

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
JEFFREY HUGHES,		
Appellant		No. 2915 EDA 2011

Appeal from the Judgment of Sentence June 15, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0008995-2010, CP-51-CR-0008996-
2010

BEFORE: STEVENS, P.J., BOWES, and PLATT,* JJ.

MEMORANDUM BY BOWES, J.: Filed: February 8, 2013

Jeffrey Hughes appeals from the judgment of sentence of life imprisonment as well as concurrent sentences imposed after a jury convicted him of first-degree murder, conspiracy to commit murder, robbery, conspiracy to commit robbery, possession of an instrument of crime ("PIC"), and carrying a firearm without a license. We affirm.

The trial court detailed the facts as follow.

On May 10, 2010, Rernard Mitchell (victim) was fatally shot in his vehicle while driving on the 4600 block of North 15th Street, in Philadelphia. The victim was also known by those close to him to sell marijuana. At approximately 4:10 p.m. on May 10, 2010, the victim sent a text message to the defendant, asking him, "You still want the two jawns or no?" to which the

* Retired Senior Judge assigned to the Superior Court.

Defendant responded, "Yeah, I still want them." A few hours later, after several other text messages were exchanged, the victim told his girlfriend, Jessica Gladden, that he was going to the Abbotsford Housing Project to meet "the bull, Jeff," whom Jessica knew to be the defendant. He told his best friend, Husani Wilson, that he was going to "sell some tree" to someone he had done business with before, and asked Mr. Wilson if he wanted to take a ride with him. Taking a brown paper bag, which Mr. Wilson knew to contain marijuana, with him, the victim and Mr. Wilson drove the victim's mother's Ford Expedition from the victim's home on the 5000 block of North Marvine Street to the Abbotsford Housing Project.

When the two arrived at the Abbotsford Housing Project, the defendant approached the victim's car almost immediately. The victim exited his car, taking the paper bag of marijuana with him and leaving Mr. Wilson in the car, and followed the defendant out of Mr. Wilson's sight. A few moments later, the victim came running back towards the car, followed by the defendant, who was shooting at him. Two of these shots hit the victim's vehicle. The victim got into his car and immediately drove off, telling Mr. Wilson that he had been robbed. Driving quickly back toward his house, the victim was stopped at a red light on North 15th Street, at the intersection of North 15th Street, Belfield Avenue, and Wyoming Avenue when a red truck with tinted windows came from behind the victim's car and pulled up along the driver's side of the victim's vehicle. Mr. Wilson and the victim both turned to look at the truck and saw a silhouette looking into their car. The rear passenger window of the truck rolled down, and a "light hand" holding a black gun came through the window. Three shots were fired at the victim's vehicle, one of which shattered the driver's window, and all of which hit the victim.

Upon seeing the gun and seeing sparks, Mr. Wilson ducked and rolled out of the victim's vehicle. When the shooting stopped, he got back into the vehicle, which continued through the intersection. Soon after, the victim passed out. The vehicle came to a stop in front of 1429 West Wyoming Avenue, in the lane of oncoming traffic. The victim was transported to Temple University Hospital, where he was pronounced dead at 11:28 p.m.

Detective Carl Watkins, assigned to investigate the incident, was able to use the victim's cell phone to determine that the defendant had recently been in contact with the victim, and began focusing the investigation on him. Based on Mr. Wilson's description of the vehicle that had pulled alongside of the victim's car at the time of the shooting, Detective Watkins contacted the Bristol Township Police Department on May 11, 2010 and asked Detective Greg Beidler to look into the whereabouts of a red SUV-type vehicle and possibly the defendant.

The following day, May 12, 2010, Detective Beidler observed a red Tahoe parked in front of 723 Church Street, in Croyden, Pennsylvania. While surveilling the red Tahoe, Detective Beidler saw four individuals, the defendant, Francis Lambert, Laura Lau, and Joe Kramer, exit 723 Church Street, enter the vehicle, and drive off, with the defendant driving. Detective Beidler and his partner, Detective Tim Perkins, followed the vehicle, ultimately pulling it over. As he was being taken out of the car, the defendant asked what he had done several times, and was told he was being detained for something that happened in Philadelphia. While being walked to the police car, the defendant leaned back to Detective Beidler and twice told him that the red Tahoe did not belong to him.

Despite the defendant's insistence that the vehicle was not his, other testimony contradicted this. Francis Lambert, Junior, the owner of the house where the defendant was residing, testified that the defendant came home from college in May of 2010 in a red Tahoe. Caitlin Hughes, the defendant's sister, testified at trial that she had seen her brother driving a red Tahoe. Specifically, she explained that the vehicle belonged to John Goldwire, the defendant's best friend, who let the defendant drive the car when he was out of town, and that Mr. Goldwire had in fact been out of town for the two weeks preceding May 17, 2010.

On May 13, 2010, Detective Beidler executed a search warrant at 723 Church Street. From a closet on the first floor, the detective recovered a purple drawstring bag, which contained a gallon-sized bag of marijuana, a brown paper bag containing 29 smaller blue packets of marijuana, and a pair of blue shorts, among other things. At trial, Joseph Kramer, the nephew of Francis Lambert, Jr., testified that the purple bag

belonged to him, that he had not seen the bag in approximately a week, and that nothing in it belonged to him.

The defendant had been transported by Bristol Police to the Philadelphia Police Homicide Unit on May 12, 2010, where he was interviewed by Detective Watkins and released. The defendant was thereafter arrested at his mother's home on May 16, 2010. On May 20, 2011, while the defendant was incarcerated, he sent a letter to Frank Lambert, Jr., referencing what others in Frank Lambert, Jr.'s family had said to the police and that he "hoped they don't go all the way with this 'cause it could be damaging to all of the them."

At trial, the Commonwealth introduced expert testimony from Detective James Dunlap, of the Philadelphia Police Department's Cellular Analysis Survey Team. Detective Dunlap presented data obtained from Verizon showing that, between 10:23 p.m. and 10:51 p.m. on May 10, 2010, the defendant's cell phone was in the cell tower sector that includes the Abbotsford Housing Project and made three calls to the victim's cell phone during that time. Detective Dunlap also presented data showing that the defendant's cell phone was in the range of the cell tower at the scene of the shooting at around the time the shooting occurred.

Trial Court Opinion, 4/23/12, at 2-6 (citations to record and footnotes omitted). At the close of the evidence, the Commonwealth requested that the court instruct the jury regarding consciousness of guilt based on Appellant's statement that the red Tahoe did not belong to him as well as the letter he sent to Frank Lambert, Jr. The trial court agreed and, over Appellant's objection, instructed the jury accordingly. In addition, the court instructed the jury that it could infer specific intent to kill, if it chose to, based on the number of shots fired at the victim. The jury found Appellant

guilty of the aforementioned charges.¹ The trial court then sentenced Appellant to life imprisonment based on the murder conviction. In addition, it imposed concurrent sentences of twenty to forty years incarceration for conspiracy to commit murder and five to twenty years for aggravated assault. The court also sentenced Appellant consecutively to ten to twenty years for robbery, five to ten years for conspiracy to commit robbery, and one to five years each for the PIC and carrying a firearm without a license charges.

Appellant filed a post-sentence motion, which the court denied on October 20, 2011. This timely appeal ensued. The trial court directed Appellant to file and serve a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. Appellant complied, and the trial court authored its Pa.R.A.P. 1925(a) opinion. The matter is now ready for our review. Appellant presents four issues for our consideration.

- I. Is the Defendant entitled to an arrest of judgment on all charges including Murder in the First Degree, Criminal Conspiracy to Commit Murder, Robbery, Criminal Conspiracy to Commit Robbery and Weapons Offenses given that the verdict is not supported by sufficient evidence?
- II. Is the Defendant entitled to a new trial on all charges where the verdict is against the weight of the evidence?
- III. Is the Defendant entitled to a new trial as the result of Court error in charging a jury where the Court improperly

¹ The jury did acquit Appellant of aggravated assault against Husani Wilson.

charged that the total number of shots fired by the Defendant could be viewed as circumstantial evidence of a specific intent to kill and where that charge is not supported by any rule or case law?

- IV. Is the Defendant entitled to a new trial as the result of Court error in charging the jury on consciousness of guilt with regard to an alleged statement made to police at a traffic stop and a letter sent to the Defendant's "father" which did not tend to establish consciousness of guilt?

Appellant's brief at 3.

Appellant's initial contention is that the Commonwealth did not introduce sufficient evidence to prove each of his convictions. However, Appellant only provides argument relative to first degree murder and conspiracy to commit murder. Therefore, we limit our discussion to those crimes. Our standard and scope of review in analyzing a sufficiency claim are settled.

The evidence established at trial need not preclude every possibility of innocence and the fact-finder is free to believe all, part, or none of the evidence presented. It is not within the province of this Court to re-weigh the evidence and substitute our judgment for that of the fact-finder. The Commonwealth's burden may be met by wholly circumstantial evidence and any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances. ***Commonwealth v. Mobley***, 14 A.3d 887, 889–890 (Pa.Super. 2011). Additionally, "in applying the above test, the entire record must be evaluated and all evidence actually received must be considered." ***Commonwealth v. Coleman***, 19 A.3d 1111, 1117 (Pa.Super. 2011).

Commonwealth v. Brown, 52 A.3d 320, 323 (Pa.Super. 2012) (quoting ***Commonwealth v. Stokes***, 38 A.3d 846, 853-854 (Pa.Super. 2011)).

Appellant argues that it is unclear from the record whether Appellant opened fire on the victim or merely returned fire at the housing project. In addition, he asserts that the evidence showed that he was the driver of the vehicle and that another person opened fire, killing the victim. He suggests that the jury determination was therefore based on speculation and conjecture. In support of this proposition, he relies on ***Commonwealth v. Karkaria***, 625 A.2d 1167 (Pa. 1993), and ***Commonwealth v. Farquahrson***, 354 A.2d 545 (Pa. 1976). According to Appellant, the evidence did not demonstrate premeditation to kill or a plan to ambush the victim, but a drug deal gone bad in which anger ultimately led to the victim's death.

The Commonwealth counters that Appellant reports the evidence in a light most favorable to him and that, when reviewed under the proper standard of review, Appellant's "guilt of these crimes is inescapable." Commonwealth's brief at 6. It further relies on the trial court's discussion of the sufficiency claims and adds only that Appellant's reliance on ***Commonwealth v. Karkaria***, 625 A.2d 1167 (Pa. 1993), is improper.

We find that the trial court cogently discussed the reasons for finding Appellant's sufficiency position meritless. Therefore, we rely on the reasoned disposition of this issue contained within the learned Judge M. Teresa Sarmina's opinion. ***See*** Trial Court Opinion, 4/23/12, at 7-11. We add that ***Karkaria*** is easily distinguishable and wholly inapposite from the

facts of this case. In *Karkaria*, the victim alleged that her step-brother raped her on a weekly basis for three years. Her additional testimony, however, was wholly inconsistent with these claims and no other evidence supported the conviction. The *Karkaria* conjecture holding is only applicable where the evidence supporting a conviction stems from one essential witness and that witness's testimony is not only inconsistent and contradictory with other evidence from that same witness, but unreliable and without any other *indicia* of support. *See e.g. Lofton, supra* (discussing *Karkaria* in the context of a weight-of-the evidence claim).

Next, Appellant asserts that the verdict in this matter was against the weight of the evidence. We recently set forth our standard of review in examining a weight claim.

[W]e may only reverse the lower court's verdict if it is so contrary to the evidence as to shock one's sense of justice. Moreover, where the trial court has ruled on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.

Commonwealth v. Champney, 832 A.2d 403, 408 (Pa. 2003) (citations omitted). Hence, a trial court's denial of a weight claim "is the least assailable of its rulings." *Commonwealth v. Diggs*, 949 A.2d 873, 880 (Pa. 2008). Conflicts in the evidence and contradictions in the testimony of any witnesses are for the fact finder to resolve. *Commonwealth v. Tharp*, 830 A.2d 519, 528 (Pa. 2003). As our Supreme Court has further explained,

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. Trial judges, in reviewing a claim that the verdict is against the weight of the evidence do not sit as the thirteenth juror. Rather, the role of the trial judge is to determine that “notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.”

Commonwealth v. Widmer, 744 A.2d 745, 752 (Pa.2000) (citations omitted). In addition, a weight of the evidence claim must be preserved either in a post-sentence motion, by a written motion before sentencing, or orally prior to sentencing. Pa.R.Crim.P. 607; ***Commonwealth v. Priest***, 18 A.3d 1235, 1239 (Pa.Super. 2011). Failure to properly preserve the claim will result in waiver, even if the trial court addresses the issue in its opinion. ***Commonwealth v. Sherwood***, 982 A.2d 48[3], 494 (Pa. 2009).

Commonwealth v. Lofton, 2012 PA Super 267, at *2.

Appellant maintains that the greater weight of the evidence supports that he and the victim arranged for the sale of marijuana, but “does not suggest that [Appellant] planned an ambush of the victim at the Abbotsford Projects.” Appellant’s brief at 17. He also submits that the evidence suggests that the victim originally opened fire.

The Commonwealth replies that Appellant’s claim is waived because he failed to support his position with case law, aside from a citation applicable to our standard and scope of review. It also submits that the issue is waived based on the overly technical view that since Appellant does not specifically state that the trial court abused its discretion, and “attempts to litigate the

weight claim itself[,]” we are precluded from reviewing the issue. Commonwealth’s brief at 8. Coming to the merits of Appellant’s position, the Commonwealth asserts that the jury’s exercise in making routine credibility determinations does not shock one’s sense of justice; thus, the trial court did not abuse its discretion.

We find that the claim is without merit. In the extraordinarily rare instance where a weight claim is successful, it is premised on more than mere conflicts in the evidence. Rather, certain facts must be clearly of greater weight than any conflicting facts. *See Lofton, supra* (citing *Widmer, supra*). This is simply not a case where the evidence necessary to meet the elements of the crime is so unreliable and without any additional support, that evidence in favor of the Appellant would outweigh it. Therefore, Appellant is not entitled to relief.

Appellant’s final two claims raise challenges to the trial court’s jury instructions. Specifically, Appellant argues that the court erred in instructing the jury that it could consider the number of shots allegedly fired by Appellant as circumstantial evidence of specific intent to kill and in giving a consciousness of guilt instruction. We are guided by the following principles in analyzing a jury instruction.

“It is axiomatic that, in reviewing a challenged jury instruction, an appellate court must consider the entire charge as a whole, not merely isolated fragments, to ascertain whether the instruction fairly conveys the legal principles at issue.” *Commonwealth v. Williams*, 557 Pa. 207, 732 A.2d 1167, 1187 (1999). “An instruction will be upheld if it clearly,

adequately and accurately reflects the law. The trial court may use its own form of expression to explain difficult legal concepts to the jury, as long as the trial court's instruction accurately conveys the law." ***Commonwealth v. Spatz***, 563 Pa. 269, 759 A.2d 1280, 1287 (2000) (citation omitted).

Commonwealth v. Cook, 952 A.2d 594, 626-627 (Pa. 2008).

The first instruction Appellant contends is erroneous is as follows. "The number of shots fired at a victim can also be an item of circumstantial evidence on which you may, if you choose, infer that there was a specific intent to kill." N.T., 6/10/11, at 123-124. Appellant argues that this instruction "could be seen to have directed a verdict towards [m]urder in the [f]irst [d]egree." Appellant's brief at 18. While recognizing that standard jury instructions are not required, Appellant points out that this specific instruction is not found in the standard jury instructions.

The Commonwealth responds first that Appellant's challenge is waived because he does not supply any case law to support his view, other than the standard and scope of review. Further, it maintains that evidence of the number of shots fired at the victim was circumstantial evidence of a specific intent to kill. Thus, it submits the trial court's tailoring of the jury instructions to fit the facts presented to the jury was warranted. It adds that the trial court did not mandate that the jury find specific intent based on the number of projectiles fired at the victim, but only that it could choose to infer specific intent based on that evidence.

We hold that the trial court's instruction was a proper articulation of the law. Despite no standard jury instruction expressly stating that the

number of shots fired at a murder victim may be viewed as circumstantial evidence of specific intent, the noted inference is simply common sense. Certainly, the jury was permitted to consider all of the evidence introduced and determine based on the number of shots fired that Appellant and his cohorts specifically intended to kill the victim. Pointedly, it is entirely reasonable to infer that an individual intends to kill a person if he continues to fire bullet after bullet at the person. Moreover, as the Commonwealth correctly highlights, the trial court did not direct the jury to find specific intent based on the number of shots fired. Instead, it quite properly stated that the jury could, if it chose to, infer that the number of shots fired was circumstantial evidence of a specific intent to kill. For these reasons, Appellant's issue is without merit.

Next, Appellant argues that the trial court erred in providing the jury with the standard "consciousness of guilt" instruction. It points out that Appellant did not lie when he said the red Tahoe did not belong to him, since he was not the legal owner. Appellant submits that the trial court's consciousness of guilt instruction indicated that the court was calling Appellant a liar, and "was demeaning to the Defendant and pejorative in nature." Appellant's brief at 22. Further, Appellant asserts that the letter sent to the Lambert family "did not induce people to lie or to fail to show up in Court to testify." *Id.* It is Appellant's position that the letter accurately reflected that police could have blamed the Lambert's for the marijuana found in their home. He adds that the letter asked for the family to visit him

and passed along his love to his "Aunt Chris," Frank Lambert, Jr.'s wife, and the mother of Frank Lambert, III.

The Commonwealth begins its response by contending that Appellant's final issue is waived. In this regard, it again maintains that Appellant did not provide any legal support for his issue aside from boilerplate citations. With respect to the merits, the Commonwealth posits that both Appellant's response that the car was not his and the letter were "classic evidence of consciousness of guilt[.]" Commonwealth's brief at 13. According to the Commonwealth, the only reason Appellant would deny ownership of the Tahoe was to "avoid being identified as the murderer." *Id.* Further, it posits that the obvious inference from Appellant's letter was a dark and threatening message.

The trial court's decision to give the instruction was not erroneous. Appellant's attempt to disassociate himself from the vehicle can be viewed as consciousness of guilt because that vehicle was used in the murder. With respect to the letter, even if it is not viewed as threatening, it still demonstrates consciousness of guilt, insofar as it recognizes that the presence of marijuana in the Lambert home was problematic to both him and the Lamberts. Further, it indicates a desire that the Lamberts not cooperate with police.

For the foregoing reasons, we affirm.

Judgment of sentence affirmed.

PHILADELPHIA COURT OF COMMON PLEAS
CRIMINAL TRIAL DIVISION

COMMONWEALTH

FILED

CP-51-CR-0008995-2010

CP-51-CR-0008996-2010

APR 23 2012

v.

JEFFREY HUGHES

Criminal Appeals Unit
First Judicial District of PA

Superior Court No.

2915 EDA 2011

Sarmina, J.

April 23, 2012

OPINION

PROCEDURAL HISTORY

On June 14, 2011, following a jury trial, Jeffrey Hughes (defendant) was found guilty of first-degree murder (H-1), criminal conspiracy to engage in murder (F-1), criminal conspiracy to commit robbery (F-1), possessing an instrument of crime (PIC) (M-1), aggravated assault (F-1), robbery (F-1), and carrying a firearm without a license (F-3).¹ On June 15, 2011, the defendant was sentenced to the mandatory term of life in prison² for the first-degree murder charge, and to concurrent sentences for the other convictions.³ Post-sentence motions were filed on June 22, 2011, and were denied by this Court on October 20, 2011. This timely appeal followed.

¹ 18 Pa.C.S. §§ 2502(a), 903 (2 counts), 907(a), 2702(a), 3701(a)(1), 6106(a)(1), respectively. The defendant was found not guilty of one count of aggravated assault, 18 Pa.C.S. § 2702(a) (CP-51-CR-0008996-2010).

² 18 Pa.C.S. § 1102(a).

³ Defendant was sentenced to not less than 20 years nor more than 40 years for the criminal conspiracy to commit murder charge; not less than 5 years nor more than 20 years for the aggravated assault charge; not less than 10 years nor more than 20 years for the robbery charge; not less than 5 years nor more than 10 years for the conspiracy to commit robbery charge; not less than 1 year nor more than 5 years for the carrying a firearm without a license charge; and not less than 1 year nor more than 5 years for the PIC charge.

Appendix

FACTS

On May 10, 2010, Rernard Mitchell (victim) was fatally shot in his vehicle while driving on the 4600 block of North 15th Street, in Philadelphia. Notes of Testimony (N.T.) 6/9/2011 at 86; 6/7/2011 at 179, 82. The victim was also known by those close to him⁴ to sell marijuana. N.T. 6/8/2011 at 260, 258-59; 6/7/2011 at 169. At approximately 4:10 p.m. on May 10, 2010, the victim sent a text message to the defendant, asking him, "You still want the two jawns or no?" to which the defendant responded, "[Y]eah, I still want them." N.T. 6/9/2011 at 176. A few hours later, after several other text messages were exchanged, *id.* at 177-178, the victim told his girlfriend, Jessica Gladden, that he was going to the Abbotsford Housing Project to meet "the bull, Jeff," whom Jessica knew to be the defendant. N.T. 6/8/2011 at 253-54. He told his best friend, Husani Wilson, that he was going to "sell some tree" to someone he had done business with before, and asked Mr. Wilson if he wanted to take a ride with him. N.T. 6/7/2011 at 171. Taking a brown paper bag, which Mr. Wilson knew to contain marijuana, with him, the victim and Mr. Wilson drove the victim's mother's Ford Expedition from the victim's home on the 5000 block of North Marvine Street to the Abbotsford Housing Project. *Id.* at 169, 170, 171; 6/8/2011 at 251.

When the two arrived at the Abbotsford Housing Project, the defendant approached the victim's car almost immediately. N.T. 6/7/11 at 174. The victim exited his car, taking the paper bag of marijuana with him and leaving Mr. Wilson in the car, and followed the defendant out of Mr. Wilson's sight. *Id.* at 175. A few moments later, the victim came running back towards the car, followed by the defendant, who was shooting at him.⁵ *Id.* at 175-76. Two of these shots hit the

⁴ Specifically, his friend, Husani Wilson, and his girlfriend, Jessica Gladden.

⁵ Officer Brian Stark, of the Crime Scene Unit, recovered seven fired cartridge casings (FCCs) from a .9mm semi-automatic weapon from a field at the Abbotsford Housing Project that was located in the direction from which the victim ran back to his vehicle. N.T. 6/7/2011 at 135, 137. No other fired cartridge casings were recovered from the Abbotsford Project.

victim's vehicle.⁶ Id. at 207. The victim got into his car and immediately drove off, telling Mr. Wilson that he had been robbed. Id. at 176. Driving quickly back toward his house, the victim was stopped at a red light on North 15th Street, at the intersection of North 15th Street, Belfield Avenue, and Wyoming Avenue⁷ when a red truck with tinted windows came from behind the victim's car and pulled up along the driver's side of the victim's vehicle. Id. at 178-79, 196, 219. Mr. Wilson and the victim both turned to look at the truck and saw a silhouette looking into their car. Id. The rear passenger window of the truck rolled down, and a "light hand" holding a black gun came through the window. Id. at 181. Three shots were fired at the victim's vehicle, one of which shattered the driver's window, and all of which hit the victim.⁸ N.T. 6/7/2011 at 87; 6/9/2011 at 87.

Upon seeing the gun and seeing sparks, Mr. Wilson ducked and rolled out of the victim's vehicle. N.T. 6/7/2011 at 181. When the shooting stopped, he got back into the vehicle, which continued through the intersection. Soon after, the victim passed out. Id. at 181-82. The vehicle came to a stop in front of 1429 West Wyoming Avenue, in the lane of oncoming traffic. Id. at 96. The victim was transported to Temple University Hospital, where he was pronounced dead at 11:28 p.m. N.T. 6/9/2011 at 86.

Detective Carl Watkins, assigned to investigate the incident, was able to use the victim's cell phone to determine that the defendant had recently been in contact with the victim, and began

⁶ One bullet hit the car just below the rear cargo area/trunk window, and one hit the right-rear window. Officer Stark recovered the lead core of a bullet from this second hole. N.T. 6/7/2011 at 98, 101, 113. Officer Mark Williford, of the Firearms Identification Unit, testified that this lead core came from a revolver. N.T. 6/9/2011 at 36-37.

⁷ In his testimony, Husani Wilson referred to this intersection as being that of "Belfield and Windrim, the intersection close to 15th." N.T. 6/7/11 at 178. Although Windrim Avenue does exist and is in the vicinity of this incident, crime scene photos indicate that it is actually Wyoming Avenue. N.T. 6/7/2011 at 92.

⁸ Officer Stark recovered .9mm FCCs from the street in front of 4654 North 15th Street. The victim suffered from three gunshot wounds as a result of this attack: one to the upper left side of his chest, one to the lower left side of his back, and one to the left arm. N.T. 6/9/2011 at 87-88.

focusing the investigation on him.⁹ N.T. 6/9/2011 at 120, 121. Based on Mr. Wilson's description of the vehicle that had pulled alongside of the victim's car at the time of the shooting, Detective Watkins contacted the Bristol Township Police Department on May 11, 2010 and asked Detective Greg Beidler to look into the whereabouts of a red SUV-type vehicle and possibly the defendant.¹⁰ Id. at 128, 122; N.T. 6/8/2011 at 228-29.

The following day, May 12, 2010, Detective Beidler observed a red Tahoe parked in front of 723 Church Street, in Croyden, Pennsylvania. N.T. 6/8/2011 at 230. While surveilling the red Tahoe, Detective Beidler saw four individuals, the defendant, Francis Lambert, Laura Lau, and Joe Kramer, exit 723 Church Street, enter the vehicle, and drive off, with the defendant driving. N.T. 6/8/2011 at 230-31. Detective Beidler and his partner, Detective Tim Perkins, followed the vehicle, ultimately pulling it over. Id. at 232-33. As he was being taken out of the car, the defendant asked what he had done several times, and was told he was being detained for something that happened in Philadelphia. Id. at 234. While being walked to the police car, the defendant leaned back to Detective Beidler and twice told him that the red Tahoe did not belong to him. Id.

Despite the defendant's insistence that the vehicle was not his, other testimony contradicted this. Francis Lambert, Junior, the owner of the house where the defendant was residing, testified that the defendant came home from college in May of 2010 in a red Tahoe. N.T. 6/8/2011 at 215. Caitlin Hughes, the defendant's sister, testified at trial that she had seen her brother driving a red Tahoe. Id. at 48. Specifically, she explained that the vehicle belonged to John Goldwire, the

⁹ Detectives were able to obtain records that revealed the subscriber information for the number on which detectives were focusing. N.T. 6/9/2011 at 120. There was a stipulation by and between counsel at trial that the subscriber information obtained from Tracfone showed that the phone number in the victim's phone, (215) 983-1570, was registered to subscriber Jeffrey Hughes, at 3820 Wallace Street, Philadelphia, PA, 19104, with an email address of jeff121890@yahoo.com and a date of birth of December 18, 1990. Id. at 164.

¹⁰ Detective Watkins recovered a cell phone from the victim's body which indicated he had contacted another cell phone. N.T. 6/9/2011 at 119. As a result of the investigation into the subscriber information of that cell phone, Detective Watkins contacted the Bristol Township police. N.T. 6/9/2011 at 121-22.

defendant's best friend, who let the defendant drive the car when he was out of town, and that Mr. Goldwire had in fact been out of town for the two weeks preceding May 17, 2010. Id.

On May 13, 2010, Detective Beidler executed a search warrant at 723 Church Street.¹¹ N.T. 6/8/2011 at 237. From a closet on the first floor, the detective recovered a purple drawstring bag, which contained a gallon-sized bag of marijuana, a brown paper bag containing 29 smaller blue packets of marijuana, and a pair of blue shorts, among other things. Id. at 238-39. At trial, Joseph Kramer, the nephew of Francis Lambert, Jr., testified that the purple bag belonged to him, that he had not seen the bag in approximately a week, and that nothing in it belonged to him. Id. at 191-92.

The defendant had been transported by Bristol Police to the Philadelphia Police Homicide Unit on May 12, 2010, where he was interviewed by Detective Watkins and released. N.T. 6/9/2011 at 126, 129. The defendant was thereafter arrested at his mother's home on May 16, 2010. N.T. 6/9/2011 at 128-29. On May 20, 2011, while the defendant was incarcerated, he sent a letter to Frank Lambert, Jr., referencing what others in Frank Lambert, Jr.'s family had said to the police and that he "hope[d] they don't go all the way with this 'cause it could be damaging to all of them." N.T. 6/8/2011 at 216.

At trial, the Commonwealth introduced expert testimony from Detective James Dunlap, of the Philadelphia Police Department's Cellular Analysis Survey Team. Detective Dunlap presented data obtained from Verizon showing that, between 10:23 p.m. and 10:51 p.m. on May 10, 2010, the defendant's cell phone was in the cell tower sector that includes the Abbotsford Housing Project and made three calls to the victim's cell phone during that time. N.T. 6/9/2011 at 192. Detective

¹¹The defendant lived at this address. At trial, Francis Lambert, Jr., the homeowner, testified that he took the defendant in during his (the defendant's) senior year of high school. N.T. 6/8/2011 at 211. Although defendant was attending college at Mansfield University, located in northern Pennsylvania, he stayed at this house during academic breaks and between semesters. Id. at 212.

Dunlap also presented data showing that the defendant's cell phone was in the range of the cell tower at the scene of the shooting at around the time the shooting occurred. *Id.* at 195.

LEGAL ANALYSIS

The defendant raises the following claims on appeal:¹²

1. There was insufficient evidence to prove beyond a reasonable doubt that the defendant was the perpetrator of the murder, a criminal conspirator, an accomplice, or that the defendant shared any specific intent to kill;
2. There was insufficient evidence to prove beyond a reasonable doubt that the defendant conspired with anyone else to commit a murder or a robbery, or that he engaged in any overt act to form the basis for a full-blown conspiracy;
3. There was insufficient evidence to prove that the defendant participated in the other crimes (aggravated assault, PIC, and unlicensed possession of a firearm) as a principal, conspirator, or accomplice;
4. The verdict was against the greater weight of the evidence because the evidence supporting the verdict is based on speculation, conjecture, and surmise, particularly as it pertains to the elements of the crime. There is only speculation that the defendant was the perpetrator, or an accomplice or a conspirator, that he had a specific intent to kill, or that he was the perpetrator of the other crimes;
5. The trial Court erred in its instruction to the jury by charging that the number of shots fired by the defendant could be viewed as circumstantial evidence of a specific intent to kill because this placed undue emphasis on one aspect of the case, whereas the jury must look at all the evidence and the totality of the circumstances. The Court's instruction, which is not

¹² These claims have been rephrased for ease of disposition.

found in the standard charge or in any case law, improperly directed the jury towards a verdict of first-degree murder;

6. The trial Court erred by charging the jury, in spite of defense counsel's objection, that the defendant's supposed statement to Detective Beidler, and the letter the defendant sent to Frank Lambert, Jr., could be viewed as consciousness of guilt. The Court was in error because the defendant was not doing anything that is traditionally viewed under case law as tending to establish consciousness of guilt.

Insufficient Evidence to Prove Perpetrator, Conspirator, Accomplice, or Intent

The defendant first argues there was insufficient evidence to prove beyond a reasonable doubt that he was the perpetrator of the murder, that he was a criminal conspirator, that he was an accomplice, or that he shared any specific intent to kill. This claim is without merit.

It is well-established that:

Our standard when reviewing the sufficiency of the evidence is whether the evidence at trial, and all reasonable inferences derived therefrom, when viewed in the light most favorable to the Commonwealth as verdict-winner, are sufficient to establish all elements of the offense beyond a reasonable doubt. We may not weigh the evidence or substitute our judgment for that of the fact-finder. Additionally, the evidence at trial need not preclude every possibility of innocence, and the fact-finder is free to resolve any doubts regarding a defendant's guilt unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances.

Commonwealth v. Patterson, 940 A.2d 493, 500 (Pa.Super. 2007), quoting Commonwealth v. Emler, 903 A.2d 1273, 1276-77 (Pa.Super. 2006). When a court is reviewing a sufficiency of evidence claim, “[b]oth direct and circumstantial evidence must be considered equally.” Commonwealth v. Carson, 592 A.2d 1318, 1320 (Pa.Super. 1991).

To convict a defendant of first-degree murder, the jury must find that (1) a human being was unlawfully killed; (2) the defendant is responsible for the killing; and (3) the defendant acted with a specific intent to kill. Commonwealth v. Montalvo, 956 A.2d 926, 932 (Pa.Super. 2008), citing 18

Pa.C.S. § 2502(a). Further, to prove conspiracy, “the trier of fact must find that: (1) the defendant intended to commit or aid in the commission of the criminal act; (2) the defendant entered into an agreement with another ... to engage in the crime; and (3) the defendant or one or more of the other co-conspirators committed an overt act in furtherance of the agreed upon crime.” Montalvo, 956 A.2d at 932, *citing* Commonwealth v. Murphy, 844 A.2d 1228, 1238 (2004). Finally, each member of a conspiracy to commit homicide can be convicted of first-degree murder regardless of who inflicted the fatal wound so long as each member had a specific intent to kill. Commonwealth v. Simpson, 754 A.2d 1264, 1268 (Pa. 2000); Commonwealth v. Wayne, 720 A.2d 456, 465 (Pa. 1998).

With these standards in mind, it is evident that the evidence, viewed in the light most favorable to the Commonwealth as the verdict winner, was sufficient to sustain the defendant’s convictions for first-degree murder and for conspiracy to commit murder. With respect to first-degree murder, the defendant only challenges the second and third elements of first-degree murder: whether he was responsible for the victim’s death as the perpetrator, a conspirator, or an accomplice; and whether he had a specific intent to kill.

First, the evidence, viewed in the light most favorable to the Commonwealth, was sufficient to support the jury’s finding that the defendant was responsible for the victim’s death. Husani Wilson saw the defendant approach and then escort the victim out of sight. The victim took the paper bag containing marijuana with him when he exited the vehicle. While being shot at by the defendant, the victim then ran back to the car without the paper bag containing the marijuana. Once in the car, the victim stated to Mr. Wilson that he had been robbed. On the way back to the victim’s home, a red truck — later connected to the defendant as the car in which he returned from college earlier that month and as the car the defendant was driving for several days following the murder — pulled up next to the driver’s side window of the victim’s car and three shots were fired at the victim, resulting in his death. Between the defendant’s actions at the Abbotsford Housing

Project — including the taking of the victim's marijuana and the shooting — and the defendant's connection to the truck from which the deadly shots were fired shortly thereafter, the jury was presented with sufficient facts to conclude that the defendant, or someone with whom he conspired, killed the victim.¹³

Second, the evidence was sufficient to support the jury's finding that the defendant possessed the requisite specific intent to kill. When deciding whether a defendant had the specific intent to kill, a court should consider all of the evidence regarding the defendant's and his co-conspirators' words and conduct and the attending circumstances that may show the defendant's state of mind at the time of the killing. Commonwealth v. Hannibal, 753 A.2d 1265, 1270-71 (Pa. 2000). The use of a deadly weapon on a vital part of the victim's body may also be viewed as an item of circumstantial evidence from which the jury may infer that the defendant possessed the specific intent to kill. Hannibal, 753 A.2d at 1271; *see also* Commonwealth v. Jones, 668 A.2d 491, 501 (holding sufficient evidence to establish defendant's specific intent to kill where members of a group devised murderous plot and defendant ordered co-conspirators to carry out the plot but was not present for crime). Finally, the number of shots fired at an individual is another item of circumstantial evidence from which the jury may be able to decide the issue of specific intent (see discussion of this issue *infra*).

In the present case, the victim was chased from a drug deal, which had turned into a robbery, while being shot at by the defendant. The victim escaped from these gunshots and fled the Abbotsford Housing Project but was shot at again almost four miles away while driving home. A truck, which was later linked to the defendant, pulled up next to the victim's driver-side window and

¹³ Detective James Dunlap testified that the defendant's cell phone was in the cell tower sector which includes the Abbotsford Housing Project around the time of the initial shooting, that he made three phone calls to the victim around the time of the crimes, and that the defendant's cell phone was in the range of the cell tower at the scene of the murder around the time the murder occurred. All of this evidence provided additional corroboration of the defendant's presence at both crime scenes.

gunshots were fired directly into the victim's car, striking the victim each time.¹⁴ Based on the initial attack, the pursuit of the victim, the time between attacks, the direct aiming into the victim's car, the number of shots fired, and the placement of the gunshots in and around the victim's chest – a vital area of one's body – the jury had sufficient evidence to find that the defendant possessed the specific intent to kill the victim. Therefore, this claim fails.

Insufficient Evidence to Prove Agreement or Overt Act

The defendant's second claim is that there was insufficient evidence to prove beyond a reasonable doubt that he conspired with anyone else to commit a murder or a robbery, or that he engaged in any overt act to form the basis for a full-blown conspiracy. This claim is without merit.

As to the existence of an agreement, there is rarely direct proof that an agreement existed, and it is not necessary to have direct evidence of such. Commonwealth v. Grekis, 601 A.2d 1275, 1283 (Pa.Super. 1992). Proof of an illegal agreement is almost always extracted from the circumstances of the activities in which the partners engage. Grekis, 601 A.2d at 1283. "An agreement can be inferred from a variety of circumstances including, but not limited to, the relation between the parties, knowledge of and participation in the crime, and the circumstances and conduct of the parties surrounding the criminal episode." Id. Although just one of these factors alone may fail to provide sufficient evidence of a criminal agreement, "[t]hese factors may coalesce to establish a conspiratorial agreement beyond a reasonable doubt." Id.

Additionally, the Commonwealth is required to prove an overt act in furtherance of the conspiracy had been committed by the defendant or by a person with whom he conspired.

Commonwealth v. Johnson, 719 A.2d 778, 784 (Pa.Super. 1998), *citing* 18 Pa.C.S. § 903. The

¹⁴ The Assistant Medical Examiner testified that one bullet entered the left side of the victim's chest and, on its way through the victim's body, the bullet went through his lung and his heart. N.T. 6/9/2011 at 102-03. The Assistant Medical Examiner then testified that the heart and the lungs are vital parts of the body. Id. at 105.

defendant himself need not have committed the overt act, "it need only be committed by a co-conspirator." Johnson, 719 A.2d at 784.

As stated, *supra*, the victim's friend, Husani Wilson, saw the defendant firing a gun in the direction of the victim and his car as the victim ran to his car after having been taken out of Mr. Wilson's sight.¹⁵ The victim was pursued and the deadly shots were then fired from the backseat of a red truck, from which one may reasonably infer more than one person was in the red truck. An agreement may be inferred from the involvement of more than one person at the time of the deadly gunshots less than four miles away from the defendant's initial shots at the victim and his car. Based on these facts and inferences, viewed in the light most favorable to the Commonwealth, the jury had sufficient evidence to conclude an agreement had been made to murder the victim and that overt acts had been taken to further this agreement.

Insufficient Evidence to Prove Participation in Other Crimes

The defendant's third claim is that there was insufficient evidence to prove that he participated in the other crimes (aggravated assault, PIC, and unlicensed possession of a firearm) as a principal, conspirator, or accomplice. This claim is without merit.

The evidence, viewed in the light most favorable to the Commonwealth, was sufficient to sustain the defendant's convictions for aggravated assault, PIC, and unlicensed possession of a firearm. The defendant only challenges whether there was sufficient evidence for the jury to conclude that *the defendant* was the perpetrator, a conspirator, or an accomplice.

In the present case, Mr. Husani, who was sitting in the passenger seat of the victim's car, saw the defendant approach the car and saw the victim and the defendant walk away. Moments later, Mr. Husani saw the defendant firing a gun in the direction of the victim as the victim ran toward his

¹⁵ Additionally, seven fired cartridge casings from a .9mm semi-automatic weapon were recovered from a field at the Abbotsford Project that was located in the direction from which the victim ran back to his vehicle.

vehicle; the defendant continued firing his gun at the victim's vehicle as the victim and Mr. Husani fled. Based on the fact that the Commonwealth provided eye-witness testimony identifying the defendant as the individual firing the shots at the victim with a firearm, there was clearly sufficient evidence to prove beyond a reasonable doubt that the defendant committed the charges of aggravated assault, PIC, and unlicensed possession of a firearm.¹⁶

Verdict Supported Only by Speculation, Conjecture, and Surmise

The defendant next claims that the verdict was against the weight of the evidence because the evidence supporting the verdict is based on speculation, conjecture, and surmise, particularly as it pertains to the elements of the crime. The defendant claims there is only speculation that the defendant was the perpetrator, or an accomplice or a conspirator, that he had the specific intent to kill, or that he was the perpetrator of the other crimes. This claim is without merit.

The jury's verdict is supported by the weight of the evidence. A weight of the evidence claim is primarily addressed to the discretion of the judge who actually presided at trial. Armbruster v. Horowitz, 813 A.2d 698, 702 (Pa. 2002). It is axiomatic that it is the function of the jury as the finder of fact to determine the credibility of the witnesses. Commonwealth v. Champney, 832 A.2d 403, 408 (Pa. 2003). Thus, the trial judge possesses only narrow authority to upset a jury verdict on a weight of the evidence claim:

“[A] trial judge cannot grant a new trial because of a mere conflict in testimony or because the trial judge on the same facts would have arrived at a different conclusion. Instead, a new trial should be granted only in truly extraordinary circumstances, for example, when the jury's 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.”

Commonwealth v. Edwards, 903 A.2d 1139, 1148-49 (Pa. 2006). Indeed, “[t]rial judges, in reviewing a claim that the verdict is against the weight of the evidence, do not sit as the thirteenth juror.

¹⁶ The Commonwealth also introduced a Certificate of Nonlicensure at trial, showing that the defendant did not possess a valid license to carry a firearm or a valid sportsman's firearm permit on the date of the shooting. N.T. 6/9/2011 at 195.

Rather, the role of the trial judge is to determine that notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.” Commonwealth v. Upshur, 764 A.2d 69, 74 (Pa.Super. 2002). As demonstrated above, the evidence presented by the Commonwealth in this case was not only sufficient to sustain the verdict, but also to satisfy the interests of justice.

As laid out in the facts above, the jury could have inferred from the evidence presented at trial that the defendant was a conspirator in the murder of the victim. Such an inference may be based on the defendant’s presence at the scene of the drug deal and robbery, his firing the initial gunshots at the victim just four miles away from and shortly before the gunshots that ultimately killed the victim, the presence at the scene of the murder of the vehicle with which the defendant was connected, the firing of a black gun out of that vehicle’s window which ultimately killed the victim, and the records of the defendant’s cell phone activity. It cannot be said that the verdict is so contrary to the evidence as to make the award of a new trial imperative so that right may be given another opportunity to prevail; therefore, the defendant’s claim that the verdict was against the weight of the evidence is without merit.

Improperly Instructed Jury Regarding Number of Shots Fired and Specific Intent to Kill

The defendant next claims that the trial Court erred in its instruction to the jury by charging that the number of shots fired by the defendant could be viewed as an item of circumstantial evidence of a specific intent to kill because this placed undue emphasis on one aspect of the case whereas the jury must look at all the evidence and the totality of the circumstances. The defendant claims that the Court’s instruction, which is not found in the standard charge or in any case law, improperly directed the jury towards a verdict of first-degree murder. The defendant’s claim states that this Court did not limit its instruction by advising the jury that the number of shots fired would be but one factor, amongst many factors, that the jury could consider. This claim is without merit.

“It is axiomatic that . . . the trial court has broad discretion in phrasing its instructions so long as the law is clearly, adequately and accurately presented to the jury.” Commonwealth v. Overby, 836 A.2d 20, 24 (Pa. 2004)(citations omitted). Furthermore, “[t]he Standard Jury Instructions are not conclusive, but are merely a guide.” Commonwealth v. Clark, 683 A.2d 901, 907 (Pa.Super. 1996), *citing* Commonwealth v. Morningwake, 595 A.2d 158, 163 (Pa. 1991), appeal denied, 600 A.2d 535 (Pa. 1991) (impliedly overruled on other grounds in 612 A.2d 1037 (Pa. 1992)). In addition, “[t]he trial court may use its own form of expression to explain difficult legal concepts to the jury, as long as the trial court’s instruction accurately conveys the law.” Commonwealth v. Johnson, 815 A.2d 563, 580 (Pa. 2002).

“The willful, deliberate and premeditated intent to kill distinguishes first degree murder from all other degrees of murder. Circumstantial evidence may prove this specific intent to kill.” Commonwealth v. Brown, 711 A.2d 444, 477 (Pa. 1998) (citations omitted). “Circumstantial evidence of a specific intent to kill may be drawn from the manner in which the homicide was committed, such as, multiple gunshot wounds.” Commonwealth v. Hughes, 865 A.2d 761, 793 (Pa. 2004). The number of shots fired is circumstantial evidence and may be used as a factor in determining whether premeditated intent to kill existed at the time of the murder. See Commonwealth v. Ramtahal, 33 A.3d 602 (Pa. 2011) (listing factors used to show lack of malice and specific intent including number of shots fired, distance bullet traveled, location of entry wound, and Appellant’s claim he merely fired into air to cause fear).

Instructing the jury about the use of circumstantial evidence is proper and the number of shots fired example accurately apprised the jurors of the law applicable to the evidence in this case. Additionally, the defendant’s claim that this Court’s instruction inhibited the jury from viewing specific intent to kill in light of the totality of the circumstances is without merit. After explaining the legal requirements for premeditation and providing one other example of circumstantial

evidence that may be used by the jury, this Court stated, “The number of shots fired at a victim can also be *an item* of circumstantial evidence from which *you may, if you choose*, infer that there was a specific intent to kill.” N.T. 6/10/2011 at 123-24 (emphasis not in original). This Court merely stated the number of shots fired as a possible piece of circumstantial evidence which may be used, along with other factors, including whether the shots were fired at a vital part of the victim’s body. For these reasons, the defendant’s claim fails.

Improperly Instructed Jury Regarding Consciousness of Guilt

The defendant’s final claim states the trial Court erred by charging the jury, in spite of defense counsel’s objection, that the defendant’s statement to Detective Beidler, and the letter the defendant sent to Frank Lambert, Jr., could be viewed as consciousness of guilt. The defendant claims that this Court was in error because the defendant was not doing anything that is traditionally viewed under case law as tending to establish consciousness of guilt. This claim is without merit.

Jury instructions must be supported by the evidence of record because instructions regarding matters that are not before the court only serve to confuse the jury. Commonwealth v. Bruce, 717 A.2d 1033, 1037 (Pa.Super. 1998), *citing* Commonwealth v. Washington, 692 A.2d 1024 (Pa. 1997); see also Commonwealth v. Carson, 913 A.2d 220, 282 (Pa. Super. 2006) (noting jury instruction must be reviewed by evaluating the instruction as a whole to ascertain whether it fairly conveys the required legal principles at the heart of the dispute). This Court’s jury instruction regarding consciousness of guilty was supported by the evidence of record. “[W]hen a person has committed a crime, and knows that he is wanted for it, any attempt by that person to flee or conceal his whereabouts, to escape from custody or resist arrest, to conceal or destroy evidence, to give false statements or testimony, *to intimidate or attempt to influence witnesses, or to otherwise engage in conduct designed to avoid apprehension or prosecution* for such crime may be admissible as evidence of consciousness of guilt, and may, along with other evidence in the case, form a basis from which guilt may be

inferred.” Commonwealth v. Pestinikas, 617 A.2d 1339, 1347-48 (Pa.Super. 1992) (emphasis not in original). The defendant takes a narrow view of evidence that may be relevant to consciousness of guilt; however, evidence “traditionally viewed under case law as tending to establish consciousness of guilt” includes more than actual flight or concealing one’s identity. See Pestinikas, 617 A.2d at 1348 (holding applying political pressure for purpose of obtaining dismissal of charges is relevant circumstance tending to show consciousness of guilt).

In the present case, the defendant was involved with a drug deal, robbery, and murder to which the car he had been driving for at least several weeks before and after the crimes were committed was connected. When police stopped the defendant in Bucks County and told him he was being detained for something that happened in Philadelphia, the defendant made the point of telling the police officer twice that the vehicle was not his. About a week after the defendant’s initial arrest, he sent a letter to Frank Lambert, Jr. regarding this case. The letter referenced what others in Frank Lambert, Jr.’s family had said to the police and that the defendant “hope[d] they don’t go all the way with this ‘cause it could be damaging to all of them.”

The defendant’s statements to the arresting officer that the car did not belong to the defendant served the purpose, if the jury wished to accept it as such, of distancing the defendant from the crime to which he knew he was connected in an effort to avoid prosecution. Additionally, the defendant’s letter to Frank Lambert, Jr. could be viewed by the jury, if the jury so decided, as an attempt to influence witnesses. Accordingly, this Court instructed the jury: “If you believe these items of evidence, you *may* consider them as tending to prove or establish the defendant’s consciousness of guilt. *You are not required to do so*. You should consider and weigh this evidence along with all the other evidence in the case.” N.T. 6/10/2011 at 109 (emphasis not in original). This Court’s jury instruction was supported by the evidence of record. Therefore, the defendant’s final claim must also fail.

Accordingly, the judgments of sentence should be affirmed.

BY THE COURT:


M. TERESA SARMIÑA, J.