NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	:	
v.	:	
LARRY DARNELL TRAVERS, JR.,	:	
Appellant	:	No. 1392 MDA 2013

Appeal from the Judgment of Sentence entered on March 7, 2013 in the Court of Common Pleas of Lycoming County, Criminal Division, No. CP-41-CR-0001069-2011

BEFORE: OTT, STABILE and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.: **FILED JUNE 13, 2014**

Larry Darnell Travers, Jr., ("Travers") appeals from the judgment of sentence imposed following his convictions of attempted homicide, aggravated assault, robbery, robbery of a motor vehicle, possession of an instrument of crime, and tampering with physical evidence. ***See*** 18 Pa.C.S.A. §§ 901, 2702(a)(1), 3701(a)(1)(i), 3702(a), 907(a), 4910(1). We affirm.

The trial court set forth a recitation of the factual and procedural history as follows:

> On June 17, 2011, [Kevin Houseknecht], the victim[,] pulled up in front of [Travers's] residence and inquired about purchasing drugs. The victim knew [Travers] as "Juney." The victim told [Travers] he was willing to buy a half-ounce of cocaine for $500 or less. [Travers] said he would make a couple of phone calls.
>
> [Travers] returned, got into the victim's vehicle and said they needed to take a ride. [Travers] directed the victim to an area

near the intersection of Sixth and Isabella Streets [in Williamsport, Pennsylvania.] [Travers] got out of the victim's vehicle and entered a blue minivan. [Travers] came back to the victim's vehicle to make sure the victim had the money. The victim pulled an envelope out of the glove box and flashed nearly $2,500 in cash, consisting mostly of $100 bills. [Travers] then had the victim take him back to his residence to get some shoes, because he was barefoot.

The victim [and Travers then] went back to Sixth and Isabella Streets. [Travers] directed the victim to follow the blue minivan. They drove to an area near Glynn Avenue and Arnold Street. A tall black male got out of the blue minivan and got into the back seat of the victim's vehicle. The victim turned towards the back seat and asked the black male if he had what he wanted. The black male asked the victim how much money he had. The victim had the envelope of money out and told the black male he had $500. The black male said it looks like you have more than $500 in there. When the victim began to explain that he only intended to spend $500 for the drugs, he felt a prick in his neck. The victim looked over and he saw a knife in [Travers's] right hand and his left hand was on the envelope of money. [Travers] then said, "Give it up."

When the victim realized he had been stabbed, he panicked. He [did not] care about the money, he just struggled to free himself of his seatbelt and get out of the car. During the process, he got stabbed a second time. The victim eventually freed himself from the vehicle and began running across a grassy field yelling "please don't hurt me" as [Travers] chased him.

Merle Wilcox ["Wilcox"] and his son were visiting a residence on Glynn Avenue. While they were outside waiting for the boy's mother to pick him up, [] Wilcox saw the victim and [Travers] running across the field. [] Wilcox initially thought they were horsing around. Then he heard the victim yell, "Please don't hurt me." [] Wilcox thought they were about to get into a fight in his son's presence so he ran towards them to tell them to break it up.

When [] Wilcox was about 20 yards away from them, the victim fell down and [Travers] pounced on him. He grabbed the victim by the chin, pulled his head to the side and stabbed the victim twice in the neck. Then [Travers] looked up, saw [] Wilcox with

> his cell phone out, ran to the victim's vehicle, got in the vehicle and drove away. When he reached the end of a dead end street, [Travers] abandoned the victim's vehicle and fled on foot. While he was running through backyards in the neighborhood, [Travers] tore off his outer shirt and threw it in someone's garbage can.
>
> [] Wilcox called 911. Before the victim was transported to the hospital, he told the police he was stabbed by "Juney," a black male, approximately six foot two inches tall and about 230 pounds. One of the officers knew [Travers] went by the nickname "Juney" and matched that description.
>
> Trooper Jeffrey Vilello ["Trooper Vilello"], who had just completed a traffic stop on the highway near this neighborhood, heard the dispatch regarding the stabbing and responded. He saw [Travers], who matched the description of the perpetrator broadcast over the dispatch, walking on Linn Street. Trooper Vilello approached [Travers] and asked him if his name was Larry Travers. When [Travers] answered in the affirmative, Trooper Vilello immediately took him into custody. The police then took [] Wilcox to Linn Street and he identified [Travers] as the individual who stabbed the victim.
>
> [Travers] was charged with attempted homicide, two counts of aggravated assault, three counts of robbery, robbery of a motor vehicle, theft by unlawful taking, receiving stolen property, possession of an instrument of crime, two counts of simple assault, and tampering with physical evidence.
>
> A jury trial was held January 24-25, 2013. [Travers] was convicted of attempted homicide, aggravated assault (causing serious bodily injury), robbery (inflicting serious bodily injury), robbery of a motor vehicle, possession of an instrument of crime and tampering with physical evidence.
>
> On March 7, 2013, the [trial c]ourt sentenced [Travers] to an aggregate term of 32 to 64 years of incarceration in a state correctional institution, consisting of 20 to 40 years for attempted homicide, [a consecutive] 6 to 12 years for robbery, and [a consecutive] 6 to 12 years for robbery of a motor vehicle.

Trial Court Opinion, 7/15/13, at 1-4 (footnote omitted).

Travers filed a Post-Sentence Motion, which the trial court denied. Travers filed a timely Notice of Appeal.

On appeal, Travers raises the following questions for our review:

> 1. Whether the evidence presented at trial was insufficient to carry a conviction for robbery and robbery of a motor vehicle[?]
>
> 2. Whether the verdict of guilty for criminal attempt of homicide was against the weight of the evidence since testimony was presented in regards to self[-]defense on the part of [Travers?]
>
> 3. Whether the court issued a sentence that was manifestly excessive and contrary to the fundamental norms underlying the sentencing process[?]

Brief for Appellant at 4 (capitalization omitted).

In his first claim, Travers contends that the evidence was insufficient to support his robbery and robbery of a motor vehicle convictions. ***Id***. at 8. Travers argues that the evidence does not demonstrate that he acted with the requisite intent required to prove the crimes. ***Id***. at 9. With regard to the robbery of a motor vehicle conviction, Travers asserts that no one saw him drive the victim's vehicle and none of his fingerprints were recovered from the vehicle. ***Id***. at 9-10. Travers further asserts that another person in the vehicle could have driven the vehicle. ***Id***. at 10. Travers also claims that the fact that he did not run or attempt to escape the police after they

approached him demonstrates that he was not involved in the robberies. ***Id***.[1]

Our standard of review is as follows:

> [W]e consider the evidence in the light most favorable to the Commonwealth as verdict winner. In that light, we decide if the evidence and all reasonable inferences from that evidence are sufficient to establish the elements of the offense beyond a reasonable doubt. We keep in mind that it was for the trier of fact to determine the weight of the evidence and the credibility of witnesses. The jury was free to believe all, part or none of the evidence. This Court may not weigh the evidence or substitute its judgment [f]or that of the factfinder.

Commonwealth v. West, 937 A.2d 516, 523 (Pa. Super. 2007) (citation omitted).

Relevant to this case, "[a] person is guilty of robbery if, in the course of committing a theft, he . . . inflicts serious bodily injury upon another[.]" 18 Pa.C.S.A. § 3701(a)(1)(i). "[A]n act shall be deemed 'in the course of committing a theft' if it occurs in an attempt to commit theft or in flight after the attempt or commission." ***Id***. § 3701(a)(2). "Serious bodily injury" is defined as "[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." ***Id***. § 2301.

To establish a robbery of a motor vehicle,

> the Commonwealth must prove the following elements …: (1) the stealing, taking, or exercise of unlawful control over a motor vehicle; (2) from another person in the presence of that person or any other person in lawful possession of the vehicle; and (3)

[1] Travers does not raise a sufficiency challenge to his other convictions.

> the taking must be accomplished by the use of force, intimidation, or the inducement of fear in the victim.

Commonwealth v. Bonner, 27 A.3d 255, 258 (Pa. Super. 2011); ***see also*** 18 Pa.C.S.A. § 3702(a).

Here, the evidence, viewed in a light most favorable to the Commonwealth as the verdict winner, established that (1) the victim, while in his vehicle, attempted to purchase cocaine from Travers; (2) Travers brandished a knife, grabbed the victim's money, and told the victim to give up his money; (3) Travers stabbed the victim multiple times before the victim escaped from his vehicle; (4) Travers then chased the victim and stabbed him twice in the neck; and (5) upon seeing Wilcox, Travers ran to the victim's vehicle and drove away in it. ***See*** N.T., 1/24/13, at 31, 35, 39-41, 50-51, 57-61, 64-66, 67-68, 76, 78. From this evidence, the jury could reasonably infer that, in the course of committing a theft, Travers inflicted serious bodily injury upon the victim. ***See Commonwealth v. Walls***, 950 A.2d 1028, 1032 (Pa. Super. 2008) (concluding that the evidence was sufficient to support a robbery conviction under section 3701(a)(1)(i) where the appellant stabbed the victim multiple times and stole a cigarette case).[2]

[2] We note that the money that Travers stole was found in the victim's vehicle. N.T., 1/24/13, at 95, 97. While Travers failed to take the money when he subsequently fled the vehicle, proof of an *attempted* theft is sufficient to meet the theft element of the offense. ***See*** 18 Pa.C.S.A. § 3701(a)(2).

Moreover, the evidence was sufficient to support Travers's robbery of a motor vehicle conviction. Indeed, Travers stole the victim's vehicle while in the victim's presence, and after he had stabbed the victim multiple times. ***See Bonner***, 27 A.3d at 258 (concluding that the evidence was sufficient to support a robbery of a motor vehicle conviction where appellant deprived the victim of her vehicle in her presence after holding a knife to her throat and threatening to kill her). Based upon the foregoing, Travers's sufficiency claims fail.

In his second claim, Travers contends that the guilty verdict for attempted homicide was against the weight of the evidence. Brief for Appellant at 10. Travers refers to his own testimony that he acted in self-defense and did not act with the requisite intent to commit the crime. ***Id***. at 10, 11-12.

Our standard of review with regard to a weight of the evidence claim is as follows:

> Appellate review of a weight claim is a review of the exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence. Because the trial judge has had the opportunity to hear and see the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court's determination that the verdict is against the weight of the evidence.

Commonwealth v. Antidormi, 84 A.3d 736, 758 (Pa. Super. 2014) (citations omitted).

The trial court determined that Travers's self-defense claim was not believable and that the verdict did not shock its conscience. ***See*** Trial Court Opinion, 7/15/13, at 4-8. We agree with the sound reasoning of the trial court and adopt its reasoning for the purpose of this appeal. ***See id***. Thus, we conclude that the trial court did not abuse its discretion in denying Travers's weight of the evidence challenge.[3]

In his third claim, Travers challenges the discretionary aspects of his sentence. "Challenges to the discretionary aspects of sentencing do not entitle an appellant to review as of right." ***Commonwealth v. Moury***, 992 A.2d 162, 170 (Pa. Super. 2010). Prior to reaching the merits of a discretionary sentencing issue,

> [this Court conducts] a four[-]part analysis to determine: (1) whether appellant has filed a timely notice of appeal, ***see*** Pa.R.A.P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, ***see*** Pa.R.Crim.P. [720]; (3) whether appellant's brief has a fatal defect, [***see***] Pa.R.A.P. 2119(f); and (4) whether there is a substantial question that the sentence appealed from

[3] Travers also asserts that the verdict is against the weight of the evidence because he blacked out during the incident, and did not act with an intent to commit the crime. Brief for Appellant at 11-12. However, Travers did not properly preserve this specific assertion in a post-sentence motion, by a written motion before sentencing, or orally prior to sentencing. ***See*** Pa.R.Crim.P. 607(A). However, even if Travers properly preserved this claim, we would conclude that it is without merit. Here, Travers cites to a single line in the transcript where he told the police that he blacks out when he is threatened. N.T., 1/24/13, at 125. It is well-settled that the finder of fact is free to believe all, part, or none of the evidence presented and to determine the credibility of the witnesses. ***Commonwealth v. Devine***, 26 A.3d 1139, 1146 (Pa. Super. 2011). Based upon the above evidence, the jury's verdict that Travers acted with the requisite intent to commit attempted homicide does not shock the conscience.

> is not appropriate under the Sentencing Code, [***see***] 42 Pa.C.S.A. § 9781(b).

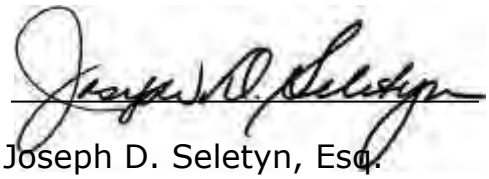
Moury, 992 A.2d at 170 (citation omitted).

Here, Travers filed a timely Notice of Appeal, raised discretionary aspects of sentencing claims in his Post-Sentence Motion, and included a Rule 2119(f) Concise Statement in his appellate brief. Travers baldly contends that he has raised a substantial question because the trial court imposed "a manifestly excessive sentence where [he] had a prior record score of one (1)." Brief for Appellant at 7; ***see also Commonwealth v. Provenzano***, 50 A.3d 148, 154 (Pa. Super. 2012) (stating that "we cannot look beyond the statement of questions presented and the prefatory 2119(f) statement to determine whether a substantial question exists."). Travers's contention does not raise a substantial question. ***See Commonwealth v. Wagner***, 702 A.2d 1084, 1085 (Pa. Super. 1996) (concluding that appellant's claim that the sentencing court did not consider or did not adequately consider certain factors, including a prior record score of zero, does not raise a substantial question); ***see also Commonwealth v. Griffin***, 65 A.3d 932, 936 (Pa. Super. 2013) (stating that the trial court's failure to consider particular circumstances or sentencing factors in an appellant's case go to the weight accorded to various sentencing factors and does not raise a substantial question); ***Commonwealth v. Harvard***, 64 A.3d 690, 701 (Pa. Super. 2013) (stating that a bald assertion that a sentence is excessive does not by itself raise a substantial question).

Even if Travers had presented a substantial question, thus permitting our review, we would conclude that the trial court did not abuse its discretion. ***See Commonwealth v. Downing***, 990 A.2d 788, 792–93 (Pa. Super. 2010) (stating that "[s]entencing is vested in the discretion of the trial court and will not be disturbed absent a manifest abuse of that discretion.") (citation omitted). Here, in imposing the sentence, the trial court was fully informed by a presentence investigation report; Travers's prior record score; the sentencing guidelines; the victim impact statement; Travers's background; the gravity of the crime; the fact that this incident took place the same day that Travers was sentenced to probation; the need for the protection of society; statements by the attorneys for the Commonwealth and Travers; Travers's statement; and Travers's behavior while in county jail, including numerous write-ups and the fact that he served 150 days in disciplinary lockup. N.T., 3/7/13, at 3-15; ***see also Commonwealth v. Baker***, 72 A.3d 652, 663 (Pa. Super. 2013) (stating that "[w]hen a sentencing court has reviewed a presentence investigation report, we presume that the court properly considered and weighed all relevant factors in fashioning the defendant's sentence."). Thus, even if we reached the merits of the issue, we would conclude that the sentence imposed was neither excessive nor so manifestly unreasonable as to constitute an abuse of discretion.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 6/13/2014

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
:
vs. : **No. CR-1069-2011**
:
LARRY D TRAVERS, JR. :
Defendant :

OPINION AND ORDER

This matter came before the Court on Defendant's post sentence motion. The relevant facts follow.

On June 17, 2011, the victim pulled up in front of Defendant's residence and inquired about purchasing drugs. The victim knew Defendant as "Juney." The victim told Defendant he was willing to buy a half-ounce of cocaine for $500 or less. Defendant said he would make a couple of phone calls.

Defendant returned, got into the victim's vehicle and said they needed to take a ride. Defendant directed the victim to an area near the intersection of Sixth and Isabella streets. Defendant got out of the victim's vehicle and entered a blue minivan. Defendant came back to the victim's vehicle to make sure the victim had the money. The victim pulled an envelope out of the glove box and flashed nearly $2500 in cash, consisting mostly of $100 bills. Defendant then had the victim take him back to his residence to get some shoes, because he was barefoot.

The victim drove Defendant home to get some shoes and then they went back to Sixth and Isabella streets. Defendant directed the victim to follow the blue minivan. They drove to an area near Glynn Avenue and Arnold Street. A tall black male got out of the blue

minivan and got into the back seat of the victim's vehicle. The victim turned towards the back seat and asked the black male if he had what he wanted. The black male asked the victim how much money he had. The victim had the envelope of money out and told the black male he had $500. The black male said it looks like you have more than $500 in there. When the victim began to explain that he only intended to spend $500 for the drugs, he felt a prick in his neck. The victim looked over and he saw a knife in Defendant's right hand and his left hand was on the envelope of money. Defendant then said, "Give it up."

When the victim realized he had been stabbed, he panicked. He didn't care about the money, he just struggled to free himself of his seatbelt and get out of the car. During the process, he got stabbed a second time. The victim eventually freed himself from the vehicle and began running across a grassy field yelling "please don't hurt me" as Defendant chased him.

Merle Wilcox and his son were visiting a residence on Glynn Avenue. While they were outside waiting for the boy's mother to pick him up, Mr. Wilcox saw the victim and Defendant running across the field. Mr. Wilcox initially thought they were horsing around. Then he heard the victim yell, "Please don't hurt me." Mr. Wilcox thought they were about to get into a fight in his son's presence so he ran towards them to tell them to break it up.

When Mr. Wilcox was about 20 yards away from them, the victim fell down and Defendant pounced on him. He grabbed the victim by the chin, pulled his head to the side and stabbed the victim twice in the neck. Then Defendant looked up, saw Mr. Wilcox

with his cell phone out, ran to the victim's vehicle, got in the vehicle and drove away. When he reached the end of a dead end street, Defendant abandoned the victim's vehicle and fled on foot. While he was running through back yards in the neighborhood, Defendant tore off his outer shirt and threw it in someone's garbage can.

Mr. Wilcox called 911. Before the victim was transported to the hospital, he told the police he was stabbed by "Juney," a black male, approximately six foot two inches tall and about 230 pounds. One of the officers knew Defendant Larry Travers went by the nickname "Juney" and matched that description.

Trooper Jeffrey Vilello, who had just completed a traffic stop on the highway near this neighborhood, heard the dispatch regarding the stabbing and responded. He saw Defendant, who matched the description of the perpetrator broadcast over the dispatch, walking on Linn Street. Trooper Vilello approached Defendant and asked him if his name was Larry Travers. When Defendant answered in the affirmative, Trooper Vilello immediately took him into custody. The police then took Mr. Wilcox to Linn Street and he identified Defendant as the individual who stabbed the victim.

Defendant was charged with attempted homicide, two counts of aggravated assault, three counts of robbery, robbery of a motor vehicle, theft by unlawful taking, receiving stolen property, possession of an instrument of crime, two counts of simple assault, and tampering with physical evidence.

A jury trial was held January 24-25, 2013. Defendant was convicted of attempted homicide, aggravated assault (causing serious bodily injury), robbery (inflicting

serious bodily injury), robbery of a motor vehicle, possession of an instrument of crime and tampering with physical evidence.[1]

On March 7, 2013, the Court sentenced Defendant to an aggregate term of 32 to 64 years of incarceration in a state correctional institution, consisting of 20 to 40 years for attempted homicide, 6 to 12 years for robbery, and 6 to 12 years for robbery of a motor vehicle.

On March 15, 2012, Defendant filed his post sentence motion in which he asserts that: (1) the guilty verdict was against the weight of the evidence because his claim of self-defense was not given enough weight, the intent to deprive the victim of the vehicle and/or the items in the vehicle was not established for the crimes of robbery and robbery of a motor vehicle, and the victim was not credible given his history of drug use and the fact that he was likely under the influence at the time of the incident; (2) the court erred in admitting inflammatory photographs that were unduly prejudicial to Defendant; (3) the sentence imposed was excessive in light of Defendant's history, prior record score and the circumstances surrounding the incident.

Defendant first asserts that the jury's guilty verdict was against the weight of the evidence. The Court cannot agree.

An allegation that the verdict is against the weight of the evidence is addressed to the sound discretion of the trial court. Commonwealth v. Sullivan, 820 A.2d 795, 805-806 (Pa. Super. 2003). A challenge to the weight of the evidence concedes that there is sufficient

[1] The Commonwealth elected not to submit the other charges to the jury because they were lesser included

evidence to support the verdict. Commonwealth v. Widmer, 560 Pa. 308, 774 A.2d 745, 751(2000). Therefore, the court is not obligated to view the evidence in the light most favorable to the verdict winner. Id. Nevertheless, a new trial is awarded only when the "verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail." Sullivan, 820 A.2d at 806 (citation omitted). The evidence must be so tenuous, vague and uncertain that the verdict shocks the conscience of the court. Id.

A defendant is not entitled to relief on a weight claim merely because there is a conflict in testimony. Commonwealth v. Sanchez, 614 Pa. 1, 36 A.2d 24, 39 (2011). "Conflicts in the evidence and contradictions in the testimony of any witnesses are for the factfinder to resolve." Commonwealth v. Lofton, 57 A.3d 1270, 1273 (Pa. Super. 2012), citing Commonwealth v. Tharp, 574 Pa. 202, 830 A.2d 519, 528 (2003). Indeed, the "weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses." Commonwealth v. Small, 559 Pa. 423, 435, 741 A.2d 666, 672 (1999), citing Commonwealth v. Johnson, 542 Pa. 384, 394, 668 A.2d 97, 101 (1995), cert. denied, 519 U.S. 827, 117 S. Ct. 90 (1996). Simply put, the role of the court in a weight claim is to determine whether "notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or give them equal weight with all the other facts is to deny justice." Lofton, 57 A.3d at 1273, citing Commonwealth v. Widmer, 560 Pa. 308, 744 A.2d 745, 752 (2000).

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offenses.

The jury's verdict did not shock the Court's conscience. Defendant did not testify at trial. Instead, he relied on the statements he made to police during interviews that were conducted on June 17, 2011 and June 20, 2011, which were played for the jury during the Commonwealth's case-in-chief. There were numerous inconsistencies in Defendant's statements.

Defendant initially claimed that he did not know the victim and he was at a carnival when the victim was stabbed. Knowing that he had discarded the green shirt he was wearing during the incident (which he later admitted doing), Defendant asked the police what color shirt the victim said he had on and how did the police know he was present. After the police told him that the victim knew him and a witness had identified him, Defendant admitted that he knew the victim as Kev, but he claimed that the victim pulled the knife on him.

More specifically, Defendant indicated that he was really broke and needed money to pay the bills. The victim wanted a half-ounce of cocaine for $500 and showed Defendant a whole bunch of $100 bills in an envelope. When the victim took Defendant back to the house to get his shoes, Defendant also got baking soda to pass off as the drugs. Defendant did not want to conduct the transaction around the kids, so they got into the vehicle and the victim made a bunch of kooky turns. The victim asked to see the drugs, and Defendant threw them at him. The victim gave him the money but then said it wasn't the right weight of drugs. He accused Defendant of gypping him and then pulled out a knife. Defendant punched the victim and tried to get out of the vehicle but the victim grabbed him.

Defendant then threw the money at the victim and tried to get away. The victim swung the knife at Defendant but missed and Defendant got the knife. Then Defendant blacked out and when he came back to awareness he was in the grassy field and there was a whole bunch of blood on the grass. He hopped back into the car and took off. When he reached the dead end, he ran on foot. He tore off his shirt and threw it in someone's garbage can. Defendant claimed he didn't know where the bag of baking soda was; he gave it to the victim so it should still have been in the car or in the area. He also asked whether someone could get in trouble for trying to sell fake drugs and the officers told him there was a provision for counterfeit substances but they were interested in the stabbing, not the drugs. Defendant also asked whether he could press charges against the victim for assaulting him first. The officers had Defendant remove his shirt and they looked for any marks on Defendant's upper body but did not find any.

During the second interview, the police told Defendant that they did not find any bag of baking soda and they spoke to his wife and she said they didn't have any baking soda or baking powder and that Defendant didn't even go into the kitchen when he came back to get his shoes. Defendant first told the officers to check the area closer, there should be something there. He also claimed that his wife didn't know about the baking soda. He got the baking soda from another person, but he wouldn't tell the police who. Later in the second interview, Defendant stated "I'm just putting lies on top of lies and that's not cool. I'm just trying to find a way out of doing all this time. I have to lie to find another way out of it." Defendant said there was no baking soda, but a few minutes later he claimed he threw the bag

of baking soda out of the vehicle onto a blue vehicle. Initially, Defendant could not describe that vehicle, but later in the interview he claimed it was a newer model, dark blue minivan with tinted windows and a for sale sign. He made statements that he threw the fake drugs because he didn't want to get in trouble for them, but the police confronted him that he didn't even know that he could get in trouble for fake drugs until he asked the police about it in the first interview. Defendant then said he just didn't want the police to be aware of what he knew. Defendant asked the officers, "If I tell you people who sell big weight, can I get out of trouble?" He also made statements such as "I'm trying to beat this case, because this case isn't me" and "I'm trying to get out of it the best way I can."

Quite simply, Defendant's claim of self-defense was utterly unbelievable and the Court was not shocked in the least that the jury rejected it. Even if one were to accept Defendant's contention that the victim was the initial aggressor and came at him with a knife, once the victim no longer had possession of the knife and fled from his own vehicle any claim of justification ceased. Defendant was no longer in danger of deadly force being used against him. At that point there was absolutely no reason for Defendant to chase the victim through the field and repeatedly stab him in the neck.

Defendant also alleges that the verdicts for robbery and robbery of a motor vehicle were against the weight of the evidence because the intent to deprive the victim of the items and/or the vehicle was not established. Again, the Court cannot agree.

The Court assumes that Defendant is arguing these verdicts were against the weight of the evidence because the vehicle was recovered and the envelope of cash was still

inside of it. First, the court questions whether an intent to permanently deprive is required for robbery of a motor vehicle. The statute does not require a theft. Instead, the crime is committed when a person takes a motor vehicle from another person in the presence of that person or any other person in lawful possession of the vehicle. 18 Pa.C.S.A. §3702(a); see also Commonwealth v. George, 705 A.2d 916 (Pa. Super. 1998)(the Commonwealth must prove: (1) the stealing, taking or exercise of unlawful control over a motor vehicle; (2) from another person in the presence of that person or any other person in lawful possession of the vehicle; and (3) the taking must be accomplished by the use of force, intimidation or the inducement of fear in the victim).

Second, a defendant need not successfully complete a theft in order to be guilty of robbery. As charged in this case, a robbery occurs when a person inflicts serious bodily injury on another in the course of committing a theft. 18 Pa. C.S.A. §3701(a)(1)(i). The phrase "in the course of committing a theft" includes acts that occur in an attempt to commit a theft or in flight after the attempt or commission. 18 Pa.C.S.A. §3701(a)(2). Clearly, when Defendant initially stabbed the victim in the neck, grabbed the envelope of money and said "give it up," he intended to steal the money from the victim and, at the very least, attempted to commit a theft. Since the phrase "in the course of committing a theft" includes attempts, the fact that Defendant ultimately abandoned the property is of no moment.

Finally, even if a completed theft were required, the crimes were completed when Defendant left the scene in the victim's vehicle. By Defendant's own admissions, he

was broke and needed money to pay his bills. When Defendant took unlawful possession or control over the items, he intended to permanently deprive the lawful owner of them. Defendant only abandoned his ill-gotten gains, because he panicked when he wound up at the end of a dead end street and was afraid he would be caught red-handed. From that point onward, Defendant was trying to conceive of ways he could avoid apprehension. This is corroborated by the fact that he tore off his green, outer shirt and discarded it in a trash can as he ran through someone's yard and he asked the police on more than one occasion early in the first interview what color shirt the witnesses said the perpetrator was wearing.

Defendant also contends the verdict is against the weight of the evidence because the victim had a drug history and was likely under the influence at the time of the incident. The Court cannot agree.

The jury was free to believe all, part or none of the victim's testimony. While the victim admitted that he had used bath salts earlier in the day, he testified that he was not under their influence at the time of the incident. Moreover, significant portions of the victim's testimony was corroborated by the testimony of Mr. Wilcox, who was an unbiased third party, and other evidence such as the amount of money recovered, the blood found on the driver's side of the vehicle, and the absence of any injuries or marks on Defendant.

Defendant next alleges that the court erred in admitting photographs of Defendant's injuries. The Court cannot agree.

Although blood could be seen on the victim's skin near or around his injuries in a couple of the pictures, the photographs were not gruesome or inflammatory. One of the

issues in this case was whether the victim suffered serious bodily injury. The photographs were relevant and admissible to show the jury the nature and extent of the victim's injuries.

The photographs also were not unduly prejudicial. Evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice. Pa.R.E. 403. Unfair prejudice, however, does not mean harmful to a defendant's case or position. "'Unfair prejudice' means a tendency to suggest decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially." Pa.R.E. 403, comment. These photographs did not inflame the passions of the jury; the pictures helped the jury understand the victim's injuries. It is much easier to comprehend the size and scope of an injury by viewing a picture than trying to visualize it based solely on a description of its location and measurements.

Finally, Defendant claims that the sentence imposed was excessive in light of Defendant's history, prior record score and the circumstances surrounding the incident. Again, the Court cannot agree.

Although Defendant only had a prior record score of a one, it consisted of two simple assaults, one of which originally was charged as an aggravated assault and involved breaking his wife's jaw. He committed the current offenses later on the same day that he was placed on probation for assaulting his wife.

The circumstances surrounding the incident were horrendous. It wasn't bad enough that this incident arose out of a drug transaction or that once Defendant saw the victim's envelope of cash he decided to rob him. Instead of simply taking the money and

running when the victim fled from the vehicle, Defendant chased the victim down like an animal. When the victim fell down, Defendant grabbed his head, pulled it to the side and stabbed the victim at least twice in the neck. Defendant was just lucky that he didn't hit the victim's carotid artery or jugular vein. The victim did, however, suffer an injury to his trachea that caused swelling and breathing difficulties, and resulted in him being transferred to Geisinger Medical Center by a Life Flight helicopter. N.T., January 25, 2013, at pp. 10-14. Clearly, the impact on the victim was significant.

The Court also felt the need to protect the community from Defendant's assaultive behavior. Defendant couldn't even control his behavior while he was in the county jail. He had numerous write ups and served a total of 150 days in disciplinary lockup.

Defendant did not take any responsibility for his actions in this case. He even had the audacity to ask the police if he could press charges against the victim.

Overall, this was one of the worst cases that did not result in a death that the court has ever seen. The robbery and robbery of a motor vehicle offenses did not merge because they involved different elements and different items of the victim's property. Once the victim fled his vehicle, Defendant had control of the victim's cash and there was absolutely no reason for the other offenses to occur. Such pointless violence in our communities needs to be stopped. The only way to stop it with this Defendant was to impose a lengthy prison sentence. See also N.T., March 7, 2013, at pp. 15-20.

ORDER

AND NOW, this 15 day of July 2013, the Court DENIES Defendant's post sentence motion.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)
Kathryn Bellfy, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)