IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	**CR-1046-2015**
v.	:	
	:	
TERRANCE PEREZ,	:	**1925(a) Opinion**
Defendant	:	

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

Terrance Perez (Defendant) through Counsel filed a notice of Appeal of the Judgement of Sentence rendered by this Court on November 1, 2016.

Procedural History

Williamsport Bureau of Police filed a Criminal Complaint against Defendant on May 14, 2015, charging Defendant with Criminal Homicide[1], Criminal Conspiracy (criminal homicide)[2], Aggravated Assault (two counts)[3], Criminal Conspiracy (aggravated assault)[4]; and Persons not to Possess, Use, Manufacture, Control, Sell or Transfer Firearms[5].

Defendant stood for trial in Lycoming County, Pennsylvania, from October 23, 2016, through November 1, 2016.

Defendant was found guilty after jury trial on all counts other than the Persons not to Possess, which was severed before trial. The Trial Court adjudicated the Defendant guilty of the Persons not to Possess charge and proceeded to sentence on all counts after the jury verdict on November 1, 2016:

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[1] 18 Pa. C.S. § 2501(a).
[2] 18 Pa.C.S. § 903(a)(1).
[3] 18 Pa.C.S. § 2702(a)(1) and 18 Pa.C.S. § 2702(a)(4).
[4] 18 Pa.C.S. § 903(a)(1).
[5] 18 Pa.C.S. § 6105(a)(1).

The Sentence of the Court as to Count 1, Murder in the First Degree, the Defendant shall undergo incarceration in a State Correctional Institution for life imprisonment without the possibility of parole.[6] Sentence of the Court as to Count 2, Criminal Conspiracy, is that the Defendant shall undergo incarceration in a State Correctional Institution for an indeterminate period of time, the minimum of which shall be twenty (20) years), the maximum of which shall be forty (40) years. This sentence shall run consecutive to the sentence imposed under Count 1. Sentence of the Court as to Count 7, Persons Not to Possess a Firearm, the Defendant shall undergo incarceration in….the minimum of which shall be five (5) years, the maximum of which shall be ten (10) years. This sentence shall also run consecutive to the sentence imposed this date under Count 1 and Count 3.

Verdict/Sentence, 11/1/2016, at 1-2.

Defendant filed post sentence motions, which were denied by operation of law and his direct appeal followed. A summary of the trial testimony follows.

Testimony of Cosme Berrones

On May 11, 2015, an argument occurred between Jamil Bryant (victim) and Rory Herbert. Rory believed that Jamil Bryant had "shorted him on marijuana" i.e. Rory had purchased marijuana from Jamil and Jamil had left some marijuana out of the bag. Jury Trial, 10/24/2016, at 78. This escalated into a physical scuffle. Id. at 79. Rory related this information to his cousin, Brandon Love (Love), who was close friends with Defendant and Jamil Bryant.

Marcus Singleton, "Spook", also came to Cosme Berrones' house to relay news of the scuffle. Id. at 80. Berrones testified that Spook came prior to Rory Herbert, Brandon Love, and Defendant's arrival. Id. at 137.

Berrones testified that for several hours Love and Defendant were arguing with Jamil over Love's cell phone verbally and via text messages. Id. at 82-83. Berrones, Love, Defendant, Berrones girlfriend, Brooke Dawson; and the mother of Love's child,

[6] Verdict/Sentence, 11/1/2016, at 1.

Jada Jenkins, were also at the Berrones home at 412 Third Avenue Williamsport, PA. Id. at 81.

Initially, Marcus Singleton, came to Berrones home around 2 PM to tell of the scuffle between Bryant and Herbert. Then Defendant, Rory Herbert, Brandon Love came to his Third Avenue home. At the time, Berrones was living there with his then girlfriend Brooke Dawson.

Berrones testified that Rory "let it [the fight with the victim] go" and went to his grandmom's house around 5 p.m. Id. at 82. After arguing for several hours, "Jamil winded up saying that he was going to blow [Loves] head off and [Defendant] felt that's [Love] basically like family to [Love] so he felt that he needed to say something about it." Id. at 84. Berrones testified that the Defendant also got on the phone with Jamil and said "if you have a problem with [Love] then you have a problem with me, he's not the only one with a gun." Id. at 85.

Berrones testified that Love and Defendant left and came back with a silver revolver. Id. Defendant asked Love and Jenkins to take him to get bullets; they declined. Id. at 86. The three (Love, Jenkins, and Defendant) ended up leaving for a short time and then returned to Berrones's home. Id. at 87.

After returning, Defendant asked for a ride from Love to Defendant's home. Id. Love's vehicle was a black Hyundai Sonata. Id. Love refused; however, after a request from Love, Berrones provided transportation to Defendant in Love's vehicle. Id. at 88.

Defendant wanted to drop off his electronic monitoring bracelet, which he wore as a state parolee, at his mother's home to establish an alibi as to his whereabouts at

the time of the shooting. Id. at 88. Berrones testified that he drove Defendant to Defendant's home so he could leave the monitor, remove it from his ankle and leave it at his home to establish a false alibi for Defendant's presence at the time of the murder. Berrones was unable to recall the exact time of their visit to Defendant's home but stated "it wasn't dark out so I know it was getting dark though. I want to say around 7:00, 5 to 7 around there." Id. at 92.

Defendant lived by the Dunkin Donuts in Newberry. Id. at 90. Defendant went inside the house for five to ten minutes while Berrones remained in Love's vehicle. Id. at 91.

Berrones testified that he drove Defendant to a storage unit in Williamsport to obtain the murder weapon prior to the murder. Id. at 95. When they got to the storage facility, someone with a silver van met them there. Id. at 96. The silver van had a "tear" on the passenger side. Id. at 97. The Defendant got out of the vehicle and into the silver van. The van went through the gate at the storage facility.

When Defendant returned in the silver van he got out of the van with a long black rifle that Berrones states was an AR-15. Id. at 99. Defendant put the assault rifle in the back seat of the car and they both returned to Berrones's home. Id. at 100.

Around 8:50 pm on the evening of May 11, 2015, Love drove Berrones and Defendant to the East End neighborhood of Jamil Bryant. Id. at 103. They spent 40-45 minutes driving around looking for Jamil Bryant around the area of his home. Id. at 104. Berrones was the front passenger and Defendant was in the rear of the vehicle with the gun. Id.

Finally, they saw Jamil Bryant on his front porch. Id. at 105. Love and

Berrones dropped the Defendant off on Ross Street and then drove up Penn Street and parked on Grant Street waiting for the murder to be accomplished. Id. at 105. The pickup spot on Grant Street was pre-arranged prior to the murder. Id. at 107. Defendant testified the Love drove himself and Defendant to kill Jamil Bryant on Anthony Street in Williamsport. He testified that they waited until after the murder was committed to drive the Defendant away.

When approaching Bryant's home, Berrones stated that they saw Bryant on the porch. He also testified that Love was driving the vehicle, that he was in the front passenger seat, and Defendant was riding in the backseat. Love and Berrones agreed to wait for Defendant on Grant Street. After waiting a short time, Berrones heard what sounded like firecrackers and then saw the Defendant running up Grant Street. Id at 107. Love pulled up to pick Defendant up. Id. The Defendant had the gun with him. The Defendant was agitated and said he "shot that pussy in his muffin. You pussies better not say anything." Id. at 108-109.

Berrones testified that after the murder they drove to Berrones's home. Id. Berrones's and Love's girlfriends were still there. Id. Defendant still had the gun on his person when they entered the home. Berrones testified that he went to the bathroom and when he came out of the bathroom he saw the Defendant coming up the basement steps and he no longer had the murder weapon with him. Id. at 110. Berrones also gave Defendant a change of clothes to aid in his escape. Id. Berrones testified that he later saw the gun in the rafters of his basement. Id. at 114. Berrones moved it into a porthole into his basement. Id. He told police where they would find the gun and consented to a search of his home to recover the weapon. Id.

Defendant asked Berrones for a change of clothes, which Berrones provided. Berrones testified that he gave Defendant a black shirt and khakis. Id. at 110. During the shooting, Berrones testified that Defendant was wearing a black hoodie, a red shirt, black shorts, and red shoes and that Berrones had lent the Defendant the black hoodie. Id. at 111.

An Instagram photo was submitted as Commonwealth's Exhibit #11 that showed Love, Defendant and an unnamed party. Id. at 112. Berrones testified that the clothes Defendant was wearing in the Instagram photo: a red shirt, black shorts and red shoes were the same that he was wearing on the day of the shooting. Berrones also testified that he gave Defendant a backpack where he stored the clothes he was wearing during the shooting. Id. at 113.

After the shooting, Evan Bryant, brother of victim, called Love. Defendant had already left Berrones home at the time of Evan Bryant's phone call to Love. Id. at 154. Love told Evan that they were in Bloomsburg. Id. at 114.

The two co-conspirators, Berrones and Love, agreed to stick with their alibi that they had been in Bloomsburg during the time of the shooting. Id. at 114-116, 155-156. After Defendant left, Berrones went to his basement and found the gun on top of ductwork. He hid the gun in his front porch. Id. at 156. When police came to his home he consented to a search and the gun was recovered.

Testimony of Agent Raymond O. Kontz III

Kontz, the affiant in the above captioned matter, obtained a warrant for Defendant's arrest on May 14, 2015. Jury Trial, 10/28/2016, at 95. Defendant was arrested in South Carolina and remanded to the J. Reuben Long Correctional Facility

in South Carolina. Id. at 96-07. Williamsport Bureau of Police Detectives traveled to the South Carolina correctional facility and on May 31, 2015, interviewed Defendant there and returned with Defendant to Williamsport for further police questioning. Id. at 97.

Kontz's three-hour interview of Defendant in South Carolina as well as 40 minute interview of Defendant when returned to Williamsport was played for the jury on 10/29/2016 and 10/31/2016. Kontz testified to the contents of the video including three separate versions of the events of that day by Defendant. Defendant first explained that he was in Philadelphia with family. When he realized that this version of events could be checked, and that if is family corroborated them, they would be charged, he then said that his co-conspirators dropped him off at Timberland [Apartments] one hour prior to the shooting. Lastly, he pointed to Berrones as the shooter.

Kontz testified to his understanding of the physical evidence in the case. Kontz correctly testified that the Defendant's DNA was recovered from the backpack found in the storage unit. Kontz testified that manual found in the storage unit was an operational manual for the murder weapon. Kontz testified regarding the Instagram photo that was shown during Berrones's testimony, Commonwealth's Exhibit 11, and that he was able to determine that the photograph was taken on the 9th of May, two days prior to the shooting. Jury Trial, 10/31/2016, at 32. Kontz recollected for the jury the testimony of Carla Johns who had contacted 911 on the evening of the shooting. Johns was living at 610 Penn Street on the evening of the shooting and testified that the Bryant's home is just off to the left of her hour "I'm three houses in on the block

and their house if kind of in my back yard." Jury Trial, 10/25/2016, at 46-47. Johns

saw a man running with a very large gun down the street. His sneakers were slapping the pavement…He was skinny, young, he looked to be white with blonde hair, he had black shorts and a black hoodie on and a big gun…he was around 5'8", 5'9" and he had a small frame that he looked to be between 18 and 21, a younger kid.

Jury Trial, 10/25/2016, at 47-48.

In their investigation of the shooting death of Jamil Bryant, police also found a duffle bag in the storage unit described by Berrones. The duffle bag contained a white Holiday Inn towel, 22 caliber bullet rounds, and two assault rifles. N.T. 8/8/2016, at 3. There was evidence that Defendant went to the storage unit to retrieve what turned out to be the murder weapon. Amongst many other things in the storage shed was a duffel bag that contained a number of firearms and .22 caliber ammunition whose make and caliber were consistent with that used for the homicide, although no ballistic expert could tie it to the murder weapon. Id. at 5. The murder weapon itself was not found in the storage facility, it was found outside the facility. Id. at 6.

Defendant's mother told police about an "ugly gun" that was ultimately also found inside the duffel bag. Id. at 10.

DNA testing indicated a major contributor on the magazine of the murder weapon was of Defendant[7]. Id at 6.

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[7] A Y chromosome DNA profile, consistent with a mixture of at least four (4) individuals, was obtained from the swab from the Bushmaster magazine (Item Q5). **May 11, 2015, DNA Analysis report from the Pennsylvania State Police Bureau** of Forensic Services, that tested the DNA of the Victim, [Defendant] and Berrones as well as nine items of additional physical evidence.

1) **Q1.** Sample swabbed from trigger grip, magazine release, and front laser sight of the **Smith & Wesson M&P 15-22, .22 LR semi-automatic rifle** (Serial # DZP9359), **item 1.1** [item #5946/AD-16]. Jury Trial, 10/28/2016, at 75. "For

Testimony of Brooke Dawson

Brooke Dawson (Dawson) was the live-in girlfriend of Berrones on the day of the shooting death of Jamil Bryant. Jury Trial, 10/25/2016, at 4. She testified that on the date in question Marcus Singleton stopped by to help them take their iguana to the SPCA. Id. at 5. Later, when Love and Herbert came to the home she learned

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item Q1 I had not interpretable results." Id. "*There was DNA present from too many contributors to be able to make an interpretation on it*." Id. Ballistics expert examined this item. Id. at 52.

2) **Q2**. **Sample swabbed from the empty Smith & Wesson, M&P 15-22, 25-round .22 LR ammunition magazine**, **item 2.1** [item #5947/AD-17]. "For item Q2 I developed a profile that was consistent with a mixture of at least three individuals. And in that profile I was able to determine a major component, that's just saying one person contributed more DNA than the others, so they are the major component of the sample, and *I determined that the major component of that sample, and* ***I determined that the major component of that profile matched the DNA profile obtained from the known reference sample from [Defendant].***" Id. at 76. "In this instance, the minor contributors I could not make an interpretation on, there was not enough DNA present from the individuals." Id. at 77. Ballistics expert examined this item. Id. at 52.
3) Q3. Swab collected from Samsung cellular phone, item 8.1 [item #5932/AD-1A].
4) **Q4**. Sample swabbed from black straps removed from WAHS **duffel bag**, **item 11.1** [item#6065/AD-20A]. "unable to make an interpretation" i.e. develop a profile. Id. at 79.
5) Q5. Swab from the Bushmaster magazine, item 12.1 [item #6017/AD-21C].
6) Q6. Swab from the 5.56 cartridges, item 13.1 [item #6017/AD-21C].
7) Q7. Swab from the Bushmaster rifle, item 14.1 [item #6288/AD-21E].
8) **Q8**. **Sample swabbed from the straps removed from the backpack item 18.1** [item #6071/AD-30A]. "I performed two types of analysis on item Q8….Y-STR analysis…looking specifically at the Y chromosome. The regular testing I could not interpret due to the complexity of the mixture, however with regarding the Y-STR testing I did develop a profile. Again it was a mixture, and I was able to identify a major contributor, and the major components of this Y chromosome DNA mixture profile matches the Y chromosome DNA haplotype obtained from the known reference sample of [Defendant]." Id. at 80.
9) Q9. Sample swabbed from the straps from the black bag, item 19.1 [item #6077/AD-31A].

about the fight. Id. at 6. Berrones's sister (Vanessa Berrones), who has a baby with Rory Herbert, was also at the house that day. Id. at 7. Herbert brought the baby when he arrived with Love, initially but they all left. Id. at 8. When Love returned he was with Defendant. Id. at 8. Love and Jamil Bryant were arguing over the phone. Id.

Dawson also testified that Defendant left her home for a period of time. Id. at 10. Brandon Love's former paramour, Jayda Jenkins, was also at the house on this date. Id. at 11. She testified that the boys were in the kitchen arguing all day long and that the Defendant was there but left for periods of time. Id. at 11-12. She also stated that Defendant returned to the home with a silver pistol and that the Defendant stated he needed bullets. Id. at 15. Dawson also testified that she knows that Berrones and Defendant at one point left the house and that the Defendant returned with a gun. Id. at 16-17.

Dawson testified that Commonwealth's Exhibit 7 (a photograph of the Smith & Wesson, Model M&P Model 15-22 .22 caliber semi-automatic rifle i.e. the murder weapon) is the gun Defendant had. Id. at 17. She states that Defendant, Berrones and Love left the house with the gun, Id. at 18, and that when they returned, she had to unlock the back door of the apartment to let them in. Id. at 19. She testified that Defendant said "he shot him 16 times" but he did not specify that it was Jamil who he had shot and Dawson said that she saw no gun when she let them into the house. Id. at 19-20.

Dawson identified the clothing Defendant was wearing in Commonwealth's Exhibit 11 as the same outfit, red shirt, black shorts, and red Jordan's that he was

wearing on the day of the shooting. Id. at 21. She also stated that Berrones gave Defendant khakis and a black shirt. Id. Though she could not remember whether it was Berrones or Love that spoke to Evan Bryant she did say they told Evan they were in Bloomsburg. Id. at 22. She also described Defendant's behavior after returning from the shooting as "hype". Id. at 32.

Testimony of Marcus Singleton

Singleton testified that on the day of the shooting he was in his vehicle (a 1997 Acura) on Anthony Street. Jury Trial, 10/25/2016, at 37. He was coming to pick Jamil up to take him to Wal-Mart to exchange a mother's day gift. Singleton was on the phone with his girlfriend for twenty minutes while waiting for Jamil. He testified that he saw Rory and Jamil talking outside Jamil's house so he presumed they had resolved the fight from earlier in the day. Id. at 43. Singleton heard the pops of the gunfire and saw Jamil laying in the middle of the road. Id. at 39. A stray bullet hit Singleton's vehicle. Id. at 38.

Earlier in the day, Rory and Jamil had had an argument over a short bag of weed. Id. at 39. Singleton described two separate argument that had taken place between Herbert and the victim and at the second argument Jamil had flashed Rory Herbert an older style pistol. Id. at 41.

Testimony of Victim's Neighbors

Carla Johns, of 610 Penn Street, testified that on the day in question she saw a "man running with a very large gun down the street". Id at 47. "He was skinny, young, he looked to be white with blonde hair, he had black shorts and black on and a big gun." Id. at 47-48. She called 911

and it was like a minute to two minutes after I called I heard shots fired and I heard somebody screaming and so I knew somebody had been shot so I picked up the phone again and I called and I said someone has been shot please hurry up send somebody

Jury Trial, 10/25/2016, at 50.

Officer Zachary Schon of the Williamsport Bureau of Police testified that on the night of the shooting was working the night shift. When he arrived for shift change, typically around 10:20 pm, he was told by Lieutenant Womer that "he just got a phone call from Lycoming County dispatch stating that a woman at 610 Penn St. had just seen a man walk down the street with a rifle in his hand". Jury Trial, 10/24/2016, at 22-23. As soon as he got in his vehicle to respond to the call he got a ""triple toned dispatch, which is emergency dispatch for shots fired at Penn Street and Anthony street with a man down in the street". Id. at 23.

Several other neighbors of the victim testified, one for the Commonwealth and three for defense. Shannon Welch of 612 Penn Street testified that he heard shots fired and said he saw someone running down the alley in the back of his towards Grant Street. Id. at 57. Welch was unable to remember what shoes the individual was wearing and could not see a weapon. In the report Welch had given to the police he said the individual was wearing a white shirt and had lighter color skin. Id. at 61.

Mary Lopez, resident of 416 Anthony Street, testified that she when she returned from work that evening she say victim standing between two cars across the street. Jury Trial, 10/31/2016, at 67. After hearing gunshots she looked outside and saw the victim on the ground in the middle of street and his brother was already over him at that time. Id. at 69. She testified that she saw two people walk by, she heard two voices, that she could not hear what they were saying or give a description but

they were walking hurriedly. Brenda Fioretti of 517 Anthony Street testified that after the shooting the saw two people down the alley. Id. at 80.

Testimony of Jail House Informants

Rory Herbert testified on October 26, 2016, and corroborated the details of that argument between himself and victim on May 11, 2015. Jury Trial 10/26/2016, at 33. He testified that while incarcerated in Lycoming County Prison at the same time as Defendant, the Defendant shared with him a letter from another individual on the outside telling him that Love and Berrones were talking and that Herbert was not saying much. Id. at 42. Herbert testified that Defendant offered him $20,000 to go to Miami and plead the fifth. Id. at 43.

Howard Larkin testified that he was incarcerated in Tioga County Jail with the Defendant. In August of 2015, Larkin testified that "he told me that a friend of his was beefing with somebody regarding a drug deal or something like that involving around drugs and that the other person that was involved with it didn't want to do nothing about it and him and two other people, it was three total, went to a storage facility, got a gun, went and found the victim and he got out of the car and shot him". Jury Trial, 10/27/2016, at 30-31. Defendant told Larkin that Defendant "lit [victim] up". Id. at 31.

Richard Guthrie testified that he personally knew Defendant prior to being incarcerated with him. He asked Defendant why he shot someone over some weed and Defendant said "he shouldn't have burnt my boy". Id. at 47.

Testimony of Jada Jenkins

Jenkins is the former paramour of Love and mother of his child. Jenkins testified that she drove in Love's car with Love and Herbert to Berrones's house and

that Berrones, Dawson and Defendant were there when they arrived. Jury Trial, 10/26/2016, at 5. She testified that she ran errands with her son after taking Love and Herbert to Berrones's and when she returned to Berrones' home, Berrones, Love and Defendant were arguing with the victim over a phone call. Id. at 6. She testified that Defendant threatened to shoot Jamil. Id. at 7. She testified that Love told her Jamil had threatened to shoot him and also testified that Love told her that Jamil said he was going to blow her head off too. Id. Jenkins testified that she argued with Jamil over the phone as well. Id. Jenkins testified that Defendant had a silver revolver gun at the time he threatened to shoot Jamil. Id.

Jenkins testified that Defendant asked her to take him to Gander Mountain for bullets for the silver revolver and she said "no". Id. at 9. She testified that she saw Defendant, Berrones and Love leave the house together. She did not know where they were going but Defendant returned with a big black gun. Id. at 9. Jenkins identified Commonwealth's Exhibit 7 as the gun Defendant was holding. She testified that she does not know where they were going and that they said "let's do this" and left from the back door off the kitchen. Cosme [Berrones] got into the passenger seat, Love drove, and Defendant was in the back with the gun. Id. at 12. The three were gone for one hour. Id. at 12.

Jenkins testified that upon returning, Berrones and Love were calm and not talkative. She testified that Defendant was "excited and hyper and he couldn't sit still and he was constantly moving around". Jenkins testified that she saw him carry the gun to the basement. Id. at 13. She testified that Defendant said "let me know when that pussy dies". Id. at 15.

Testimony of Lauren Force, DNA Expert

Force, employed by PSP Greensburg, the analyst of the DNA evidence collected, was qualified as a DNA expert and testified to her conclusions as to the DNA collected by police via swabs of various items. Jury Trial, 10/28/2016, at 69. Also See Footnote Seven for list of items and DNA results. She testified that Berrones could not be included as contributable to the interpretable DNA in this case. Id. at 78. She determined that the Defendant was a major contributor to the DNA profile on the magazine of the murder weapon and the backpack found inside the duffel bag.

The Commonwealth and Defense stipulated that if called to testified Catherine Palla would testify that the additional DNA testing of Love and Herbert led to her expert conclusion that Love and Herbert cannot be included as contributors to the interpretable DNA profiles obtained from the evidence in this case. Id. at 90.

Testimony of Jason Dockey, Williamsport Bureau of Police

Officer Jason Dockey of the Williamsport Bureau of Police testified just prior to Hayman. On 5/11/2015, Dockey was working dayshift and he responded to a hit and run accident on First and High Streets. Id. at 86. A tractor trailer had been sideswiped and the police received a telephone call that a silver Pontiac van struck the tractor trailer. Id. at 87. Police found the van at the 600 block of Thomas Street. Id. at 88. Dockey testified that there was a large gaping hole in the passenger side sliding middle door and there was also a green in color paint transfer which color was similar to that of the truck that was hit. The registered owner of the silver van was Christopher Hayman. Id.

Testimony of Chris Hayman, friend of Defendant

Defendant met with Hayman earlier that day at his apartment on 1020 Memorial Avenue. Jury Trial, 10/25/2016, at 90. This meeting is corroborated not only by Berrones' testimony that Defendant went to Fifth Avenue, but also the testimony of Jason Lemay of the Pennsylvania Board of Probation and Parole that shows the GPS data from Defendant's ankle monitor showing that Defendant was in the geographical area of the described visit. See Commonwealth's Exhibit 21O and Testimony of Jason Lemay, 10/27/2016.

Hayman testified that Defendant asked his cousin, his brother and himself for a ride to the storage facility and was told "no". Id. at 91. Hayman, however, agreed to meet him Defendant at the storage facility. Id. Hayman had the storage unit key and the passcode to the facility in his phone. Id. at 94. Hayman testified that after Defendant came out of the storage facility he had a weapon with him either an AR or an AK and it was black rifle. Id. at 97. Hayman identified Commonwealth's Exhibit 7 as the rifle. Id.

Testimony of Detective Stephen Sorage

Sorage testified twice: on 10/25/2016, and again on 10/28/2016. Sorage was the officer who executed the search warrant of the Catch All Storage Facility. During Sorage's testimony describing what was recovered from the storage unit, the jury was shown several photographs. A photograph of the facility, a photo of what was observed when opening door to the storage unit, photos of a canvas bag, a photo of a backpack that Sorage said was contained in the canvas bag, ammunition (356 rounds for a .22 caliber Winchester), a manual for a Smith & Wesson 15-22 assault rifle,

white towel and Gucci cologne. Jury Trial, 10/25/2016, at 65-68 and Jury Trial, 10/28/2016, at 91. Sorage also testified that there was a silver revolver in the canvas bag. Jury Trial, 10/28/2016, at 93.

Testimony of Sabina Kent, mother of Defendant

In May of 2015, Kent was living with Defendant at 2017 West Fourth Street. Kent spoke with police after Defendant's arrest. Jury Trial, 10/27/2016, at 11. She testified that both she and her son were on electronic monitoring and shortly before this incident they took their bracelets off to see what would happen. Id. at 13. Nothing did because "he would go out until about 3:00 in the morning". Id. at 15. At night, he left the ankle unit plugged in at the 2017 West Fourth Street residence.

Kent testified that Defendant's minibike had been taken the morning of because he was out riding it illegally. Id. at 16. She also testified that a silver vehicle, not Love's vehicle which she could identify since Defendant had usually been picked up by Love, came to the house on the date in question and that she saw Defendant bring the canvas bag out of their residence. She testified that the scope on Commonwealth's exhibit 7 was broken. Id. at 19.[8]

The photographs of the canvas bag and their contents as presented during Sorage's testimony were also presented to Kent, who identified them. Jury Trial, 10/27/2017, at 6-7. She testified that the bullets shown in the photograph are those she remembered seeing in the bottom of the bag. She also identified the backpack inside the canvas bag as belonging to her son. Later, she identified the silver revolver

[8] Ballistics Expert Spencer later testified that the sight area where a scope would be mounted does not appear to be damaged in any way. Jury Trial, 10/28/2016, at 69.

Sorage found in the canvas bag as the "ugly gun." She identifies Commonwealth's Exhibit #7 as a gun also belonging to her son.

Testimony of Dr. Barbara Bollinger, Forensic Pathologist

Bollinger, a forensic pathologist, testified as to the victim's cause of death. She explained to the jury that the services of a forensic pathologist are required to determine the cause of death in suspicious, unexpected or traumatic deaths. A forensic pathologist duty is to confirm the cause of death. Jury Trial, 10/26/2016, at 47. She determined that the cause of death of Jamil Bryant was homicide. Id. at 60.

Bollinger testified that the autopsy of the victim showed multiple gunshot wounds to the head, torso; chest abdomen, neck – nine; left hand and right hand 13 wounds. Id. at 50. She testified to abrasions and blunt force injuries: scratches of the skin and bruises of the skin about the head consistent with the physical fight that occurred with Herbert. Id. Autopsy photographs were shown to the jury and she testified to each and explained that each bullet she recovered she gave to the police department. Id. at 58.

Testimony of Corporal Elwood F. Spencer, Jr. Ballistics Expert

Spencer was qualified as an expert in firearm and tool mark examination. He testified regarding the evidence recovered from the crime scene and the workings of the murder weapon. The actual murder weapon (not photograph) was shown to the jury as Commonwealth's Exhibit 26. Spencer testified to the various tests he uses to determine whether that particular firearm was used in discharging the bullets recovered from the victim's body. Through his analysis he determined that all 17 of the cartridge cases recovered from the crime scene were in fact discharged from the

Smith & Wesson semi-automatic .22 caliber rifle recovered from Berrones' home. Jury Trial, 10/28/2016 at 64. Spencer was also able to identify the ammunition recovered from the storage unit as consistent with the super X Winchester casings recovered from the crime scene. Id. at 59.

Matters Complained of on Appeal

1. Trial Court erred by permitting Kontz to testify, over defense objection, that having involved several police agencies in the investigation, interviewed more than 50 witnesses and logged 344 pieces of evidence, that no evidence pointed to any person other than the Defendant as being the trigger person.

The Court allowed Kontz to testify to the ultimate issue in the criminal investigation. Jury Trial, 10/31/2016, at 54-55. The Court did advise the jury that they were the finders of fact and that it was their determination as to what the evidence says and what the evidence points to that is controlling in this case. Id. at 56. Pennsylvania Rules of Evidence do allow opinion testimony on the ultimate issue: "An opinion is not objectionable just because it embraces an ultimate issue." Pa.R.E. 704 (opinion on ultimate issue). Even if Kontz's testimony was incorrectly admitted, the Court submits that such error is harmless as the independent evidence in the case was sufficient to convict the Defendant of the crimes charged.

The harmless error standard, as set forth by Commonwealth v. Story, 476 Pa. at 409, 383 A.2d at 164 (citations omitted), states that "whenever there is a 'reasonable possibility' that an error 'might have contributed to the conviction,' the error is not harmless." Commonwealth v. Howard, 645 A.2d 1300, 1307 (1994). The appellate court makes the determination of whether the it is beyond a reasonable doubt that the error is harmless. Commonwealth v. Story, 383 A.2d 155,162 (Pa.

1978) but the Court submits in light of all the evidence submitted at trial, and the corroborating evidence submitted at trial, allowing the arresting officer to testify to the ultimate issue was not in error.

2. DNA testing white towel.

Argument on this issue occurred on August 8, 2016. Though the District Attorney represented to the Court that "the DNA testing identified a major contributor on the magazine of the murder weapon to be in fact Mr. Perez" (as was indicated to the District Attorney by Kontz in his Supplemental Police Report #13), when DNA isolation procedures were performed on Item Q5 [Bushmaster magazine], and amplified by Polymerase Chain Reaction, "no interpretable results were obtained from the swab of the Bushmaster magazine (Item Q5) due to the complexity of mixture(s) and stochastic effects observed." 10/21/2015, Lab Report W15-01622-7. When DNA profiling analysis of the Y chromosome was performed on the same item, a Y chromosome DNA haplotype from an unidentified individual was obtained from the component of this DNA mixture. The unidentified Y chromosome, and the fact that one male co-defendant's (Brandon Love's) DNA had not been tested, and another male was the impetus for the disagreement between Defendant and Victim that day, indicated to the Court that further DNA testing of these individuals (Brandon Love and Rory Herbert) should be ordered. Opinion and Order, 7/11/2016, at 7.

Though the Court found it necessary in the interests of justice to order further DNA testing of the murder weapon, the Court found it unnecessary to test a hand towel. Defense Counsel argued that if the DNA of either Love or Berrones were found on the towel that would undermine their credibility at trial of Berrones. Berrones

testified that he did not go into the storage unit on the date in question. The Court failed to see how Berrones's DNA on a hand towel would establish that he did not go into a storage unit. Additionally, with the DNA testing already done, the conclusion was that "Cosme Berrones" cannot be included as a contributor to the interpretable Y chromosome DNA haplotypes obtained from the evidence in this case." Id. at 5. The Court believed that regardless of whose DNA was on the hand towel; too many inferences would need to be made from whatever the result of that test to go to a fact of consequence in determining the truth of the matter.

3. Trial Court refused to permit questioning of Berrones regarding plea negotiations, including that he rejected a 15-40 year agreement, and the Commonwealth thereafter agreed to 12 year minimum.[9]

Berrones did testify that he was also charged with third degree criminal homicide, conspiracy to commit criminal homicide, and tampering with evidence. He testified that he pled in exchange for a 12-25 year sentence in a State Correctional Institution. Id. at 116-117.

The Commonwealth submitted into evidence as Commonwealth's Exhibit #12 the plea agreement between the Commonwealth and Berrones. Berrones had been incarcerated since the criminal complaint was filed in May of 2015. Id. at 128. Before Defendant's trial and before Berrones testified, the Court accepted a plea from Berrones pursuant to the agreement outlined supra.[10]

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[9] See Jury Trial, 10/24/2016, at 69-75 for argument on this issue prior to Berrones testifying. See Jury Trial, 10/24/2016, at 116-128 for testimony regarding plea agreement executed October 18, 2016 between the Commonwealth and Berrones.

[10] Defendant's co-conspirator Berrones pled guilty to 3rd degree murder, Conspiracy, Tampering with Physical Evidence and Obstruction of the Administration of Law on Tuesday, October 18, 2016. Opinion and Order. 11/29/2016, at 1.

Once a witness testifies, evidence of his bias, interest or corrupt motive is relevant impeachment evidence. The Court instructed the jury on accomplice testimony, that it comes from a polluted and corrupt source, and also gave the False in One False in All instruction.

Berrones testified that he lied to police. Id. at 116, 158, 170. Defense Counsel elicited from Berrones that he was false in his testimony at the preliminary hearing. The jury heard evidence with which they could have found Berrones not credible. Defense Counsel argues that is was error for the Court to not allow examination of Berrones regarding his rejection of an initial plea offer and receiving a better offer from the District Attorney, which he then accepted in exchange for his testimony. The law regarding offering terms of plea agreements as evidence to the jury is

> the Commonwealth can reveal the existence and terms of a plea agreement, but cannot take any further action that would indicate to the jury that the prosecutor vouches for the testimony, such as introducing the written plea agreement for the jury to peruse during deliberation, as in Bricker, or putting counsel for the co-conspirators on the stand to vouch for the veracity of their clients, as in Tann. Moreover, the trial court must give an instruction to the jury cautioning them to "look upon the testimony with disfavor" and realize that such witnesses may "falsely blame others because of some corrupt and wicked motive." Bricker, 581 A.2d at 155.

Commonwealth v. Miller, 819 A.2d 504, 515 (2002).

While there need not be a contract in place for plea negotiations to be admissible as impeachment evidence in a court case, see Commonwealth v. Strong[11], when there is a contract in place and it is disclosed no further evidence of the negotiations leading up to that agreement are required.

[11] Not all negotiations between the prosecution and a cooperating co-defendant witness falling short of an actual agreement must be disclosed to the defense. It is only where some actual promise of favorable treatment in the witness's own prosecution has been made, and that fact becomes material at trial, that disclosure is required. Commonwealth v. Strong, 761 A.2d 1167, 1180 (2000).

On the first day of trial, before Berrones testified, the Court took argument on this issue in chambers. Jury Trial, 10/24/2016, at 69–75. The Court did not find plea negotiations to be relevant and therefore did not allow it to be admitted into evidence. Id. at 74. Here there was an agreement in place that had been tentatively accepted by the Court by taking Berrones' plea and the jury was made aware of that agreement and instructed as to the meaning of such an agreement. It was not necessary for further details of the plea negotiation process to be discussed. Finding that the Commonwealth had met its burden of disclosing Brady material, i.e. impeachment evidence of its witness, no further testimony regarding the process by which that agreement was arrived at was required.

4. Error in permitting visitation handset recordings

In its Opinion and Order filed November 29, 2016, this Court admitted the recordings of visitation conversations made over a handset at the Lycoming County Prison finding them to be oral communications not protected by The Wiretap and Surveillance Act. In Commonwealth v. Fant,[12] the Supreme Court of Pennsylvania held that recordings of visit conversations over telephone-like handsets were not telephone calls governed by exception 14 of the Wiretapping and Electronic Surveillance Control Act[13]. Bound by that authority, this Court found that visitation recordings were not telephone calls, and thus not exempt via exception 14 of the Wiretap Act[14].

In the case at bar, this Court found that that visitation conversations were not

[12] Commonwealth v. Fant, 146 A.3d 1254 (Pa. 2016).
[13] 18 Pa.C.S. § 5701 *et. seq.*
[14] 18 Pa.C.S. § 5704. (exceptions to prohibition of interception and disclosure of communications)

oral communications as defined by the Wiretap Act[15] as the facts and circumstances of the prison visitation system testified to in both ***Fant*** hearings showed that any expectation that the conversations were not being intercepted would not be justifiable. The Lycoming County Prison in its "Answer to Defendant's Motion to Suppress Recordings of Prison Visitations" asked the Court to find that the it acted lawfully relative to recording Defendant's inmate visits. The Court did and does find that the Lycoming County Prison acted lawfully in its recording of prison visitation conversations. It did not find exception (4) of the Wiretap Act to apply, i.e. that defendant's consent to the recording of their prison visits. Rather the Court found the communication being intercepted to be oral in nature, not electronic, as defined by the Act, and that it was not the type of oral communication protected by the Act. Opinion, 11/29/2016, at 14-17.

5. Phone call with step mother.

Defense counsel objects to the Court's admission of Phone Call #4, Snippet #1, 5:49 mark where Defendant's step mother stated "Well I hoped you learned your lesson. You always wipe your shit off". To which the Defendant replied "I been doing that." Defense Counsel argued that the 5:49 mark was not relevant and if it were, it was inadmissible evidence of prior bad acts.

The statement was admitted pursuant to Rule 803. (25) (an opposing party's statement). The statement was not admitted as evidence of prior bad acts, but was instead admissible as an admission by a party opponent, see Pa.R.E. 803(25),

[15] 18 Pa.C.S. § 5702 (definitions) "*Oral communication*." — Any oral communication uttered by a person possessing an expectation that such communication is not subject to interception under circumstances justifying such expectation. The term does not include any electronic communication.

because Defendant and step-mother were discussing his DNA being found on the magazine of the murder weapon. Defendant's statement that "I been doing that" to his stepmother saying "Well I hope you learned your lesson. You always wipe your shit off." indicated that Defendant wipes down guns, which is a method of reducing one's culpability for murder. Even though the statement contains no clear admission of guilt of the offense prosecuted, it is admissible as an opposing party statement. Commonwealth v. Weiss, 81 A.3d 767, 800 (2013). Moreover, even if it were error to admit the contents of the phone call, the error is harmless when considering it against the amount of other evidence presented in this case. Commonwealth v. Hutchinson, 811 A.2d 556 (2002).

6. Letters with girlfriend

The Court relies on its Opinion in support of its Order of October 24, 2016, and the reasoning above in support of its decision to admit Defendant's letters to his girlfriend. Opinion, 11/29/2016, at 17-23. The Commonwealth presented the letters to the jury in a power point presentation and Kontz testified as to the contents. Jury Trial, 10/31/2016, at 46 – 54.

7. Use of prior consistent statements of Berrones

Berrones testified at both the Preliminary Hearing, 6/23/2015, and the Trial, 10/24/2016. During cross examination, Defense Counsel brought to light that Berrones had lied previously when he stated that Love showed up at his house first. Rather Singleton had showed up first. The Defense submitted into evidence a transcript of an audio recording at City Hall, a transcript of a conversation with Berrones at his home, as well as instant messages from Love's phone, and text

messages Berrones had sent to the victim. Defense Exhibit #5 was a transcript of an interview by Sorage and Kontz with Berrones. Through this testimony, Defense Counsel was able to show that Berrones had not been truthful with police.[16] The Commonwealth rehabilitated Berrones credibility on redirect by admitting the transcript of the Preliminary Hearing. Jury Trial, 10/24/2016, at 176-177. Though the Court initially sustained the Defense's objection to the use of the preliminary hearing transcript, the Commonwealth was able to question Berrones regarding its contents. Id. at 177-193. Defense Counsel also used the preliminary hearing transcript in re-crossing Berrones regarding inconsistencies between his statements at the Preliminary Hearing of Defendant on 6/23/2015 and at the Jury Trial of Defendant on 10/24/2016. Id. at 196. When counsel has brought into question the credibility of a witness, opposing counsel may submit prior consistent statements to rehabilitate the witness. Pa.R.E. 613(c) (witness's prior consistent statement to rehabilitate) and as such this assignment of error is without merit. The Court, over objection of the Defense, then allowed rehabilitation of witness Berrones on recross examination on 10/28/2017. Jury Trial, 10/28/2017, at 43-47. As the Pennsylvania Rules of Evidence allows such rehabilitation this assignment of error is without merit.

8. Allowing Co-Defendant to consult with counsel during testimony and for not instructing the jury on the request.[17]

During the trial on October 25, 2016, Defense Counsel sought to cross examine the Commonwealth's witness, and codefendant with recordings of visit conversations codefendant had while an inmate at Clinton County Correctional

[16] See Jury Trial, 10/24/2016, Cross Examination of Cosme Berrones, at 127-170.
[17] Jury Trial, 10/24/2016, at 166.

Facility (CCCF) on May 15, 2015. The Commonwealth had not questioned Defendant regarding these telephone calls and no Fant hearing had been held on the issue (a hearing was held subsequently on October 26, 2016, where the Court determined that Defense would be able to question Berrones regarding these telephone calls).

The scope of cross examination of witness should be limited to the subject matter of the direct examination and matters affecting credibility, however, the court may, in the exercise of discretion, permit inquiry into additional matters as if on direct examination. Pa.R.E. 611 (b) (generally restricting the scope of cross-examination to matters discussed during direct examination and matters affecting credibility.)

In this instance, the Court permitted Berrones to consult with counsel before testifying regarding the visit conversations as they were not addressed during the direct examination and no motion in limine had been filed by Defense prior to trial. Defense Counsel requested permission to use the visit conversations to impeach Berrones. The Court did not allow Defense Counsel to question Berrones on his request to speak with his attorney. Id at 168.

The Court allowed the witness to consult with Counsel to protect his 5th Amendment rights as well as to protect the right of Defense Counsel to cross examine the witness. The need for counsel to protect the Fifth Amendment privilege comprehends not merely a right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires. Miranda v. Arizona, 384 U.S. 436, 470 (US 1966). Berrones was testifying pursuant to a plea agreement that had been tentatively accepted by this Court on October 18, 2016. He was now being questioned on a subject area that he had not been prepared for prior

to trial and was reluctant to continue with the questioning. Anything he said at the trial is a judicial statement that could be used by the Commonwealth at any time to bring further charges and/or seek leave of Court to rescind Berrones accepted plea agreement. By allowing him to consult with counsel, the Court was protecting his Fifth Amendment right not to be a witness against himself and also protecting Defense Counsel's right to impeach the credibility of the Commonwealth's witness. Any complaint of error in this regard is without merit.

9. Permitting testimony regarding "ugly gun"

The Court relies on its Opinion of 11/29/2016, especially Footnote #5 in support of its decision. Opinion, 11/29/2016, at 2-3. See Jury Trial, 10/27/2016, at 22 for sidebar argument over Commonwealth's ability to examine witness Sabina Kent on contents of the duffle bag including the revolver, i.e. "ugly gun." After Kent testified regarding the gun, Jury Trial, 10/27/2016, at 25, Detective Stephen J. Sorage was again called to the stand to testify to the contents of the black canvas duffle bag he found pursuant to a search of Troy Brown's storage unit at the Catch All Storage Facility. Jury Trial, 10/28/2016, at 91 – 94. He testified to finding ".32 caliber revolver long barreled handgun" i.e. the ugly gun. Id. at 93.

10. Not requiring Commonwealth to redact portions of Defendant's statements where the officers confronted him about statements of co-conspirator who did not testify[18].

[18] The Public Defender states in its motion that the Co-Defendant was not joined for trial; however, he was joined for trial but was not tried with Terrance Perez. On the date of Jury Selection, 10/18/2016, Counsel for Co-Defendant Brandon Love requested a severance for trial. Neither the Court nor Defense Counsel objected to the severance.

The Court admitted the fabricated statements in order for the Commonwealth to show the Defendant's reaction to them. Jury Trial, 10/28/2017, at 86-88.

Kontz said to Defendant, "I'm not sure why B-Love's [Brandon Love] story, what has told us is the same as Cosme's. He says that you got out of the car and that you had the gun with you when you got out of the car." The only statements Defendant made during that exchange were "yeah" line 8, "right" line 21, "When did they get picked up" Defendant's Exhibit #14, Interview Transcript, 6/1/2015, at 16 line 4. "So they had two or three days afterwards to formulate a story." On page 17 of the interview "The other thing you gotta understand is that wasn't the first story that B-Love told, okay. His story changed in the room okay. It's not like they formulated this story, he came in off the street and gave that up right off the bat."

The Court cautioned the jury that the Defendant's statements were not being admitted for the truth of the matter asserted but rather for Defendant's reaction to the fabricated statements.[19] In Bruton v. United States,[20] because of the substantial risk that the jury, despite instructions to the contrary, looked to the incriminating extrajudicial statements in determining petitioner's guilt, admission of a co-defendant's confession in the joint trial violated petitioner's right of cross-examination secured by the Confrontation Clause of the Sixth Amendment. In the joint trial, the accomplice did not testify. The accomplice's confession was admitted into evidence. The

[19] Jury Instruction #20, 11/1/2016. "There was evidence presented during the trial that the Defendant was confronted with statements allegedly made by Brandon Love. Those statements may not be considered by you as evidence of guilt for the truth of the matters discussed but rather they are admitted for the limited purpose of illustrating the reaction and response given by the Defendant to the statements allegedly made by Brandon Love."

[20] Bruton v. United States, 391 U.S. 123, 123, 88 S. Ct. 1620, 16(1968).

accomplice's confession was that he and co-defendant (Bruton) committed the crime. The trial judge attempted to cure the situation by instructing the jury that they could only use the confession as evidence of guilt of the accomplice but not as evidence of guilty of his co-defendant. The Supreme Court found this warning not sufficient. Defense Counsel argues that similarly the Court's curative instruction was not enough here, though in this instance the accomplice was not being tried at the same time.

When Bruton applies, a cautionary instruction is *per se* incapable of rectifying the problem of admitting a co-defendant's confession, who is not testifying. But this is not a Bruton situation. In Commonwealth v. McCrae, 574 Pa. 594, 832 A.2d 1026 (Pa. 2003) the Supreme Court of Pennsylvania held that Bruton applies only in the context that gave rise to the decision i.e., the introduction of a powerfully incriminating statement made by a non-testifying co-defendant at a joint trial. "Bruton is inapplicable to statements made by an individual other than a non-testifying co-defendant at a joint trial of co-defendants." Commonwealth v. Brown, 925 A.2d 147, 159 (Pa. 2007). This trial, though it had been originally joined, was severed on the date of jury selection. Defense Counsel did not object to the severance.

11. The Defendant submits that, due to the lack of credibility of the witnesses against him, including numerous lies to police and motives to fabricate, the verdict was so against the weight of the evidence as to shock the conscience of the Court and require grant of a new trial.

The trier of fact, in this case, the jury, 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:

> The finder of fact -- here, the jury -- exclusively weighs the evidence, assesses the credibility of witnesses, and may choose to believe all, part, or none of the evidence. Issues of witness credibility include questions of inconsistent

testimony and improper motive.

> A challenge to the weight of the evidence is directed to the discretion of the trial judge, who heard the same evidence and who possesses only narrow authority to upset a jury verdict. The trial judge may not grant relief based merely on "some conflict in testimony or because the judge would reach a different conclusion on the same facts." Relief on a weight of the evidence claim is reserved for "extraordinary circumstances, 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."
>
> On appeal, this [appellate court] cannot substitute its judgment for that of the jury on issues of credibility, or that of the trial judge respecting weight. [Appellate Court] review is limited to determining whether the trial court abused its discretion; the [appellate court] role precludes any *de novo* consideration of the underlying weight question.

Commonwealth v. Sanchez, 36 A.3d 24, 39 (Pa. 2011) (internal citations omitted).

The DNA expert, Laura Force, told the jury there was a match between Defendant, the murder weapon magazine and the backpack straps found in the duffle bag that was recovered by Detective Sorage from the Catch All Storage Unit. Defendant's mother testified to the contents of the duffle bag and that belonged to her son. The DNA expert testified that there was no evidence of samples that matched Berrones and Love, the other two co-conspirators in the murder. Kontz testified and the video showed and Defense Counsel argued that trigger person was Berrones. The Defense witnesses testified that they heard other males walking away from the scene on that night but were unable to provide any identifying information or necessarily link the individuals to the incident in any way. The DNA expert also stated to the jury there was no DNA match for the other two individuals involved in fight. Text messages from Love's phone corroborated details of fight testified to by Berrones, Singleton and Herbert. Jason Lemay's testimony regarding the Defendant's whereabouts on the date in question as documented by the GPS in the

ankle monitor he wore. See Jury Trial, 10/27/2016, at 59-73, corroborated the testimony of Berrones and Jenkins.[21]

Even if he were not the trigger person, which is not supported by the evidence, he would likely be equally culpable for the murder under the law, as the text messages, see testimony of Agent Jason Bolt, 10/28/2017, at 6-32, coupled with the physical evidence show that the murder of Jamil Bryant was a premeditated act by three accomplices. Given that Defendant appeared to admit to the murder to not one but two inmates, went on to write letters to his girlfriend regarding the game of chess he was playing in attempting to avoid responsibility, and his flight to South Carolina after the murder, in addition to all of the Commonwealth's evidence as outlined above, there seems little doubt as to the sufficiency of the evidence. Though Defendant is correct in his statement that a number of the Commonwealth's witnesses were known criminals with a known propensity for untruthfulness, the jury was made aware of these facts. Additionally, many of the Commonwealth's witnesses had no motivation to lie and the evidence of those unbiased witnesses supported the remaining witnesses' testimony with few insignificant exceptions.

12. Reconsideration of Sentence

Sentencing is within the sound discretion of the trial court. Commonwealth v. Zirkle, 107 A.3d 127 (Pa. Super. 2014). Criminal Conspiracy and Persons not to Possess Firearms are separate crimes for which Defendant was found guilty and did not merge for sentencing purposes. Though it may seem excessive to set consecutive sentences for each crime charged, when the lead conviction mandates

[21] Jenkins denied going to Hanna restaurant but GPS maps show that Defendant did but for a very short period). (cite to record)

life in prison, it serves an important function in the criminal justice system. If for some reason the law were to change, or the legal status of this case would change vis a vie the leading charge of criminal homicide in the first degree with a mandatory life with no parole sentence, the Defendant would still serve a sentence for the other crimes for which he was adjudicated guilty. Moreover, Defendant was serving a state parole sentence at the time of the commission of these crimes, which is reason to be sentenced on every discrete crime for which he was found guilty that did not merge for sentencing purposes.

The Court respectfully requests that its Judgement of Sentence in the above captioned matter be affirmed.

BY THE COURT,

DATE: _____ _____
Nancy L. Butts, P.J.

cc: Public Defender (JB, WM, NS)
DA (EL, KO)
Gary Weber Esq.