

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-434-2024
	:
vs.	:
	: Opinion and Order re Habeas Corpus
BENJAMIN VILLANUEVA, III,	:
Defendant	:

OPINION AND ORDER

This matter came before the court on December 17, 2024 for a hearing and argument on Defendant's Petition for Writ of Habeas Corpus filed on August 1, 2024.

By way of background, Defendant is charged with homicide,¹ aggravated assault,² robbery,³ tampering with evidence,⁴ possession of firearm prohibited,⁵ and firearms not to be carried without a license.⁶

At the hearing, the Commonwealth introduced the transcript of the preliminary hearing as Commonwealth's Exhibit #1 and copies of the exhibits that were introduced at the preliminary hearing, which consisted of preliminary hearing exhibits 1 through 7 and 9.⁷ The Commonwealth also introduced a Trace Evidence Report as Commonwealth Exhibit #2 and a

¹ 18 Pa. C.S.A. §2501(a).

² 18 Pa. C.S.A. §2702(a)(4).

³ 18 Pa. C.S.A. §3701(a)(1)(i).

⁴ 18 Pa. C.S.A. §4910(1).

⁵ 18 Pa. C.S.A. §6105(a)(1).

⁶ 18 Pa. C.S.A. §6106(a)(1).

⁷ These exhibits consisted of the autopsy report (Exhibit 1), a photograph of the victim with a wad of money (Exhibit 2), a photograph of blood and the fur lining (Exhibit 3), a photograph of the victim and Defendant at The Bar (Exhibit 4), a photograph of the North Face jacket (Exhibit 5) and a close-up of that jacket showing the snaps for lining to attach to the jacket (Exhibit 6), a photograph of the fur lining and a tape measure (Exhibit 7) and an outdoor photograph of the jacket behind the wooden gate (Exhibit 9). Preliminary Hearing Exhibit 8 was a copy of the Trace Evidence Report which the Commonwealth introduced as Commonwealth Exhibit #2 at the hearing and argument on Defendant's Habeas.

DNA Analysis Report as Commonwealth Exhibit #3.

Six witnesses testified at the preliminary hearing. Lycoming County Coroner Charles Kiessling testified that he attended the autopsy on December 11, 2023 in Allentown in this case. The cause of death was massive hemorrhaging from multiple gunshot wounds to the face, neck, stomach, and torso. Due to stippling, the shot to the victim's face was likely from less than six inches away. The gunshots to the torso and right shoulder were from an indeterminate range. The shot to the right shoulder was not lethal. The shot to the torso struck and caused damage to the victim's kidney, liver, lung and rib. Bullet fragments were recovered from the shot to the torso/right lower back and along the wound path from the hard palate, neck muscles and stomach contents from the shot to the face. The manner of death was homicide.

He also testified that he was called at 5:36 a.m. regarding the shooting/body and arrived at the scene at 6:15 a.m. The victim was lying supine (on his back) in the middle of the street on Memorial Avenue. Two officers were at the scene when he and his deputy coroner arrived. There was blood to the left of the body, which indicated to the coroner that the victim was lying face down or on his left side and then had gotten rolled back onto his back. He and his deputy photographed the scene, put the deceased's body in a body bag, secured the body bag with a lock tag, and transported the body to the morgue where it remained until it was transported to Allentown for the autopsy.

Jordan Siddle, a friend of the victim's for about 10 years also testified at the preliminary hearing. He indicated that he went to the Valley Inn in South Williamsport. The victim messaged him and Siddle told the victim he was at the Valley Inn. The victim then

met Siddle at the Valley Inn where they spent time some listening to music and drinking. Siddle took a snapchat of the victim. The snapchat depicted the victim fanning a wad of money that consisted of hundreds and fifties. There was a lot of money, and the victim did not spend all of that money while they were at the Valley Inn. The victim put his money in a pants pocket. They left the Valley Inn together and drove to downtown Williamsport and parked across from Jersey Shore State Bank. Siddle went to the Back Alley Bar and Grill and the victim went to The Bar on Market.

Officer Damon Cole of the Williamsport Bureau of Police testified that he and his partner responded to a call about a potential gunshot victim in the street. In the one thousand block of Memorial Avenue they observed a male lying on the ground covered in blood. Blood was coming from his mouth. Officer Cole checked the body, but there was no pulse or breathing. EMS arrived on scene moments later and determined that the victim had passed. Officer Cole secured the scene and began taking photographs. There were casings on the ground and there was a fur lining of a hood next to the body covered in blood. Preliminary Hearing Exhibit 3 was a photograph of the fur lining next to the victim. His partner spoke to the callers (who reported the body) at the northwest corner of Braine and Memorial and there was an elderly lady on the north side of the street on her porch. It was a residential neighborhood where a lot of people park their cars on the street overnight.

While Officer Cole was photographing the scene, he received a call concerning a vehicle on Isabella Street, approximately one block north of the body. It was a possible hit-and-run. The Pennsylvania State Police were there. The registration was run on the vehicle.

Agent Benjamin Hitesman of the Williamsport Bureau of Police testified that he was

working as an agent, which is equivalent to a detective, on the morning of December 9, 2023. He reported to the scene, which was in the thousand block of Memorial Avenue just east of the intersection of Memorial Avenue and Braine Street. He observed a deceased black male in the south lane of Memorial Avenue kind of close to a blue SUV. The decedent had on a green hoodie and camo cargo pants. The front pockets of the pants were turned out. There was no wallet, identification, credit cards or cash on the body. Large amounts of blood were on the victim's face and beside him to the left of his left hand. There was a fur trim piece near his left hand. The fur piece did not match anything that the victim was wearing. There were four casings found.

The victim's mother heard about the incident on social media. She came to the station and identified the body at approximately 8:00 a.m.

There also was a call about a vehicle on Isabella Street. It was about half a block away from the intersection of Isabella and Seventh Avenue and the trunk was open. Inside the trunk was an old identification card for the victim. The vehicle had hit another parked car on the south side of Memorial Avenue. Agent Hitesman recovered a video from a homeowner on the north side of Isabella Street which showed the car from east to west and run into the parked car on the other side of the street. No one was seen getting out of the car and no one appeared to be in the car.

In the course of Agent Hitesman's investigation, he determined that the car was registered to Jonathan Pedraza, but Mr. Pedraza had gotten a DUI and allowed the victim to drive the vehicle. A few dollars in small bills were found in the sunglass case above the center console but no wallet, credit or debit cards or current identification for the victim were

located in the vehicle.

There was a bright green band on the victim's right wrist. The police determined that the wristband might be from The Bar on Market. Agent Hitesman went to The Bar on Market and observed their video, which depicted the victim wearing the green Nike sweatshirt. Preliminary Hearing Exhibit #4 was a still photograph from the video of The Bar on Market. The photograph depicted the victim sitting at the bar next to another individual who was wearing a black North Face winter coat with a fur trim along the hood. From a scan on The Bar on Market's ID machine, Agent Hitesman determined that the individual in the black North Face jacket with fur lining the hood was the Defendant, Benjamin Villanueva. He also confirmed the victim's ID. The victim and Defendant left The Bar on Market together.

On December 9, a citizen discovered a black jacket discarded in her yard. Another officer collected the jacket and brought it back to the station. Preliminary Hearing Exhibit #5 is a photograph of the jacket which was retrieved from the citizen's yard. It was a hooded, black North Face coat. The hood of the jacket had five snaps. Preliminary Hearing Exhibit #6 is a photograph of the coat, hood and the snaps on the hood. The fur piece near the body had five snaps opposite of the hood on the jacket. Preliminary Hearing Exhibit #7 is a photograph of the fur piece and the snaps on the hood. In other words, the jacket had five snaps to accept the snaps with protrusions on the fur piece.

Agent Hitesman observed video from near the location where the jacket was recovered. At approximately 4:00 a.m. an individual with a build consistent with Defendant traveling from north to south comes down an alley, takes off the coat and discards it behind a

makeshift wooden gate. The individual walks a few yards away, stops and starts to go back, then decides not to and continues southbound on South Street. About 25 minutes later, a white Hyundai sedan came back traveling the same path that the individual walked. The sedan parked just south of where the coat was discarded. A male, who fits the same description as the male who discarded the coat earlier, gets out of the vehicle, goes directly to the coat, picks the coat up, manipulates the coat, leaves the coat, returns to the vehicle and drives away.

Later that day, other agents took Gun Shot Residue (GSR) swabs of Defendant's person and the jacket that was recovered. The swabs of Defendant's hands for GSR occurred in the afternoon; Agent Hitesman's best guess was around 1:30 or 2:00 p.m. on December 9, 2023. The swabs were submitted to the Pennsylvania State Police Wyoming Regional Lab on December 9, 2023 and were analyzed. The analyst sent a report dated March 21, 2024 with the results of her analysis. The report was admitted as Commonwealth's Exhibit #2 at the habeas hearing and argument. The report contained the results for the samples from Defendant's hands (right palm, right back, left palm and left back -items 1.1, 1.2, 1.3. and 1.4, respectively), the samples from the black North Face coat (right sleeve, back coat, left sleeve, and front coat – items 2.1, 2.2, 2.3 and 2.4, respectively) and a black Carhartt beanie (item 3.1).

On one of the videos, gunshots can be heard at approximately 3:41 a.m. on December 9, 2023. Four shots were heard.

Officer Charles Schwab of the Williamsport Bureau of Police was on duty the morning of December 9, 2023 and responded to the call about the discarded jacket at 514

West Fourth Street. He spoke to the resident who called it in. The resident told Officer Schwab that she took her dog out around 1:00 a.m. and did not see anything suspicious. At 5:30 a.m., she noticed a jacket wadded up in the corner of her yard that hadn't been there at 1:00 a.m. and called it in. The woman noticed that her dog had urinated on the jacket. She picked it up at some point then immediately put it back down.

Behind a makeshift wooden gate, Officer Schwab found a black jacket and a green long sleeve shirt. He photographed everything, packaged it and brought it to Agent Hitesman. There were cameras located on a commercial building just to the west of 514 West Fourth Street. Officer Schwab and Agent Hitesman watched the video with the building owner. There were two segments of video. The first segment showed an individual walking down South Street past where the coat was found. The person stops, it appears like the person put something behind the wooden barrier and then continued walking down South Street. In the second video, there is a white Hyundai sedan with a black moonroof.

Officer Nicholas Carrita of the Williamsport Bureau of Police testified at the preliminary hearing that he was provided a photograph of the white Hyundai sedan. The vehicle had a black moonroof, the rear windows were tinted and there was a white, EZ Pass on the front windshield. He located that vehicle in front of 501 West Fourth Street. He immediately called Agent Hitesman. While he was on the phone with Agent Hitesman, Defendant came out of the apartment at 501 West Fourth Street and approached Officer Carrita. Defendant said he was there to talk to Officer Carrita about last night. He said he saw Officer Carrita behind his girl's car and he was there for Officer Carrita to take him in. Officer Carrita got out of his patrol vehicle, took Defendant into custody and transported him

back to police headquarters. During transportation, Defendant said he was on state parole and a couple of other utterances such as “this shit crazy.” Officer Carrita only asked Defendant where he lived. He did not interview Defendant and he did not read him his Miranda rights.

Officer Carrita also testified that where the coat was found and where the exchange occurred with Defendant at 501 West Fourth Street was maybe a hundred yards or half a block.

Commonwealth’s Exhibit 2 is the Trace Evidence report. The report contains the results of the analysis for gunshot residue on Defendant’s hands, the coat and the beanie. The report explains the gunshot residue may include particles that are characteristic in composition and/or indicative in composition. The report defines those terms as follows:

“Characteristic particles are composed of the elements lead, barium and antimony in a single particle. Particles classified as characteristic are typical of gunshot residue. At least one characteristic particle must be identified to obtain a positive result.

Indicative particles are composed of only one or two elements of lead, barium and antimony in a single particle. Particles classified as indicative may have originated from environmental/occupational sources and/or gunshot residue. The presence of indicated particles alone is not sufficient for a positive result.

Indicative particles were identified on the samples from Defendant’s hands but no characteristic particles were identified on those items. “Due to the lack of characteristic particles, no determination can be made regarding the indicative particles and their association with gunshot residue.” The report goes on to state that does not eliminate the possibility that Defendant could be associated with the discharge of a firearm; it simply

indicates that no characteristic particles were identified on the stubs used to sample his hands. Some conditions that could lead to such a result are: not handling or firing a firearm; not being near a firearm when it was discharged; wiping or washing GSR from hands; the firearm not being a good depositor of GSR, more than six hours elapsing between the time when the firearm was discharged and when the hands were sampled and not using hands to discharge the firearm.

One characteristic particle was identified on the right sleeve of the coat but on no other portions of the coat, and indicative particles were identified on all portions of the coat. The report explains that the results indicate that GSR was detected on the black North Face coat. The report explains that GSR can be deposited from several different circumstances one of which is discharging a firearm but other explanations are being in close proximity of a discharging firearm or coming into contact with a surface or object that has GSR on it.

Indicative particles were identified on the beanie but no characteristic particles. These results do not indicate that GSR was detected on the beanie, but the absence of characteristic particles does not eliminate the possibility that a weapon was discharged.

Commonwealth Exhibit 3 is the DNA Analysis report. No interpretable results were obtained from the swabs of the casings due to insufficient quantity of DNA or from the North Face jacket due to the complexity of the mixture.

There was a DNA profile consistent with a mixture of at least three unidentified contributors from the cutting from the Carhartt beanie. Defendant and the victim were excluded as contributors to the DNA from the beanie.

The swab from the stained area of the fur hood matched the DNA profile of the

victim and excluded Defendant.

The swab from the unstained area of the fur hood consisted of a mixture of four contributors, including Defendant and the victim.

The lab conducted DNA analysis of the Y chromosome for the swabs of the casings, the cutting from the North Face jacket and the known samples from Defendant and the victim but no interpretable results were obtained due to insufficient quantity of Y chromosome DNA on the casings and the complexity of the mixture on the cutting from the North Face jacket.

The DNA profile from the swabs of the unstained portion of the fur hood was also uploaded into the Combined DNA Index System (CODIS) and the profile is potentially from the same contributor as a sample previously submitted by South Williamsport Police from 2009 incident numbers.⁸

ARGUMENTS

Defense counsel argued that the Commonwealth failed to establish a *prima facie* case for any of the charges. More specifically, defense counsel asserted in the motion that the Commonwealth had not sufficiently proven that: (1) Defendant was the one who shot and killed the victim; (2) Defendant intentionally, knowingly, recklessly, or negligently brought about the death of the victim; (3) Defendant used a weapon of any kind or caused bodily injury to the victim in any way; (4) Defendant took any property or inflicted any serious bodily injury to the victim; (5) Defendant acted in any way to disassociate himself with

⁸These incident numbers may coincide with Lycoming County case numbers CP-41-CR-0002079-2009 and CP-41-CR-1712-2009.

evidence, namely the black coat; and (6) Defendant ever possessed a firearm on the night in question.

At the argument, defense counsel argued that the evidence only showed that Defendant was with the victim when he was shot. There were no witnesses who saw the shooting and no forensic evidence to show that Defendant was the shooter. The Trace Evidence Report only showed one characteristic particle on the right sleeve of Defendant's coat and only indicative particles were found on Defendant's hands and other locations of the coat. Given the information regarding the proximity of the shooter in light of the stippling on the victim's face, one would expect more characteristic particles on Defendant's coat if he were the shooter. Defense counsel argued that unknown third persons shot at the victim and Defendant fled and hid believing he was going to be next.

The Commonwealth argued that this was not the trial and its burden was *prima facie*, not beyond a reasonable doubt. The Commonwealth argued the facts of the case, many of which were introduced at the preliminary, but some were not.⁹ The Commonwealth argued that it met its burden of proof and the motion should be denied.

⁹For example, as the court previously noted in its decision denying the Commonwealth's motion to amend, no evidence was presented about Defendant and the victim being at Sheetz. The court can only consider the evidence that the Commonwealth presented, which consisted of the preliminary hearing transcript, a trace evidence report, and a DNA analysis. The arguments of counsel for either side are not evidence. *See Commonwealth v. Puksar*, 951 A.2d 267, 280 (Pa. 2008) ("it is well-settled that arguments of counsel are not evidence"); *Commonwealth v. Reich*, --A.3d --, 2025 WL 1740140, *13 (Pa. Super. 2025); *Commonwealth v. Moore*, 263 A.3d 1193, 1206 (Pa. Super. 2021).

DISCUSSION

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a prima facie case of guilt. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). A prima facie case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed the offense. *Id.* Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and also may submit additional proof. *Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. *Commonwealth v. Wojdak*, 466 A.2d 991, 997 (Pa. 1983); see also *Commonwealth v. Kohlie*, 811 A.2d 1010, 1014 (Pa. Super. 2002). Moreover, “inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case.” *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003). The Commonwealth is not required to present direct evidence and can sustain its burden of proof via wholly circumstantial evidence. See *Commonwealth v. Diggs*, 949 A.2d 873, 877 (Pa. 2008), *cert. denied*, 566 U.S. 1106 (2009); *Commonwealth v. Watley*, 81 A.3d 108, 113 (Pa. Super. 2013)(*en banc*). Furthermore, the evidence need not preclude every possibility of

innocence. *Watley, id.*

1. Homicide

Defendant is charged with homicide, which the Crimes Code defines as follows: “A person is guilty of criminal homicide if he intentionally, knowingly, recklessly or negligently causes the death of another human being.” 18 Pa. C.S.A. §2501(a). For first-degree murder, the elements that the Commonwealth must prove are: (1) a human being was killed unlawfully; (2) the person accused is responsible for the killing; and (3) the accused acted with specific intent to kill and malice. *See Commonwealth v. Hitcho*, 123 A.3d 731, 746 (Pa. 2015).

The testimony of the coroner and the autopsy report showed that the manner of death was homicide. The victim died from massive hemorrhaging from multiple gunshot wounds to the face, neck, stomach and torso. The shot to the torso struck and caused damage to the victim’s kidney, liver, lung and rib. There was stippling around the shot to the victim’s face which indicated that the shot to the face was likely from less than six inches away.

Specific intent to kill and malice can be inferred from the use of a deadly weapon upon a vital part of the victim’s body. *Hitcho, supra*. There are vital organs in the head and torso such as the brain, heart, lungs, liver and kidneys. The perpetrator used a deadly weapon to shoot the victim in vital parts of his body, which resulted in the victim’s death. Clearly, the evidence presented was sufficient to show that the victim was killed unlawfully and that the perpetrator did so with specific intent and malice.

The only issue contested by the defense is that Defendant was the shooter. The court finds that the Commonwealth presented sufficient circumstantial evidence to show that

Defendant was the shooter.

Defendant and the victim were seen leaving The Bar on Market Street together. Defendant was wearing a black North Face jacket with a fur-lined hood.

At 3:41 a.m., shots were fired in the area of Memorial Avenue and Braine. An individual in the neighborhood found the victim's body lying in the street. Fur lining was located near the victim's body. There was a stain on the fur that matched the victim's DNA. An unstained portion of the fur was also tested. That portion contained a DNA mixture of at least four individuals, including the victim and Defendant.

A black North Face jacket with a hood that had snaps for a fur lining was found discarded behind a wooded gate approximately 100 yards from Defendant's residence. The snaps on the fur lining found near the victim lined up with the snaps on the black North Face jacket found not far from Defendant's residence.

A black male with a build consistent with Defendant's discarded the jacket and walked away in the direction of Defendant's residence at around 4:00 a.m. About 25 minutes later, the individual returned driving a white Hyundai sedan with a black moonroof and a white EZ pass. The individual went directly to the jacket, picked it up, manipulated it, put it back and drove away. The jacket was not there at 1:00 a.m. and was found by the property owner at 5:30 a.m. when her dog urinated on it.

The police were looking for the vehicle. Officer Carrita located a white Hyundai sedan with a black moonroof and white EZ pass parked outside of Defendant's residence. Defendant saw Officer Carrita and came outside. He told Carrita that the car belonged to his girlfriend. He came outside to talk to Carrita about last night and for Carrita to "take him in."

The black North Face jacket, Defendant's hands and a beanie were tested for gunshot residue (GSR). There was GSR on the right sleeve of the jacket. There were indicative particles but not characteristic particles on Defendant's hands and the other parts of the jacket that were sampled. The lack of characteristic particles on other parts of the jacket and on Defendant's hands does not necessarily mean that he did not fire a firearm. The lack of characteristic particles could be explained by several things, including but not limited to Defendant wiped or washed his hands, the firearm was not a good depositor, Defendant did not use his hands to discharge the firearm, or the sample was taken from that six hours from the time of discharge. Since the shooting occurred at approximately 3:41 a.m. and the police took swabs of Defendant's hands at 1:30 or 2:00 p.m., the samples were taken about ten hours after the shooting occurred.

From this evidence, the jury could infer that Defendant was the shooter and that he discarded the jacket as consciousness of guilt. Defendant was wearing a black North Face jacket with fur lining on the night of the shooting. The fur lining is found near the victim's body with a stain on it that contained the victim's DNA. The jacket was discarded by an individual matching Defendant's build and near Defendant's residence. The individual returned in a white Hyundai sedan with a black moonroof and white EZ pass, manipulated the jacket (perhaps as if looking for something he thought he left it in it), discarded it again and left. A white Hyundai sedan with a black moonroof and white EZ pass was parked outside Defendant's residence and, according to Defendant, belonged to his girlfriend. Defendant did not wait for the police to come to his residence and make any inquiries. Instead, he approached the officer who was looking at the vehicle and Defendant said

something to the effect of he was there for Carrita to take “him in” which also suggested Defendant’s involvement in shooting incident and discarding his jacket.

2. Aggravated Assault

“A person is guilty of aggravated assault if he: ... (4) attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon.” 18 Pa. C.S.A. §2701(a)(4). Bodily injury is defined as “[i]mpairment of a physical condition or substantial pain.” 18 Pa. C.S.A. §2301. The definition of deadly weapon includes a firearm. *Id.*

As previously noted, the evidence was sufficient to establish a *prima facie* case that Defendant was the shooter. The victim was shot. The bullets struck the victim in the face, and torso, causing bodily injury. One of the torso shots was to the victim’s shoulder; this shot was not fatal. Thus, the victim suffered bodily injury separate from the shots that caused his death. Bullets are expelled from firearms. Firearms are deadly weapons. Therefore, the Commonwealth presented *prima facie* evidence that Defendant committed the crime of aggravated assault by causing bodily injury with a deadly weapon.

3. Robbery

“A person is guilty of robbery if, in the course of committing a theft, he: (i) inflicts serious bodily injury upon another.” 18 Pa. C.S.A. §3701(a)(1)(i). Serious bodily injury is “[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or

organ.”

The evidence presented at the preliminary hearing showed that the victim was shot and his pockets were turned inside out. The coroner observed the body at the scene. He testified that based on the blood located to the left of the body that the body was rolled from its left side onto its back.

The evidence also showed that the victim had a large wad of cash in his possession while he was out drinking at the bars. Defendant was with the victim when he was drinking and would have seen him with the wad of money.

The victim had to show identification at The Bar on Market Street, which the establishment scanned. The victim’s wallet, identification and wad of money were not located on his person or in the vehicle he had been driving which was found abandoned on Isabella Street, less than a block from where his body was discovered.

From this evidence, a reasonable jury could infer that the victim was robbed and that the individual who robbed him was the person who shot him. As stated earlier, the jury could infer from the totality of the evidence that Defendant was the person who shot the victim. Therefore, the court finds that the Commonwealth presented *prima facie* evidence that Defendant robbed the victim.

4. Tampering with Evidence

“A person commits a misdemeanor of the second degree if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(1) alters, destroys, conceals or removes any record, document or thing with intent to impair its verity or availability in such proceeding or investigation.” 18 Pa. C.S.A. §4910(1).

The court finds that the Commonwealth established a *prima facie* case that Defendant tampered with evidence. Defendant was wearing a black North Face jacket with fur lining the on the night of the murder. The fur lining was found near the victim.

From the totality of the evidence, a reasonable jury could infer that Defendant was the individual who discarded the black North Face jacket behind a wooden gate at 540 West Fourth Street, which was only 100 yards from Defendant's residence. Defendant was wearing such a jacket on the night of the murder. Prior to the murder, the jacket had the fur lining snapped on it. After the murder, the fur lining was next to the victim, and the jacket was discarded on West Fourth Street. The snaps from the fur lining next to the victim lined up with the snaps on the discarded jacket. The person who discarded the jacket had the same build as Defendant. The person came back driving a white Hyundai sedan with a black moonroof and a white EZ Pass. The police located a vehicle matching that description parked outside of Defendant's residence. When Defendant saw the officer outside of his residence, he came outside, and he told the officer that the vehicle belonged to his girlfriend. He also told the officer that he came outside so the officer could "take him in". The court does not believe that a jury would have any problem concluding that Defendant was the individual who discarded the Black Face jacket behind the wooden gate for the purpose of concealing it or that the jacket was evidence related to the shooting incident given that a portion of the jacket, the fur lining, was found near the victim's body. The jacket also had GSR on it, which also shows that it had evidentiary value.

5. Possession of Firearm Prohibited

"A person who has been convicted of an offense enumerated in subsection (b), within

or without this Commonwealth, regardless of the length of sentence or whose conduct meets the criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.” 18 Pa. C.S.A. §6105(a)(1). For this offense only, a firearm is defined as any weapons which are designed to or may readily be converted to expel a projectile by the action of an explosive or the frame or receiver of any such weapon.” 18 Pa.C.S.A. §6105(i).

The court has already found that the Commonwealth presented *prima facie* evidence that Defendant was the shooter. To shoot the victim, Defendant had to possess and use a firearm. The gunshot residue found on the right sleeve of the jacket Defendant was wearing the night of the incident tends to show that Defendant had the gun in his right hand when he discharged the firearm. By definition, bullets are metal projectiles for firing from a firearm that are often discharged by the action of an explosion, specifically the ignition and explosion of gun powder. The bullet casings found at the scene and the stippling (or powder tattooing) on the victim’s face tends to show that the firearm was close enough to the victim’s face that gunpowder and other debris expelled from the muzzle became embedded in the victim’s face. The defense counsel stipulated that Defendant is a person who is not to possess a firearm. Preliminary Hearing Transcript, at 2. Therefore, the court finds that sufficient evidence was presented for the offense of Possession of Firearm Prohibited.

6. Firearms Not To Be Carried Without a License

“[A]ny person who carries a firearm in any vehicle or any person who carries a firearm concealed on or about his person, except in his place of abode or fixed place of business, without a valid and lawfully issued license under this chapter commits a felony of

the third degree.” 18 Pa. C.S.A. §6106(a)(1). The definition of firearm that applies to this offense is “[a]ny pistol or revolver with a barrel length of less than 15 inches, any shotgun with a barrel length less than 18 inches or any rifle with a barrel length less than 16 inches, or any pistol, revolver, rifle or shotgun with an overall length of less than 26 inches.” 18 Pa. C.S.A. §6102.

Since defense counsel stipulated that Defendant is a person who is not to possess a firearm, see Preliminary Hearing Transcript, at 2, he cannot obtain a license to legally carry a concealed firearm on his person or in a vehicle.

Although sufficient evidence was presented to show that Defendant possessed a gun, no evidence was presented to show that he possessed it concealed on his person or inside a vehicle. Furthermore, even if the evidence was sufficient to show that he concealed a weapon on his person or in the victim’s vehicle, no evidence was presented to show that the weapon met the specific size requirements for the definition of a firearm for this offense. Accordingly, the court will grant Defendant’s petition for writ of habeas corpus with respect to the charge of Firearm Without a License.

CONCLUSION

When the evidence and all reasonable inferences that can be drawn from the evidence are viewed in the light most favorable to the Commonwealth, the Commonwealth presented *prima facie* evidence for all of the elements of the offenses, except Count 6, Firearm Without A License. The defense arguments that Defendant also was being shot at and his actions were merely his attempt to avoid being shot and not consciousness of guilt assumes facts not in evidence and views the evidence in the light most favorable to the defense, not the

Commonwealth. One characteristic particle is enough for a jury, if it chooses to do so, to conclude that GSR was on the North Face jacket. Defendant's arguments about the quantity of the particles are issues for trial. Defendant's arguments that there was no direct evidence to establish that he was the shooter cannot prevail at this stage of the proceedings because the Commonwealth can establish the offenses through wholly circumstantial evidence. Whether the jury elects to draw the inferences in favor of the Commonwealth or chooses to find that the Commonwealth proved its case beyond a reasonable doubt without direct evidence are issues for trial. At this stage of the proceedings, however, the court must view the evidence and draw inferences in the light most favorable to the Commonwealth.

For the foregoing reasons, the following order is entered.

ORDER

AND NOW, this 21st day of August 2025, the court grants the petition for writ of habeas corpus with respect to Count 6, Firearm Without A License. In all other respects, the court DENIES Defendant's petition for writ of habeas corpus.

By The Court,

Nancy L. Butts, President Judge

cc: Thomas Marino, Esquire (DA)
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