

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 vs. : No. CR-866-2011  
 :  
 SHAKOOR TRAPP, :  
 :  
 Defendant : Post – Sentence Motion

**OPINION AND ORDER**

By Information filed on July 21, 2011, Defendant was charged with numerous criminal offenses, the most serious of which were criminal attempt – homicide and aggravated assault. Following a lengthy jury trial, Defendant was found guilty of attempted murder, aggravated assault, burglary, criminal trespass, possession of instrument of a crime, recklessly endangering another person and simple assault. On April 8, 2015, Defendant was sentenced to an aggregate period of state incarceration, the minimum of which was 32 ½ years and the maximum of which was 65 years.

The aggregate sentence consisted of 20 to 40 years for attempted homicide, a felony of the first degree; 6 ½ to 13 years for Count 4, burglary, a felony of the first degree; 5 to 10 years for Count 6, persons not to possess, a felony of the second degree; and 1 to 2 years for Count 7, possessing instruments of a crime, a misdemeanor of the first degree. The sentence was effective April 8, 2015 although Defendant had credit for time served from June 1, 2011 to April 7, 2015. Defendant filed a post-sentence motion on April 17, 2015, which was argued before the court on May 26, 2015.

Defendant raises several issues in his post-sentence motion. First, Defendant claims that the evidence was insufficient to meet the Commonwealth’s burden of proof for

all of the offenses charged. Second, Defendant argues that the verdict was against the weight of the evidence with respect to all of the charges. Third, Defendant argues that the Court erred in granting the Commonwealth's Motion in Limine to preclude the introduction of Defendant's expert witness regarding the witness's identification of Defendant. Next, Defendant asserts that the sentence was excessive and, in conjunction with such, Defendant also argues that the court relied upon impermissible factors in imposing its sentence.

In connection with both the sufficiency of evidence and weight arguments, Defendant contends that the testimony and other evidence produced by the Commonwealth failed to meet the appropriate legal standard to identify Defendant as the perpetrator of the offenses. The parties obviously concede that in order for Defendant to be found guilty there must be sufficient evidence to establish his identity as the perpetrator of the crime. Identity may be established by both direct and circumstantial evidence.

In reviewing the sufficiency of the evidence, the court considers whether the evidence and all reasonable inferences that may be drawn from that evidence, viewed in a light most favorable to the Commonwealth as the verdict winner, would permit the jury to have found every element of the crime beyond a reasonable doubt. *Commonwealth v. Davido*, 582 Pa. 52, 868 A.2d 431, 435 (2005); *Commonwealth v. Murphy*, 577 Pa. 275, 844 A.2d 1228, 1233 (2004).

Moreover, the Commonwealth may sustain its burden by only circumstantial evidence and need not preclude every possibility of innocence. *Commonwealth v. Orr*, 38 A.3d 868, 872 (Pa. 2011), quoting *Commonwealth v. Hansley*, 24 A.3d 410, 416 (Pa. Super.

2011). “Any doubts regarding a defendant’s guilt may be resolved by the factfinder 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.” *Id.*

The court finds that there was an abundance of evidence upon which to identify the Defendant as the perpetrator of the incident, which formed the basis for Defendant’s convictions.

Tiffany Nixon testified that, on May 29, 2011, she was awoken in the early morning hours believing that she was being “punched” in her chest. In fact, she was being stabbed by a person that she described during the trial as being African American, wearing a white or cream colored hoodie and who looked familiar. She testified that she had seen the individual previously around the neighborhood.

The perpetrator of the offense ended up not only stabbing Ms. Nixon but also choking her and eventually shooting her in her cheek, temple and knee areas. She testified that she had an ample opportunity to identify the individual who shot her and during the trial positively identified Defendant as her assailant.

When Ms. Nixon first spoke with the police and immediately following her attack, she testified that she was not thinking clearly. She was confused, scared and in pain. Furthermore, she worried about her physical condition and most of all about her children. As a result, she was unable to provide any specifics regarding her assailant to the police.

Ms. Nixon was transported by ambulance to the Williamsport Emergency Room where she was assessed and life-flighted by helicopter to Geisinger Medical Center.

She underwent emergency treatment, was admitted to the Intensive Care Unit and was intubated.

She started writing notes as her recollection of what occurred became clearer and as she testified “her memory got better.” Among other things, she recalled that the attacker wore a white or cream-colored hoodie and shot her with a small silver gun.

Her sister visited her in the hospital and based upon information her sister had received from others, she showed Ms. Nixon three photographs obtained from Facebook of three individuals. One of the photographs was of Defendant. According to Ms. Nixon, the photos jogged her memory and she recognized Defendant as her attacker.

Subsequently, Ms. Nixon identified Defendant from a photo array that had been presented to her by the Williamsport Police. Without any suggestions being made to her, she quickly picked out Defendant and identified him as her attacker. The photo array picture of Defendant was not the same Facebook photograph she had previously recognized.

According to Ms. Nixon, there was no doubt in her mind that Defendant was the individual who attacked her. She had previously seen Defendant “quite often” outside of where she resided, among other things, smoking cigarettes.

During her testimony, Ms. Nixon positively identified Defendant as her attacker.

Officer Levan of the Williamsport Bureau of Police confirmed that when he first contacted Ms. Nixon immediately following the attack, she was hysterical, crying obsessively, frantic, absolutely upset, unsteady and suffering from a gross amount of blood

loss.

Agent Eric Delker of the Williamsport Bureau of Police confirmed the victim's testimony with respect to the photo array. He indicated that when he presented the array to Ms. Nixon, there was nothing suggestive about it and he asked that she look at it closely to determine if there was anyone who she recognized. Ms. Nixon identified Defendant and indicated that she was absolutely sure that he was the individual who had stabbed her and shot her.

A neighbor, Shana Saunders, testified that a few nights before the attack, she had an encounter with Defendant. She heard that Defendant fired a handgun and saw him with a small silver gun similar to that testified to by the victim. Defendant asked Ms. Saunders not to tell anyone what she observed. Ms. Saunders also saw Defendant in front of his apartment, a few doors from the victim's apartment, only a few hours prior to the attack.

Agent Leonard Dincher of the Williamsport Bureau of Police indicated that following Ms. Nixon's identification of Defendant and further investigation, a warrant was issued for Defendant's arrest. He obtained information that Defendant was at 523 High Street. He and other police officers searched the residence and eventually found Defendant hiding from the police by lying between ceiling joists in the rafters below the roof. Defendant was attempting to evade apprehension by hiding in an area of the home that was very inaccessible and in an area that was extremely hot with no ventilation whatsoever.

As well, a pair of bloody socks was located at Defendant's residence. The blood on the socks was tested and a DNA expert testified that the DNA in the blood was consistent

with that of Ms. Nixon. The expert opined that the chances of the blood being similar to the DNA of another person were extremely small.

The court concludes that there was sufficient evidence for which the jury could identify the Defendant as the perpetrator of the offenses.

Ms. Nixon positively identified Defendant as her attacker to her sister while at Geisinger, to Agent Delker at a non-suggestive photo array while at Geisinger, and in court. All of these identifications were immediate and sure. There was no hesitancy whatsoever. Ms. Nixon's failure to provide specifics immediately following the attack and during the few days after the attack does not cause the court to doubt her identification. Indeed, given the vicious nature of the attack, the injuries suffered by the victim and the victim's stated concerns, it is entirely logical that her recall of the event and the identity of her attacker became clearer in the days immediately following the incident. Furthermore, there is nothing at all suggestive about the identifications. The cell phone "Facebook" identification was one out of three separate pictures with no testimony whatsoever that any suggestiveness was present. The photo of Defendant in the photo array was one out of eight pictures that included a different picture of Defendant than what was presented to her by her sister. The victim was familiar with Defendant through his presence in the area on previous occasions. Furthermore, the victim clearly had an opportunity to observe her attacker during the incident.

Second, Ms. Saunders' testimony places Defendant near the scene at the time of the incident and immediately prior to it. She also observed Defendant in possession of a

similar handgun at that time.

Third, Defendant hiding from the police between ceiling joists of an attic lying in insulation in a dark and hot area is certainly consciousness of guilt. The suggestion that he was hiding as a result of a prior warrant was not accepted by the jury. Incidentally, prior to the attack on the victim, Defendant was not evading the police and in fact openly walked around in public until the incident.

Finally, the bloody socks in Defendant's residence which contained Ms. Nixon's DNA also strongly support the Defendant's guilt. Defendant wore socks with grey toes and grey heels, similar to the sock found in his residence, on him when he was arrested. Viewing the socks, there were areas of blood that had spattered and/or dropped on the socks and perhaps other areas in which the perpetrator while wearing the socks stepped in blood. As well, there were photographs of the crime scene, which showed blood spatters and even some pools of blood.

A weight of an evidence claim enables a judge to reverse the verdict only when it is contrary to the evidence as to shock one's sense of justice and the reward of a new trial is imperative so that right may be given another opportunity to prevail. *Commonwealth v. Sanchez*, 614 Pa. 1, 36 A.3d 24, 39 (2011), citing *Commonwealth v. Blakeny*, 596 Pa. 510, 946 A.2d 645, 652-53 (2008). "The weight of the evidence is exclusively for the finder of fact who is free to believe all, part or none of the evidence and to determine the credibility of the witnesses." *Commonwealth v. Small*, 559 Pa. 423, 435, 741 A.2d 666, 672 (1999), cert. denied, 531 U.S. 829, 121 S. Ct. 80 (2000).

Clearly in light of the above evidence, the jury's verdict did not shock the court's conscious. In fact, the jury's conclusion was similar to that as set forth by the court in its opinion, verdict and order filed on June 14, 2012 finding Defendant guilty of persons not to possess a firearm.

At trial, the defense sought to admit the expert testimony of Jonathan P. Vallano, Ph. D, a legal psychologist and assistant professor of psychology at the University of Pittsburgh at Greensburg. The Commonwealth filed a motion in limine to preclude the introduction of Dr. Vallano's testimony and the court granted the Commonwealth's motion pursuant to an opinion and order dated September 4, 2014. The defense concludes that the court erred in that opinion.

The court disagrees with Defendant and incorporates its opinion and order that was dated September 4, 2014 but filed on September 5, 2014.

As the court noted, it is clear from the Pennsylvania Supreme Court decision in *Commonwealth v. Walker*, 92 A.3d 766 (Pa. 2014), that the Supreme Court did not envision that expert testimony regarding eyewitness identification would be admissible in every case. The court finds that the notes from the victim referencing a white or cream-colored hoodie and a small silver gun, the supporting testimony from the neighbor, the bloody sock with both the victim's and Defendant's DNA on it, Defendant's videotaped statement that the sock was probably his and the evidence of Defendant's consciousness of guilt are sufficient to show the Commonwealth's case was not primarily dependent upon eyewitness testimony.



Defendant avers next that the sentence of 32 ½ years to 65 years of state incarceration was excessive. It is unclear as to why Defendant claims the sentence was excessive other than that the Court did not agree with defense argument that the sentence should be low in light of the Defendant's age, his alleged likelihood of becoming rehabilitated, his initial involvement in treatment, that there was no evidence as to impact on the community and that it was inconsistent with "like and similar cases in Lycoming County."

"Sentencing is a matter vested in the sound discretion of the Sentencing Judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion." *Commonwealth v. Bricker*, 41 A.3d 872, 875 (Pa. Super. 2012), quoting *Commonwealth v. Cunningham*, 805 A.2d 566, 575 (Pa. Super. 2002). "[A]n abuse of discretion is more than a mere error of judgment; thus, a sentencing court will not have abused its discretion unless 'the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will.'" *Commonwealth v. Walls*, 592 Pa. 557, 926 A.2d 957, 961 (2007), quoting *Commonwealth v. Smith*, 543 Pa. 566, 673 A.2d 893, 895 (1996).

"In determining whether a sentence is manifestly excessive, the appellate court must give great weight to the sentencing court's discretion, as he or she is in the best position to measure factors such as the nature of the crime, the defendant's character, and the defendant's display of remorse, defiance, or indifference. *Commonwealth v. Colon*, 102 A.3d 1033, 1043 (Pa. Super. 2014), quoting *Commonwealth v. Mouzon*, 828 A.2d 1126, 1128 (Pa. Super. 2003).

Defendant has not alleged that the judgment exercised by the court was manifestly unreasonable or the result of partiality, prejudice, bias or ill-will. Defendant has only alleged that the court did not accept his arguments as to why the sentence should be less than what was imposed.

The court considered all of the relevant factors as required and imposed a sentence that was consistent with the protection of the public, reflected the rehabilitative needs of Defendant, reflected the impact of the crime on the victim which was substantial and reflected the impact of the crime on the community.

Defendant's final argument is that the court relied upon impermissible factors in imposing the sentence. Specifically, Defendant contends that the court employed the deadly weapon used matrix as set forth in the guidelines and that said matrix is unconstitutional in light of the *Alleyne* decision. In the alternative, Defendant argues that the deadly weapon enhancements are vague and overbroad.

Defendant's arguments are specious at best. There is no basis whatsoever in law to support Defendant's arguments. The sentencing guidelines are advisory only and clearly outside the purview of *Alleyne*. ***Commonwealth v. Ali***, 112 A.3d 1210, 1226 (Pa. Super. 2015). As well, the vague and overbroad argument has been previously addressed by the Court and rejected. See ***Commonwealth v. McKeithan***, 350 Pa. Super. 160, 504 A.2d 294, 300-301 (1986).

While the trial court has no discretion as to whether it will apply § 303.4 and add at least twelve (12) months and up to twenty-four (24) months to the standard sentencing

guideline range when a defendant possesses a deadly weapon during the commission of an offense, it does have the discretion in imposing a sentence after it has determined the proper sentencing guideline range. *Commonwealth v. Bowen*, 417 Pa. Super. 340, 612 A.2d 512 (1992), quoting *Commonwealth v. Dotzman*, 558 A.2d 1312, 1317 (Pa. Super. 1991).

**ORDER**

**AND NOW**, this \_\_\_ day of August 2015, for the reasons set forth above, Defendant's post-sentence motion is denied.

By The Court,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: Melissa Kalaus, Esquire (ADA)  
Robert Cronin, Esquire (APD)  
Gary Weber, Esquire (Lycoming Reporter)  
Work file