

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :

v.
NAKOMA ROSS,
Defendant

: CP-41-CR-0000494-2021
:
:
: 1925(a) Opinion
:

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

This opinion is written in support of this Court’s judgment of sentence dated May 2, 2023.

Nakoma Ross (Ross) was charged with four (4) counts of Assault of Law Enforcement Officer¹, nine (9) counts of Aggravated Assault², two (2) counts of Discharge of Firearm into an Occupied Structure³, one (1) count of Institutional Vandalism⁴, one (1) count of Recklessly Endangering Another Person⁵, and one (1) count of Possessing Instruments of Crime⁶.

Anthony Haynie testified that on April 1, 2021 he was living at 298 Ross Road in Trout Run, Pennsylvania. N.T., 2/13/2023 at 19. Along the driveway leading to his house there were two other homes, 44 and 46 Ross Road. *Id.* at 20. He was working from home and at about 11 o’clock in the morning he heard two bangs. When he went to investigate he discovered a bullet hole in his house. *Id.* at 28-29. He noticed light coming from a hole in the sunroom door and believed it to be a bullet hole. *Id.* He called his neighbor at 44 Ross Road (Sue) to see if someone was shooting and she told him that Ross was home. *Id.* At the time Ross was living at 46 Ross Road. Haynie then called the State police and told them that “he was sure that he had bullets entering his house.” *Id.*

After about 40 minutes, the State Police arrived, and while taking photographs of the bullet damage, “a couple more shots went off.” *Id.* At that point he moved into the basement. *Id.* at 31. Several

¹ 18 Pa.C.S. § 2702.1(a).

² 18 Pa.C.S. § 2702(a)(1), (a)(4), (a)(6).

³ 18 Pa.C.S. § 2707.1(a).

⁴ 18 Pa.C.S. § 3307(a)(3).

⁵ 18 Pa.C.S. § 2705.

⁶ 18 Pa.C.S. § 907(a).

hours later the Williamsport Bureau of Police came with an armored truck to take the State Police officers and Haynie to an awaiting cruiser to be transported to the township building. *Id.* Haynie was not able to return to his home until around 10 pm that evening. *Id.* at 32.

Kenneth Haynie, the owner of the house, testified that he received a call from his son about what was happening at the house and he and his wife arrived after the State police had gotten there. *Id.* at 35. While his son told him that he knew of three that had been fired toward or at the house, he discovered five shots toward the house *Id.* When he arrived at the house, he was shown that there were three (3) bullet holes, two into the house upstairs and one into the police cruiser. *Id.* Upon inspection he also found that one entered the house downstairs at the basement level and lodged in the exterior wall on the other side. *Id.* Another bullet hole was found in the outside steps going up to the deck outside the sunroom. *Id.* He was able to retrieve one “jacket or bullet” from the wall and gave it to the police. *Id.* at 36.

Trooper Robert Jacobs (Jacobs) testified that he and Trooper Brett Harvey (Harvey) responded to the report of shots fired to a residence in Cogan House Township. *Id.* at 43. They were travelling in an unmarked unit but in full uniform. Once Jacobs observed the bullet holes, he requested the alternate Forensic Services Unit (FSU) trooper, William Jones (Jones) come to the scene. Jacobs described that Jones parked his marked unit in front of the west side of the house or in a location that was between Haynie’s house and the two houses on the lower portion of Ross Road. *Id.* at 45. The two unmarked police vehicles were parked on the east side of the house which was behind the residence near the wooded line. *Id.* Jacobs testified that he and Jones walked around the house the property to identify and measure the bullet holes. *Id.* at 47. They were trying to identify from which direction the bullets were being fired. *Id.* Jacobs testified they were doing that not even knowing if anyone was watching them. *Id.* He had no idea that there was an actual shooter a couple of hundred yards away watching them. *Id.* at 48.

Jacobs testified that he was inside the kitchen of the residence speaking with Haynie and the others when he heard additional shots hitting the house. *Id.* He described what he thought was two to

three loud gunshots very close to his location. *Id.* Jacobs, Harvey and Jones exited the house and remained at the back side of the house *Id.* at 49. Jacobs moved the police car that he had arrived in to offer cover to them because at that point they were not sure where the shooting was coming from. *Id.*

Jacobs testified that the troopers who were outside moved inside when they received a dispatch saying that the shooter “had one of them in his scopes.” *Id.* at 50. Jacobs and the others then went back inside the residence to the basement. *Id.* Jacobs testified that he did not feel comfortable getting into his vehicle because they did not know where the shots were coming from. *Id.* Jacobs also was afraid during various times that he might get shot. *Id.* at 51. He testified that he had to say two words that no officer wants to hear and that is ‘shots fired.’ *Id.* Jacobs also was in coach-pupil supervision with Trooper Harvey, and he was not only worried for his own safety but for Harvey’s as well. *Id.* Jacobs testified that in order for them to leave the scene, an armored vehicle called a Bearcat owned by the Williamsport Bureau of Police, was brought to the scene to take the residents of the 44 Ross Road as well as the troopers and the Haynie’s from 298 Ross Road to the nearest township building. *Id.* at 52.

Trooper Brett Harvey (Harvey) also testified he was with Jacobs that day. *Id.* at 58. He testified that he was a recent graduate from the State Police Academy and Jacobs was his coach in his second 30-day period on the job. *Id.* Harvey initially stayed inside with Haynie but then was outside standing off the east entrance of the house when he heard the additional shots being fired. *Id.* at 59-60. While taking cover at the rear of the residence, Harvey went over to his vehicle and was able to retrieve his armor-plated vest. *Id.* at 61. He took a position behind his vehicle trying to maintain cover on the wooded area which left him exposed on the side along the other corner of the house. *Id.* at 62. Because they were not sure where the shooter was, Harvey tried to create as much visibility as possible. *Id.* He also testified that at some point he was ordered to inside to seek cover as there was a trooper “in the scope.” *Id.* at 65. Harvey was able to get the number of Sue Ross from Haynie to gather more information about what might be happening at that end of the road. *Id.* at 59. Harvey also testified that during this time he was in fear of being shot. *Id.* at 65. He did acknowledge that after the troopers were aware that one of them was in the shooter’s scope, no other shots were fired. *Id.* at 68.

Corporal Matthew Brown (Brown) testified that he responded to the scene upon Trooper Jacobs's request because of who he thought it might be. *Id.* at 70. Jacobs told Brown that they thought that he might be unstable. *Id.* Brown came to the scene in an unmarked vehicle which he parked next to the other unmarked vehicle behind the residence. *Id.* at 71. He described being shown the gunshot holes inside the house by the other troopers and was preparing to contact his lieutenant to assist with coming up with a plan when he heard two loud gunshots. *Id.* at 72. He testified that he did not know where they were coming from. *Id.* He described that immediately afterward, the troopers scattered to set a perimeter. *Id.* He added that the gunshots were loud, and he believed that it was from a high caliber rifle. *Id.* He described looking out of the window of the house toward Jones' marked unit and discovering the broken headlight. *Id.* at 75. From that damage, Brown thought that the vehicle was struck from the wooded area from the left. *Id.* at 76. While he was in the house he was concerned that gunfire could have struck him. *Id.* at 77. He received information from command that the shooter "had a trooper in his crosshairs" and they were told to go down into the basement where they waited until they were picked up by the armored car. *Id.* at 77. Brown said that at that point he still did not know where the shots came from so he only felt safe leaving the scene in the armored car. *Id.* at 78. He also acknowledged that no shots were fired which came inside the house. *Id.* at 80.

Agent Jeremy Brown of the Williamsport Police testified that he was called to assist the state police on April 1, 2022. *Id.* at 82. At the time he was the team leader for the County Special Response Team (SRT). *Id.* He and another officer manipulated the SRT vehicle to provide an armored barrier between the suspect and the extraction of officers or civilians. *Id.* at 83. Agent Brown extracted the occupants of the first house and then drove up a dirt road to a two-story house to perform the same maneuver. *Id.* at 84. Once all of the individuals had been evacuated, they returned to the suspect location. *Id.* at 85. He positioned the vehicle so he could keep an eye to see if the suspect might leave the location and escape. *Id.* Once he returned, he knew that the State Police had assembled their SWAT team. *Id.* At that point they worked with the State Police as he knew there was some kind of

negotiations happening with the suspect. *Id.* at 87. Agent Brown and his partner worked to guide the suspect out of the residence and the State Police took custody of him. *Id.*

Corporal Steven Schmit (Schmit) testified that he was a member of the Collision Analysis and Reconstruction (CARS) unit for the State Police. He responded to the area of Ross Road to help to ‘get eyes’ on a residence with the use of a drone. *Id.* at 89-90. Through his use of the drone or unmanned aerial vehicle (AEV) he was able to gather real time images of the area along Ross Road to check for activity in or out of the suspect residence. *Id.* at 93. He also testified about the use of the AEV for photogrammetry, or the science of taking measurements from multiple photographs to identify measurements within photographs. *Id.* at 96. Schmit testified that it was 1188 feet from the deck of 46 Ross Road to the state police cruiser parked in front of 298 Ross Road and approximately 1260 feet from that same location on 46 Ross to the deck of 298 Ross Road. *Id.* at 103.

Trooper Eileen McDermott testified that on April 1, 2021 she was a member of the Forensic Services Unit of the Pennsylvania State Police. *Id.* at 106. She responded to 298 Ross Road after 5 pm to process the crime scene. *Id.* at 108. McDermott testified that she recovered several projectiles and took many photos of the crime scene. *Id.* She testified about the damage caused to the front driver’s side headlight. *Id.* at 111. McDermott described that the bullet entered the police vehicle on the passenger’s side quarter panel, travelled through the engine compartment and ended at the driver’s side headlight. *Id.* at 113. She was able to retrieve the bullet fragment from the headlight once the vehicle was brought to the state police barracks. *Id.* at 114. McDermott was also able to recover a bullet fragment from the dirt and grass in the space between the state police vehicle and 298 Ross Road. *Id.* at 115. She also testified that she found another bullet fragment in a double pane window in the porch area of the house. *Id.* at 117. McDermott also discovered a bullet hole in the exterior door that goes into the living room of the Haynie residence. *Id.* at 118. She was able to trace the path of the bullet into the living room of the residence into the wooden leg of a table and then into the wall that separates the living room and kitchen. *Id.* at 120. She also described finding another bullet hole just above one of the bedroom windows on the west side of 298 Ross Road. *Id.* at 123. McDermott described following the path of the

bullet through the house: into a bedroom and out of a bedroom wall, in and out of closet walls into an adjacent bathroom entering into and then resting in the wall of a hallway *Id.* at 126-128. McDermott testified to another bullet strike to a lower portion or basement area which was first noticed by the homeowner. *Id.* She would have come back to the scene to photograph the find and take the bullet fragments. *Id.* Finally, McDermott describes another bullet strike in the basement entering into the west side of the structure and resting in a stud found on the east side of the wall. *Id.* This bullet would have travelled through lattice and plywood on the exterior, into a metal toolbox, through the wall behind the toolbox, through the wall behind across the basement into a wooden stud. *Id.* at 134. The homeowner would have provided a set of photos of the stairs up to the deck showing another bullet strike and she was able to observe the same bullet strike in the photos she had taken from the original investigation. *Id.*

McDermott also would have processed the firearms that would have been seized from the Ross residence. *Id.* at 135. She testified that there were over 20 firearms (long guns) that were collected. *Id.* at 137. McDermott specifically reviewed two long guns: a wooden stock rifle with silver barrel with scope and a black stock metal barrel, camouflage strap and scope. *Id.* at 138. This last weapon also had some sort of green transfer on the stock of the weapon. *Id.*

On cross examination, McDermott testified that there were five (5) bullet strikes to the house in various locations but on the west side of the house. *Id.* at 141. She also clarified that the bullet hole in the workshop area into the above ground basement was at about 4 1/2 feet or about chest level on her, as she is 5'2". *Id.* at 143.

Trooper Nathan Birth, the current fire marshal with the State Police also assisted at the incident scene. He first took a perimeter position and second acted as one of the troopers who executed a search warrant on the Ross residence. *Id.* at 145. On the south side of the Ross residence was a wooden porch on cement blocks. *Id.* at 146. Birth would have taken several photographs of the Haynie residence from the Ross's porch area including a photo of the location of the State police marked unit outside the Haynie residence. *Id.* at 148. Other photographs showed a bunk bed with spent cartridges and mobile

cellular phone. *Id.* at 149. He also photographed the school locker style gun cabinets which held multiple guns, ammunition, and scopes. *Id.* at 154.

Trooper Jamesan Keeler was then called as the lead investigator for the April 1, 2021 incident on Ross Road. *Id.* at 156. He testified that he would have interviewed Ross after he was in police custody. *Id.* Ross was wearing a gray sweat suit, and his face was painted with green and black hunting style face paint. *Id.* Keeler also testified that he observed some of the firearms which were recovered from the residence. One of them, a 7 mm Remington Magnum rifle with a 24-power scope appeared to have green paint smeared on the action as if someone had been holding it. *Id.* at 161. Keeler testified that as a hunter himself, his rifle only has a scope of 3x9 power with 9 being the highest level of magnification. *Id.* He also testified that based upon Ross's statements, he sent the 308-caliber rifle to the lab for analysis. *Id.* He was advised by the lab that it was not possible for that weapon to have discharged those projectiles, so they sent rifles which would have matched those that could have discharged the projectile: 2 Remington 7mms and two or three of the 270 caliber rifles. *Id.* at 162-163. While Ross said in his interview that he used a 223, none were recovered from the scene. *Id.*

Keeler also testified that a Remington 700 7 mm Magnum rifle was seized from the Ross home. N.T. 2/15/2023 at 21. The rifle had a 24-power scope and the sleeve on the butt stock with additional spent and live rounds. *Id.* at 22. It was on this rifle that Keeler saw the green substance on the bolt. *Id.* There was another rifle seized which had a 3x9 scope on it. *Id.* at 24.

It was at this point the Commonwealth played the video of Ross's interview⁷. Initially, Ross says he was sleeping and was woken up by his mother calling him and telling him someone was shooting and the police wanted him to come outside with his hands in the air. Ross's story changes into his neighbor was shooting a gun and Ross thinks he hears bullets whizzing by him. Ross denies being the shooter and describes the sounds of the shots and the bullets and avers that he took shelter under

⁷ This video was the subject of Motion to Suppress which was denied by this Court in an Opinion and Order dated October 13, 2022.

covers because he might have been targeted. The troopers do not seem to believe Ross's version of the events and repeatedly advise Ross to be honest so they can help him.

Eventually Ross admits to attempting to shoot a deer and believes he may have missed and shot through a neighbor's house. Ross claims he used a .223 caliber rifle to shoot but put the weapon back after missing the deer with two (2) or three (3) shots. Ross then states he picked a patch of dirt and continued shooting. After the police arrive on scene, Ross asserts that he laid low but later admits to shooting the police car through the engine block. When asked what he saw through his scope at the time, Ross lowers his head and raises his hand to his nose in an attempt to mime looking through the scope and pulling the trigger. Ross states he was aiming at a deer and ended up hitting the police car. When asked what he was shooting at if no deer was around the car, Ross replies, "I guess the vehicle." Ross says he was not aiming at the trooper so he did not know if he was in the vehicle at the time he was shooting at the engine block. Ross admits he shot at the car more than twice but denies trying to kill the troopers.

Although Ross denies trying to kill the officer he concedes that he put hunting paint on his face before leaving the house because he "figured first time I ever wore war paint." When asked about going to war he calls it 'face paint'. When confronted with telling his mom on the phone that he did in fact have an officer in his scope, Ross instead talks about seeing a trooper at the neighbor's house and asserts that he saw vapor trails indicating that someone else deliberately shot at the trooper's head. Ross claimed that he tried to shoot this bullet mid-flight and it went through the police vehicle's engine block instead. Ross admits to telling his mom he had a rifle and if the policeman came out he was going to shoot it out with him but then asserts he put the rifle away after saying this to his mom.

Ross denied wanting to hurt himself and when asked if he wanted the police to hurt him he replied, "not really, I kinda, I'm not gonna lie, I felt safe when you guys handcuffed me." Ross later states after shooting the police car he did not know if he was going to "take a round" next and if so, "if it happens, it happens." Ross stated that after what he did maybe he should get lethal injection or firing squad. Ross was asked if he thought he did something serious enough to deserve that outcome and Ross

says “in a way yes, but...” never finishes. Shortly he returns to his theory that there was a second shooter and alleges a vapor trail showing a bullet headed towards a trooper’s head. Ross questioning ends shortly thereafter.

William Jones a retired State trooper testified that he responded to the scene on Ross Road as the Forensic Services Unit (FSU) trooper. He responded to the scene in a gray marked State police vehicle. N.T. 2/15/23 at 6. Since he was unsure of where the shooting was, he parked the vehicle in the front of the house, left his vehicle and did an outside observation of the crime scene. *Id.* Once he surveyed the scene, as he moved away from the front of 298 Ross Road and began his processing was when he heard gunshots. *Id.* He could not see anyone shooting from where he was posted, although he thought the shots were coming from quite a ways away. *Id.* He was then called to come inside by the Corporal on the scene. *Id.* While he was on the scene he absolutely thought that he was going to get shot. *Id.* at 9. Jones also felt that he would not have been safe to drive away from the scene because there was only one access road which would go past all of the other buildings at the opposite end of the property which was where they assumed that the shots were coming from. *Id.*

County Detective Loretta Clark testified that she was called to the scene as a negotiator. *Id.* at 15. She is part of the Lycoming County hostage negotiation team. She described being in contact with Ross’ mother, Kelly Houseknecht, to get in contact with him. *Id.* She had been talking with him prior to Clark talking with her. *Id.* at 18. Although they were able to get through and he seemed to be trying to communicate, all she could hear was mumbling. *Id.* Once they met at Cogan House Township building she was able to talk with him. *Id.* at 16. While she was able to talk with him, after asking him to come out to surrender, he hung up. *Id.* From that point, State Police responded with their negotiation team, and she had no further involvement. *Id.* She heard that shortly after she briefed the state police negotiators, Ross surrendered. *Id.* at 18.

Finally, Sergeant Joseph Gober a firearm and tool mark examiner from the Pennsylvania State Police. He testified that he received two different evidence submissions from this case. *Id.* at 31. In the first, he received four discharged and mutilated metal jacket bullets from the scene plus a model 798

caliber 308 Winchester which were test fired. *Id.* He described his examination of the discharged metal jacket bullets were not fired from the Winchester. *Id.* at 37. He testified that he reached out to the investigator to see if he could get a firearm that could have fired the bullets. *Id.* at 37-38. He also knew that three of the discharged bullets were fired by the same unknown gun. *Id.* at 39.

Investigators provided Sgt. Gobel with five additional rifles. *Id.* at 45. He determined that the three discharged bullets from the scene were fired from the Remington 7mm Magnum with the 3x9 scope to a reasonable degree of scientific certainty. *Id.* at 51.

Jury trial was held on February 13 and 15, 2023. After the jury deliberated for about three (3) hours, they returned a verdict of guilty on all charges. Ross was sentenced on May 2, 2023 by this Court to an aggregate sentence of 44-88 years to be served in a state correctional facility.

Ross filed timely post sentence motions which were denied by operation of law on October 16, 2023. Ross filed an appeal to the Superior Court on October 25, 2023. This Court directed Ross to file a concise statement of errors complained of on appeal. On November 9, 2023 Ross filed his concise statement in which he asserted two issues:

1. Defendant respectfully avers that the evidence submitted at Appellant's trial was insufficient to meet the Commonwealth's burden of proving the Appellant guilty of the four (4) counts of Assault of a Law Enforcement Officer [sic] under 18 [Pa.C.S.] Section 2702.1
 - a. Specifically, the evidence at trial showed that no bodily injury occurred and failed to establish an attempt to cause serious bodily injury.
2. Defendant respectfully avers that the discretionary aspects of this Honorable Court's sentence constitute an abuse of discretion regarding the length of his sentence of 44-88 years in State Prison.

Ross first alleges that the Commonwealth failed to meet its burden of proof on the charge Assault of a Law Enforcement officer.

The test used to determine the sufficiency of the evidence in a criminal matter is "whether the evidence, and all reasonable inferences taken from the evidence, viewed in the light most favorable to

the Commonwealth, as verdict-winner, were sufficient to establish all the elements of the offense beyond a reasonable doubt.” *Commonwealth v. Maloney*, 876 A.2d 1002, 1007 (Pa. Super. Ct. 2005) citing *Commonwealth v. Lawson*, 759 A.2d 1 (Pa. Super. Ct. 2000). When applying “the above test, the entire record must be evaluated, and all evidence actually received must be considered.” *Commonwealth v. Lambert*, 795 A.2d 1010, 1015 (Pa. Super. Ct. 2002). An appellate court should not interfere with the trial court’s findings in a non-jury trial unless “the evidence is so weak and inconclusive that as a matter of law no probability of fact can be drawn from the combined circumstances.” *Commonwealth v. George*, 878 A.2d 881, 885 (Pa. Super. Ct. 2005) (quoting *Commonwealth v. Wright*, 722 A.2d 157, 161 (Pa. Super. 1998)). 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. *Commonwealth v. Rivera*, 238 A.3d 482, 495 (Pa. Super. 2020). Credibility is within the province of the jury as the factfinder, which is free to believe all, part, or none of the evidence. *Commonwealth v. Ramtahal*, 33 A.3d 602, 607 (Pa. 2011); *Commonwealth v. Holt*, 270 A.3d 1230, 1233 (Pa. Super. 2022).

“A person commits a felony of the first degree who attempts to cause or intentionally or knowingly causes bodily injury to a law enforcement officer, while in the performance of duty and with knowledge that the victim is a law enforcement officer, by discharging a firearm.” 18 Pa. C. S. A. § 2702.1(a). Therefore, the Commonwealth must prove: (1) the defendant attempted to cause, or intentionally or knowingly caused, bodily injury, (2) the victim was a law enforcement officer acting in the performance of his duty, (3) the defendant had knowledge the victim was a law enforcement officer, and (4) in attempting to cause, or intentionally or knowingly causing such bodily injury, the defendant discharged a firearm. *Commonwealth v. Martuscelli*, 54 A.3d 940, 948 (Pa. Super. 2012) citing *Commonwealth v. Landis*, 48 A.3d 432, 445 (Pa. Super. 2012) (*en banc*) (citation omitted). Ross alleges

the Commonwealth failed to show an attempt to cause serious bodily injury and therefore cannot be convicted of this offense.

Where the victim does not suffer bodily injury, the charge of aggravated assault can be supported only if the evidence supports a finding of an attempt to cause such injury. “A person commits an attempt when, with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime.” 18 Pa.C.S.A. § 901(a). An attempt under Subsection 2702(a)(1) requires some act, albeit not one causing serious bodily injury, accompanied by an intent to inflict serious bodily injury. *Commonwealth v. Matthew*, 589 Pa. 487, 909 A.2d 1254 (2006). “A person acts intentionally with respect to a material element of an offense when ... it is his conscious object to engage in conduct of that nature or to cause such a result[.]” *Id.* at 1257–58 (quotation omitted). “As intent is a subjective frame of mind, it is of necessity difficult of direct proof.” *Id.* (citation omitted). The intent to cause serious bodily injury may be proven by direct or circumstantial evidence. *Id.*

“An intent is a subjective frame of mind, it is of necessity difficult of direct proof[.] [W]e must look to all the evidence to establish intent, including, but not limited to, [the defendant's] conduct as it appeared to his eyes[.] Intent can be proven by direct or circumstantial evidence; it may be inferred from acts or conduct or from the attendant circumstances. The intent for attempt may be shown by circumstances which reasonably suggest that a defendant intended to cause [bodily] injury. Thus, in order to prove an attempt under Section 2702.1, the Commonwealth must demonstrate both a substantial step plus an intent to cause bodily injury to a law enforcement officer by discharging a firearm.” *Commonwealth v. Landis*, 48 A.3d 432, 446 (Pa. Super. 2012) (internal citations and quotation marks omitted).

In *Martuscelli*, the defendant and the police were in a shootout with the defendant inside his home and the police officers at a distance from the house on a tree line. The defendant was shooting at the officers. The officers testified that as the defendant shot in their direction they heard “felt and heard bullets whizzing by them.” 54 A.3d 940, 944-945. The Superior Court held that “the intent of the

legislature was to protect our law enforcement officers' safety in recognition of the daily potentially violent situations they encounter.” 54 A.3d at 950.

Here, the Commonwealth presented testimony that Ross shot at Haynie’s house twice prior to the police coming onto the scene. Once at the residence, the troopers began their investigation with a marked State police cruiser parked in front of the house that Ross had been shooting at. Once on scene additional shots were fired and Brown observed that the marked police unit had been damaged by a gunshot which was recovered from the lens of the vehicle. Concurrently, Brown heard bullets hit the house and he received a message from his barracks that whoever was shooting had a “trooper in their scope.”

The evidence presented clearly established that Ross, who was shooting at the house, knew that there were troopers there and intended to place them in fear of being shot. The troopers who were on scene testified that they were in fact worried that they might be shot. Ross even communicated with the State Police barracks that he had a trooper “in his scope.” Despite the distance between the houses, Ross possessed a weapon with a scope of significant magnification to be able to see the police at 298 Ross Road. Ross knew that the troopers were there as he shot toward the house. The legislative intent of the statute is to protect law enforcement without regard as to whether or not they feel like a “victim.” Ross knew that the officers were there investigating his earlier shots at the house and took a substantial step at hitting them by discharging his weapon toward the house, even hitting the state police cruiser. Therefore, the Court finds that the Commonwealth has proven that Ross showed his intent to not only to try to cause bodily injury to the state police, but to do so by discharging his weapon.

Ross next alleges that the Court abused its discretion in imposing a 44–88-year sentence. Ross offers nothing specific in his 1925(b) statement to substantiate his claim. However, the Court can use the information set forth in his Post sentence motion for guidance.

In Ross's post sentence motion, he alleges that the Court failed to consider the following in making its determination of sentence.

a. The Sentencing Court made it clear that its intent was not to impose a de facto life sentence, but in essence this sentence could very well end up being a de facto life sentence, since Movant would be sixty-five (65) years old before he would even have a chance at parole;

b. The Sentencing Court acknowledged a likelihood that Movant would not ever be paroled on this sentence;

c. The Sentencing Court took note that it would not impose a de facto life sentence in a situation where no one was killed, however entered a sentence that failed to acknowledge that thankfully no one was even wounded or hurt;

d. The sentence failed to distinguish Movant's set of facts, where two rifle shots were fired while troopers were simply on scene. From a scenario where shots were actively being taken at targeted troopers;

e. the sentence failed to consider Movant's very young age and likelihood of rehabilitation;

f. the sentence failed to properly consider movant's lack of criminal history;

g. the sentence did not properly give credence to Trooper Jacobs's statement that he does not consider himself a victim given the nature of his work, and still could have served to represent all four (4) troopers by imposing a concurrent twenty (20) years since a twenty (20) year minimum would easily encompass the standard range for all four counts of [Aggravated] Assault of a Law Enforcement Officer (60-78); as opposed to running Count 1 and Count 2 consecutive to one another.

Sentencing is a matter vested within the sound discretion of the trial court and will not be disturbed absent a manifest abuse of discretion. *Commonwealth v. Rush*, 162 A.3d 530, 544 (Pa. Super. 2017), citing *Commonwealth v. Crump*, 995 A.2d 1280, 1282 (Pa. Super. 2010); see also *Commonwealth v. Perry*, 32 A.3d 232, 236 (Pa. 2011). "An abuse of discretion is more than a mere error of judgment; thus, a sentencing court will not have abused its discretion unless the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will." *Perry, id* (internal quotations omitted), citing *Commonwealth v. Walls*, 926 A.2d 957, 961 (Pa. 2007).

A defendant presents a substantial question when he “sets forth a plausible argument that the sentence violates a provision of the sentencing code or is contrary to the fundamental norms of the sentencing process.” *Commonwealth v. Dodge*, 2013 PA Super 253, 77 A.3d 1263, 1268 (2013).

In imposing sentence, “the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and the community, and the rehabilitative needs of the defendant.” 42 Pa. C.S.A. § 9721 (b).

This Court is also guided by § 9781 (d) of the Judicial Code, which requires appellate courts in reviewing a sentence to determine from the record whether the court considered:

“(1) the nature and circumstances of the offense and the history and characteristics of the Defendant; (2) the opportunity of the sentencing court to observe the Defendant, including any pre-sentence investigation; (3) the findings upon which the sentence was based; and (4) the guidelines promulgated by the Commission.” 42 Pa. C.S.A. § 9781 (d). In determining if a sentence is excessive or unduly harsh, great weight must be afforded to the sentencing court’s discretion. *Commonwealth v. Colon*, 102 A.3d 1033, 1043 (Pa. Super. 2014), quoting *Commonwealth v. Mouzon*, 828 A.2d 1126, 1128 (Pa. Super. 2003)).

Where the sentencing court is informed by a presentence investigation report (“PSI”), it is presumed that the sentencing court was aware of relevant information regarding the Ross’s character and weighed those considerations and the appropriate sentencing factors. *Commonwealth v. Harper*, 273 A.3d 1089, 1097-1098 (Pa. Super. 2022). *Commonwealth v. Hill*, 210 A.3d 1104, 1117 (Pa. Super. 2019). “[W]here the court has been so informed, its discretion should not be disturbed.” *Harper*, 273 A.3d at 1098. “Further, where a sentence is within the standard range of the guidelines, Pennsylvania law views the sentence as appropriate under the Sentencing Code. *Hill, supra* (citing *Commonwealth v. Moury*, 992 A.3d 162, 171 (Pa. Super. 2010)).

An allegation of excessiveness due to the imposition of consecutive sentences implicates the discretionary aspects of sentencing. *Commonwealth v. Mastromarino*, 2 A.3d 581, 585 (Pa. Super. 2010). The imposition of consecutive, rather than concurrent, sentences only raises a substantial question in the most extreme circumstances. *Moury*, 992 A.2d at 171. Furthermore, a Defendant is not entitled to a volume discount for his crimes. *Commonwealth v. Prisk*, 13 A.3d 526, 533 (Pa. Super. 2011); *Commonwealth v. Hoag*, 665 A.2d 1212, 1214 (Pa. Super. 1995).

Ross was convicted of four (4) counts of Assault of a Law Enforcement Officer, a felony of the first degree⁸, offense gravity score (OGS) of 13. Prior to sentencing, the Commonwealth placed Ross on notice that it would be asking for the mandatory sentence to be imposed; twenty (20) years for each charge⁹ representing one for each State trooper on the scene. Additionally, he was convicted of nine (9) counts of Aggravated Assault of differing sections which included an additional or civilian victim. However, for the Aggravated Assault, attempted serious bodily injury of Haynie, the OGS is 10 with a standard range of 40-54 months when a deadly weapon enhancement is applied.¹⁰ According to his presentence investigation report, the Ross had a prior record score of zero (0).

Ross was sentenced to an aggregate of 44-88 years to be served in a State Correctional facility. The sentence consisted of two mandatory sentences of 20-40 years to run consecutively to one another on the Assault of a Law enforcement officer, with an additional standard range 4-8 years on the Aggravated Assault on Haynie.

In its discussion of the appropriate sentence to be imposed, the Court specifically discussed Ross's age and lack of prior record. The court considered the length of the sentence based upon the age at which the Ross would be when he was eligible for parole. The Commonwealth asked for four consecutive mandatory sentences which is their right to do. While four troopers were shot at, the Court

⁸ 18 Pa. C.S.A. § 2702.1.

⁹ 42 Pa. C.S.A. § 9719.1.

¹⁰ 204 Pa. Code §303.10(a)(2).

believed that making two of those sentences consecutive factored in all of the considerations argued by Ross.

In sentencing Ross, the Court need not consider whether anyone was wounded or hurt because the charges on which he was sentenced did not require that bodily injury occur. Ross suggests that since one of the troopers did not feel like a “victim” he should not be sentenced on the charge. It is clear from *Martuscelli, supra*, that the legislature intended to protect our law enforcement officers' safety in recognition of the daily potentially violent situations they encounter. The Court believed that the two twenty-year sentences running consecutively accomplished that goal. Police should be able to investigate an incident without the fear of being injured while in the performance of their duty by someone using a firearm. Although Jacobs told the Court that he does not feel like a victim because of the job that he has, it doesn't diminish the impact that the crimes had on himself and his colleagues. He felt particularly worried that day not only for himself but for his pupil trooper who was assigned to him that day. Jacobs told the Court that he thinks about the incident often and how it has affected him in his work both good and bad. N.T. 5/2/2023 at 20.

The Court considered the age and lack of criminal history of Ross and counterbalanced it with the history of mental illness discussed by his family along with the nature and type of offense committed. All of the facts and circumstances were considered by this Court and it imposed a sentence that the Court believed was a balance of all factors. A sentence of any less would be to minimize the serious nature of his acts.

Date: January 9, 2024

By the Court,

Nancy L. Butts, President Judge