IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	**No. CR-1412-2014**
	:	
vs.	:	
	:	
	:	**Opinion and Order re Defendant's**
RASHAWN J. WILLIAMS,	:	**Post Sentence Motion**
Defendant	:	

OPINION AND ORDER

This matter came before the court on August 29, 2016 for an argument on Defendant's post sentence motion which was filed on May 9, 2016. The relevant facts follow.

On June 1, 2014, Defendant Rashawn Williams shot and killed Aaron Lowry outside the Lamplight Hookah Lounge on West Fourth Street in Williamsport Pennsylvania and then fled to High Point North Carolina. On June 6, 2014, when law enforcement officers attempted to apprehend the Defendant in High Point, the Defendant fled from an apartment and was pursued into a wooded area by a law enforcement canine, which bit the Defendant and caused some injuries to his face and left ankle that were treated at a local hospital. The Defendant was extradited back to Pennsylvania and charged with homicide, aggravated assault, possession of a firearm without a license, person not to possess a firearm, possession of an instrument of crime (firearm), simple assault, terroristic threats and flight to avoid apprehension or prosecution.

A jury trial was held April 12-18, 2016. The jury convicted the Defendant of all the charges, including first degree murder. On May 5, 2016, the court sentenced the Defendant to life in prison.

On May 9, 2016, the Defendant filed his post sentence motion in which he challenged the sufficiency and weight of the evidence and asserted that the trial court made numerous erroneous evidentiary rulings.

The Defendant first contends the trial court erred by failing to suppress or exclude evidence contained in his medical records from High Point, North Carolina. The court addressed this issue in its Opinion and Order entered on December 23, 2015. For the reasons set forth in that decision, the court found that the methods used by the Commonwealth to obtain those medical records did not violate the Health Insurance Portability and Accountability Act (HIPAA) or otherwise warrant suppression of those records. The records and more specifically the contents thereof, such as the Defendant's statements about fleeing from law enforcement and being bit by the canine, were relevant and admissible to show the Defendant's consciousness of guilt.

The Defendant next contends the trial court erred by excluding Dr. Vey's proposed testimony, especially in light of the fact that the Commonwealth argued during closing arguments that the victim would not, with broken ribs, holes in his lung and mortally wounded, fold up a knife and put it in his pocket. The court addressed this issue in its Opinion and Order entered on April 8, 2016 and incorporates that decision by reference. The court also notes that the Commonwealth did not argue in its closing that the victim was incapable of folding the knife and putting it in his pocket, but rather that it would not make sense for the victim to do so. N.T., April 18, 2016, at 136.

The Defendant also claims that the trial court erred by precluding the defense from presenting the victim's prior conviction for aggravated assault with a deadly weapon. The

defense sought to introduce the victim's 2003 conviction in North Carolina for a misdemeanor charge of assault with a deadly weapon for which he was sentenced to 4 years of supervision. The incident occurred on January 1, 2002 and involved the victim brandishing a wooden stick to take another individual's wallet.

> The admission of evidence is solely within the discretion of the trial court and a trial court's evidentiary rulings will be reversed on appeal only upon an abuse of that discretion. An abuse of discretion will not be found based on a mere error of judgment, but rather occurs when 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. Woodward, 129 A.3d 480, 494 (Pa. 2015)(citations omitted).

When a claim of self-defense is properly at issue, evidence of the victim's prior convictions for aggression may be admitted for two limited purposes: (1) to corroborate the defendant's knowledge of the victim's violent character to show that the defendant reasonably believed he was in danger, or (2) as character/propensity evidence to show that the victim was the aggressor. ***Commonwealth v. Mouzon***, 53 A.3d 738, 741 (Pa. 2012). Not every conviction, however, is admissible for these purposes. Instead, only those crimes that are similar in nature and not too distant in time will be relevant and admissible. ***Id.*** Furthermore, the determination as to similar nature and remoteness rests within the sound discretion of the trial judge. ***Id.***

The court found that the conviction was too remote and not similar enough to shed any light on whether the victim was the initial aggressor in this case. Furthermore, there was nothing to indicate that the Defendant was aware of this conviction, and the uncontested evidence presented at trial showed that the victim punched or attempted to punch the

Defendant before he was shot by the Defendant.

The Defendant also alleges the trial court erred by precluding the defense from introducing evidence that the victim had THC and benzodiazepines, in addition to alcohol, in his blood at the time of the autopsy. The toxicology results in the autopsy report of Dr. Starling-Roney showed in the victim's femoral blood: 46.5 ng/ml of benzodiazepines; 5.7 ng/ml of Delta-9-THC; 2.9 ng/ml of 11-Hydroxy-Delta-9-THC; and 28.5 ng/ml of Carboxy-Delta-9-THC. The court precluded this evidence because it was not relevant, especially where the defense did not have any testimony to say that the amount of drugs in the victim's system caused him to be intoxicated or to act in a certain way. N.T., April 12, 2016, at 93-95. Absent such testimony, evidence that the victim had controlled substances in his system would only smear the victim.

The Defendant asserts the trial court erred by finding that the defense opened the door to Christofer Snyder testifying that he had escorted the Defendant and his baby's mother out of the Cell Block bar at some date prior to the shooting at the Hookah Lounge. During cross-examination and re-cross examination of Mr. Snyder, defense counsel made it seem like Mr. Snyder did not recognize and could not identify the Defendant or his baby's mother at the time of the incident. N.T., April 12, 2016, at 124-134, 141-142. The prosecutor requested a sidebar and argued that defense counsel opened the door to the prior contacts between Mr. Snyder and the Defendant at the Cell Block. *Id*. at 142-158.

The court permitted very limited questioning of Mr. Snyder about the reasons why he was unwilling to pick out the Defendant in a line-up. Mr. Snyder testified that he was scared to pick out the Defendant in a line-up due to an altercation that he had with him at the cell

block. The altercation basically consisted of the Defendant and his ex (his baby's mother) having an argument inside the Cell Block and Cell Block employees including Mr. Snyder having to escort them outside the premises a little more physically than they should have. The incident at the Cell Block was the first time that Mr. Snyder saw the Defendant. *Id*. at 156-160. The court offered to give the jury a cautionary instruction, but the defense declined that offer. *Id*. at 156, 160.

The court does not believe it committed an abuse of discretion in admitting this limited evidence. The evidence was relevant and admissible to rebut the arguments and inferences defense counsel was suggesting in his cross-examination of Mr. Snyder. The evidence also was not unduly prejudicial. It was just an argument that resulted in the Defendant and his baby's mother being kicked out of a bar; it was not any type of assaultive behavior by the Defendant on Mr. Snyder or his baby's mother. If the evidence truly were unduly prejudicial, defense counsel would have wanted the court to give the jury a cautionary or curative instruction.

The Defendant also claims the trial court erred by admitting intercepted phone calls/visits during the Commonwealth's case-in-chief, including one with "Clint" from June 7, 2014 where the Defendant discussed being attacked by the police K-9; and one from June 16, 2014 with his mother (Commonwealth Exhibit 110, June 16, 2014, from 30:48 to 31:18 minutes) where he discussed Sheriah Worthy bringing the victim and Bell to the Hookah Lounge. The Defendant contends the calls were irrelevant to the charges and the June 16 call was triple hearsay.

During the June 7th call, the Defendant tells "Clint" that he would not have

surrendered to the police if it wasn't for the dog biting him. After "Clint" and the Defendant discussed the number of staples and stitches the Defendant received for his injuries, the Defendant stated, "That John was tearing me up, bull. I wouldn't have gave (sic) up but that dog, bull. I wouldn't have gave (sic) up, but that dog that mother f—r bite he make (sic) me give up."

This call was clearly relevant to the charge of flight to avoid apprehension or prosecution. It also tended to rebut the Defendant's claims that he went to North Carolina for reasons other than to avoid apprehension for his charges. If that were true or if the Defendant was not aware that the victim had died at the time he left Pennsylvania, he would not have fled from law enforcement officers in North Carolina before the officers even had a chance to tell the Defendant why they were there. The evidence was also relevant and admissible to show the Defendant's consciousness of guilt.[1]

As far as the court can tell, the June 16 visitation recording between the Defendant and his mother or a female relative was not admitted during the Commonwealth's case-in-chief; instead, it was played during cross-examination of the Defendant. N.T., April 15, 2016, at 142.

During direct examination, the Defendant stated that he left the Hookah Lounge, saw his daughter's mother (Shariah Worthy) outside on the sidewalk and asked her if she had a ride. She said yes she was waiting for her brother, and before the Defendant could respond he was punched in the right side of his face. *Id*. at 57. On cross examination, the prosecutor

[1] For the sidebar discussion about the admissibility of this call, see N.T., April 14, 2016, at 53-55. The call was played during Agent Kevin Stiles testimony in the Commonwealth's case in chief. *Id.* at 100-101.

asked the Defendant why Shariah walked out of the Hookah Lounge that night. The Defendant answered, "I asked her to go home."

The June 16, 2014 recording was admitted to impeach the Defendant's testimony and show that the Defendant kicked Ms. Worthy out of the Hookah Lounge and his interaction with Ms. Worthy was not as amicable as he made it seem.

The transcript of the recording from between 30:48 and 31:18 (contained in Commonwealth Exhibit 110, along with several other calls and visitations) consisted of the following statement by the Defendant:

> You brought them there, you brought them there, you brought them there, because they told her, they told her, this what they told her: we're not going to let him do nothing. I don't put my hands on her. Know what I'm saying? But I do, when she's in certain clubs, we can't be in, we can't party together. I kicked her out. And, they told her we're not going to let him to (sic) nothing to you. So she was telling them that I was doing something to her, which, you're my daughter's mom, I'm not going to put my hands I have to.

This issue was discussed during a lengthy sidebar conference. N.T., April 15, 2016, at 128-137. The Defendants' statements fell within the hearsay exception in Rule 803(25) of the Pennsylvania Rules of Evidence. The statements of other people were not offered for the truth of the matter asserted.

Moreover, immediately after the recording was played the court gave the jury a cautionary instruction about the use of this evidence. *Id*. at 142-143. Defense counsel then requested another sidebar, during which he requested a further instruction to the jury. *Id*. at 144-147. The court then gave an additional instruction specifically explaining to the jury that the first portion of the statement about what other people said could not be considered for the truth of the matter asserted. *Id*. at 147-148.

The Defendant next avers the trial court erred by admitting, over defense objection, the testimony of Amelia Nance that Erica Lambert borrowed money from her on June 1, 2014. The Defendant contends that the entirety of Ms. Nance's testimony was inadmissible hearsay. The court cannot agree.

Hearsay is defined as a statement that: (1) the declarant does not make while testifying at the current trial or hearing; and (2) the party offers in evidence to prove the truth of the matter asserted in the statement. Pa.R.E. 801(c).

Ms. Nance's testimony was not hearsay. Generally, Ms. Nance did not testify about statements Erica Lambert made to her. Instead, she testified about actions she herself took in response to a phone call from Erica Lambert. Ms. Nance testified that sometime between 7:00 and 8:00 a.m. on June 1, 2014 she met Ms. Lambert at a Sheetz gas station in Chambersburg PA. The Defendant, who she knew as Dewboy, was with Ms. Lambert. Ms. Lambert and the Defendant were in a champagne or gold colored car. N.T., April 13, 2016 at 91-94.

The only reason the contents of the phone call were discussed was to show how Ms. Nance knew to go to that particular Sheetz gas station. The prosecutor asked, "How did you know to go to that spot?" In response to that question, Ms. Nance replied, "Okay so she [Erica Lambert] called me and she asked if she could meet me at the Sheetz to borrow a hundred dollars at that particular Sheetz." This statement was not offered to show its truth, i.e. that Ms. Lambert called to borrow a hundred dollars or even that she actually borrowed that amount of money. It was offered to show how Ms. Nance knew to meet Ms. Lambert at that location. Therefore, the discussion of the contents of the phone call was not hearsay.

The Defendant also asserts the trial court erred by admitting the victim's jean shorts into evidence during the Commonwealth's rebuttal when it failed to introduce this evidence in its case-in-chief. The court cannot agree.

This evidence was proper rebuttal evidence. In its case-in-chief, the Commonwealth presented evidence that the victim was not brandishing a knife during the incident and that a knife was found in the victim's pocket. There also was evidence that the victim's blood was on the knife. The defense presented evidence that the victim had a knife in his hand before the Defendant shot him. The Commonwealth realized that, based on the defense testimony that the victim had a knife in his hand, the defense would argue that the blood on the knife would corroborate the testimony of the defense witnesses. The Commonwealth introduced the victim's jean shorts to show that the pocket was soaked with blood. This evidence was admitted to rebut the defense evidence and show that the victim's blood seeped through the shorts and was transferred from the pocket to the knife while the knife was in the victim's pocket. See N.T., April 15, 2016 at 173-175.

The Defendant also avers the trial court erred by admitting the testimony of Alisa Jackson, in rebuttal, that she told Sheriah Worthy that the victim was deceased at 3:41 a.m. on June 1, 2014, because that testimony was entirely hearsay.

This evidence was not being offered for the truth of the matter that the victim actually died at 3:41 a.m., but rather as a link in the chain of circumstantial evidence to show that the Defendant was aware of the victim's death before he fled from Pennsylvania to High Point, North Carolina.

The Defendant claims the trial court erred by denying the defense request to present

testimony in surrebuttal that it is not uncommon for witnesses to be uncooperative. The evidence the defense wanted to present was testimony from Greta Davis, another attorney in the Public Defender's Office. See N.T., April 18-19, 2016 at 48-49. What was relevant in this case was not some vague generalization regarding why some individuals might not cooperate with law enforcement, but rather why the particular witnesses in this case did not speak with law enforcement. The proffer regarding Ms. Davis' testimony was not specific to the defense witnesses in this case.

The Defendant next contends the trial court erred by failing to give a heat of passion voluntary manslaughter jury instruction when the evidence would have supported such a charge. The court cannot agree.

> As the Pennsylvania Supreme Court explained in ***Commonwealth v. Hutchinson***
>
> > A heat of passion defense, like the diminished capacity defense, is a partial defense, focused on the element of intent. A defendant accused of murder may establish that he or she is guilty, not of murder, but rather of voluntary manslaughter, by proving that, at the time of the killing, he or she was acting under a sudden and intense passion resulting from serious provocation by the victim. Emotions encompassed by the term passion include anger, rage, sudden resentment or terror which renders the mind incapable of reason. Whether the provocation of the victim was sufficient to support a heat of passion defense is determined by an objective test: whether a reasonable man who was confronted with the provoking events would become impassioned to the extent that his mind was incapable of cool reflection. To reduce an intentional blow, stroke, or wounding resulting in death to voluntary manslaughter, there must be sufficient cause of provocation and a state of rage or passion without time to cool, placing the [defendant] beyond the control of his reason, and suddenly impelling him to the deed. If any of these be wanting – if there be provocation without passion, or passion without a sufficient cause of provocation, or there be time to cool, and reason has resumed its sway, the killing will be murder.

25 A.3d 314-315 (Pa. 2011).

This case was purely a self-defense claim. The defense did not present any evidence that the Defendant acted out of any kind of sudden rage, terror, resentment or any other passion or emotion.

The Defendant testified that the victim and one or two others attacked him from behind. He was being punched in the head, grabbed by the neck and collar of his shirt, and "rag-dolled." He was trying to block punches when he heard something to the effect of I'm going to kill you and he saw the guy going in his pocket. He thought the guy was going for a gun, so the Defendant had to get his arm loose so he could get the gun he had in his right pocket. As the Defendant was trying to reach his gun, he saw a knife in the hands of the guy who said he was going to kill him. The Defendant pulled out his gun, pointed it in the guy's direction and fired. Once the gun was fired, everybody kind of stopped. The Defendant pointed the gun and told all three guys to back up. The Defendant then walked to his car and drove away. N.T., April 15, 2016, at 57-62.

Since there was no evidence of the Defendant being overcome by a sudden and intense passion, a heat of passion jury instruction was not appropriate in this case. ***Commonwealth v. Taylor***, 876 A.2d 916, 925 (Pa. 2005)("It is settled that a trial court should not instruct the jury on legal principles which have no application to the facts presented at trial. Rather, there must be some relationship between the evidence presented and the law upon which an instruction is requested."). Therefore, the court did not err in failing to give such an instruction.

The Defendant next asserts that the verdict was contrary to the weight of the evidence. Again, the court cannot agree.

> A verdict is not contrary to the weight of the evidence because of a conflict in testimony or because the reviewing court on the same facts might have arrived at a different conclusion than the fact[-]finder. Rather, a new trial is warranted only when the jury's verdict is so contrary to the evidence that it shocks one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail.

Commonwealth v. Morales, 91 A.3d 80, 91 (Pa. 2014)(quoting ***Commonwealth v. Tharp***, 830 A.2d 519, 528 (Pa. 2003)). A verdict is contrary to the weight of the evidence such that it shock's one's conscience when "the figure of Justice totters on her pedestal" or the verdict causes the trial judge to "lose his breath, temporarily, and causes him to almost fall from the bench." ***Commonwealth v. Boyd***, 73 A.3d 1269, 1274-1275 (Pa. Super. 2013)(citing ***Commonwealth v. Cruz***, 919 A.2d 279, 282 (Pa. Super. 2007), appeal denied, 928 A.2d 1289 (Pa. 2007)).

Although the court might have arrived at a different conclusion than the jury with respect to the premeditation and deliberation and/or the specific intent to kill necessary for a first degree murder conviction because the victim was the initial aggressor and the Defendant did not have any prior history with him, the jury's verdict did not shock the court's conscience. The standard is not whether the court would reach the same conclusion as the jury, but rather whether the jury's verdict made Justice totter on her pedestal or took the court's breath away. It did not. The Defendant's claims regarding the victim brandishing a knife or saying that he was going to kill the Defendant came across as concocted, especially in light of the statements the Defendant made in his phone conversations with his girlfriend, friends and relatives in which the Defendant asserted that he was not even there and he did not possess a gun (which he admitted at trial were untrue) and the fact that in these phone conversations the Defendant never mentioned the victim having a knife in his hand.

Therefore, the court was not at all surprised that the jury rejected the Defendant's claim that he was justified in using deadly force in this case. Furthermore, the jury could, and apparently did, infer that the Defendant had the specific intent to kill from his use of deadly weapon on a vital part of the victim's body.

The Defendant next contends that the evidence was insufficient to prove specific intent to kill necessary for first degree murder.

In reviewing a sufficiency of the evidence claim the court must view the evidence in the light most favorable to the Commonwealth as the verdict winner. ***Commonwealth v. Haney***, 131 A.3d 24, 33 (Pa. 2015).

The evidence presented clearly established that the Defendant possessed a firearm, which he was not licensed to carry concealed on his person. In fact, the Defendant was prohibited from possessing a firearm due to a prior conviction for robbery. The Defendant, according to his own testimony, took the firearm out of his pocket, pointed it at the victim and fired it. N.T., April 15, 2016, at 59-60.

The victim suffered a gunshot wound to the chest. N.T., April 12, 2016, at 86. The bullet was fired from at least 18 inches away. *Id*. at 96. The bullet injured the victim's upper and lower lobes of the left lung, which is a vital organ, as well as the victim's sternum, ribs, and the pericardium or sack surrounding the victim's heart. *Id*. at 89, 91. Those injuries led to bleeding which eventually led to a lack of oxygen to the brain and the heart. *Id*. at 91-92.

Specific intent to kill may be inferred from the use of a deadly weapon on a vital organ. ***Commonwealth v. Galvin***, 985 A.2d 783, 790 (Pa. 2009). Since the evidence clearly established that the Defendant used a firearm on a vital organ of the victim's body, the

evidence was sufficient to establish specific intent to kill necessary for first degree murder. Furthermore, the Defendant's possession and use of a firearm for which he had no license to carry is additional evidence of his intention to commit the crime. 18 Pa.C.S. §6104.

The Defendant also alleges that the evidence was insufficient to prove malice as required for third degree murder and aggravated assault causing serious bodily injury. Again the court cannot agree.

> Malice in Pennsylvania has a special meaning. It does not mean simple ill will. Malice is a shorthand way of referring to the three different mental states that the law requires as being bad enough to make a killing murder. Thus, a killing is with malice if the killer acted, first, with an intent to kill, or second, an intent to inflict serious bodily harm, or third, a wickedness of disposition, hardness of heart, cruelty, recklessness of consequence, and a 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. Overby, 836 A.2d 20, 24 (Pa. 2003); see also ***Commonwealth v. Ludwig***, 874 A.2d 623, 631-632 (Pa. 2005). As with specific intent to kill, the jury may infer malice based on the defendant's use of a deadly weapon on a vital part of the victim's body. ***Commonwealth v. Hitcho***, 123 A.3d 731, 746 (Pa. 2015)(citing ***Commonwealth v. Arrington***, 86 A.3d 831, 840 (Pa. 2014), cert. denied, 135 S.Ct. 479 (2014)). As previously noted, the evidence clearly established that the Defendant used a deadly weapon on a vital part of the victim's body; therefore, the evidence was sufficient to establish malice for third degree murder and aggravated assault.

The Defendant avers the Commonwealth failed to disprove self-defense beyond a reasonable doubt where all uncontested evidence established that the victim and at least one friend jumped the Defendant. The evidence was not uncontested. The Commonwealth

presented evidence that although the victim approached the Defendant neither the victim nor his friend punched the Defendant or jumped him. Archie Bell testified that neither he nor the victim punched Mr. Williams and on one else was with them at the time. N.T., April 12, 2016, at 36-37. Christofer Snyder testified that he saw the Defendant, his baby's mother (Shariah Worthy), and two Indian/Native American-looking men (the victim and Archie Bell) discussing something loudly or having an irritable moment . N.T., April 12, 2016 at 104-105, 118. They were just at the end of the building talking. *Id.* at 116. He didn't see the two men running down the street toward the end of the building. *Id*. He didn't see any altercation; he heard noises and he heard them talking loudly. *Id.* at 119. He also didn't see the shooting but he heard what he initially thought was a firecracker then saw the girl running across the street saying "he's got a gun." *Id*. at 107, 110.

Even assuming for the sake of argument that the evidence was uncontested that the victim and/or one of his friends threw the first punch or "jumped" the Defendant, the evidence was not uncontested with respect to the victim or any of his friends displaying a knife. In other words, even if the evidence had been uncontested that the Defendant would have been justified in using nondeadly force, it was not uncontested that the Defendant was justified in using deadly force.

The Defendant was not entitled to stand his ground and use deadly force in this case, because he illegally possessed the firearm. Pennsylvania's self-defense statute states:

> An actor who is not engaged in a criminal activity, who is not in illegal possession of a firearm and who is attacked in any place where the actor would have a duty to retreat under paragraph (2)(ii) has not duty to retreat and use force, including deadly force if:

(i) the actor has a right to be in the placewhere he was attacked;
(ii) the actor believes it is immediately necessary to do so to protect himself against death, serious bodily injury, kidnapping or sexual intercourse by force or threat; and
(iii) the person against hwom the force is used displays or otherwise uses:
(A) a firearm or replica of a firearm as defined in 42 Pa.C.S. §9712 (related to offenses committed with firearms); or
(B) any other weapon readily or apparently capable of lethal use.

18 Pa.C.S. §505(b)(2.3). The Defendant admitted in his own testimony that he possessed the gun in his pocket, he had convictions for robbery and criminal trespass, and he had the firearm illegally concealed on his person. N.T., April 15, 2016, at 49, 59, 106. Moreover, Pennsylvania law prohibits individuals with robbery convictions from possessing firearms. 18 Pa.C.S. §6105. Since the Defendant clearly was in illegal possession of the firearm, he could not stand his ground and use deadly force.

The Defendant's illegal possession of the firearm meant he had a duty to retreat if he could safely do so. See 18 Pa.C.S. §505(b)(2)(ii). Archie Bell testified that there was nothing blocking the Defendant from running down the sidewalk. N.T., April 12, 2016, at 37. Although defense witness Rashawn Ruley testified that three guys jumped on the Defendant's back "like attacking him," when asked when in relation to the fighting that the gunshot went off, Ruley replied "Like probably, like I would say probably after –after the altercation, after he got hisself (sic) together or something because it was three guys and it was just him." N.T., April 14, 2016, at 148. Therefore, the Defendant was not entitled to use deadly force; instead, he had a duty to retreat.

Furthermore, the evidence viewed in the light most favorable to the Commonwealth established that the victim did not display or otherwise use the knife. Archie Bell testified that the victim did not have anything in his hands. N.T., April 12, 2016 at 32-33. The knife

was also found in the victim's pocket as opposed to on the sidewalk or in the victim's hands, and the victim's blood on the knife was a transfer stain from the victim's blood seeping through the pocket of his jeans shorts onto the knife.

Additionally, the testimony from the defense witnesses that the victim displayed a knife was not persuasive. The Defendant repeatedly talked about his case in recorded telephone conversations with his girlfriend, friends and family. The Defendant's stories about the incident constantly changed. Initially he claimed he was not even present at the scene that night. Later, he claimed that he did not have a gun; the victim or one of his friends did. At no point in these conversations, however, did the Defendant claim that the victim had a knife.

Rashawn Ruley also testified that the victim had a sharp object in his right hand, but that was after Mr. Ruley heard a shot and the Defendant, who he knew as "Dewboy," walked past him. Mr. Ruley heard the victim's friends say call the cops because the victim just got shot and then the victim collapsed. N.T., April 14, 2016, at 138-139. This testimony puts the knife in the victim's hands after the Defendant shot him.

Finally, the jury could have inferred from the evidence presented that the Defendant concocted his story about the victim displaying a knife after his girlfriend read Pennsylvania's self-defense law to him in one of the phone conversations. The Defendant never mentioned the knife in his phone conversations; the first time he mentioned the victim wielding a knife was in his trial testimony. His witnesses, Rashawn Ruley and Rasheem Johnson, were his friends or acquaintances who did not come forward and provide the information to the police, were drunk or had been drinking that night, were not willing to be

interviewed and were incarcerated with the Defendant for periods of time during the pendency of this case.

When all of the evidence presented at trial is viewed in the light most favorable to the Commonwealth as the verdict winner, it was sufficient to disprove the Defendant's self-defense claim beyond a reasonable doubt.

The Defendant's final assertion is that "the jury's verdict was improperly based solely on presumptions and consciousness of guilt, not the evidence, thereby resulting in a verdict based on speculation; this is based upon the Commonwealth arguing in its closing that the jury could ignore the evidence when deciding the case."

The court does not know what the defense is referring to when it claims the Commonwealth argued in its closing that the jury could ignore the evidence when deciding the case. The Commonwealth made some alternative arguments, including one to the effect that even if the jury found that the victim or Mr. Bell took a swing at or punched the Defendant it did not justify the Defendant's use of deadly force. That argument, however, did not ask the jury to ignore the evidence. It asked the jury to rely on certain evidence presented by the Commonwealth, such as the fact that the knife was found in the victim's pocket, to find that the Defendant was not defending himself from the use of deadly force and to follow the law that deadly force can only be used when an individual reasonably believes he is in danger of death or serious bodily injury, and not merely bodily injury from a punch.

Simply put, the jury's verdict was not based solely on presumptions and consciousness of guilt. It was based on ample evidence that the Defendant shot the victim in

the chest, the bullet struck his left lung, and the victim died as a result. The Defendant's own testimony established that he pulled a firearm out of his pocket, ***pointed it at the victim who was only a few feet away from him***, ***and fired it***. The verdict was also based on evidence, such as the fact that the knife was found in the victim's pocket and testimony from the Commonwealth's witnesses that the victim did not have a knife in his hand, which showed that the Defendant was not confronting deadly force but, at most, a punch with a closed fist. Therefore, the Defendant did not reasonably believe that he was imminent danger of death or serious bodily injury.

This evidence was supplemented with inferences that the Defendant committed the killing with malice and a specific intent to kill based on the Defendant's use of a deadly weapon on a vital organ of the victim, and evidence of the Defendant's consciousness of guilt, such as his flight from Pennsylvania to North Carolina, his flight from the law enforcement officers and their canine in North Carolina, and his inconsistent and ever-changing stories (none of which mentioned the victim possessing a knife) in his recorded telephone conversations.

In sum, the jury's evidence was based on the evidence and the inferences that could be drawn from the evidence in this case, and not speculation as argued by the Defendant.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Nicole Spring, Esquire (APD)
Work file