IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	
	:	
vs.	**:**	**No. CR-708-2013**
	:	
GLENN A . JACKSON,	**:**	
Defendant	**:**	**Post-Sentence Motion**

OPINION AND ORDER

By Information filed on June 3, 2013, Defendant was charged with criminal homicide, aggravated assault, possessing instruments of a crime, abuse of a corpse, simple assault, and tampering with or fabricating physical evidence.

Following a lengthy jury trial, Defendant was found not guilty of first degree murder and not guilty of third degree murder. Defendant was, however, found guilty of voluntary manslaughter. The jury concluded that the killing was done in the heat of passion and with unreasonable self-defense. Defendant was also found guilty of two counts of aggravated assault, possession of instruments of a crime, abuse of a corpse, simple assault, and tampering with or fabricating physical evidence.

On October 5, 2015, the court sentenced Defendant to serve an aggregate term of incarceration in a state correctional institution, the minimum of which was 82 months and the maximum of which was 25 years.

On October 8, 2015, Defendant filed a post sentence motion in arrest of judgment and for a new trial. Argument on the post sentence motion was held before the court on October 22, 2015.

Defendant first claims that there was insufficient evidence to convict him of

voluntary manslaughter and on both counts of aggravated assault because "the Commonwealth failed to disprove his self-defense claim."

"When the defendant introduces evidence of self-defense, the Commonwealth bears the burden of disproving such a defense beyond a reasonable doubt." ***Commonwealth v. Rivera***, 983 A.2d 1211, 1221 (Pa. 2009).

> The Commonwealth sustains this burden if it establishes at least one of the following: (1) the accused did not reasonably believe that he was in danger of death or serious bodily injury; (2) the accused provoked or continued the use of force; or (3) the accused had a duty to retreat and the retreat was possible with complete safety. The Commonwealth need only prove one of these elements beyond a reasonable doubt to sufficiently disprove a self-defense claim.

Commonwealth v. Ventura, 975 A.2d 1128, 1143 (Pa. Super. 2009)(citations omitted), appeal denied, 987 A.2d 161 (Pa. 2009).

Issues of whether a Defendant has acted out of an honest, bona fide belief that he was in imminent danger and whether such belief was reasonable are questions properly resolved by the finder of fact. ***Commonwealth v. Hill***, 629 A.2d 949, 952 (Pa. Super. 1993), appeal denied, 645 A.2d 1313 (Pa. 1994). The conviction in this case must be upheld if, accepting as true all the evidence which could properly have been the basis for the verdict, the finder of fact could reasonably find that Defendant's claim of self-defense had been disproved beyond a reasonable doubt. ***Commonwealth v. Coronett***, 455 A.2d 1224, 1228 (Pa. Super. 1983).

> In applying [this] test, [the 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,… the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier 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. Gray, 867 A.2d 560, 567 (Pa. Super. 2005), appeal denied, 879 A.2d 781 (Pa. 2005)(quoting ***Commonwealth v. Nahavandian***, 849 A.2d 1221, 1229-1230 (Pa. Super. 2004)(citations omitted)).

When reviewing the evidence as a whole in a light most favorable to the Commonwealth, the court finds that the Commonwealth has met its burden of disproving Defendant's self-defense claim. Specifically, the evidence was sufficient to prove that Defendant did not reasonably believe that he was in danger of death or serious bodily injury at the time he killed the victim. Further, the evidence was sufficient to prove that Defendant continued the use of force.

Defendant and Jackie Reed were incarcerated in the Lycoming County Prison and housed in the same block for at least three days from October 6, 2014 to October 8, 2014. Jackie Reed testified that Defendant explained to him in detail what occurred in connection with the killing.

Defendant told Mr. Reed that a fight broke out between Defendant and Michael Krauser, the victim. During the fight, Defendant "popped" the victim with an ashtray. He apparently "just turned around" and swung the ashtray "cracking" the victim with it "real, real hard." Defendant said the victim "went down and didn't get back up."

Defendant then took a sword from an umbrella can near the door and stabbed the victim.

Mr. Reed testified that Defendant said he wasn't going to let the victim get the upper hand on him by letting him get up. Significantly, Defendant never told Mr. Reed that he was "defending himself."

Defendant also told Mr. Reed that he did not "think" that law enforcement authorities "had anything on him."

The Commonwealth also presented the testimony of Jennifer Seltzer. She was a neighbor and friend of Defendant.

On March 6, 2013, shortly after the killing, Defendant went to Ms. Seltzer's house. He was very nervous and did not seem himself. Ms. Seltzer noticed no bruising or scratching on Defendant. Defendant indicated to Ms. Seltzer that "shit was going to hit the fan." Ms. Seltzer asked Defendant if he knew where Mr. Krauser was and Defendant replied "he's in my basement."

Defendant told Ms. Seltzer that he and Mr. Krauser were in a fight. Mr. Krauser apparently had him around the throat and made some threatening remarks. Defendant was able to get Mr. Krauser off of him by bending back one of Mr. Krauser's fingers. Defendant then grabbed an ashtray, swung it and hit Mr. Krauser with it. Defendant indicated to Ms. Seltzer that he knocked Mr. Krauser down and "knocked him out."

Apparently, the victim sunk down into a "puppy bed." Defendant then went and got a sword and stabbed Mr. Krauser three times. According to Defendant, the incident happened "pretty quickly."

Ms. Seltzer asked Defendant why he stabbed the victim if he was unconscious. Defendant indicated "he lost it, he had enough." When pressed by Ms. Seltzer about possibly being arrested, Defendant indicated he would "plead nutty, do the insanity thing."

The forensic evidence sufficiently established that the victim died as a result of the stab wounds to his neck. One of the stabs actually sliced the victim's carotid artery in half causing him to bleed to death within minutes.

As well, there was abundant circumstantial evidence to prove Defendant's consciousness of guilt. For a period of days, Defendant lied to law enforcement officials about whether he had any contact with the victim. When a search warrant was executed on Defendant's home and Defendant was advised by a State Trooper who they were looking for, Defendant "dropped his head."

After killing the victim, Defendant took substantial steps to hide any evidence of the crime. He obtained assorted coverings including plastic and wrapped up the body very carefully. He then buried the body in a crawl space in the basement. To get to the crawl space, he had to essentially clean out a closet and lift up floorboards. Following the burying of the body, he replaced the floorboards and all of the contents of the closet. He told one witness that he wanted to make the closet look dirty like nothing had ever been moved.

He purchased cleaning materials and cleaned up the area where the incident occurred in order that there could be no traces of anything. He hid the sword in a golf bag. He took the ashtray that was broken, wrapped it up in a dogfood bag and plastic and gave it

to another individual to hide in a storage unit of another building.

The box in which the victim fell after being struck with the ashtray was eventually taken by Defendant to a burn pit. Defendant actually told Mr. Reed that he had "taken the pallet that had the blood and stuff over by a burn pit."

As well, Defendant took certain incriminating items, including a book entitled "The Stiff", and hid them in an area of the floor and/or wall underneath a lazy Susan where "nobody would find it."

Defendant's own testimony was sufficient to disprove self-defense. He admitted burying the victim four feet down. He also admitted to striking the victim with the ashtray. Furthermore, Defendant admitted that while the victim was down, he walked away, grabbed the sword and then stabbed the victim. Defendant's demeanor as well could be interpreted as inconsistent with a reasonable self-defense claim. He was somewhat evasive, hesitant in answering questions, non-committal and somewhat purposefully confused. He gratuitously added information, went off on different tangents and simply didn't answer some questions.

Moreover, in explaining the incident, he indicated that after he obtained the sword and contrary to what he allegedly told Ms. Seltzer and Mr. Reed, the victim came toward him. As a result, he had to stab him with the sword as well as a knife that he obtained from the kitchen. He was, however, interviewed by Terri Calvert at some point prior to the trial and after the incident. He explained that he used a sword to kill the victim, but never said anything about a knife.

In viewing all of this evidence in a light most favorable to the Commonwealth, the court concludes that the evidence was sufficient to disprove Defendant's self-defense claim. Therefore, Defendant's post sentence motion with respect to this issue will be denied.

Defendant next argues that the court improperly excluded the testimony of Terri Calvert. While she was not referred to as Dr. Calvert during her testimony, she is a licensed Psychiatrist. She performed an examination of Defendant and was prepared to testify on Defendant's behalf.

In a detailed opinion and order dated April 14, 2015, which this court relies upon, the court granted the Commonwealth's motion in limine and precluded the testimony of Dr. Calvert. The court concluded that her testimony did not "touch upon" any psychological likelihood of Defendant's behavior under a given stimulus. The court concluded as well that the proposed testimony did "nothing more than buttress the credibility of Defendant which is prohibited." Accordingly, the court will deny Defendant's post sentence motion with respect to the proffered testimony of Dr. Calvert.

Defendant next asserts that the court erred by excluding evidence that the victim's estranged wife had obtained a protection from abuse (PFA) order against the victim. The court addressed this issue in a detailed Opinion and Order dated May 22, 2015. The court relies on that opinion. Thus, the court will deny Defendant's motion with respect to the court's prior decision excluding the PFA evidence.

Defendant next asserts that the court erred by excluding the proffered

testimony of June Wagner. Specifically, Defendant proffered that Ms. Wagner would testify that she asked the victim to leave her residence at some point prior to the incident with Defendant but that he refused to do so.

Defense counsel proffered that there was a picnic going on at "the Wagner house." June Wagner was not there but there was an incident involving the victim. June Wagner came home after receiving a call from her son. The victim was there when she came home. She told him to leave but he wouldn't. She then called the police and at that point he left.

"Any analysis of the admissibility of a particular type of evidence must start with the threshold inquiry as to its relevance and probative value." ***Commonwealth v. Robinson***, 721 A.2d 344, 350 (Pa. 1998). Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action. PA. R. EVID. 401; ***Commonwealth v. Christine,*** 2015 Pa. LEXIS 2432, at *9 (Pa. October 27, 2015); ***Robinson***, supra. Specifically, it must "be determined first if the inference sought to be raised by the evidence *bears upon a matter in issue in the case* and, second, whether the evidence renders the desired inferences more probable than it would be without the evidence." ***Commonwealth v. Seiders***, 614 A.2d 689, 691 (Pa. 1992)(citations omitted).

Further, character evidence to prove a victim's violent propensities is admissible where self-defense is asserted and where there is a factual issue as to who was the aggressor. ***Commonwealth v. Busanet***, 54 A.3d 35, 51 (Pa. 2012), cert. denied, 13 S. Ct. 178

(2013). In a criminal case, when the character or character trait of an alleged victim is admissible, the defendant may prove the character or character trait by specific instances of conduct. PA. R. EVID. 405(b)(2); ***Commonwealth v. Carbone***, 707 A.2d 1145, 1154 (Pa. Super. 1998).

In this case, the court finds that its preclusion of the evidence was not in error. The proffered evidence was simply not relevant. It did not tend to prove a violent propensity or characteristic of Defendant that was at issue. It did not go to prove any alleged violent propensity of the victim to show that he was the aggressor. In fact, the victim did leave shortly after Ms. Wagner returned. Moreover, and as asserted by the Commonwealth during the oral argument on Defendant's post sentence motion, an abundance of evidence was admitted as to the victim's prior violent propensities. This evidence would have been minimally relevant at best and entirely cumulative. Accordingly, the court will deny Defendant's post sentence motion claiming that it erred in precluding the proffered testimony from June Wagner.

Defendant next contends that the court erred by limiting the testimony of the two police officers from New Mexico to only facts that would arguably support the charge for which the victim pled guilty. This issue was highly contested during the trial. Indeed, the court took in-camera testimony from both officers in order that the court would have a factual basis prior to deciding the issue.

As previously noted, in a homicide trial, where self-defense is asserted, a defendant may introduce evidence of the turbulent or dangerous character of the decedent.

Carbone, supra. In this case, Defendant wished to introduce the testimony of two New Mexico police officers to prove allegedly violent propensities of the victim to show that the victim was in fact the aggressor. Defendant need not have knowledge of the victim's prior conviction if it is being offered to prove the victim was the aggressor. ***Christine***, supra.

The victim had been charged with committing criminal offenses in the state of New Mexico on December 31, 2005 and June 4, 2006. Those criminal complaints resulted in the victim eventually pleading guilty to one count of assault on a police officer and another count of refusing to obey a police officer. The court eventually allowed the police officers who arrested the victim to testify not only to the crimes for which the victim pled guilty but also to the underlying facts constituting those crimes. The court did not permit the police officers to testify as to any other violent, tumultuous or aggressive conduct of the victim observed by the police officers for which the victim may have been charged but not convicted.

In reviewing the record and the relevant case law, the court believes that it may have erred, but in favor of Defendant. Indeed, it appears that where the evidence sought to be admitted is a prior act of violence not reduced to a criminal conviction, the law requires that the violent act or acts be known to the defendant at the time of the homicide. ***Commonwealth v. Stewart***, 647 A.2d 597, 598 (Pa. Super. 1994); ***Commonwealth v. Ignatavich***, 482 A.2d 1044, 1047 (Pa. Super. 1984).

Obviously, and as conceded by Defendant, he had no prior knowledge of any New Mexico incidents. But, where a previous violent act has been reduced to a conviction,

the Defendant may use that conviction, regardless of whether he had previous knowledge of it, to prove the violent propensities of the victim and to establish that the victim was the aggressor. ***Christine***, supra at *10; ***Commonwealth v. Amos***, 445 Pa. 297, 284 A.2d 748 (1971).

Accordingly, the court at trial precluded Defendant from introducing any testimony with regard to the New Mexico incidents unless they had resulted in a conviction. The court remains of the opinion that it did not err in reaching this decision.

Further, however, and as argued by the Commonwealth at the argument on Defendant's post sentence motion, the court agrees in retrospect as follows: (1) the evidence would have been cumulative, (2) if the court erred, any error was harmless in light of the overwhelming evidence in support of the verdict, and (3) any error was harmless because the jury found that the victim was the aggressor. As a result, the court will deny Defendant's post sentence motion based upon the alleged error of limiting the testimony of the two New Mexico police officers.

Defendant's final claim of error relates to the court excluding the testimony of Willie Whidbee about prior acts of violent behavior of the victim "that he had observed."

With respect to Mr. Whidbee, Defendant proffered his testimony that in 2009 on two separate incidents, he and the decedent were fishing together. The decedent "would get upset." On one occasion, he "ran one guy into the water" after the decedent pulled a knife. The other incident "was similar where Krauser threatened somebody with a knife."

At the time of trial after considering the respective arguments, the court

decided to preclude this testimony. The court concluded that it was far more prejudicial than probative.

A court may preclude probative evidence if its probative value would be outweighed by the prejudicial impact of said evidence. "Unfair prejudice means the tendency to suggest a decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially." PA. R. EVID. 403, comment; ***Commonwealth v. Page***, 965 A.2d 1212, 1220 (Pa. Super. 2009).

In this particular case, the court concluded that because the decedent did not exhibit any weapons nor threaten Defendant with the use of any weapons, the decedent's use of a knife on two separate occasions five years earlier under completely different circumstances with completely different individuals, would have minimal if any probative value. More importantly, the court was concerned that the evidence would be so prejudicial that it would enflame the jury to make a decision based upon something "other than the legal propositions relevant to the case." ***Page***, supra (quoting ***Commonwealth v. Owens***, 929 A.2d 1187, 1191 (Pa. Super. 2007)).

The court believes that that decision was not in error. Moreover, the court contends at this point that the decision was not in error for the following additional reasons: (1) the conduct was not reduced to any conviction; (2) it was cumulative; and (3) if there was error, it was harmless, especially because the jury found that the victim was the aggressor.

Accordingly, the court will deny Defendant's post sentence motion to the extent Defendant claims it erred in limiting and/or excluding the testimony of Willie

Whidbee.

ORDER

AND NOW, this ___ day of November 2015, upon consideration of Defendant's post sentence motion, which was filed on October 8, 2015 and argued on October 22, 2015, the Court **DENIES** Defendant's motion.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: William Miele/Nicole Spring, Esquire (PD)
Eric Linhardt/Kenneth Osokow, Esquire (DA)
Gary Weber, Esquire (Lycoming Reporter)
Work file