

CH was in Flanagan Park on July 9, 2012. She was with AJ and AJ's son. CH was sitting on a bench with AJ when she heard an argument. The argument was to the side of AJ and CH, so CH had to turn to see it. CH saw AJ turn and look at the argument. Kevan Connelly, Braheem Connelly, the Defendant, and a light-skinned black male with braids were arguing. CH turned back around and started talking with AJ again. She did not pay attention to the argument. She was looking at AJ, and AJ was looking at her. CH heard gun shots while she was talking with AJ. When the gun shots happened, AJ ran to get her son. CH did not see anybody with a gun. She saw that Kevan Connelly was shot but did not see who shot him.

3. Scott Warner's Testimony

Scott Warner is a licensed private detective. Warner testified that shell cases from a semi-automatic gun usually eject six to eight feet from the shooter. Warner testified that cases do not usually eject as far as the cases were from where CH said the argument occurred. According to information provided by CH, Qu Mar Moore was closer than the Defendant to the location where the cases were found.

4. MC's Testimony

In the early evening of July 9, 2012, ST asked MC if his friends could stay at her house. About an hour after ST asked, ST, Cooley, Qu Mar Moore, and a light-skinned black male with braids came to MC's house. The Defendant was not at MC's house. ST's friends did not stay more than an hour except for Qu Mar Moore, who stayed the night. ST gave her $50 and about $100 worth of heroin, so Qu Mar Moore could stay the night. On July 10, 2012, MC saw Qu Mar Moore's picture in the news and told ST that Qu Mar Moore had to leave her house.

5. Kadeem Alford's Testimony

Kadeem Alford is the Defendant's brother. Kadeem Alford was at AM's house almost every day and was almost like a family member. Qu Mar Moore was regularly at AM's house but not as much as Kadeem Alford. The Defendant did not go to AM's house often. Kadeem Alford did not know the last time the Defendant was at AM's house. Kadeem Alford knew AM had a gun license and heard AM talking about getting a gun, but Kadeem Alford did not know if AM had a gun. Kadeem Alford never saw a gun belonging to AM. Qu Mar Moore never asked Kadeem Alford about AM's gun. Qu Mar Moore never showed Kadeem Alford a gun belonging to AM.

C. Arguments of Post-Sentence Motion

The Defendant argues that the Commonwealth failed to offer sufficient evidence to support a conviction for First Degree Murder for the following reasons. It was unclear whether the Defendant possessed a .40 caliber all black handgun or a .45 caliber silver and black handgun. The Commonwealth did not present any evidence that the Defendant intended to kill Kevan Connelly.

The Defendant argues that the Commonwealth failed to offer sufficient evidence to support a conviction for Conspiracy to Commit Murder because "no evidence was presented to demonstrate that [the Defendant] and QuMar Moore had spoken prior to the shooting that day, that they communicated an agreement through communication of third parties, that either knew the other was coming to the park, that either knew the other had a weapon or that either had formulated a plan to shoot Kevan Connelly." The Defendant argues that since there was not a conspiracy in Commonwealth v. Kennedy,[6] there is not a conspiracy in his case. He contends that his actions and Qu Mar Moore's actions "amounted to joining into an affray spontaneously rather than pursuant to a common plan, agreement or understanding."

The Defendant argues that the Court's application of 18 Pa.C.S. § 1102.1 was unconstitutional under the Cruel and Unusual Punishment Clause of the Eighth Amendment to the Federal Constitution.

The Defendant argues that the imposition of the mandatory minimum sentence in 18 Pa.C.S. § 1102.1(a)(1) was unconstitutional under Alleyne v. United States[7] because the jury did not find that the Defendant was 15 years of age or older.

[6] 453 A.2d 927 (Pa. 1982).
[7] 133 S. Ct. 2151 (2013).

The Defendant argues that his sentence was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution because 18 Pa.C.S. § 1102.1 requires courts to ignore factors set out in Pennsylvania's Juvenile Act when sentencing a defendant. According to the Defendant, "the terms of 18 Pa.C.S. § 1102.1 seek to circumvent the protection provided to every juvenile offender and the directive provided to the court when imposing sentence on a juvenile offender that specific individual factors surrounding that juvenile offender be considered and a sentence be imposed specifically focusing on those factors as they relate to this specific defendant. As such, 18 Pa.C.S. § 1102.1 denies this specific class of offender equal protection under the laws of the United States and of the Commonwealth of Pennsylvania."

The Defendant argues that his sentence is unconstitutional under the Federal and State *Ex Post Facto* Clauses because the shooting occurred after the Supreme Court of the United States decided Miller v. Alabama[8] but before 18 Pa.C.S. § 1102.1 took effect.

The Defendant argues that 18 Pa.C.S. § 1102.1 is unconstitutional under the Original Purpose Clause and the Single Subject Clause of the Pennsylvania Constitution.

The Defendant argues that his sentence is manifestly excessive because the Court did not properly weigh and utilize the sentencing factors set forth in Miller v. Alabama. In addition, the Defendant argues that the Court considered factors beyond his control and did not properly weigh factors. He, therefore, requests that the Court reconsider his sentence.

[8] 132 S. Ct. 2455 (2012).

II. Discussion

A. The Commonwealth Presented Sufficient Evidence to Support the Conviction for First Degree Murder.

Pennsylvania courts apply the following test to determine whether evidence is sufficient to support a conviction:

> The standard [Pennsylvania courts] apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, [a court] may not weigh the evidence and substitute [its] judgment for the fact-finder. In addition . . . the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the [finder] of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Rivera, 983 A.2d 767, 770-71 (Pa. Super. 2009) (quoting Commonwealth v. Jones, 874 A.2d 108, 120-21 (Pa. Super. 2005)).

"In order to prove first-degree murder, the Commonwealth must establish that: (1) a human being was killed; (2) the accused caused the death; and (3) the accused acted with malice and the specific intent to kill. The jury may infer the intent to kill based upon the defendant's use of a deadly weapon on a vital part of the victim's body." Commonwealth v. Sanchez, 82 A.3d 943, 967 (Pa. 2013) (citations omitted).

Here, the Commonwealth offered sufficient evidence that the Defendant intended to kill Kevan Connelly. The Defendant returned to the park after an argument with Kevan Connelly. He returned with a gun and approached Kevan Connelly. He shot Kevan Connelly. After the

shooting, he said, "I caught my first body, and I'll do it again." Such evidence is sufficient for a jury to find that the Defendant intended to kill Kevan Connelly.

There was also sufficient evidence to establish that the Defendant caused Kevan Connelly's death. The Defendant shot Kevan Connelly. Dr. Starling-Roney testified that Connelly died of multiple gunshot wounds. Thus, the Commonwealth presented sufficient evidence that the Defendant caused Kevan Connelly's death.

B. The Commonwealth Presented Sufficient Evidence to Support the Conviction for Conspiracy to Commit Murder.

"To sustain a criminal conspiracy conviction, the Commonwealth must establish a defendant entered into an agreement to commit or aid in an unlawful act with another person or persons, with a shared criminal intent, and an overt act was done in the conspiracy's furtherance." Commonwealth v. Weimer, 977 A.2d 1103, 1105-06 (Pa. 2009). "[A] conspiracy may be inferred where it is demonstrated that the relation, conduct, or circumstances of the parties, and the overt acts of the co-conspirators sufficiently prove the formation of a criminal confederation. The conduct of the parties and the circumstances surrounding their conduct may create a web of evidence linking the accused to the alleged conspiracy beyond a reasonable doubt." Commonwealth v. Knox, 50 A.3d 749, 755 (Pa. Super. 2012) (quoting Commonwealth v. McCall, 911 A.2d 992, 996-97 (Pa. Super. 2006)).

Here, from the circumstances, a jury could infer that the Defendant and Qu Mar Moore conspired to kill Kevan Connelly. The Defendant is correct that under Kennedy, "persons do not commit the offense of conspiracy when they join into an affray spontaneously, rather than pursuant a common plan, agreement, or understanding." 453 A.2d at 930. However, the circumstances show that neither the Defendant nor Qu Mar Moore joined an affray

spontaneously. Both the Defendant and Qu Mar Moore knew that Kevan Connelly was at Flanagan Park. Both went to the park with a gun. Both were in the group that approached Kevan Connelly, and both shot Kevan Connelly. From these circumstances, a jury could infer that the Defendant and Qu Mar Moore conspired to kill Kevan Connelly. Therefore, the Commonwealth presented sufficient evidence to support the conviction for conspiracy to commit murder.

C. 18 Pa.C.S. § 1102.1 is not Unconstitutional under the Cruel and Unusual Punishment Clause.

In Commonwealth v. Lawrence,[9] the Superior Court of Pennsylvania held that 18 Pa.C.S. § 1102.1 "does not offend the Cruel and Unusual Punishment Clause of the Eighth Amendment." 99 A.3d at 122. Therefore, this issue has no merit.

D. Any *Alleyne* Error was Harmless Because the Defendant Conceded the Fact Required for the Mandatory Minimum Sentence.

"A person who has been convicted, after June 24, 2012, of a murder of the first degree . . . and who was under the age of 18 at the time of the commission of the offense shall be sentenced as follows: [a] person who at the time of the commission of the offense was 15 years of age or older shall be sentenced to a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 35 years to life." 18 Pa.C.S. § 1102.1(a)(1).

"Section 1102.1 does present an Alleyne problem." Lawrence, 99 A.3d at 123, n.11. In Lawrence, the Court found that any *Alleyne* error was harmless because the defendant conceded the fact required for the mandatory minimum. Id.

[9] 99 A.3d 116 (Pa. Super. 2014).

Here, the Defendant conceded that he was 17 years old on July 9, 2012. The following is an exchange between Defense Counsel and Agent Peacock, who was a witness called by the Commonwealth:

> **Defense Counsel**: Agent Peacock, on July 9th of 2012, do you know how old [the Defendant] was?
>
> **Peacock**: [The Defendant], I believe, was just a few days shy of his 18th birthday.
>
> **Defense Counsel**: Which is another way of saying that he was 17 years old?
>
> **Peacock**: Yes, sir.

N.T., 4/25/14, at 111. Because the Defendant conceded the fact required for the mandatory minimum, any *Alleyne* error is harmless.

E. The Defendant's Sentence is not Unconstitutional under the Equal Protection Clause Because the Mandatory Sentence of 18 Pa.C.S. § 1102.1(a)(1) is Reasonably Related to a Legitimate Public Interest.

The Defendant argues that 18 Pa.C.S. § 1102.1 requires the Court to ignore the factors in Section 6352 of Pennsylvania's Juvenile Act. When determining whether to impose a sentence of life without parole on a juvenile convicted of first degree murder, a court is required to consider and make findings on the record regarding the following:

> (1) The impact of the offense on each victim, including oral and written victim impact statements made or submitted by family members of the victim detailing the physical, psychological and economic effects of the crime on the victim and the victim's family.
> (2) The impact of the offense on the community.
> (3) The threat to the safety of the public or any individual posed by the defendant.
> (4) The nature and circumstances of the offense committed by the defendant.
> (5) The degree of the defendant's culpability.
> (6) Guidelines for sentencing and resentencing adopted by the Pennsylvania Commission on Sentencing.
> (7) Age-related characteristics of the defendant, including:
> (i) Age.
> (ii) Mental capacity.

> (iii) Maturity.
> (iv) The degree of criminal sophistication exhibited by the defendant.
> (v) The nature and extent of any prior delinquent or criminal history, including the success or failure of any previous attempts by the court to rehabilitate the defendant.
> (vi) Probation or institutional reports.
> (vii) Other relevant factors.

18 Pa.C.S. § 1102.1(d). Pennsylvania's Juvenile Act requires the following:

> If the child is found to be a delinquent child the court may make any of the following orders of disposition determined to be consistent with the protection of the public interest and best suited to the child's treatment, supervision, rehabilitation and welfare, which disposition shall, as appropriate to the individual circumstances of the child's case, provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable the child to become a responsible and productive member of the community.

42 Pa.C.S. § 6352(a).

Under 42 Pa.C.S. § 6352(a), a court has to consider public protection, the juvenile's treatment, supervision, rehabilitation, welfare, accountability, and development of competencies. Under 18 Pa.C.S. § 1102.1(d), a court has to consider public safety, the degree of culpability, the nature and circumstances of the offense, the juvenile's maturity, mental capacity, prior history, and probation or institutional reports. Although the two sections use different words, they have the same effect. If a court considers the factors in 18 Pa.C.S. § 1102.1, it considers the factors in 42 Pa.C.S. § 6352. Therefore, the Court rejects the Defendant's argument that he was treated differently because the Court did not consider the factors in 42 Pa.C.S. § 6352.

The crux of the Defendant's argument appears to be that the sentence was unconstitutional because juveniles who are not convicted of murder are not subject to mandatory sentences. "The constitutional validity of duly enacted legislation is presumed. The party seeking to overcome the presumption of validity must meet a formidable burden."

Commonwealth v. Haughwout, 837 A.2d 480, 487 (Pa. Super. 2003) (quoting Commonwealth v. Means, 773 A.2d 143, 147 (Pa. 2001)).

"The equal protection clause of the Fourteenth Amendment provides that no State shall 'deny to any person within its jurisdiction the equal protection of the laws.'" Commonwealth v. Albert, 758 A.2d 1149, 1151, (Pa. 2000) (quoting U.S. Const. amend. XIV, § 1). "[T]he starting point of equal protection analysis is a determination of whether the State has created a classification for the unequal distribution of benefits or imposition of burdens." Commonwealth v. Parker White Metal Co., 515 A.2d 1358, 1363 (Pa. 1986). "[T]he test to be applied in equal protection cases, neither implicating rights fundamental under the Pennsylvania or United States Constitutions nor involving suspect classifications, is the 'rational basis' test." Commonwealth v. Lark, 504 A.2d 1291, 1298 (Pa. Super. 1986).

Here, the Defendant does not contend that he is in a suspect class or that a fundamental right is implicated. Therefore, the Court will apply the rational basis test. The rational basis test consists of the following two-step analysis:

> First, [a court] must determine whether the challenged statute seeks to promote any legitimate state interest or public value. If so, [the court] must next determine whether the classification adopted in the legislation is reasonably related to accomplishing that articulated state interest or interests.

Albert, 758 A.2d at 1152. "In undertaking its analysis, the reviewing court is free to hypothesize reasons the legislature might have had for the classification. If the court determines that the classifications are genuine, it cannot declare the classification void even if it might question the soundness or wisdom of the distinction." Id.

It goes without saying that murder is a serious crime. "It demonstrates a disregard for . . . the life of the victim. It is a crime of archviolence." Commonwealth v. Middleton, 467 A.2d 841, 847 (Pa. Super. 1983). The legislature has a legitimate interest in forbidding and preventing

murder. The imposition of the 35 year mandatory sentence under 18 Pa.C.S. § 1102.1(a)(1) is reasonably related to this interest. The sentence punishes those who commit murder and helps to deter others from committing murder. Therefore, the sentence is reasonably related to a legitimate public interest. The Defendant "does not argue that a national consensus exists against imposing a sentence of 35 years to life imprisonment upon a juvenile." Lawrence, 99 A.3d at 121, n.10.

F. The Defendant's Sentence is not Unconstitutional under the Federal and State *Ex Post Facto* Clauses Because the Court Applied the Law in Existence at the Time of the Offense.

In Commonwealth v. Batts,[10] the Supreme Court of Pennsylvania offered the following instruction on sentencing juveniles who are convicted of first or second degree murder:

> We recognize the difference in treatment accorded to those subject to non-final judgments of sentence for murder as of *Miller's* issuance and those convicted on or after the date of the High Court's decision. As to the former, it is our determination here that they are subject to a mandatory maximum sentence of life imprisonment as required by Section 1102(a), accompanied by a minimum sentence determined by the common pleas court upon resentencing. Defendants in the latter category are subject to high mandatory minimum sentences and the possibility of life without parole, upon evaluation by the sentencing court of criteria along the lines of those identified in *Miller*.

66 A.3d at 297.

Miller was decided on June 25, 2012. *See* 132 S. Ct. 2455. Because Miller was decided before the Defendant shot and killed Kevin Connelly, the Court was required to evaluate criteria along the lines of those identified in Miller. In Knox, the Superior Court discussed the requirements of Miller:

> [A]t a minimum [a court] should consider a juvenile's age at the time of the offense, his diminished culpability and capacity for change, the circumstances of the crime, the extent of his participation in the crime, his family, home and neighborhood environment, his emotional maturity and development, the extent that familial and/or peer pressure may have affected him, his past exposure to violence, his drug and alcohol history, his ability

[10] 66 A.3d 286 (Pa. 2013).

> to deal with the police, his capacity to assist his attorney, his mental health history, and his potential for rehabilitation.

50 A.3d at 745. The Court has already cited the factors to be considered under 18 Pa.C.S. § 1102.1(d). Such factors include age, metal capacity, maturity, circumstances of the offense, degree of culpability, degree of criminal sophistication, criminal history, and probation or institutional reports. Although 18 Pa.C.S. § 1102.1(d) is worded differently than Knox, it has the same effect as Knox. Therefore, when a court considers the factors in 18 Pa.C.S. § 1102.1(d), it meets the requirement of evaluating criteria along the lines of Miller. Because the Court considered those factors consistent with the reasoning in Miller, it applied the law in existence at the time that the Defendant shot and killed Kevan Connelly. Thus, the sentence is not unconstitutional under the Federal and State *Ex Post Facto* Clauses.

G. 18 Pa.C.S. § 1102.1 is not Unconstitutional under the Original Purpose Clause and Single Subject Clause of the Pennsylvania Constitution.

In Commonwealth v. Brooker,[11] a juvenile was sentenced under 18 Pa.C.S.A. § 1102.1. 103 A.3d at 329. "[T]he final version of Act 204 created Section 1102.1 . . . ." Id. at 337. The juvenile argued that 18 Pa.C.S.A. § 1102.1 violated the Original Purpose Clause and Single Subject Clause of the Pennsylvania Constitution. Id. at 329-30. The Superior Court held that the juvenile was "not entitled to relief under the Original Purpose Clause." Id. at 336. It also held that "Act 204 does not violate the Single Subject Clause." Id. at 338.

[11] 103 A.3d 325 (Pa. Super. 2014).

H. The Defendant's Sentence is not Excessive Because the Court Considered the Factors in 18 Pa.C.S. § 1102.1(d).

The Defendant's sentence is not excessive because the Court considered the factors in 18 Pa.C.S. § 1102.1(d). *See* N.T., 11/10/14, at 114-21. The Court also reviewed a pre-sentence investigation report. Id. at 3-8.

III. Conclusion

The Commonwealth presented sufficient evidence to support the conviction for First Degree Murder. The Commonwealth presented sufficient evidence to support the conviction for Conspiracy to Commit Murder. The Superior Court has held that 18 Pa.C.S.A. § 1102.1 is not unconstitutional under the Cruel and Unusual Punishment Clause. Any *Alleyne* error was harmless because the Defendant conceded the fact required for the mandatory minimum sentence. The Defendant's sentence is not unconstitutional under the Equal Protection Clause because the mandatory sentence of 18 Pa.C.S.A. § 1102.1(a)(1) is reasonably related to a legitimate public interest. The Defendant's sentence is not unconstitutional under the Federal and State *Ex Post Facto* Clauses because the Court applied the law in existence at the time of the offense. The Superior Court has held that 18 Pa.C.S.A. § 1102.1 is not unconstitutional under the Original Purpose Clause and Single Subject Clause of the Pennsylvania Constitution. The Defendant's sentence is not excessive because the Court considered the factors in 18 Pa.C.S.A. § 1102.1(d).

ORDER

AND NOW, this _____ day of February, 2015, based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Post-Sentence Motion is hereby DENIED. Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4), 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; (b) the right to assistance of counsel in the preparation of the appeal; (c) if indigent, the right 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).

By the Court,

Nancy L. Butts, President Judge