IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR-1467-2013**
	:	
vs.	**:**	**CRIMINAL DIVISION**
	:	
	:	
TYRELL BOYD,	**:**	
Appellant	**:**	**1925(a) Opinion**

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

This opinion is written in support of this court's judgment of sentence dated December 18, 2104 and docketed December 22, 2014. The relevant facts follow.

On July 20, 2013, Appellant shot Ansari Wilson inside a residence at 1510 Scott Street in Williamsport, Pennsylvania. In the day or hours prior to the shooting, Appellant and Mr. Wilson had disagreements over money, and Appellant told Reginald Morton that he might have to "down Mook" (shoot Mr. Wilson). Just prior to the shooting, witnesses saw Appellant walking towards 1510 Scott Street together with another young African American male who was riding a bike. Appellant had a black handgun tucked inside the waist of his pants and he was talking on a cell phone. Witnesses heard Appellant tell the person on the other end of the conversation that he was on the block, and then Appellant angrily said "now what" and "I don't play" several times. Appellant hung up the phone and entered the residence at 1510 Scott Street. Shortly thereafter, the witnesses heard gunshots and Appellant yelling "I don't play" and/or "I told you I don't play." Appellant quickly came out of the residence, took the bike from the other individual, got on the bike, and left.

Appellant fled to Reginald Morton's residence where he changed his shirt before ultimately fleeing to Philadelphia.

A witness who heard the shots called 911. Police and emergency medical personnel responded to 1510 Scott Street. The police kicked in the door and found Mr. Wilson near the door lying on his back, covered in blood and gasping for air. Shortly thereafter, Mr. Wilson died from a gunshot wound to the torso.

The police apprehended Appellant in Philadelphia.

Appellant was charged with an open count of homicide, aggravated assault, firearms not to be carried without a license, person not to possess a firearm, and flight to avoid apprehension, trial or punishment.

A trial was held November 3-7, 2014. Appellant was convicted of all the charges, including first degree murder.

On December 18, 2014, the court sentenced Appellant to life without parole for first degree murder.[1]

On December 29, 2014, Appellant filed a post-sentence motion, in which he challenged the sufficiency and weight of the evidence for his first degree murder conviction. The court denied this motion in an opinion and order entered on March 5, 2015.

Appellant filed his notice of appeal on March 10, 2015. Appellant asserts eight issues on appeal. Appellant first contends that the trial court erred by refusing to issue a corrupt source jury instruction regarding the testimony of Reginald Morton, specifically PaSSJI (Crim) 4.06 (certain testimony subject to special scrutiny) and/or PaSSJI (Crim) 4.01

[1]The court also sentenced Appellant to 3 ½ to 7 years for carrying a firearm without a license, 5 to 10 years for person not to possess a firearm, and 1 ½ to 7 years for flight to avoid apprehension. These sentences were consecutive to each other, but concurrent to the sentence of life without parole for first degree murder.

(accomplice testimony).

Appellant argued that Mr. Morton was an accomplice with respect to the flight to avoid apprehension charge or he was an informer; therefore, these jury instructions were appropriate. The Commonwealth argued Mr. Morton was not an accomplice to any of the charges, but certainly not to homicide, which was the crux of the matter at trial. Furthermore, the Commonwealth contended that Mr. Morton was not an informer because he was charged with tampering with evidence after Appellant was arrested and charged in this case. At most, Mr. Morton was like any other witness who may have had an interest in testifying favorably to the Commonwealth. In light of these facts and circumstances, the Commonwealth contended the general credibility instruction regarding the bias or interest of a witness was sufficient. N.T., 11/07/2014, at 9-13.

The court noted that, to support his argument that the jury instruction applied to informers, Appellant was relying on the advisory committee note to PaSSJI (Crim) 4.06. That advisory committee note, however, also indicated that it was within the court's discretion whether or not to rely on the general credibility charge regarding interest and bias or to single out the informer's testimony for special scrutiny. N.T., 11/07/2014, at 11. After taking a recess to review this issue, the court denied Appellant's request for these jury instructions.

"A trial court has broad discretion in phrasing its instructions to the jury and can choose its own wording so long as the law is clearly, adequately and accurately presented to the jury for consideration." ***Commonwealth v. Marinelli***, 589 Pa. 682, 910 A.2d 672, 687 (2006).

The court found that the instructions requested by Appellant were not

appropriate in this case. Mr. Morton was not Appellant's accomplice with respect to the crimes charged in this case. A person is an accomplice of another person in the commission of an offense if, with the intent of promoting or facilitating the commission of the offense, he solicits such person to commit it or aids or agrees or attempts to aid such other person in planning or committing it. 18 PA. CONSOL. STAT. ANN. §306. There is no evidence in the record that Mr. Morton solicited, aided, or agreed or attempted to aid Appellant in the shooting of Mr. Wilson, Appellant's possession of a firearm, or Appellant's flight. Furthermore, the closing arguments of the parties and the court's general credibility instructions adequately addressed the factors the jury could consider in assessing Mr. Morton's credibility. N.T., 11/07/2014, at 22-35, 54-55, 65-66, 69, 72-75, 81-82, 85-86.

Appellant argued that Mr. Morton helped him avoid apprehension by giving him a different shirt; therefore Appellant was an accomplice. The court could not agree. Appellant was not charged with simply avoiding apprehension, but rather **flight** to avoid apprehension. Appellant did not point to any evidence which showed Mr. Morton assisted his flight from the scene of the crime or from Williamsport. Moreover, even if Mr. Morton could be considered an accomplice to that offense, Appellant was not seeking the jury instruction to attack Mr. Morton's credibility on that offense as Appellant readily admitted that he got scared and fled. Instead, Appellant was seeking the instruction solely to get the jury to disbelieve the portions of Mr. Morton's testimony that supported the elements of malice and specific intent to kill on the homicide offense, such as his testimony that Appellant said he might have to "down Mook." Clearly, Appellant was not an accomplice with respect to the homicide offense. To give either of the requested charges under the facts and circumstances of this case would only confuse or mislead the jury. The general

credibility instruction clearly and accurately explained to the jury that it could consider a witness' bias or interest without confusing or misleading the jury into believing that Mr. Morton could be considered an accomplice with respect to the homicide or firearm offenses.

Appellant next asserts the trial court erred by entering into evidence Commonwealth Exhibit 54, the timeline, as it was misleading to the jury and therefore should have been excluded under PA. R. EVID. 403.

The admissibility of evidence is within the discretion of the trial court, whose rulings will not be reversed absent an abuse of discretion. ***Commonwealth v. Hoover***, 107 A.3d 723, 729 (Pa. 2014). An abuse of discretion is not a mere error of judgment; rather, an abuse of discretion exists where the court has reached a conclusion that overrides or misapplies the law, or where the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will. ***Commonwealth v. Davido***, 106 A.3d 611, 645 (Pa. 2014).

At trial, Appellant objected to the admissibility of the timeline because the times were derived from different devices and there was nothing indicating that all of these devices were in sync. The court found that Appellant's arguments went to the weight of the evidence, not its admissibility. In the court's view, Appellant was seeking mathematical certainty, which was not required. N.T., 11/05/2014, at 70-75.

The timeline was based on and supported by the surveillance videos, the phone records and the testimony that was admitted into evidence. Appellant's insistence that the Commonwealth was required to show that the cell phones and surveillance cameras were "in sync" was patently unreasonable. Prior to committing a crime, a perpetrator does not synchronize his or her electronic devices with the devices of the victim, the potential

witnesses or the neighborhood surveillance cameras. Nevertheless, the cell phones probably were "in sync" with each other since cell phones typically contain a radio-controlled clock.

Appellant also claims the court erred by allowing Agent Kevin Stiles to testify as to time estimates regarding when Appellant left the view of the surveillance camera and then re-appeared at the home where Mr. Wilson died, thus usurping the fact-finding function of the jury and misleading the jury. The court cannot agree.

Agent Stiles was trying to assist the jury in his testimony. He watched the surveillance videos and explained to the jury where the view of one surveillance camera ended, the view of other surveillance cameras began, and the proximity of those locations to 1510 Scott Street where the shooting occurred and Mr. Morton's residence on Wildwood Boulevard where Appellant went after the shooting. This information would be helpful to jurors who were not familiar with this area of Williamsport. He also explained to the jury how he estimated certain times because, although the hour and minutes were clearly visible on the video itself, the last digit of the seconds display was hard to find or could not be seen. N.T., 11/05/2014, at 109-111, 112-116

The court also gave a cautionary instruction so that Agent Stiles' testimony would not usurp the fact-finding function of the jury. The court specifically told the jury: "He is estimating a time based on what his testimony indicated. Time may be a factor or may be an issue that you are going to have to decide. In evaluating the testimony and evaluating what time it may be, I think you're going to have to rely on your view of the evidence and your calculation of what the time will be." N.T., 11/05/2104, at 111-112. "The law presumes the jury follows the instructions of the court." ***Commonwealth v. Eichinger***, 108 A.3d 821, 846 (Pa. 2014), quoting ***Commonwealth v. Drumheller***, 570 Pa. 117, 808

A.2d 893, 906 (2002).

Under the facts and circumstances of this case, the court does not believe that Agent Stiles' testimony misled the jury or usurped its fact-finding function.

Appellant also asserts the trial court erred by permitting the jury to possess during their deliberation Commonwealth's Exhibit 54, the timeline. Appellant objected for the same reasons that he objected to the admissibility of Commonwealth's Exhibit 54, and the court made the same ruling. N.T., 11/072014, at 136-137.

Next, Appellant contends the trial court erred by refusing to permit the jury to possess during their deliberations copies of Mr. Morton's redacted guilty plea colloquy, Appellant's phone records and Mr. Morton's phone records.

Rule 646(A) provides: "Upon retiring, the jury may take with it such exhibits as the trial judge deems proper, except as provided in paragraph (C)." PA. R. CRIM. P. 646(A). This rule and its predecessor have been interpreted as vesting the trial court with discretion to permit or refuse jury access to trial exhibits. ***Commonwealth v. Dupre***, 866 A.2d 1089, 1102 (Pa. Super. 2005); ***Commonwealth v. Ellis***, 700 A.2d 948, 956 (Pa. Super. 1997).

Appellant introduced Mr. Morton's guilty plea colloquy as Exhibit 5, but it contained Mr. Morton's prior record score. When the court and the attorneys were discussing which exhibits the jury should be permitted to possess during their deliberations, the prosecutor objected to Exhibit 5, stating "I thought we had resolved that before because of the prior record score on it." Appellant's attorney then indicated that "if we're going to send it out you've got to redact it to take off the prior record score." The court denied the request to permit the jury to possess Exhibit 5, because it was "not going to allow a

document to go out to the jury in a different form than how it was introduced." N.T., 11/07/2014 at 125.

Clearly, it would have been error for the jury to possess an exhibit that contained Mr. Morton's prior record score, as that would have informed the jury that Mr. Morton had prior criminal convictions.

The court notes that sending out the guilty plea colloquy also had the potential to emphasize a portion of Mr. Allatt's testimony to the exclusion of other portions. Mr. Allatt represented Mr. Morton at his guilty plea colloquy. The guilty plea colloquy listed the charges Mr. Morton was pleading guilty to, the maximum penalties for those offenses, the standard guideline ranges for those offenses and terms of the plea agreement. Mr. Allatt was also questioned regarding: all of the offenses Mr. Morton was charged with at the time he decided to cooperate with the Commonwealth; the concept of merger; the fact that a judge could reject the plea agreement, the standard guidelines were advisory only, and a judge has the ability to sentence in the aggravated or mitigated range of the guidelines or above or below those guideline ranges. N.T., 11/06/2014, at 81-116.

The court also did not permit the jury to possess during deliberations Appellant's phone records (defense exhibit 12) or Mr. Morton's phone records (defense exhibit 14), because only specific phone calls were referred to during the testimony. N.T., 11/07/2014 at 125-126. The other phone calls were not discussed and did not appear to have any relevance to these proceedings. The court also did not permit the Commonwealth's exhibits that were phone records to be possessed by the jury during their deliberations. N.T., 11/07/2014 at 134-136.

Under the facts and circumstances of this case, the court does not believe it

abused its discretion in precluding the jury from possessing during its deliberations defense exhibits 5, 12 or 14.

Appellant also asserts the trial court erred by permitting the jury to possess during their deliberations Commonwealth's exhibits 61 and 62, autopsy pictures. Appellant objected to the jury possessing these photographs, because there was no issue that Mr. Wilson was dead, so there wasn't any purpose for the jury to possess them. The Commonwealth argued that the photographs showed the trajectory of the bullet. The court permitted the jury to possess them for the reason stated by the Commonwealth and because the photographs were important to the Commonwealth's closing argument.[2] N.T., 11/07/2014 at 139.

Appellant claims that the evidence was insufficient regarding the elements of malice and specific intent to support the first-degree murder verdict.

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

[2] See N.T., 11/07/2014, at 60-62.

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***, 107 A.3d 52, 66 (Pa. 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***, 109 A.3d 711, 716 (Pa. Super. 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).

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 Appellant specifically intended to kill Mr. Wilson and that he did so with malice.

During the trial in this matter, Appellant 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. Appellant and Mr. Wilson were "best" friends. As well, they were "making money" together by "selling drugs." N.T., 11/06/2014, at 128-129.

On July 20, 2013, he admitted seeing Mr. Wilson at Latoya Young's residence at 1433 Scott Street. He asked Mr. Wilson for $30 that Mr. Wilson owed him, but Mr. Wilson said he did not have any money. Appellant 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 got a phone call from Mr. Wilson, who "was angry." Id. at 131-132.

According to Appellant, he was having an argument with Mr. Wilson. Mr. Wilson was yelling at him and asking him why he was "acting like a bitch." Appellant was "kind of yelling too." Appellant told Mr. Wilson he was done getting money with him because he had too much going on and his mind was somewhere else. Mr. Wilson then asked Appellant for the guns back. He eventually told Mr. Wilson he could have the guns back but he would have to wait until Appellant got back to the house at 1510 Scott Street.[3] Id. at 131-136.

Appellant 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." Id. at 136-138.

After the shooting, he ran "around the back of the house" and "jumped on the bike" and "went to Reginald Morton's house." Id. at 139.

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." Id. at 141.

[3] In his trial testimony, Appellant admitted that he had one gun "on him" and he claimed another gun was at the house.

He eventually left for Philadelphia. In route, he threw the guns away. Id. at 143.

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 Mr. Wilson. Appellant came in and asked the victim for the $30.00 "he owed him." Mr. Wilson told Appellant that he did not owe him "nothing." Mr. Wilson remained at the residence for a while. Appellant left after saying "don't worry about it." N.T., 11/03/2014, at 131-133.

Kisha Depitte lived at 1510 Scott Street with her two of her children in July of 2013. At the time of the shooting, she was "dating" Appellant. She had also known the victim, Mr. Wilson. Sometimes he would come to her house and hang out. According to her, the Appellant and Mr. Wilson were friends. The night before the shooting, however, according to Ms. Depitte, Appellant and Mr. Wilson "had a disagreement" concerning money. Mr. Wilson apparently came into some money but would not "split it" with Appellant. N.T., 11/03/2014, at 152-162.

According to Ms. Depitte, she spoke with Appellant after the shooting and asked him what happened. Appellant replied that he "made a mistake, he hit him" meaning that he shot Mr. Wilson. Appellant told Ms. Depitte that he thought he shot Mr. Wilson in the stomach. Appellant 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, Appellant told her that he went to the house and saw Mr. Wilson "in there." Appellant 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…[Appellant] just blacked out." Id. at 164-170.

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. N.T., 11/03/2014, at 56, 59-60.

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." Id. at 60-63.

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." Id. at 63-65.

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. Id. at 65-67.

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. Id. at 67-68.

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." N.T., 11/03/2014, at 88-91.

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." Id. at 92-94.

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. Id. at 95.

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. N.T., 11/03/2014, at 107-113.

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. N.T., 11/03/2014, at 141-146.

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." N.T., 11/03/2014, at 33-36, 45.

The Commonwealth presented videotape and photographic evidence of an individual matching the description of Appellant 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. Sometime during the day on July 20, 2013, Appellant spoke with him on the telephone. According to Mr. Morton, Appellant 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 Appellant was selling drugs for Mr. Wilson and that a problem arose regarding money. Mr. Morton also was aware that Mr. Wilson was planning on cutting Appellant off. N.T., 11/04/2014, at 17-20.

Later that day, Appellant arrived on a bicycle at Mr. Morton's house. Approximately five minutes before arriving, Appellant called Mr. Morton stating that he would be "right there." Appellant entered the living room where Mr. Morton was sitting and stated "I hit him, I hit him, I hit him." He told Mr. Morton that he "hit him" at his house on Scott Street. Appellant showed Mr. Morton a revolver that he had "tucked into his waist." Id. at 7-10.

Mr. Morton decided to take the bicycle to go to Scott Street. Prior to leaving, Appellant, 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. Id. at 10.

After going to the scene, Mr. Morton eventually returned to his house at Wildwood Boulevard. Appellant was sitting on the porch and wearing the shirt that Mr. Morton gave to him. Appellant was talking on the phone and having a conversation with another person in which Appellant apparently was told that Mr. Wilson had died. Appellant 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." Mr. Morton described Appellant's attitude when he made this statement as "[v]ery arrogant. Like he didn't care." Id. at 12-16.

Jessica Vartenisian testified. She was living with Mr. Morton in July of 2013. When Appellant showed up at their house on July 20, he was acting "funny and nervous." He was wearing a blue shirt. As well, Appellant was waiting to leave because "the cops were down the street and he didn't want the cops to see him." N.T., 11/06/2014, at 68-73.

The Commonwealth's expert forensic pathologist, Dr. Michael Johnson, performed an autopsy on Mr. Wilson. According to Dr. Johnson, Mr. Wilson 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." N.T., 11/04/2014, at 105-110.

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 Appellant, 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 Appellant had just entered the front door and Mr. Wilson 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. Appellant and Mr. Wilson were friends whose relationship started to deteriorate over money. They had sold drugs together and apparently Mr. Wilson was no longer willing to do so. Angry over the money issue and apparently not wanting to be cut out or disrespected, Appellant started walking toward 1510 Scott Street. While on the phone with Mr. Wilson, Appellant made implied, if not expressed, threats. He entered the residence at 1510 Scott Street and intentionally and maliciously killed Mr. Wilson. Appellant then fled the scene and eventually was apprehended in Philadelphia hundreds of miles away from the scene.

Appellant readily admitted that he shot Mr. Wilson, but claimed he was acting in self-defense. This claim, however, was refuted by the Commonwealth. Appellant admitted that he and Mr. Wilson had been arguing over money, guns, and their drug dealing business. He even admitted that Mr. Wilson told him he was in the house to get his guns and Appellant wasn't "going to do nothing about it." N.T., 11/06/2014, at 137. Appellant tried to downplay these issues, but his version of their argument was not consistent with the portions that Ms. Kurtz and Mr. Walker overheard, such as the statements "I'm on the block, now what", "I don't play" and "I told you I don't play." N.T., 11/03/2014 at 62, 65, 91, and 94.

Furthermore, the revolver that Appellant claimed Mr. Wilson obtained from under the couch and raised as if he was going to shoot Appellant was never found. In fact, Kisha Depitte testified that on the day of the shooting Appellant did not have any guns or ammunition in her residence. N.T., 11/04/2014, at 159. Moreover, his actions after the shooting evidenced his consciousness of guilt. He asked Mr. Morton for rubbing alcohol and a change of shirt. He then changed his changed his shirt, hid from the police, fled to Philadelphia and discarded the firearm he used to shoot Mr. Wilson.

When the evidence is viewed as a whole, it certainly is sufficient to show that Appellant shot Mr. Wilson with malice and the specific intent to kill.

Appellant's final contention is that the jury's verdict was against the weight of the evidence given several contradictions in the testimony regarding: (1) the existence of a dispute between Appellant and Mr. Wilson; (2) the amount of time Appellant was in the home where Mr. Wilson died; (3) the volume or duration of any dispute between Appellant and Mr. Wilson; (4) the existence or non-existence of certain phone calls between Appellant and Mr. Morton; and (5) Appellant's opportunity, or lack thereof, to make incriminating statements to Mr. Morton following the shooting.

"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)).

The jury's verdict did not shock the court's sense of justice. Appellant admitted shooting Mr. Wilson. As previously discussed, Appellant's claim of self-defense was refuted by the evidence.

There were no contradictions regarding the **existence** of a dispute between Appellant and Mr. Wilson. Appellant admitted he had a dispute with Mr. Wilson

immediately prior to the shooting. Any conflict or contradiction related to the nature and seriousness of the dispute. Appellant attempted to downplay their dispute and portray Mr. Wilson as the one who was angry because Appellant did not wish to be in "business" with him anymore. Appellant's minimizations, however, were not credible and were not consistent with testimony of the unbiased, third party witnesses who heard Appellant yelling "I don't play" prior to the shooting and "I told you I don't play" at the time of the shooting.

A similar argument can be made with respect to the volume of any dispute between Appellant and Mr. Wilson. Appellant admitted that he and Mr. Wilson were yelling at each other over the phone prior to the shooting, which was consistent with the testimony of Ms. Kurtz and Mr. Walker that the guy in the blue shirt walking down Scott Street was yelling at the person with whom he was conversing on the phone.

Any alleged inconsistencies with regard to the duration of the argument, the time Appellant was inside the residence at 1510 Scott Street at the time of the shooting, and Appellant's opportunities to make incriminating statements to Mr. Morton following the shooting were not sufficient to make the jury's verdict shock the court's conscience. Traumatic events can affect a witness' perception of time. The bottom line is that Appellant's actions were consistent with Mr. Morton's, Ms. Kurtz' and Mr. Walker's testimony regarding statements Appellant made both prior to and after the shooting. Mr. Morton's statements that Appellant told him on the day of the shooting that he might have to "down Mook" were consistent with Appellant's subsequent actions, regardless of what time during the day those statements were made. This statement and Appellant's actions were also consistent with Ms. Kurtz and Mr. Walker's testimony that Appellant, who was the individual in the blue shirt walking down Scott Street with the young African American male

riding a bike, repeatedly said "I don't play" and "I told you I don't play" and Mr. Morton's testimony that Appellant told him "I hit him, I hit him, I hit him."

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

DATE: _____ By The Court,

_____
Marc F. Lovecchio, Judge

cc: Melissa Kalaus, Esquire (ADA)
Jeffrey Rowe, Esquire
William Miele, Esquire (PD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)