

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-33-2019
	:	
vs.	:	
	:	
RONALD SHOOP,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

Before the Court is Defendant’s Post Sentence Motion filed August 16, 2021. For the reasons set forth below, the Motion is denied.

I. Background

Following a three (3) day jury trial, Defendant was found guilty on May 14, 2021 of four (4) out of five (5) counts of burglary. Prior to trial beginning, the Commonwealth filed, and the Court granted, a Motion for Use of Immunity for one of the Commonwealth’s material witness, Angel Hart. On the second day of trial, the Defendant knowingly, intelligently, and voluntarily waived his right to counsel and proceeded *pro se* for the remainder of the trial. Trisha Jasper, Esquire, Defendant’s previous trial counsel, was appointed as stand by counsel. After trial, Attorney Jasper was granted leave to withdraw as Defendant’s counsel and Matthew Diemer, Esquire was reassigned to represent Defendant.

On August 5, 2021, the Court sentenced Defendant, among other things, to a period of incarceration of twenty-six (26) to fifty-two (52) months on each of the four (4) counts, each to run consecutive to another and consecutive to the sentence that Defendant was currently serving. On August 16, 2021, Defendant timely filed a Post Sentence Motion which included a Motion in Arrest of Judgment, Motion for Judgment of Acquittal, Motion

for New Trial Because the Verdict was Against the Weight of the Evidence and Because the Evidence was Insufficient to Support the Guilty Verdict, Motion for New Trial Due to After Discovery Evidence, and Motion for Reconsideration and Modification of Sentence.

A hearing and argument was initially set for October 1, 2021 but was continued to November 23, 2021 because the trial transcripts were not yet received and reviewed by Attorney Diemer and because a key witness to Defendant's Motion, Angel Hart, was unable to be located. On November 23, 2021, the Defendant's continuance request was granted because Ms. Hart's whereabouts remained unknown. Additionally, Defendant wished to introduce text messages from Ms. Hart to Defendant's brother, Harley Shoop, who was also not present. The Court directed that, at the time of the rescheduled hearing on December 28, 2021, it expected Harley Shoop to be present. On December 28, 2021, Attorney Diemer indicated that Ms. Hart was still unable to be located, but that she was scheduled to enter a guilty plea in a separate matter on January 28, 2022. The Court granted another continuance in an attempt to ensure that Ms. Hart was available and present, and rescheduled the hearing to January 28, 2022.

On January 28, 2022, Ms. Hart appeared with representation. Despite this Court's directive, Harley Shoop failed to appear. Ms. Hart testified that, following her testimony at trial, she sent a text message to Harley Shoop. She stated that all of her testimony at trial was accurate and truthful.

We will address each of Defendant's arguments as they were set forth in his Motion.

II. Motion in Arrest of Judgment, Motion for Judgment of Acquittal, Motion for New Trial Because the Verdict was Against the Weight of the Evidence and Because the Evidence was Insufficient to Support the Guilty Verdict

A claim challenging the sufficiency of the evidence is a question of law. *Com. v. Widmer*, 5744 A.2d 745, 751 (Pa. 2000). “Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Where the evidence offered to support the verdict is in contradiction to the physical facts, in contravention to human experience and the laws of nature, then the evidence is insufficient as a matter of law. When reviewing a sufficiency claim the court is required to view the evidence in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence.” *Id.* (internal citations omitted).

On the contrary, a motion for a new trial based on a claim that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. *Com. v. Clay*, 64 A.3d 1049, 1054–55 (Pa. 2013). A challenge to the weight of the evidence “concedes that the Commonwealth has produced sufficient evidence of each element of the crime, but questions which evidence is to be believed.” *Com. v. Kinney*, 157 A.3d 968, 971 (Pa.Super. 2017). A new trial, therefore, should only be awarded when “notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice,” or when a verdict is so contrary to the evidence that it

“shocks one’s sense of justice.” *Widmer*, 5744 A.2d at 751–52 (Pa. 2000); *Com. v. Brown*, 648 A.2d 1177, 1189 (Pa. 1994).

Defendant first argues that the evidence presented at trial was insufficient to sustain the jury’s verdict specifically because the Commonwealth failed to present evidence that Defendant is the one who committed the crimes.¹ During trial, the Commonwealth produced a surveillance video of two (2) men successfully gaining access to a home. One of the men was identified as Wilbur Kramer, who testified at trial that the other person was Defendant. Mr. Kramer also testified that it was Defendant who accompanied him on the other burglaries. Angel Hart, Defendant’s girlfriend, identified her vehicle in the surveillance video but could not definitively state whether or not the other man pictured in the video was Defendant. Defendant nevertheless maintains that the other individual was a person named Cody Bechtel, who did not testify at trial. Additionally, the jury was able to see for itself the video of the two men and compare it with their observations of Defendant’s physical aspects. Other than Defendant’s assertions of innocence, there was no evidence presented to suggest that the individual in the video was anyone but the Defendant. For these reasons, the Court finds that the evidence was sufficient to support a guilty verdict beyond a reasonable doubt.

Regarding his weight of the evidence argument, Defendant states that the jury’s finding was against the weight of the evidence because both Angel Hart and Wilbur Kramer failed to testify credibly in identifying Defendant as the person seen on the surveillance footage. Defendant states that, in fact, Mr. Kramer and Ms. Hart did not identify Defendant

¹ Defendant does not argue that the Commonwealth failed to prove beyond a reasonable doubt that burglaries were committed but rather, that it failed to prove that Defendant was the one who committed the burglaries.

as Mr. Kramer's accomplice until after they were both contacted by the Commonwealth and promised leniency.

At trial, Mr. Kramer admitted that during an unplanned interview with police, he failed to identify Defendant as the perpetrator and withheld information from them. He also admitted he was not telling the police the truth because he did not want to get anyone into trouble. Mr. Kramer testified that he was not promised anything for his trial testimony. He also unequivocally identified Defendant as the individual who burglarized other's homes with him. Similarly, Ms. Hart testified that she initially told the police that the individual in the video did not look like the Defendant but at trial, she testified that she cannot tell if it is him.

Obviously, the jury was apprised of this information and would have taken it into consideration during their deliberations. The jury was also given thorough instructions on witness credibility determinations and accomplice testimony. Despite Mr. Kramer's and Ms. Hart's prior inconsistent statements, the jury found their statements at trial credible.

Defendant also argues that the fact that Defendant's DNA was not found at the crime scene is proof that he is innocent. While Defendant is correct that his DNA was not found, this fact is not dispositive, especially considering the fact that at least in the surveillance video, the perpetrators were wearing gloves and masks. When considering the whole of the testimony and evidence present, the jury's verdict did not "shock the conscience."

Next, Defendant argues that the jury's guilty verdict of only four (4) out of the five (5) burglaries rather than all five (5) "shocks one's conscience." The Court disagrees. The victim of the alleged burglary for which the jury found the Defendant not guilty was David

Haas, who was the only victim who testified by Zoom, who did not live at the residence permanently, and whose property nothing was stolen from. Additionally, this was the only residence that Defendant was not alleged to have entered as the burglary was abandoned when the alarm sounded. The jury's verdict on this count could have been for any reason and is merely proof that it carefully considered all of the evidence presented and deliberated on the facts of each count.

For the reasons set forth above, the Court finds that the jury's verdict was not against the weight of the evidence. Therefore, Defendant's argument fails on these grounds.

III. Motion for New Trial Due to After Discovery Evidence

Defendant argues that shortly after Defendant was sentenced, Ms. Hart sent a text message to a member of Defendant's family apologizing "for lying under oath during her testimony" when she testified that Defendant "was the individual seen in the surveillance footage and the individual who committed the charged offenses." *See Post Sentence Motion at Paragraph 30.*

Before a Court grants a new trial based on Defendant's claim of after discovered evidence, the defendant must first demonstrate the following: that the evidence could not have been produced at or before trial; that he will not use the evidence solely to impeach the credibility of a witness; that the evidence is not corroborative or cumulative to the evidence already presented at trial; and, perhaps most importantly here, that the evidence is "of such nature and character that it would likely compel a different verdict if a new trial is granted." *Com. v. Padillas*, 997 A.2d 356, 363-65 (Pa.Super. 2010), *citing Com. v. Pagan*, 950 A.2d 270 (Pa. 2008). In making this final determination, the Court should consider "the integrity

of the alleged after-discovered evidence, the motive of those offering the evidence, and the overall strength of the evidence supporting the conviction.” *Id.* at 365.

At trial, Ms. Hart testified that during the initial investigation of the burglaries, Ms. Hart was interviewed by the police and shown still shots of the surveillance video depicting the two perpetrators. During this interview, Ms. Hart stated that she could not tell one way or the other whether it was the Defendant, but that it did not look like the Defendant. At trial, Ms. Hart stated that she could not state one way or another definitively.

Ms. Hart explained at the time of the hearing on Defendant’s instant Motion that she did not lie during her testimony at trial. She never stated in the text messages that she lied on the witness stand. Rather, she told Defendant’s brother that she did not intentionally lie. Ms. Hart also reiterated that she was unable to definitively identify who the people were in the video.

Ms. Hart’s testimony now is the exact same as it was during trial – that she cannot identify the person in the video. The jury heard this testimony and decided, apparently independently of Ms. Hart’s testimony, that the person in the video was in fact the Defendant. Despite Defendant’s assertions, Ms. Hart’s text message to Defendant’s brother does not amount to an admission of perjury. This evidence would not change the outcome of the trial. For these reasons, Defendant’s Motion is denied on this ground.

IV. Motion for Reconsideration and Modification of Sentence

Defendant argues that this Court’s sentence was “manifestly unreasonable and unnecessarily excessive and unjust” considering Defendant’s family history, level of education, nature of the offenses, and need for rehabilitation. *See Post Sentence Motion at*

Paragraphs 40-41.

At the time of sentencing, Defendant had a Prior Record Score [hereinafter “PRS”] of 5 and, pursuant to the Pennsylvania Commission on Sentencing’s Basic Sentencing Matrix, each count on which Defendant was found guilty holds an Offense Gravity Score [hereinafter “OGS”] of 7. 204 Pa.Code § 303.3(c)(1); 204 Pa.Code § 303.15. The standard range for a person with a PRS of 5, who committed a crime with an OGS of 7, is twenty-four (24) to thirty (30) month. 204 P.S. § 303.16(a).

Pursuant to Section 9721, it is within a trial court’s discretion to impose sentences of imprisonment consecutively or concurrently to one another and will not be disturbed absent a finding of manifest excessiveness of an aggregate sentence. 42 Pa.C.S.A. § 9721(a); *Com. v. Dodge* (“*Dodge I*”), 859 A.2d 771 (Pa.Super. 2004) (holding that a consecutive, standard range sentence on thirty-seven counts of theft related offenses was excessive); *Com. v. Graham*, 661 A.2d 1367, 1373 (Pa. 1995). The Superior Court, in determining whether a substantial question has been raised for purposes of appeal, considers “whether the decision to sentence consecutively raises the aggregate sentence to, what appears upon its face to be, an excessive level **in light of the criminal conduct at issue in the case.**” *Com. v. Gonzalez-Dejusus*, 994 A.2d 595, 598–99 (Pa.Super. 2010) (emphasis added) (holding that an aggregate sentence of 20 to 40 years imprisonment was not excessive based on the crimes committed which included, separately, an armed robbery of two individuals at a retail store, a kidnapping of a father and infant daughter, and a car theft).

Here, the Court imposed a sentence of twenty-six (26) to fifty-two (52) months on each count, which is well within the standard guideline range. Additionally, in its sentencing

Order, the Court noted that the sentences would run consecutive “as these are four separate instances of burglary and not one incident The Court has considered the gravity of these particular crimes and the nature of what has happened and their impact upon the victims but also does not believe it warrants going on the higher end as there was no physical harm done to individuals. There was obviously emotional harm, but the Court does not see a reason to go to the top end or exceed the state guidelines in this matter. The hope is that through this time that Mr. Shoop will be able to come out the other side of this matter rehabilitated and in a position to proceed in a productive way.” *See August 5, 2021 Sentencing Order*. The Court was well within its discretion to impose the above sentences to run consecutive to another. For these reasons, Defendant’s Motion is denied on this ground.

V. Conclusion

For the reasons set forth above, the Court finds that there was sufficient evidence to support the guilty verdict, that the jury gave proper weight to the evidence, that there is no after discovered evidence that would support the grant of a new trial, and the Court’s sentence was reasonable in light of the circumstances of this case. Therefore, Defendant’s Motion is denied.

ORDER

AND NOW, this 17th day of **February, 2022**, upon consideration of Defendant's Post Sentence Motion, and for the reasons set forth above, the Motion is **DENIED**. This Court's Sentencing Order of August 5, 2021 shall remain in full force and effect.

Defendant is hereby notified that he has the right to appeal this order. An appeal is initiated by the filing of a Notice of Appeal with the Lycoming County Clerk of Courts within thirty (30) days after entry of this order. See Pa.R.App.P. 902, Pa.R.App.P. 903, Pa.R.App.P. 904. Defendant has the right to assistance of counsel in the preparation of the appeal. He has the right, if he is indigent, to appeal *in forma pauperis* (without the payment of costs and fees) and to proceed with assigned counsel as provided in Rule 122 of the Pennsylvania Rules of Criminal Procedure. He has a qualified right to bail under Rule 521(B) of the Pennsylvania Rules of Criminal Procedure. When the sentence imposed includes imprisonment of less than 2 years, the defendant has the same right to bail as before verdict unless the judge modified the bail order. When the sentence imposed includes imprisonment of 2 years or more, the defendant does not have the same right to bail as before verdict, but bail may be allowed in the discretion of the judge. In either scenario, the defendant's release on bail is conditioned on the defendant filing an appeal within 30 days after the entry of this order. If the Notice of Appeal is not filed in the Clerk of Courts' office with the thirty (30) day time period, Defendant may lose forever his right to raise these issues.

By the Court,

Ryan M. Tira, Judge

RMT/ads
CC: DA (MS)
Matthew Diemer, Esquire
Gary Weber, Esq.
Alexandra Sholley – Judge Tira's Office