IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	**No. CR-1467-2013**
	:	
vs.	:	**CRIMINAL DIVISION**
	:	
	:	
TYRELL BOYD,	:	**Post-Sentence Motion**
Defendant	:	

On December 18, 2014, Defendant was sentenced to a term of life of imprisonment without parole for first degree murder. Defendant was also sentenced to concurrent sentences for carrying firearms without a license, persons not to possess a firearm and flight to avoid apprehension. A count of aggravated assault merged with first degree murder for sentencing purposes. Defendant had previously been tried before a jury and found guilty on November 7, 2014.

Defendant filed a Post-Sentence Motion on December 29, 2014 which asserted that the first degree murder conviction was not supported by sufficient evidence and/or was against the weight of the evidence produced at trial. Argument on said Motion was held before the Court on January 21, 2015.

In determining the sufficiency of evidence claim, the Court must determine "whether the evidence introduced at trial and all reasonable inferences derived from that evidence, viewed in a light most favorable to the Commonwealth as verdict winner, was sufficient to establish beyond a reasonable doubt all of the elements of first-degree murder." ***Commonwealth v. Burno***, 94 A.3d 956, 969 (Pa. 2014)(*citing* ***Commonwealth v. Sanchez***, 82 A.3d 943, 967 (Pa. 2013)); see also ***Commonwealth v. Johnson***, 680 CAP, 2014 Pa. LEXIS 3522, *22 (December 30, 2014). "[T]he 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." ***Commonwealth v. Gonzalez***, 2015 PA Super 13, 2015 Pa. Super. LEXIS 20, *3 (January 21, 2015)(*quoting* ***Commonwealth v. Troy***, 832 A.2d 1089, 1092 (Pa. Super. 2003)). In order for a first degree murder conviction to be obtained, the Commonwealth would need to prove the following elements beyond a reasonable doubt: (1) a human being was unlawfully killed, (2) the defendant perpetrated the killing, and (3) the defendant acted with malice and a specific intent to kill. ***Commonwealth v. Mattison***, 82 A.3d 386, 392 (Pa. 2013). First degree murder is an intentional killing, e.g., one that is willful, deliberate and premeditated. 18 Pa. C.S. § 2502 (a), (d).

For a variety of reasons, Defendant contends that the Commonwealth did not produce sufficient evidence to establish the elements of malice or specific intent. Defendant argues, among other things, that: he and the victim were great friends; the argument between them earlier in the day ended without hostility; the evidence was unclear as to how long he was inside the home before shots were fired; he lived at the residence and was always armed; and the jury "could make no reasonable inference of malice or specific intent" under the circumstances.

Malice, as defined in the law, "consists either of an intent to kill or to inflict great bodily harm or of a wickedness of disposition, hardness of heart, cruelty, recklessness

of consequences, any mind regardless of social duty indicating an unjustified disregard for the probability of death or great bodily harm, and an extreme indifference to the value of human life." ***Commonwealth v. Myers***, 621 A.2d 1009, 1011 (Pa. Super. 1993). As well, "[m]alice may be either expressed by the Defendant or implied from his words and conduct. When a deadly weapon is intentionally used against a vital part of the human body, malice may be inferred to exist." ***Id***.

Intent generally refers to one's state of mind which causes a person to act. The question is whether the evidence presented was sufficient to establish that Defendant's state of mind was to intentionally kill the victim. Specific intent to kill can be inferred from the circumstances surrounding an unlawful killing. ***Commonwealth v. Sattazahn***, 631 A.2d 597, 602 (Pa. Super. 1993). As well, and as previously noted, specific intent to kill may reasonably be inferred from the accused's use of a deadly weapon on a vital part of the victim's body. ***Commonwealth v. Hobson***, 604 A.2d 717, 720 (Pa. Super. 1992).

In assessing a sufficiency of evidence claim, direct and circumstantial evidence receive equal weight. ***Commonwealth v. Grekis***, 601 A.2d 1275, 1280 (Pa. Super. 1992). Whether it is direct, circumstantial or a combination of both, what is required is that the evidence taken as a whole establishes the elements of the crime beyond a reasonable doubt. ***Commonwealth v. Robinson***, 864 A.2d 460, 478 (Pa. 2004).

In this case, the evidence taken as a whole overwhelmingly proves beyond a reasonable doubt that Defendant specifically intended to kill Ansari Wilson and that he did so with malice.

During the trial in this matter, Defendant took the stand and testified on his own behalf. In June and July of 2013, he was living at 1510 Scott Street. He was living there with Kisha Depitte and her son Quayon. Defendant and Mr. Wilson were "best" friends. As well, they were "making money" together by "selling drugs."

On July 20, 2013, he admitted seeing Mr. Wilson at Latoya Young's residence at 1433 Scott Street. He eventually left and ended up on Scott Street walking toward 1510. He was with "a kid from around the neighborhood." While he was walking toward 1510, he admitted that he was on the phone with Mr. Wilson and Mr. Wilson "was angry."

He admitted that he had a gun "on" him. According to the Defendant, he was having an argument with Mr. Wilson and was "kind of yelling too."

He admitted entering 1510 Scott Street and coming into contact with Mr. Wilson. They had words. While he contended that he was essentially acting in self-defense, he admitted shooting Mr. Wilson. He did not know the exact number of shots he fired but he knew it was "more than one."

After the shooting, he ran "around the back of the house" and "jumped on the bike" and "went to Reginald Morton's house."

When he arrived at Mr. Morton's house, he told Mr. Morton that he "hit" or shot Mr. Wilson. He admitted asking Mr. Morton for "rubbing alcohol" and "a shirt" because he "was nervous…never heard of anybody getting off on self-defense…wasn't thinking of turning [himself] in…and was thinking about…[getting] away from [the] situation."

He eventually left for Philadelphia. In route, he threw the guns away.

Latoya Young testified that she resided at 1433 Scott Street in July of 2013.

On July 20, 2013 at approximately 4:30 in the afternoon, she arrived at her house with the victim, Ansari Wilson. Defendant came in and asked the victim for the $30.00 "he owed him." The victim told Defendant that he did not owe him "nothing." Mr. Wilson remained at the residence for a while. Defendant left after saying "don't worry about it."

Sometime during the day on July 20, 2013, Defendant spoke on the telephone with Reginald Morton. According to Mr. Morton, Defendant told him that he might have to "down Mook" (shoot Mr. Wilson). Based on that conversation as well as prior conversations with Defendant, Mr. Morton knew that Defendant was selling drugs for Mr. Wilson and that a problem arose regarding money. Mr. Wilson was planning on cutting Defendant off.

Kisha Depitte lived at 1510 Scott Street with her two sons in July of 2013. At the time of the shooting, she was "dating" Defendant. She had also known the victim, Mr. Wilson. Sometimes he would come to her house and hang out. According to her, the Defendant and Mr. Wilson were friends. The night before the shooting, however, according to Ms. Depitte, Defendant and Mr. Wilson "had a disagreement" concerning money. Mr. Wilson apparently came into some money but would not "split it" with Defendant.

Cindy Kurtz testified. On July 20, 2013, she lived at 1503 Scott Street, which was across the street and diagonal from 1510 Scott Street. Around 5:00 in the evening, she was sitting on her front porch with Sean Walker.

Shortly after 5:00 p.m., she noticed two African-American "kids" traveling "down the 1400 block of Scott Street" towards 1510 Scott Street. They were both on the other side of the street. One was walking. The other was on a bike. They were "together."

The one walking was wearing a blue shirt and talking "quite loudly" on the

phone. Approximately two or three times, she heard him say in an angry voice how he was on the block and "now what, now what."

The person in the blue shirt hung up the phone and approximately 30 seconds to one minute later, he went up onto the porch of 1510 Scott Street and entered the house. According to her, "he just opened the door and went in."

After the person entered the house, she heard one shot. She then heard the same person yell in an angry tone "I told you I don't play. I don't play." She then heard one or two more shots. It was not "that long" before she heard the shooting.

She immediately went inside and called 911. She then came outside and saw the person in the blue shirt walking in the field or empty lot next to 1510 Scott Street. He was walking again with the person on the bike. They were walking away from 1510 Scott Street.

Sean Walker also testified. He was sitting on the porch of 1503 Scott Street with Ms. Kurtz. He too observed the two "young males" walking up the street toward 1510 Scott Street. He heard the individual on the phone yelling in an angry tone four or five times "I don't play."

He then saw the individual on the phone with the blue shirt enter 1510 Scott Street. The other individual on the bike went around the side of the house to the back alley behind the house. Approximately "five minutes, five to ten minutes" later he heard gunshots. He also heard the same person yelling "I don't play."

He then saw the same person in the blue shirt who was on the phone come out of the house quickly, like "let's get out of here." The person went to the back alley, met with the person on the bike, got on the bike and left.

Kevin Hill also testified. He also witnessed two individuals walking toward 1510 Scott Street between 5:00 and 5:30 p.m. on July 20, 2013. He was with friends installing a water heater at a residence on Scott Street. They were standing in a parking lot near the rear garage to the property. He saw two individuals walking toward 1510 Scott Street and noticed that the one walking had a blue shirt on. The blue shirt was up and he could see a black handgun "on his waist." In less than a minute, he heard gunshots. "Pretty much right afterwards" the individual in the blue shirt came around from the side of the house and "took the bike" from the other kid and rode off.

Quayon Depitte testified. In July of 2013, he was approximately 13 years old and lived with his mother at 1510 Scott Street. On July 20, 2013, after going to the barber, he and his friend arrived home at approximately 5:00 p.m. They entered through the front door that was normally unlocked. He subsequently saw and spoke with the victim, Mr. Wilson, who came upstairs where Quayon was watching TV. Quayon "guessed" that Mr. Wilson returned downstairs. He then heard shots. He immediately texted his mother and hid in a closet.

Officer Robert Williamson of the Williamsport Bureau of Police also testified. On July 20, 2013, a dispatch of "shots fired" went out at 5:28 p.m. He was the first law enforcement officer to arrive at the scene "within three minutes, maybe four." He kicked in the door to 1510 Scott Street and found the victim approximately 18 inches from the front door, in the living room, laying on his back, covered in blood and gasping for air. EMS responded "pretty quick" and "got him out of there."

The Commonwealth presented videotape and photographic evidence of an

individual matching the description of Defendant and consistent with Defendant's testimony, riding a bike away from 1510 Scott Street after the shooting. Video/photographic evidence was produced from cameras located at the Pajama Factory and Textron.

Reginald Morton also testified. Defendant arrived at his house on a bicycle on July 20, 2013. Approximately five minutes before arriving, Defendant called Mr. Morton stating that he would be "right there." Defendant entered the living room where Mr. Morton was sitting and stated "I hit him, I hit him, I hit him." Defendant told Mr. Morton that he "hit him" at his house on Scott Street. Defendant showed Mr. Morton a revolver that he had "tucked into his waist."

Mr. Morton decided to take the bicycle to go to Scott Street. Prior to leaving, Defendant, who was wearing a blue shirt, asked Mr. Morton for "rubbing alcohol and a change of shirt." Mr. Morton got him a different shirt and peroxide.

After going to the scene, Mr. Morton eventually returned to his house at Wildwood Boulevard. Defendant was sitting on the porch talking on the phone. Defendant was wearing the shirt that Mr. Morton gave to him. Defendant was having a conversation with another person in which Defendant apparently was told that Mr. Wilson had died. Defendant then told Mr. Morton: "I'm glad he dead, because if he would have lived, I know for a fact that he would have told on me." According to Mr. Morton, Defendant told him with an "arrogant attitude that he was happy that Mr. Wilson was dead."

According to Ms. Depitte, she spoke with Defendant after the shooting and asked him what happened. Defendant replied that he "made a mistake, he hit him" meaning that he shot Mr. Wilson. Defendant told Ms. Depitte that he thought he shot Mr. Wilson in

the stomach. Defendant did not say anything to Ms. Depitte about Mr. Wilson having a gun, reaching for a gun or the two of them arguing. According to Ms. Depitte, Defendant told her that he went to the house and saw Mr. Wilson "in there." Defendant said, "I asked him why he was in there, and he said you ain't about nothing, you ain't going to do nothing to me and…[Defendant] just blacked out."

Jessica Vartenisian testified. She was living with Mr. Morton in July of 2013. When Defendant showed up at their house on July 20, he was acting "funny and nervous." He was wearing a blue shirt. As well, Defendant was waiting to leave because "the cops were down the street and he didn't want the cops to see him."

The Commonwealth's expert forensic pathologist, Dr. Michael Johnson, performed an autopsy on Mr. Wilson. According to Dr. Johnson, the victim was struck with a bullet in a "vital part" of his body. Dr. Johnson described "vital" as "required for life." The bullet entered on the left side of Mr. Wilson's abdomen, penetrated into his pelvis and exited out of the right hip area. This caused "extensive internal bleeding". He noted that "that sort of blood loss is a vital injury." According to Dr. Johnson, the cause of Mr. Wilson's death was a "gunshot wound of the torso." The manner of death was "homicide" or "death at the hands of another person."

In addition to the above-referenced testimony, the Commonwealth presented evidence from numerous other witnesses. Numerous items of physical evidence were recovered from the scene. The physical evidence corroborated the Commonwealth's version as even admitted by Defendant, that a shooting took place in the living room of 1510 Scott Street. Three shots were fired, one of which struck Mr. Wilson in the side and killed him.

The evidence also supported the Commonwealth's version that after being struck, Mr. Wilson attempted to move toward the front door. His blood was found on an ottoman near a couch which was near the front door. At least one bullet and a few casings were found suggesting that the shooting took place in a location in which Defendant had just entered the front door and the victim was toward the back part of the living room.

The jury chose to believe the version of the incident as advanced by the Commonwealth which was clearly supported by the evidence. Defendant and the victim were friends whose relationship started to deteriorate over money. Defendant and the victim had sold drugs together and apparently the victim was no longer willing to do so.

Angry over the money issue and apparently not wanting to be cut out or disrespected, Defendant started walking toward 1510 Scott Street. While on the phone with the victim, he made implied, if not expressed, threats. Acting hastily and in anger, he entered 1510 and intentionally and maliciously killed Mr. Wilson. Defendant then fled the scene, made numerous admissions and eventually was apprehended in Philadelphia hundreds of miles away from the scene.

Defendant further alleges that the jury's verdict was against the weight of the evidence. "The trial judge may not grant relief based merely on 'some conflict in testimony or because the judge would reach a different conclusion based on the same facts.'" ***Commonwealth v. Sanchez***, 36 A.3d 24, 39 (Pa. 2011)(*quoting* ***Commonwealth v. Blakeney***, 946 A.2d 645, 653 (Pa. 2008)). A new trial should be granted only in truly extraordinary circumstances i.e., "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" ***Id***.

> The determination of whether to grant a new trial because the verdict is against the weight of the evidence rests within the discretion of the trial court….Where issues of credibility and weight of the evidence are concerned, it is not the function of the appellate court to substitute its judgment based on a cold record for that of the trial court. The weight to be accorded conflicting evidence is exclusively for the fact finder, whose findings will not be disturbed…if they are supported by the record. A claim that the evidence presented at trial was contradictory and unable to support the verdict requires the grant of a new trial only when the verdict is so contrary to the evidence as to shock one's sense of justice.

Commonwealth v. Young, 692 A.2d 1112, 1114-15 (Pa. Super. 1997).

The issue is not whether there is a mere conflict in the testimony. "Rather, the role of the trial judge is to determine that 'notwithstanding all of the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all of the facts is to deny justice.'" ***Commonwealth v. Clay***, 649 A.3d 1049, 1055 (Pa. 2013)(quoting ***Commonwealth v. Widmer***, 744 A.2d 745, 752 (Pa. 2000)).

> A verdict is said to be contrary to the evidence such that it shocks one's sense of justice when 'the figure of Justice totters on her pedestal,' or when 'the jury's verdict, at the time of its rendition, causes the trial judge to lose his breath, temporarily, and causes him to almost fall from the bench, then it is truly shocking to the judicial conscience.

Commonwealth v. Cruz, 919 A.2d 279, 282 (Pa. Super. 2007)(quoting ***Commonwealth v. Davidson***, 860 A.2d 575, 581 (Pa. Super. 2004)(citation omitted), appeal granted on other grounds, 871 A.2d 185 (Pa 2005)).

Clearly, and based upon the evidence as set forth above, the jury verdict did not shock the court's conscience.

ORDER

AND NOW, this ____day ofMarch, following a hearing and argument, Defendant's Post-Sentence Motion is **DENIED**.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: DA (KO)
PD (WM)
Jeffrey A. Rowe, Esquire
Gary Weber, Lycoming Reporter
Work file