

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
RAYNERDO J. JONES	:	
	:	
Appellant	:	No. 1732 EDA 2018

Appeal from the Judgment of Sentence April 25, 2018  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-0003864-2017

BEFORE: GANTMAN, P.J.E., KUNSELMAN, J., and FORD ELLIOTT, P.J.E.

MEMORANDUM BY GANTMAN, P.J.E.: **FILED FEBRUARY 12, 2019**

Appellant, Raynerdo J. Jones, appeals *nunc pro tunc* from the judgment of sentence entered in the Philadelphia County Court of Common Pleas, following his jury trial convictions for first-degree murder, firearms not to be carried without a license, carrying firearms on public streets or public property in Philadelphia, and possessing instruments of crime.<sup>1</sup> We affirm.

In its opinion, the trial court accurately set forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.

Appellant raises two issues for our review:

WAS THE JURY’S VERDICT AGAINST THE WEIGHT OF THE EVIDENCE IN LIGHT OF THE OBVIOUS CONFLICTS IN TESTIMONY OF WITNESSES BETTIE CUFFEE AND GLORIA MCCLOUD?

---

<sup>1</sup> 18 Pa.C.S.A. §§ 2502(a); 6106; 6108; 907, respectively.

DID THE [TRIAL] COURT ERR IN FAILING TO SUPPRESS THE  
IN-COURT IDENTIFICATION OF COMMONWEALTH WITNESS  
ISRAE [GILLIARD]?

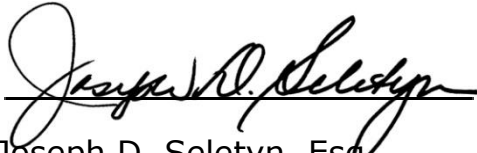
(Appellant's Brief at 3).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Barbara A. McDermott, we conclude Appellant's issues merit no relief. The trial court opinion comprehensively discusses and properly disposes of the questions presented. (**See** Trial Court Opinion, filed August 8, 2018, at 6-10) (finding: **(1)** regardless of any discrepancy in testimony, video recording showed Appellant wielding firearm at scene of shooting and 911 calls identified Appellant as shooter based on his distinctive facial tattoos; witness McCloud observed Appellant on block and heard him argue with witness Cuffee moments before shooting; witness McCloud did not testify to seeing any other potential suspects on her block in moments before shooting; both witnesses, Cuffee and McCloud, testified Decedent was on porch few minutes before he was shot; Appellant did not raise self-defense claim at trial, so purported inconsistency in testimony regarding crossbow was immaterial; jury determined credibility and returned with guilty verdict; verdict was not against weight of evidence; **(2)** witness Gilliard had independent basis for her in-court identification of Appellant; she engaged in conversation with Appellant to demand argument be moved elsewhere; she observed Appellant at one point directly in front of her home; even though single photograph procedure was

ruled unduly suggestive, witness Gilliard's in-court identification of Appellant was sound). Accordingly, we affirm on the basis of the trial court's opinion.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 2/12/19

**FILED**

**IN THE COURT OF COMMON PLEAS  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CRIMINAL TRIAL DIVISION**

2018 AUG -8 PM 2: 52

COMMONWEALTH OF PENNSYLVANIA : CP-51-CR-0003864-2017

OFFICE OF JUDICIAL RECORDS  
CRIMINAL DIVISION  
FIRST JUDICIAL DISTRICT  
OF PENNSYLVANIA

v.

CP-51-CR-0003864-2017 Comm. v. Jones, Raynerdo J.  
Opinion

RAYNERDO JONES



8147371571

**OPINION**

**McDermott, J.**

**August 8, 2018**

**Procedural History**

On April 12, 2017, the Defendant, Raynerdo Jones, was arrested and charged with Murder and related offenses. On April 23, 2018, the Defendant appeared before this Court and elected to be tried by a jury. On April 23 and April 24, 2018, the Defendant litigated a suppression motion regarding witness identification.<sup>1</sup> The motion was granted in part and denied in part. On April 25, 2018, the jury convicted the Defendant of First-Degree Murder, Carrying a Firearm Without a License (“VUFA 6106”), Carrying a Firearm on a Public Street in Philadelphia (“VUFA 6108”), and Possessing a Criminal Instrument (“PIC”).<sup>2</sup> On this same date, this Court imposed the mandatory sentence of life imprisonment without parole for First-Degree Murder, and concurrent three to six years of imprisonment for VUFA 6106, and one to two years of imprisonment for VUFA 6108.<sup>3</sup>

On April 26, 2018, the Defendant filed a post-sentence motion challenging the weight of the evidence, which this Court denied on May 2, 2018. On June 7, 2018, after this Court reinstated

<sup>1</sup> The jury was selected before the suppression hearing took place.

<sup>2</sup> The remaining charges were *nolle prossed*.

<sup>3</sup> There was no further penalty imposed for PIC.

the Defendant's appellate rights *nun pro tunc*, the Defendant filed a timely Notice of Appeal.<sup>4</sup> On June 14, 2018, the Defendant filed a timely 1925(b) Statement.

### Facts

On November 11, 2016 the decedent, Hezekiah "Jeremiah" McCloud, was shot multiple times at 3816 North 18th Street in north Philadelphia, next to the home of Bettie "Tanya" Cuffee. Responding officers encountered Gloria McCloud and Isrea Gilliard at the scene of the shooting, each of whom described the shooter as a light-skinned African-American male with facial tattoos. Officers escorted McCloud and Gilliard to the Police Administration Building ("PAB") for questioning. N.T.S.H. 4/23/2018 at 133, 227.

At the PAB, Detective Freddie Mole showed each witness a single suggestive photo of the Defendant, Raynerdo Jones, with the notation "arrestee database." Each witness separately stated that Cuffee argued with the Defendant immediately before the shooting and identified him by the photograph. N.T.S.H. 4/23/2018 at 133–134.

During the suppression hearing, Mole confirmed the single-photo procedure. Gilliard testified that she recognized the Defendant because she had seen him coming and going numerous times from Cuffee's house over the previous six months. McCloud testified that she did not personally know the Defendant and had not seen him before the date of the incident. N.T.S.H. 4/23/2018 at 120–126, 130, 133–134; N.T.S.H. 4/24/2017 at 76.

This Court suppressed the out-of-court identifications of both McCloud and Gilliard. Due to the suggestive photo procedure, McCloud was not permitted to make an in-court identification of the Defendant. Because Gilliard had an independent basis of identification from her prior interactions with him, she was permitted to identify the Defendant in-court. N.T. S.H. 4/23/2018 at

---

<sup>4</sup> Defense counsel miscalculated the filing date and requested reinstatement.

141, 145; N.T.S.H. 4/24/2018 at 82.

At trial, Cuffee testified that at 8:15 a.m. on November 11, 2016, she awoke to find her daughter Marktina Cuffee's paramour, the Defendant, in her row house on the 3800 block of North 18th Street. A verbal argument ensued, escalating when Cuffee punched and chased the Defendant out of her house. N.T. 4/23/2018 at 173–176.

After the fight spilled onto the street, Gilliard came out of her neighboring home to tell the pair to move the argument elsewhere. Gilliard heard the Defendant tell Cuffee "he['d] be back" before leaving the area. Gilliard recognized the Defendant, as she previously observed him on at least six occasions over the previous six months. N.T 4/24/2018 at 84, 86.

After the argument, Cuffee travelled to the Roman Grocery at 1735 West Butler Street, approximately half a block from her home, to purchase cigarettes. At 10:06 a.m., video surveillance from the store captured Cuffee leave the store and walk in the direction of her home.

Shortly after her arrival, the Defendant returned to the 3800 block on North 18th Street on a bicycle. McCloud, from her home next-door to Cuffee's, overheard the Defendant shouting and went outside to investigate. McCloud observed the argument for ten minutes before returning inside. The Defendant left the block shortly thereafter.

After the Defendant left the block, the decedent came onto his porch and shared a cigarette with Cuffee. As they smoked, the Defendant returned to the area of Roman Grocery with an unidentified person. At 10:26 a.m., video surveillance captured the Defendant and the conspirator walk past the Roman Grocery. The Defendant continued to Cuffee's home while the unidentified male remained outside the store. N.T. 4/23/2018 at 129, 179; N.T 4/24/2018 at 136–144; Commonwealth Exhibit C-50.

The Defendant returned to Cuffee's home and began insulting her again. In response, the

decedent told the Defendant not to speak to a woman in such a disrespectful tone. After arguing with the decedent, the Defendant returned to his accomplice at the Roman Grocery store and retrieved a pistol from him. This exchange was captured by video surveillance. Armed, the Defendant returned to Cuffee's porch, advanced towards the decedent and shot him five times. As the decedent lay bleeding on the porch, the Defendant stood over his fallen body and shot again. N.T. 4/23/2018 at 180–185, 231; N.T. 4/24/2018 at 139–144.

Thirty two seconds after the shooting, the Defendant fled south towards the unidentified male at the Roman Grocery. Recovered video surveillance captured both men as they fled south on North 18th Street, turning left on West Butler Street before fleeing right onto North Bouvier Street. Commonwealth Exhibit C-50.

Philadelphia police received several calls as the Defendant and the unidentified male fled the scene. In response to the dispatcher's radio call, Officer William Argyriou arrived on the scene at 10:28 a.m. Unwilling to wait for an ambulance, Officer Argyriou and his partner Officer Jeremy Elliot transported the decedent to the hospital, where he was pronounced dead at 10:46 a.m. N.T. 4/23/2018 at 223–225.

Dr. Khalil Wardak, an Associate Medical Examiner with the City of Philadelphia, conducted the decedent's autopsy and testified at trial. Three of the six shots damaged vital organs, including the heart and lungs. None of the wounds demonstrated soot or stippling, indicating that the shots were fired from further than three feet from the decedent's body. The cause of death was multiple gunshot wounds and the manner of death was homicide. Dr. Wardak submitted two projectiles from the decedent's body to ballistics for testing. N.T. 4/24/2018 at 33–44, 47.

As the decedent was transferred to the hospital, Officers Myisha Allen and Joseph Doyle

secured the scene. Cuffee approached the officers, explaining that the Defendant had shot the decedent because he was standing up for her. Officers escorted Cuffee, McCloud, and Gilliard to the PAB, where they provided statements. N.T. 4/23/2018 at 229–232.

Officer Yacilla of the Crime Scene Unit recovered five fired cartridge cases (“FCCs”) and three projectiles from the McCloud porch and then submitted them for testing. Firearms expert Officer Jose Cruz examined all of the ballistics evidence collected from the porch and the decedent’s body.<sup>5</sup> Officer Cruz concluded that all of the fired bullets and FCCs were all 9-millimeter caliber and fired from the same firearm. N.T. 4/24/2018 at 61–64, 107–108.

Detective Thornsten Lucke recovered the video evidence from Roman Grocery at 1735 West Butler Street on the corner of North 18th and Butler Streets as well as Annabel Food Market at 1707 West Butler on the corner of West Butler and Pulaski Streets. A review of the video confirmed the timeframe described by Cuffee and McCloud. N.T. 4/24/2018 at 131–148.

On November 14, 2016 Detective Timothy Bass, a homicide detective in the Fugitive Unit, attempted to execute an arrest warrant issued for the Defendant at several locations. It was not until April 12, 2017 that Detective Bass located the Defendant at 1300 Erie Avenue and Old York Road, about twelve blocks from the crime scene. At that time, the Defendant was wearing make-up on a portion of his face, hiding distinctive tattoos. N.T. 4/24/2018 at 151–152; Commonwealth Exhibits C-54, C-55.

At trial, defense counsel presented Marktina Cuffee, who testified that her mother called family members to “come get his ass” after the altercation first began in the house. During her testimony, the defense played a 911 call made by Virginia Cuffee, Marktina’s sister, which described the shooter with a distinctive tattoo reading “RIP” over his forehead, the same tattoo as

---

<sup>5</sup> Although Dr. Wardak identified six gunshot wounds, only five projectiles and five FCCs were recovered. The graze wound on the decedent’s chin was not associated with any of the recovered ballistic evidence.



the Defendant.<sup>6</sup> Tanya Cuffee asserted that she had no contact with any of her fourteen brothers. No witness claimed to have seen any other men at the time of the shooting, nor were any present when the police arrived moments later. N.T. 4/23/2018 at 202; N.T. 4/24/2017 at 164, 167–168, Commonwealth Exhibit C-51.

### **Discussion**

The Defendant raises two issues for review, alleging that this Court erred in failing to suppress the in-court identification by Gilliard, and that the jury's verdict was against the weight of the evidence in light of the conflicting testimony between McCloud and Cuffee.

The Defendant contends that this court erred by denying his motion to preclude Gilliard's in-court identification. During the suppression hearing on Gilliard's and McCloud's in- and out-of-court identifications, Detective Mole testified that he showed each witness a single photo of the Defendant, after which each witness identified the Defendant as being present shortly before the shooting. The Defendant argued that this procedure was improper and unduly suggestive. This Court agreed and suppressed the out-of-court identifications of both McCloud and Gilliard. This Court further suppressed McCloud's in-court identification of the Defendant because she had not seen the Defendant prior to the shooting and, therefore, had no independent basis to identify him.

This Court did permit Gilliard's in-court identification of the Defendant. After hearing Gilliard's testimony that she observed the Defendant multiple times in the six months prior to the shooting, this Court determined that she had an independent basis to identify him. The Defendant asserts that this Court's decision was made in error, on the grounds that Gilliard did not have an independent basis to support her identification. The Defendant does not articulate any additional

---

<sup>6</sup> The Commonwealth presented two 911 calls as evidence before resting their case, the call by Virginia Cuffee and a call by an anonymous individual made seconds after the shooting. Both 911 calls described the shooter's distinctive facial tattoos, which matched those on the Defendant's face. N.T. 4/24/2018 at 19–20, Commonwealth Exhibit C-51.

reasoning to support his assertion.

An out-of-court identification is suggestive if the police use an identification procedure that singles-out a suspect. *Commonwealth v. Stiles*, 143 A.3d 968, 979 (Pa. Super. 2016). In this case, Detective Mole provided one and only one photo to Gilliard, making no effort to create an array. After extensive testimony about the procedure employed as well as standard police procedure, this Court determined that Detective Mole employed a suggestive procedure, making Gilliard's out-of-court identification inadmissible. N.T. 4/23/2018 at 135–137.

If a pre-trial identification is inadmissible, the subsequent in-court identification is admissible if the witness has an independent basis for the identification. *Commonwealth v. Johnson*, 139 A.3d 1257, 1278 (Pa. 2016). To determine whether there is a sufficiently independent basis for the identification, a courts must consider: “(1) the opportunity of the witness to view the suspect at the time of the offense; (2) the witness focus or attention upon the suspect; (3) the accuracy of the witness description of the suspect; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation.” *Commonwealth v. Johnson*, 139 A.3d 1257, 1279 (Pa. 2016). When a witness knows a defendant from instances prior to the commission of the crime in question, then there is a sufficient independent basis for identification that is not tainted by improper police identification procedure. *Id.* (quoting *Commonwealth v. Small*, 559 Pa. 423, 741 A.2d 666, 679 (1999)).

This claim is without merit as Gilliard had an independent basis for her in-court identification. Gilliard knew the Defendant from the neighborhood, and had witnessed the Defendant come and go from the Cuffee house multiple times over the six to eight months leading up to the shooting. Not only did Gilliard clearly observe the Defendant during his argument with Cuffee, she also engaged in a conversation with him to demand the argument be moved elsewhere.

She testified that she was able to see the Defendant not only from a distance of four rowhomes, but at one point directly in front of her home. This Court concluded that Detective Mole's single photograph procedure was suggestive but Gilliard had an independent basis for identifying the Defendant. N.T. 4/23/2018 at 141; N.T. 4/24/2018 at 79, 81–83. This court properly denied the Defendant's motion to suppress Gilliard's in-court identification.

The Defendant next alleges that the verdict was against the weight of the evidence on the grounds that the testimony presented at trial from Cuffee and McCloud was conflicting. The Defendant does not identify any specific inconsistency.

Upon this Court's independent review of the evidence, the only inconsistency between the testimony of Cuffee and McCloud is the location of a crossbow and whether it was displayed to the Defendant. At trial, McCloud testified that Cuffee held a crossbow and brandished it at the Defendant during their argument, while Cuffee testified that the crossbow remained hidden during the initial argument and was brought inside prior to the shooting. N.T. 4/23/2018 at 177, 182, 214–216.

The defense theory of the case did not hinge on the inconsistency of McCloud and Cuffee's testimony regarding the location and use of the crossbow. Instead, the defense asserted that Cuffee's brothers intervened in the argument and accidentally shot the decedent. The defense theory that was not supported by material fact, as no witness, not even Marktina Cuffee, ever observed Tanya Cuffee's brothers at the scene of the shooting. N.T. 4/24/2018 at 187–190.

The test for weight of the evidence claims is whether the verdict must be so contrary to the evidence as to shock one's sense of justice. *Commonwealth v. Rosser*, 135 A.3d 1077, 1090 (Pa. Super. 2016) (citing *Commonwealth v. Gonzalez*, 109 A.3d 711, 723 (Pa. Super. 2015)). Since the finder of fact is free to believe all, part, or none of the evidence and to determine the credibility of

the witnesses, for a defendant to prevail on a challenge of the weight, the evidence must be “so tenuous, vague and uncertain that the verdict shocks the conscience of the court.” *Commonwealth v. Thompson*, 106 A.3d 742, 759 (Pa. Super. 2014) (citing *Commonwealth v. Ross*, 856 A.2d 93, 99 (Pa. Super. 2004)). An appellate court cannot substitute its judgment for that of the finder of fact. *Commonwealth v. Ovalles*, 144 A.3d 957, 968–969 (Pa. Super. 2016) (citing *Commonwealth v. Slocum*, 86 A.3d 272, 275–276 (Pa. Super. 2014)). A weight of the evidence challenge is one of the least assailable reasons for granting or denying a new trial. *Commonwealth v. Horne*, 89 A.3d 277, 285 (Pa. Super. 2014) (citing *Commonwealth v. Widmer*, 744 A.2d 745, 753 (Pa. 2000)).

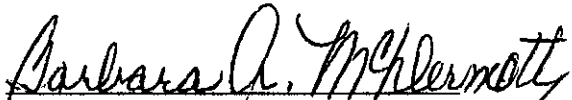

An argument that the verdict is contrary to the weight of the evidence concedes that there is sufficient evidence to sustain the verdict but contends, nevertheless, that the verdict is against the weight of the evidence. *Commonwealth v. Landis*, 89 A.3d 694, 699 (Pa. Super. 2014) (citing *Commonwealth v. Rivera*, 983 A.2d 1211, 1225 (Pa. 2009)). An allegation that the verdict is against the weight of the evidence is addressed to the sound discretion of the trial court. *Commonwealth v. Stokes*, 78 A.3d 644, 650 (Pa. Super. 2013) (citing *Widmer*, 744 A.2d at 751–752). “A new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. A trial judge must do more than reassess the credibility of the witnesses and allege that he would not have assented to the verdict if he were a juror.” *Commonwealth v. Mucci*, 143 A.3d 399, 410 (Pa. Super. 2016) (citing *Commonwealth v. Clay* 64 A.3d 1049, 1054–1055 (Pa. 2013)).

Regardless of the mere discrepancy between Cuffee and McCloud regarding the crossbow, video recording shows the Defendant wielding a firearm at the scene of the shooting and 911 calls from Virginia Cuffee and an anonymous source identify the Defendant as the shooter based on his distinctive facial tattoos. McCloud observed the Defendant on the block and heard him argue with

Cuffee only moments before the shooting. McCloud did not testify to seeing any other potential suspects on her block in the moments leading up to the shooting. Both Cuffee and McCloud testified that the decedent was on the porch only a few minutes before being shot. N.T 4/23/2017 at 179, 212. Even if the crossbow had remained on the porch and had been brandished before the shooting, the Defendant did not raise a self-defense claim at trial, rendering this inconsistency immaterial to the ultimate issue presented to the jury. The jury was the finder of fact and determined the credibility of each witness and exhibit during deliberations and returned with a guilty verdict. This Court exercised its sound discretion in concluding that the verdict was not against the weight of the evidence and that decision should not be disturbed.

For the foregoing reasons, the judgment of this Court should be affirmed.

BY THE COURT

  
Barbara A. McDermott, J. 

**PROOF OF SERVICE**

I hereby certify that I am this day serving the foregoing filing upon the person(s), and in the manner indicated below, which service satisfies the requirements of Pa. R. Crim. P. 114:

Philadelphia District Attorney's Office  
Three South Penn Square  
Philadelphia, PA 19107  
Attn: Lawrence J. Goode, Esquire

**Type of Service: DA's Courthouse Assigned Box**

James F. Berardinelli, Esq.  
1600 Locust Street  
Philadelphia, PA 19103

**Type of Service: First Class Mail**

Raynerdo Jones  
NJ 5276  
SCI Camp Hill  
P.O. Box 200  
Camp Hill, PA 17001

**Type of Service: Certified Mail**

**Dated: August 8, 2018**

  
\_\_\_\_\_  
**Joseph Duffy**  
Law Clerk to the  
Honorable Barbara A. McDermott