

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
 :
 vs. : No. CR-90-2017
 :
 JOSEPH COLEMAN, :
 :
 Defendant : Post-Sentence Motion

OPINION AND ORDER

Before this court is Defendant's Post-Sentence Motion filed on November 26, 2019. Following a three-day jury trial that took place from February 13, 2019 through February 15, 2019, Defendant was found guilty of two counts of second degree murder involving two different victims, as well as related robbery offenses. A persons not to possess firearms charge as well as a firearms not to be carried without a license charge were previously severed for trial purposes. Defendant waived a jury trial on these severed charges and the non-jury trial was held on September 3, 2019. Following this trial, Defendant was found guilty of the persons not to possess charge but not guilty of the carrying a firearm without a license charge.

Defendant filed a Post-Verdict Motion that was denied by Order of Court dated October 11, 2019. Following a sentencing hearing on November 20, 2019, Defendant was sentenced to two (2) consecutive life sentences on the second degree murder convictions and a concurrent five (5) to ten (10) years on the persons not to possess conviction. Defendant timely filed a Post-Sentence Motion and oral argument was held before this court on March 19, 2020. Defendant participated in the oral argument by video conferencing.

Defendant has advanced alternative arguments with respect to his persons not

to possess conviction. Defendant first argues that the court erred in admitting Defendant's "confession" because the Commonwealth failed to first establish the corpus delicti of the crime. More specifically, Defendant argues that prior to Defendant's confession being admitted, the Commonwealth failed to establish by a preponderance of the evidence that Defendant both possessed the gun and was legally precluded from possessing it. Alternatively, Defendant argues that the Commonwealth failed to establish by a preponderance of the evidence that Defendant possessed "the gun that was used in the robbery." Next, Defendant argues that the evidence was insufficient to find beyond a reasonable doubt the corpus delicti of persons not to possess. Lastly, Defendant argues that the conviction on the persons not to possess charge was against the weight of the evidence.

In connection with Defendant's sentence, Defendant argues that his consecutive life sentences are unduly harsh and excessive. Defendant argues that an individual can practically only serve one life sentence; he had a "minimal role" in the homicide as an accomplice and not the actual shooter; the convictions arose out of "only one criminal episode"; and that concurrent sentences would not deny justice to the victims' families. Given these facts and circumstances, Defendant asserts that his life sentences should have run concurrently.

During the non-jury trial in this matter, Casey Wilson first testified for the Commonwealth. On October 31, 2016, he was driving his car with Defendant as one of his passengers. [Transcript, p. 14]. While in the car, Defendant "had a gun." [Transcript, p. 14]. They traveled together to Shane Wright's house because Defendant wanted to rob Mr.

Wright. [Transcript, p. 23]. Mr. Wilson first went into Mr. Wright's house to make sure that Mr. Wright was there and that the back door was unlocked. [Transcript, pp. 26-27]. He then returned to his car and informed Defendant that Mr. Wright was inside the house.

[Transcript, pp. 22, 27].

While parked outside of Mr. Wright's house, Defendant covered his face with a sheet and left the car carrying the gun. [Transcript, pp. 15-16]. Defendant walked in the direction of Mr. Wright's house along with another individual named Jordan. [Transcript, p. 16]. Mr. Wilson heard "gun shots", and Defendant then came running out of the house. [Transcript, p. 16]. Defendant asked "Jordan" why "did he shoot" as they returned to the car. [Transcript, p. 16]. Everyone then returned by car to Mr. Wilson's house. [Transcript, p. 17].

Before Defendant left Mr. Wilson's house, however, he gave Mr. Wilson the gun that was wrapped in some type of brown cloth and told Mr. Wilson to get rid of it. [Transcript, p. 17]. Mr. Wilson subsequently threw the gun behind a bush at Victoria Gardens on Hepburn Street in Williamsport. [Transcript, p. 18]. Mr. Wilson identified Commonwealth Exhibit 1 as a photograph of the "sheet that Defendant used and his gun." [Transcript, pp. 18-19]. He described the gun as "like brownish" in color or "tan." [Transcript, p. 30]. He later described it as "grayish" with "black in it" or "silver" with "black in it." [Transcript, p. 34, 35].

Officer Tyson Minnier next testified for the Commonwealth. On the evening of October 31, 2016, he was working as a police officer for the City of Williamsport and was on duty. [Transcript, p. 37]. He responded to a shooting at Poplar Street. He located a

magazine clip underneath the leg of a deceased individual. [Transcript, pp. 38-39].

Corporal Richard Hofford next testified. On the evening of October 31, 2016 and the morning of November 1, 2016, while employed by the Williamsport Bureau of Police, he processed the crime scene at Poplar Street. [Transcript, p. 42]. He collected the pistol magazine located by Officer Minnier and logged it into evidence. [Transcript, pp. 42-44]. The magazine was loaded but he could not tell how many cartridges were in it. [Transcript, pp.45-46]. He assumed that the cartridges in the magazine were removed by the lab. [Transcript, p. 46].

Agent Trent Peacock next testified for the Commonwealth. He was an agent employed by the Williamsport Bureau of Police during the time in question. [Transcript, p. 47]. He viewed Commonwealth Exhibit 1 and identified it as a picture of the Ruger .22 pistol that he recovered behind the bushes at 653 Hepburn Street. [Transcript, pp. 47-48]. When he located the gun, it did not have a magazine in it. [Transcript, p. 49]. There was no magazine found with the gun when it was recovered. [Transcript, p. 61]. As part of his investigation, on August 23, 2019, he took the magazine located by Officer Minier and collected by Corporal Hofford, inserted it in the pistol that he located, and fired the pistol. [Transcript, p. 49]. The gun functioned “properly.” [Transcript, p. 49]. As part of his investigation, he also interviewed Defendant. [Transcript, p. 50]. He identified a photo of the gun that he located behind the bushes and that he showed to Defendant. [Transcript, p. 50].

The parties then stipulated that on November 15, 2011, Defendant was sentenced on one count of delivery of a controlled substance. [Transcript, pp. 53-54].

The Commonwealth then played portions of the audio visual recording of the interview with Defendant on November 18, 2016. [Transcript, pp. 54-56]. During the interview Agent Peacock showed Defendant a photograph of the gun that was “recovered behind the bushes at 653 Hepburn Street at Victoria Gardens, the location Casey Wilson took us to.” [Transcript, p. 56]. In describing the color of the gun, Agent Peacock noted that it was “kind of grayish” with the “blued finish” wearing off. [Transcript, p. 57]. During the interview, Defendant admitted possessing the gun depicted in the photograph and giving it to “Shane.” [Transcript, p. 63].

Defendant testified on his own behalf. He stated that on October 31, 2016, he and Mr. Wilson “went and sold the gun to Shane Wright.” [Transcript, p. 65]. He identified the gun as the same gun depicted in the picture that he was shown by Agent Peacock. [Transcript, pp. 65-66].

Addressing Defendant’s arguments regarding the corpus delicti rule, it is established law that “a criminal conviction may not stand merely on the out-of-court confession of one accused.” *Commonwealth v. Persichini*, 663 A.2d 699, 702 (Pa. Super. 1995) (citations omitted). There must be independent evidence to suggest that a crime has occurred. *Id.*

“The corpus delicti consist of two elements: The occurrence of a loss or injury, and some person’s criminal conduct as the source of that loss or injury. The identity of the party responsible for the act is not part of the corpus delicti.” *Id.* (citations omitted).

Contrary to what Defendant initially argues, the corpus delicti rule does not

require that the existence of the crime be proved beyond a reasonable doubt prior to the admission of the confession. *Id.* It is satisfied where independent evidence, beyond the statement of the accused, suggests that a crime has occurred. *Id.* at 703 (citations omitted). “[I]t is not necessary that the Commonwealth preliminarily and independently establish all elements of the charge, since the corpus delicti is not synonymous with the whole of the charge.” *Id.* (citations omitted).

Under Pennsylvania law, there are two phases involved with the court’s application of the corpus delicti rule. The first phase involves the court’s application of a rule of evidence governing the threshold question of the admissibility of the confession. In this first phase of the rule’s application, the court must determine whether the Commonwealth has proven the corpus delicti of the crimes charged by a mere preponderance of the evidence. If the court is satisfied on the evidence presented, that it is more likely than not that a wrong has occurred through a criminal agency, then the confession and/or admissions of the defendant are admissible.

Commonwealth v. Ahlborn, 657 A.2d 518, 521 (Pa. Super. 1995).

Contrary to Defendant’s first two arguments, there was sufficient evidence under the corpus delicti rule to support the court’s admission of Defendant’s statements to Agent Peacock that he possessed the revolver.

Not only was there direct evidence from Casey Wilson but there was also corroborating circumstantial evidence including, but not limited to, the loaded magazine being found at the scene where Defendant was present, the magazine fitting in the gun given to Mr. Wilson and hidden by him, and the stipulation by the parties that Defendant was previously convicted of a crime precluding him from possessing a weapon. See for example, *Commonwealth v. Murray*, 174 A.3d 1147 (Pa. Super. 2017) (sufficient evidence under the

corpus delicti rule to support trial court's admission of defendant's statements to parole agent that he had possessed a revolver, in prosecution for possession of a firearm by a prohibited person; parole agent testified at the suppression hearing that he discovered an operable gun concealed in a communal bathroom in side parolee group home where defendant had been living, the gun was hidden inside a plastic bag and under the bathtub in the only bathroom in the house, and the gun was secreted in a manner that suggested that the person who placed it there did not lawfully possess it). Contrary to what Defendant argued, the stipulation was entered into evidence prior to Defendant's admission being entered into evidence.

The second phase of the rule's application occurs after a confession has already been admitted into evidence. After the court has made its initial determination that the Commonwealth has proven a corpus delicti by a preponderance of the evidence and has ruled the confession to be admissible, the corpus delicti rule **additionally** requires that the Commonwealth prove to the [fact-finder's] **satisfaction beyond a reasonable doubt**, the corpus delicti of the crimes charges.

Ahlborn, 657 A.2d at 521 (emphasis original).

Defendant's contention that this part of the corpus delicti rule was not proven, also lacks merit. The Commonwealth has clearly proven beyond a reasonable doubt that the "injury or loss" was consistent with the crime having been committed. The evidence was in fact overwhelming that Defendant possessed the gun and was not permitted to do so given his prior conviction.

Very recently, in *Commonwealth v. Harper*, 2020 PA Super 77, 2020 WL 1516934 (March 30, 2020), the Superior Court addressed a corpus delicti challenge in connection with a persons not to possess conviction. The burden on the Commonwealth was

to establish that the defendant “possessed a firearm.” *Id.* at 16. Unlike in this case, the Commonwealth failed to meet that burden because there was “not a scintilla of evidence connecting [Harper] to the scene of the underlying shooting, the casings found, or the particular shooting itself.” *Id.* at 17. The only evidence was Harper’s admission to carrying a gun on the night in question. In this case, Defendant was observed carrying a gun to and from a shooting and he requested another to discard the gun. Moreover, the gun was found and identified. Clearly, the corpus was established.

Defendant’s next claim relating to the corpus delicti is a weight of the evidence claim. A weight of the evidence claim contends the verdict is a product of speculation or conjecture, and requires a new trial only when the verdict is so contrary to the evidence as to shock one’s sense of justice. *Commonwealth v. Dougherty*, 679 A.2d 779, 785 (Pa. Super. 1996); see also *Commonwealth v. McGhee*, 2020 PA Super 80, 2020 WL 1527227, *7-8 (March 31, 2020)(regarding appellate review of trial court’s exercise of discretion on weight of evidence claim). This court essentially addressed this issue in its prior Order regarding Defendant’s Post-Verdict Motion. See Order dated October 11, 2019, which was filed on October 17, 2019. Clearly, the verdict did not shock this court’s sense of justice. Defendant’s argument to the contrary does not change this court’s opinion.

Defendant’s final claim is that the consecutive life sentences are excessive.

“Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion.” *Commonwealth v. Mann*, 957 A.2d 746, 749 (Pa. Super. 2008)(quoting *Commonwealth v.*

Ford, 947 A.2d 1251, 1252 (Pa. Super. 2008)). In imposing its sentence, as set forth on the record and in the presence of Defendant, the court considered the gravity of the offenses, the protection of the public and the rehabilitative needs of Defendant. 42 Pa. C.S.A. § 9721(b). The court considered the particular circumstances of the offenses and the character of Defendant. The court thoroughly considered a Pre-Sentence Report. The court referenced, among other things, Defendant's prior record, the sentencing guidelines, Defendant's personal characteristics and the nature of the offenses. While the court acknowledges Defendant's arguments, the court previously considered them and, in weighing all of the relevant factors, decided that consecutive sentences were appropriate. The court did not ignore or misapply the law, exercise its judgment for reasons of partiality, prejudice, bias or ill will, or arrive at a manifestly unreasonable decision. The court's decision was guided by sound judgment. Defendant is not entitled to a volume discount.

ORDER

AND NOW, this ____ day of April 2020, following a hearing and argument, the court denies Defendant's Post-Sentence Motion.

Defendant is advised that he has a right to appeal. Any appeal must be filed within thirty (30) days of the date of this Order.

Defendant is advised that he has the right to assistance of counsel in the preparation of the appeal.

As Defendant is indigent, he has the right to appeal *in forma pauperis* and to proceed with assigned counsel as provided in Pa. R. Crim. P. 122.

Defendant has been found guilty of an offense which is punishable by life imprisonment; therefore, he is not entitled to bail pending appeal. Pa. R. Crim. P. 521(A)(1), (B)(2).

By The Court,

Marc F. Lovecchio, Judge

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