IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	
	:	
v.	:	**No. 1063-2016**
	:	**CRIMINAL**
KNOWLEDGE FRIERSON,	:	
Defendant	:	

OPINION AND ORDER

Beginning October 30, 2017 and ending November 2, 2017, a jury trial was held before this Court, at which the Defendant, Knowledge Frierson, was found guilty of Murder of the Third Degree[1], Aggravated Assault (attempts to cause serious bodily injury)[2], Aggravated Assault (attempts to cause serious bodily injury with a deadly weapon)[3], Possession of an Instrument of Crime[4], and Tampering with Physical Evidence[5]. The Court then sat as factfinder later on November 2, 2017, and found the Defendant guilty of Persons Not to Possess a Firearm[6] and Firearms Not to be carried without a License[7]. On February 20 , 2018, the Court imposed sentences aggregating to a minimum of 26 years to a maximum of 60 years imprisonment. Defendant's Post Sentence Motion was timely filed on March 2, 2018. Argument on Defendant's Motion was held on June 29, 2018. Defendant raises 8 issues in his motion which will be addressed seriatim.

---

[1] 18 Pa.C.S. § 2501
[2] 18 Pa.C.S. § 2702(a)(1)
[3] 18 Pa.C.S. § 2702(a)(4)
[4] 18 Pa.C.S. § 907
[5] 18 Pa.C.S. § 4910
[6] 18 Pa.C.S. § 6105
[7] 18 Pa.C.S. § 6106

Background

On October 13, 2015, at approximately 9:00 p.m., Keith Freeman, Jr. (Freeman) was in his home on 421 Brandon Avenue with his children. His girlfriend, Karina Washington (Washington), was at work. Freeman testified that his son told Freeman that someone was at the door. Freeman did not open the door, but he saw an individual (Defendant) on the front porch he did not recognize. Defendant asked for a person whose name Freeman also did not recognize. Freeman told Defendant he had the wrong house, and Defendant walked west towards Cherry Street.

Freeman testified that Defendant's demeanor made him nervous because Defendant did not look him in the eye and had his hands in his hoodie. After Defendant left, Freeman decided he did not want Washington to walk home from work. Freeman called his mother and aunt and asked one of them to pick up Washington. His aunt, Carolyn Barr (Barr), said that she would pick up Washington. Freeman called Washington and told her Barr would pick her up after work.

Defendant knocked on the door again, and Freeman told him again that he had the wrong address. Freeman testified that Defendant insisted that he had the right address and that someone sent him. Freeman also testified that after the second encounter, he ran upstairs and got his gun.

When Barr and Washington arrived at the house, they noticed Defendant was waiting around outside the house and was staring at them. Freeman testified that he also called his friend Tyson Bolden (Bolden). Bolden came to Freeman's house shortly after Washington and Barr arrived, and Freeman believed Bolden brought a handgun with him.

Freeman, Washington, Barr, and Bolden discussed the situation in the house. When the time came for Barr to leave, Freeman and Bolden decided to walk Barr back to her car. As they were walking down the steps of the house, Freeman testified that Barr screamed his nickname, Dump, and suddenly he and Defendant were face to face. Washington, who was inside the house, also testified that she heard Barr scream Dump followed by gunshots. Freeman and Defendant struggled over Defendant's gun as they fell to the ground near the bottom of the steps, and a shot went off. Freeman testified that he then jumped off of the Defendant and that the Defendant shot again. Defendant and Freeman then exchanged gunfire as Freeman backed away east toward Elmira Street and Defendant headed west toward Cherry Street. Freeman testified that he fired about three or four shots, and he thought Defendant fired about six shots. Freeman testified that he threw his weapon into the bushes and that he saw Defendant limping in an unnamed alley after the shooting stopped. At some point during the gunfire exchange, a bullet struck Barr in the torso and she died soon after. Dr. Michael Johnson (Johnson), the forensic pathologist who performed Barr's autopsy, testified that the cause of Barr's death was a single gunshot wound to her abdomen. Johnson concluded that the manner of her death was homicide.

Multiple eyewitnesses testified to the events that occurred on October 13, 2015. Robert Smith lived on 914 Cherry Street, just around the corner from 421 Brandon Avenue. At approximately 9:30 p.m. he heard between 10-12 gunshots. Smith testified that there were one or two gunshots at first, followed by a brief pause and then more gunshots after that, "almost like a panic fire" (N.T. 10/30/17 p. 131). He believed that the gunfire sounded like it was coming from 2 different guns, one smaller caliber and one

slightly larger caliber. After calling 911, Smith testified that he heard a male voice yelling for help that sounded like it was coming from Brandon Avenue.

Kathleen Mitsdarfer (Mitsdarfer) lived at 406 Brandon Avenue. She testified that she was awakened by the sound of gunfire, heard three gunshots followed by a pause and then a few more shots. She said the shots were coming from the west and that she looked out her bedroom window and saw a man with a silver gun in his right hand walking backwards in front of her house. Mitsdarfer testified that the man did not fire the gun while she was watching, and that he was walking quickly to the east down the middle of the street.

Theresa Bower (Bower) lived at 436 Brandon Avenue close to where the unnamed alley intersects with Brandon Avenue. She testified that she heard gunshots and a woman screaming which caused her to look outside. Bower testified she saw a man running down the alley with a gun and that he was limping.

Drew Barasky (Barasky) was living at 429 Brandon Avenue at the time, and around 9:30 p.m. that night he heard gunshots. He then saw someone limping in the alleyway as if they were hurt, and shortly after that he heard someone screaming for help at the side of his house. In June 2016, Barasky and Defendant were both housed in the same block of the Lycoming County prison. Barasky testified that he and the Defendant had a brief conversation regarding the night of the shooting. Barasky mentioned to the Defendant that he lived in the area of Brandon Avenue where the shooting occurred, and testified that Defendant told Barasky that Defendant "got rid of the thing in the alley" (N.T. 10/31/17 p. 112), which Barasky understood to mean the gun.

A few months after the shooting, Bruce Huffman (Huffman) discovered a bullet hole in a post on his back porch. Huffman lives on Cherry Street, and can see 421 Brandon Avenue from his back porch. Huffman testified that the hole was on the east side of the post, and that there was a dent or small protrusion pushing out to the west side. He also testified that he had not heard any gunshots since the night of the shooting before he found the bullet in his porch.

At 9:30 p.m. on October 13, 2015 Officer Eric Houseknecht (Houseknecht) was dispatched to the 400 block of Brandon Avenue for shots fired and a victim on scene. Houseknecht was the first unit to arrive at the scene and he testified that he found Barr barely conscious and lying on the ground in front of 421 Brandon Avenue and Washington crying on the porch. Officer Jordan Stoltzfus (Stoltzfus) also arrived to clear people from the scene. Stoltzfus was told that someone was crying for help behind a nearby residence, and he found the Defendant between 427 and 429 Brandon Avenue lying on the ground with a gunshot wound. Stoltzfus testified that he collected two pairs of pants from Defendant that had been cut off by EMS and that there was blood on the pants.

Officer Derrick Cummings (Cummings) was also called to the scene to perform a gunshot residue (GSR) kit on the Defendant. He testified that he went to the ambulance to use a scanning electronic microscopy kit (SEMS) on Defendant to check for gunpowder residue. Cummings testified that the kit looks for residue on the hands, which would be left behind if someone shoots a weapon. Cummings received SEMS training at the police academy, and testified that any type of fluid or blood can cause a negative result on the test. He also stated that the hands that are being tested should not touch anything, such as

clothing, because it could remove some of the residue. Cummings testified that after swabbing both the Defendant's left and right hands, he placed the swabs back into the kit and sealed it. He confirmed that a proper chain of custody was maintained and the kits are kept in a secure location.

Officer Joseph Ananea (Ananea) processed the crime scene at Brandon Avenue. He testified that he marked various items of interest as he did a walk-through of the scene. Because the outside crime scene involved a shooting, he especially looked for ballistic evidence such as shell casings, bullets and bullet fragments, as well as blood. He testified that in addition to fresh pools of blood on Brandon Avenue, he found a pool of blood in the gravel stones where Defendant was found lying in the alleyway. Along the alleyway, Ananea testified that there were drag marks and disturbances in the gravel, as well as more blood in the stones and bloody leaves. At the end of this blood trail, Ananea found a handgun in the alley next to a chain link fence. Ananea collected blood samples, the handgun, and took photographic evidence of the crime scene. He testified that he did not find any bullets or casings that night, and that revolver style guns do not eject casings, unlike semi-automatic weapons which do.

A few days later, Ananea was informed that there was a possible bullet strike on a tree in the crime scene between 415 and 419 Brandon Avenue. Ananea testified that he saw a fresh bullet strike on the eastern side of the tree and found tiny metal fragments embedded into the tree. The tree was cut down in order to extract the bullet.

Lieutenant Arnold Duck (Duck) also processed the crime scene with Officer Ananea. Duck made a map of the scene after the walk-through and diagrammed where evidence was collected and the markers were placed. Duck also took measurements to be

used for reconstructing the crime scene. Duck testified that the handgun recovered from the alleyway was a Ruger revolver. All 6 rounds had been fired, with all of the casings still intact but no bullets in the gun. Duck also testified that there was a lot of blood on the gun, mostly on the metal portion around the trigger and the barrel but barely any blood on the grip itself. He testified that he swabbed the gun for blood and DNA evidence, and that he could not find any fingerprints on the gun.

Duck called Agent Trent Peacock (Peacock) and advised him that there had been a shooting. Duck also told Peacock that there were two victims, one already deceased and the other seriously injured in the hospital. Peacock testified that he drove straight to the scene and met with Houseknecht and Stoltzfus. He then proceeded to the hospital, where he came into contact with Defendant. Officers Schon and Cummings were preparing to do a SEMS kit. He testified that Defendant's hands had been bagged to protect any residue or other evidence that was on the hands. Peacock also testified that immediately after the bags were removed, Defendant stuck his hands under his hospital gown and wiped them. Peacock asked him to stop and Defendant replied that his groin itched. Peacock asked Defendant if he had handled a gun, and Defendant responded that he did not want to talk to Peacock any longer. After the SEMS kit was completed, Peacock delivered it to R.J. Lee Group for analysis.

Peacock testified that the investigation found that the resident of 411 Brandon Avenue, Shawn Silvis, had video cameras on the front of the house, and that he was able to recover a videotape of the events of that night. When Peacock reviewed the video, he saw that there was a person walking backward down the street to the east with a gun. He later identified the individual as Freeman, and Freeman initially denied that he had a gun.

Freeman later admitted to having a gun and told Peacock that he discarded the weapon in some bushes between Brandon Avenue and Glenwood Avenue.

Peacock also obtained a one-foot cut section of the tree in front of 415 Brandon Avenue that contained the embedded bullet. He testified that he and Duck and Ananea were able to extract a mushroomed bullet from the tree section and sent it to the ballistics lab. He also met with Huffman to observe the bullet hole in Huffman's porch post. He saw that the bullet had entered from the east side and dented the west side, and Peacock extracted the bullet from the porch post. He testified that he believed that the bullets found in the tree and the porch were from Freeman's gun because both bullets entered on the east side and were heading west and Freeman was heading east while firing at Defendant, who was going west.

Peacock testified that after the investigation evaluated the preliminary evidence and determined Defendant was a suspect, Peacock and Agent Kontz conducted a recorded interview of defendant in City Hall. Peacock testified that Defendant was read his Miranda rights and that Defendant did not appear to be under the influence of alcohol or any substance, and that Defendant appeared to understand the questions regarding his rights. Peacock also testified that no promises were made to Defendant in exchange for his statement, and that Defendant's statement was voluntarily and freely given.

Peacock also testified that he and Agent Kontz took Defendant into custody and transported him from Harrisburg to Williamsport on the same day they interviewed Defendant. He testified that he did not discuss the charges with the Defendant prior to the interview, that while he was taking Defendant into custody the only told Defendant that

his arrest was stemming from the shooting in which Defendant was injured, and that neither he nor Agent Kontz interviewed Defendant while he was being transported.

Veronica Miller, (Miller), a forensic scientist at the Greensburg Regional Laboratory, performed the DNA analysis. She testified that she matched Defendant's DNA profile to the DNA samples she extracted from the blood stains on the Ruger revolver, the leaves and stones from the alleyway, and the rear steps of 427 Brandon Avenue. Miller was unable to perform a full analysis on the sample from the grip of the gun due to the complexity of the mixture.

Stephanie Hrico (Hrico), an employee of R.J. Lee Group's forensic science department, performed the GSR analysis. She testified that she has undergone SEMS and GSR analysis training. Hrico explained that in order for her to determine that a particle is highly specific to the discharge of a firearm, the particle has to have the correct chemical elements and the proper morphology. She testified that the three elements that make up gunshot residue are lead, barium, and antimony, and that the particle should be round or smooth-edged due to the intense heat from the discharge of the firearm. Hrico further explained that if a particle has all three chemical components, then that three-component particle is considered to be characteristic of gunshot residue. She testified that firing a weapon can also create two and one-component particles as well, although those particles could come from other sources.

Hrico used a scanning electron microscope to determine what chemical elements were present and to see the actual shape of the particles. The kits she received contained samples form Defendant's left and right palms, and the backs of his left and right hands. Hrico testified that on the back of Defendant's right hand, she found one three-

component particle that was characteristic of gunshot residue. She also found two and one-component particles in all 4 locations of Defendant's hands. She also testified that there are many factors that could remove residue from the hands, such as hand washing, running, wiping hands off, adverse weather, and bodily fluids such as blood and sweat.

Sergeant Elwood Spencer (Spencer), a Pennsylvania State Police Trooper assigned to the Bureau of Forensic Services as a firearm and tool mark examiner, provided the ballistics analysis. He identified the handgun recovered from the alley as a Ruger Security 6 .357 magnum caliber revolver. He testified that weapon was functional and had a routine trigger pull. Spencer also testified that he recovered two discharged and mutilated bullets, one from the tree and one from the porch post. He concluded that the two bullets were fired from the same weapon, but was unable to determine if they were fired from the Ruger revolver or a different gun. Spencer also testified that although he could not give a definitive answer as to the caliber of the bullets, he said that the weight and morphology would make it more likely that the caliber was a 380 or 357 as opposed to a 9mm.

Discussion

1. ***The Court erred in denying Defendant's Motion to Suppress the Statement being made to the Williamsport Bureau of Police.***

   The Court's rationale for the aforementioned denial can be found in its July 28, 2017 Opinion and Order. The Court will therefore rely on that Opinion for purposes of this Motion.

2. The Court erred in failing to give the missing witness instruction pertaining to Tyson Bowman (Bolden).

In *Commonwealth v. Echevarria*, 575 A.2d 620 (Pa. Super. 1990), the Superior Court reiterated that a missing witness instruction is warranted "When a potential witness is: (1) available to only one of the parties to a trial, and (2), it appears this witness has special information material to the issue, and (3), the witness's testimony would not be merely cumulative, then if that party does not present the testimony of the witness, the jury may draw an inference that such testimony, had it been presented, would have been unfavorable to that party", citing *Commonwealth v. Manigault*, 462 A.2d 239 (Pa. 1983).

Commonwealth v. Harley, 418 A.2d 1354 (Pa. Super. 1980) carves out the exceptions where an adverse inference may not be drawn due to a missing witness. "The missing witness rule provides that a negative inference may be drawn from the failure of a party to call a particular witness who was in his control… However, each of the following circumstances represents an exception to that rule:

1. The witness is so hostile or prejudiced against the party expected to call him that there is a small possibility of obtaining unbiased truth;
2. The testimony of such a witness is comparatively unimportant, cumulative, of inferior to that already presented;
3. The uncalled witness is equally available to both parties;
4. There is a satisfactory explanation as to why the party failed to call such a witness;
5. The witness is not available or not within the control of the party against whom the negative inference is desired; and,

6. The testimony of the uncalled witness is not within the scope of the natural interest of the party failing to produce him" *Harley,* supra at p.1357)

The Commonwealth has been unable to locate Bolden, and has neither had the opportunity to interview nor speak with him, and he is therefore not available to or within the control of the Commonwealth. Any attempts to locate Bolden have undoubtedly been complicated by the fact that there has been debate over what the missing witness's name actually is. Freeman, Bolden's friend, initially provided the name Bowman and then later said the name was Bolden. Freeman's girlfriend, Washington, also had trouble remembering the last name while she was testifying. Furthermore, the Court finds that this witness was equally available (or unavailable) to both parties, and that furthermore, Defense has not shown that the testimony of this witness would have provide information or insight that would have not been merely cumulative.

3. The Court erred in precluding the defense from calling landlord Gregory Smith from testifying.

Defense counsel asked to call landlord Gregory Smith to testify. Mr. Smith would have provided a residential lease for 419 Brandon Avenue and would have testified that the lease stated that there was a third person, a child, living with the two tenants. Mr. Smith would have testified that there was a high-school aged boy living in the house at the time. Defense claimed that Mr. Smith's testimony would support Defendant's testimony that he was looking for a friend of his named "Craig" or "Greg" when he went to Freeman's home on 421 Brandon Avenue. However, the relevancy of this testimony

was not clear to the Court, because the residential lease does not identify the name of the young male living at 419 Brandon Avenue. Furthermore, Mr. Smith did not recall the boy's name. Without additional specific information, the Court precluded landlord Gregory Smith from testifying.

4. The Court erred in failing to grant a Frye hearing on the gunshot residue and the Court erred in denying Defendant's Motions in Limine to preclude the testimony of gunshot residue.

Pennsylvania courts adhere to the *Frye*[8] standard when determining the admissibility of scientific evidence. "The *Frye* test consists of a two-step process, which is as follows: First, the party opposing the evidence must show that the scientific evidence is 'novel' by demonstrating that there is a legitimate dispute regarding the reliability of the expert's conclusions. If the moving party has identified novel scientific evidence, then the proponent of the scientific evidence must show that the expert's methodology has general acceptance in the relevant scientific community despite the legitimate dispute" *Commonwealth v. Safka*, 95 A.3d 304 (Pa. Super. 2014).

Additionally, "A *Frye* hearing is not required in every instance that a party wants to introduce scientific evidence. Rather, a hearing is warranted only when the trial court 'has articulable grounds to believe that an expert witness has not applied accepted

[8] *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), which held that expert testimony must be based on scientific methods that are sufficiently established and accepted. *Frye* was first adopted by this Court in *Commonwealth v. Topa*, 471 Pa. 223, 369 A.2d 1277 (1977), and is used to determine the admissibility of novel scientific evidence, and is incorporated into Rule 702. *Grady v. Frito–Lay Inc.*, 576 Pa. 546, 839 A.2d 1038, 1043 (2003), *Commonwealth v. Jacoby,* 170 A.3d 1065, 1090 (Pa. 2017).

scientific methodology in a conventional fashion in reaching his or her conclusions'" *Commonwealth v. Jacoby*, 170 A.3d 1065 (Pa. 2017), citing *Commonwealth v. Walker,* 92 A.3d 766 (Pa. 2014). Defense counsel has not submitted sufficient evidence to indicate that GSR analysis is a "novel" science. Counsel admits that GSR testing "has been around for years" (N.T. 9/8/17, p. 7). GSR testing is not novel and holds general acceptance in the scientific community. The following discussion was held in regard to the GSR testing:

> [DEFENSE COUNSEL]: I attached the GSR reports to the motion in limine and the concern I have, Your Honor, is number one, whether or not it's entitled to a *Frye* hearing depends, obviously, whether it's novel evidence. Now, I know the gunshot testing has been around for years; however, there has been a change in the way they do that. And the problem we have is there is no national standard or consensus on what qualifies as a positive.
>
> THE COURT: My recollection is the testimony of the witness provides that information. I've sat through enough homicide trials… the one expert witness that came, the manager, I believe she testifies and probably gives that information.
>
> [DEFENSE COUNSEL]: Well, and then, Your Honor, it goes beyond the scope of the report so I would object to it on that basis as well. The report's got to tell us more than what this report tells us.
>
> THE COURT: I don't think it's outside the scope of the report, I just think it's explaining in more – in greater detail the information that's

set forth in the report, which is about the three particle , and two particle, and three particles are from certain discharge… But I thought as part of the conversation – as part of the explanation of what they found that's set forth in the report, it explains how they can distinguish and how many grains –

[DEFENSE COUNSEL]: Your Honor, my point is this report does not tell me how many particles are required to be even considered positive for gunshot residue and there is no national standard that tells you how many are considered positive. Each laboratory acts in its own way.

THE COURT: Right.

[DEFENSE COUNSEL]: There's no standard for us to say, here's what the standard is, you did not meet the standard. Even with this report, even if you let them supplement it, it still doesn't tell me what we need to know to meet the criteria of a *Frye* case… FBI has criticized, critiqued gunshot residue testing for years, has stopped doing it, and I don't think it's, number one, relevant to this case. And I think that the – the report itself lacks foundation to be even considered to be admissible as evidence under Rule 702.

DA: The report explains what a particle is, it tells how many particles they – they found consistent with gunshot residue – that was consistent with gunshot residue or one or two particle residues. It explains they do the analysis on a particle – by particle. And we all, I think, understand what the particle is, Judge. It goes on… and it explains what

> the – it has to have a particular – the three chemical elements, but it has to have a particular morphology as well. That is to condense into a single particle… If it doesn't, they're not going to say it's a one particle, or two particle, or three particle residue…that's a weight of the evidence issue, your honor, and it's consistent with our evidence. And that's why it's admissible.
>
> THE COURT: Yeah. And I can't speak for the FBI, but this is the first time anybody's objected to gunshot residue in any case that I've been involved, to say that it doesn't meet the *Frye* standards.

The Court reaffirms the September 8, 2017 order denying the motion to preclude the gunshot residue testimony. This Court does not believe that GSR testing is a "novel science" and does not find there is a legitimate dispute as to the reliability of the conclusions of a GSR expert. Because Defense did not raise the required issues that would necessitate a *Frye* hearing, this Court properly refused to grant such hearing and was correct in admitting the GSR testimony.

5. The jury's verdict is inconsistent and contrary to the weight of the evidence.

In *Commonwealth v. Johnson*, 668 A.2d 97 (Pa. 1995), the Court explains that the "weight of the evidence is exclusively for the finder of fact who is free to believe all, none or some of the evidence and to determine the credibility of the witnesses" As the ultimate trier of fact, the jury must decide how to weigh the evidence presented before it. Therefore, the Court must carefully use its discretion when determining whether or not

the jury properly weighed the evidence presented before it. In *Thompson v. City of Philadelphia*, 493 A.2d 669 (Pa. 1985), the Pennsylvania Supreme Court explains that "a new trial should not be granted because of a mere conflict in testimony… a new trial should be awarded when the jury's verdict is so contrary to the evidence as to shock one's sense of justice". This Court finds that the jury appropriately weighed the testimony of various witnesses and that the jury's verdict is a reasonable application of the facts. Defendant does not specify how verdict is contrary to the weight of the evidence. The jury's decision to consider the testimony of Freeman, multiple eyewitnesses, and law enforcement officials more credible than the testimony of the Defendant is within the jury's purview as trier of fact. Therefore, the Court found that the jury's verdict was not inconsistent or contrary to the weight of the evidence, and did not grant a new trial.

6. ***The Court erred in denying Defendant's Motion for Judgment of Acquittal at the close of the Commonwealth's case with regard to Homicide and Aggravated Assault and Commonwealth failed to present sufficient evidence to establish that the actions or inactions of Defendant gave rise to criminal homicide or aggravated assault.***

In *Commonwealth v. Brown*, 648 A.2d 1177 (Pa. 1994), the Pennsylvania Supreme Court notes that in cases where the sufficiency of evidence is in question, the "applicable standard of review is whether, viewing all the evidence in the light most favorable to the Commonwealth as verdict winner, together with all reasonable inferences favorable to the Commonwealth, a jury could find every element of the crime beyond a

reasonable doubt". Under these guidelines, and taking into consideration all evidence and testimony presented at trial, this Court determined that a jury could find every element of the criminal homicide and aggravated assault charges beyond a reasonable doubt. The autopsy conducted by Dr. Johnson found that Barr's manner of death was homicide, caused by a single gunshot wound to the abdomen. Law enforcement officers and forensic science experts explained that based on the ballistics evidence, the positioning of the two men, and the physical evidence collected from the crime scene, it was most likely one of the Defendant's shots that struck and killed Barr. Freeman testified that he was tackled to the ground by Defendant, who was in possession of a gun, and who then fired it at Freeman before Freeman shot back. Because this Court determined that the Commonwealth had presented sufficient evidence to establish the charges of criminal homicide and aggravated assault, this Court was proper in its denial of Defendant's Motion for Judgment of Acquittal.

7. Defendant contends that the aggregated sentence is excessive and inconsistent with sentences for similar offenses.

Commonwealth v. Fries, 523 A.2d 1134 (Pa. Super. 1987) affirmed that "sentencing is a matter within the sound discretion of the sentencing judge and a sentence will not be disturbed by an appellate court absent manifest abuse. A sentence must either exceed the statutory limits or be manifestly excessive to constitute an abuse of discretion… A sentencing judge's discretion must be accorded great weight as he is in the best position to weigh various factors such as the nature of the crime, the defendant's character, and the defendant's displays of remorse, defiance, or indifference" (citing

Commonwealth v. White, 491 A.2d 252 (Pa. Super. 1985) and *Commonwealth v. Duffy,* 491 A.2d 230 (Pa. Super. 1985)). In addition, "When imposing a sentence, the sentencing court must consider the protection of the public, gravity of offense in relation to the impact on the victim and community, and the rehabilitative needs of the defendant" (*Commonwealth v. Fullin*, 892 A.2d 843, (Pa. Super. 2006)). Defendant acknowledges that the sentence is within statutory limits. As to whether this sentence is excessive in the aggregate or inconsistent with other sentences for similar offenses, this Court offers the following examples to demonstrate consistency:

1. *Commonwealth v. Sears*, (Lycoming County Court of Common Pleas, 2015) Sears was sentenced to 21 to 50 years imprisonment after being convicted of Murder of the Third Degree, Simple Assault, and Receiving Stolen Property.
2. *Commonwealth v. Gooden-Reid*, (Lycoming County Court of Common Pleas, 2015) Gooden-Reid was sentenced to 30 to 60 years imprisonment after being convicted of Murder of the Third Degree, Possession of Instrument of a Crime, Tampering with Physical Evidence, Obstruction of Justice, Abuse of a Corpse, Recklessly Endangering Another Person, and Criminal Mischief.

In each of these cases, the defendants were sentenced to 20 to 40 years for the Third Degree Murder conviction, and the other sentences were to be served consecutively. Therefore, Defendant's sentence is not excessive and is consistent with other sentences imposed by this Court.

8. Defendant requests discovery of the plea agreement and a factual hearing to determine if Keith Freeman gave inaccurate testimony regarding his pending criminal charges and/or possible plea agreement.

Defense Counsel argues the fact that after the trial the Commonwealth *nolle prossed* the charges against witness Freeman is plea agreement information that should have been presented to the jury during trial for them to consider as it would be relevant to his truthfulness or veracity. During the trial, Freeman testified to the fact that he was arrested on the charges of Recklessly Endangering another person[9], Possession of Controlled Substances (heroin)[10] and Possession of a Firearm without a License.[11] (N.T. 10/30/2017 at p.83) as a result of the investigation into Barr's death. He would have also testified that he would not have been promised anything in return for his testimony. *Id*. Had the Court had additional time, a hearing could have been held to explore the circumstances surrounding when the Commonwealth would have decided to dismiss the charges against Freeman. In the Court's opinion, the jury was given information about Freeman's criminal charges and was also aware that he could receive a benefit in exchange for his testimony; what that benefit was or could be was not defined. Although the jury's reflection on these questions may have been stronger if the jury had known that the Commonwealth later chose to *nolle pros* or dismiss his case, this issue is a difference of degree. The jury had sufficient information to evaluate Mr. Freeman's overall credibility as a witness. As the Court believes that the jury still had information of the

[9] 18 Pa. C.S.A. §2705
[10] 35 P.S. 780-113(a) 16
[11] 18 Pa. C.S.A. §6105

possible favorable disposition of the case before it with which to evaluate Freeman's credibility, a new trial is not warranted. Therefore, the requests for discovery and a hearing are denied.

ORDER

AND NOW, this day of July 2018, based on the foregoing Opinion, it is hereby ORDERED AND DIRECTED that Defendant's Post Sentence Motion is DENIED.

Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4)(a), Defendant is hereby notified that he has the right to appeal this Order within thirty days (30) of the date of this Order to the Pennsylvania Superior Court. He also has the right to the assistance of counsel in the preparation of the appeal. The Court notes Defendant is represented by court appointed conflict counsel who will continue to represent him through any appeal which may be taken. Since the Defendant has been convicted of the offense of Murder in the Third Degree, he shall not be eligible for bail under Rule 521(B).

By The Court,

Nancy L. Butts, President Judge

CC: DA;
Robert Hoffa, Esq.