

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

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| COMMONWEALTH OF PENNSYLVANIA, | | IN THE SUPERIOR COURT OF PENNSYLVANIA |
| Appellee | | |
| v. | | |
| PHILOME CESAR, | | |
| Appellant | | No. 453 EDA 2012 |

Appeal from the Judgment of Sentence December 20, 2011
In the Court of Common Pleas of Lehigh County
Criminal Division at No(s):
CP-39-CR-0005299-2010
CP-39-CR-0005301-2010
CP-39-CR-0005302-2010

BEFORE: BENDER, J., LAZARUS, J., and COLVILLE, J.*

MEMORANDUM BY LAZARUS, J.

Filed: April 25, 2013

Philome Cesar appeals from the judgment of sentence of 95 to 190 years' incarceration, imposed after he was convicted by a jury of nineteen counts of robbery and one count of providing false identification to law enforcement. On appeal, Cesar challenges the trial court's denial of his pretrial motion to suppress, the denial of his petition for writ of *habeas corpus*, the sufficiency of the evidence to sustain several of his robbery convictions, and the discretionary aspects of his sentence. After our review, we find no error or abuse of discretion. Therefore, we affirm the judgment of sentence.

* Retired Senior Judge assigned to the Superior Court.

A jury convicted Cesar of committing nineteen separate armed robberies of Lehigh County convenience stores, hotels, and other commercial establishments. Cesar displayed a firearm, threatening and terrorizing the victims with it during the crimes. After a months-long robbery spree, Cesar was ultimately apprehended and discovered to be in possession of items stolen from several victims, as well as clothing matching the description of that worn by the perpetrator of these numerous offenses. Other physical evidence directly tied Cesar to several of the robberies, and as all of the crimes had a similar *modus operandi*, the jury found Cesar guilty of committing all nineteen robberies. Cesar's conviction of providing false identification to law enforcement was based on his giving officers a false name at the time of his arrest.

The sentencing court reviewed a presentence report and, on December 20, 2011, the court held a sentencing hearing. Following the hearing, the court sentenced Cesar to a mandatory term of five to ten years' incarceration for each of his nineteen robbery convictions, for an aggregate term of 95 to 190 years' imprisonment. The court imposed the mandatory sentence because during each offense, Cesar brandished a firearm, placing his victims in fear of death or serious bodily injury. **See** 42 Pa.C.S. § 9712(a). Cesar filed a timely notice of appeal, as well as a timely concise

statement of matters complained of on appeal pursuant to Pa.R.A.P.

1925(b).¹ He raises five issues for our review:

- I. Did the court err in denying Cesar's pre-trial motion to suppress the evidence seized during a stop in violation of [Cesar's] rights under the fourth amendment to the Constitution of the United States and Article I, Section 8 of the Constitution of the Commonwealth of Pennsylvania?
- II. Did the court err in failing to grant Cesar's pre-trial motion in the nature of a *habeas corpus* motion where the Commonwealth failed to make out a *prima facie* case for each robbery?
- III. Did the court err in failing to grant a new trial where the evidence was insufficient as a matter of law to support the conviction[s]?
- IV. Is there a substantial question for which the Superior Court should grant allowance of appeal from the discretionary aspects of the sentence?
- V. Did the court err in sentencing Cesar to a harsh and excessive sentence which was therefore unjust where the sentence is the equivalent to a [term of] life in prison without the possibility of parole where there were no allegations of serious bodily injuries?

Appellant's Brief at 5.

Cesar first argues that the court improperly denied his pretrial motion to suppress evidence seized subsequent to his arrest.

In reviewing an order from a suppression court, we consider the Commonwealth's evidence, and only so much of the defendant's

¹ We note that during his trial and sentencing hearing, Cesar chose to represent himself with the assistance of court-appointed standby counsel. However, following the imposition of his sentence, Cesar moved for appointment of counsel to represent him on appeal, which the court granted. Accordingly, Cesar is represented by counsel in this appeal.

evidence as remains uncontradicted. We accept the suppression court's factual findings which are supported by the evidence and reverse only when the court draws erroneous conclusions from those facts.

Commonwealth v. Hoopes, 722 A.2d 172, 174-75 (Pa. Super. 1998).

Cesar argues that after he was arrested, police officers interrogated him without giving him the requisite warnings pursuant to ***Miranda v. Arizona***, 384 U.S. 436 (1966).² He maintains that, consequently, "the information provided during the course of the interrogation of [Cesar] after he was placed in custody was gained in violation of his constitutional rights making his arrest unlawful conduct by the police." Appellant's Brief, at 21. Thus, Cesar contends that "[a]ny evidence obtained as a result of this unlawful arrest should have been suppressed." ***Id.***

Initially, we note that in his motion to suppress, Cesar did not challenge the legality of his arrest on the basis that police officers impermissibly interrogated him prior to giving him ***Miranda*** warnings. ***See*** Appellant's Omnibus Pre-Trial Motions, 2/18/11, at 6-8. Therefore, this specific claim is waived. ***See Commonwealth v. Richter***, 791 A.2d 1181, 1186 (Pa. Super. 2002) (citation omitted) (failure to raise issue in suppression motion constitutes waiver of that claim).

² In its January 6, 2012 opinion ruling on Cesar's post-sentence motions, the trial court provides a detailed discussion of the circumstances surrounding Cesar's arrest, and the subsequent search of his vehicle and residence. For purposes of this appeal, we adopt the court's discussion of those facts. ***See*** Trial Court Opinion, 1/6/12, at 15-21.

Nevertheless, even had Cesar raised this argument in his motion to suppress, we would conclude that it is meritless. Assuming, *arguendo*, that following Cesar's arrest, officers interrogated him without first providing ***Miranda*** warnings, that error does not retroactively make his arrest illegal. Rather, the omission of ***Miranda*** warnings might justify suppression of statements made by Cesar, or perhaps evidence that would not have inevitably been discovered absent those statements. ***See Commonwealth v. Hoffman***, 589 A.2d 737, 743 (Pa. Super. 1991) (evidence which would have been inevitably discovered by lawful means is purged of original illegality and may be admitted). Cesar does not identify what precise statements or evidence should have been suppressed due to the alleged omission of ***Miranda*** warnings. Therefore, his challenge to the court's denial of his suppression motion would be meritless even had it been properly preserved.

Secondly, Cesar alleges that the trial court erred in denying his pretrial "Petition for Writ of *Habeas Corpus* and Motion to Dismiss for Failure to Establish a *Prima Facie* Case." In his petition, Cesar argued that the Commonwealth presented insufficient evidence at the preliminary hearing to sustain any of the charges pending against him. However, this Court has declared that:

[O]nce a defendant has gone to trial and has been found guilty of a crime, any alleged defect in the preliminary hearing is rendered immaterial. Where, as in the instant case, it is determined at trial that the evidence of the Commonwealth is sufficient to be submitted to the jury, then any deficiency in the

presentation before the district justice would have been harmless.

Commonwealth v. Kelley, 664 A.2d 123, 127 (Pa. Super. 1995) (citations and internal quotation marks omitted). Accordingly, in the present case, the alleged defects in the preliminary hearing were rendered immaterial upon Cesar's conviction.

In his third issue, Cesar challenges the sufficiency of the evidence to sustain twelve of his robbery convictions. His sole argument is that no witness could directly identify him as the person who committed those twelve robberies and, therefore, the evidence was necessarily insufficient to sustain his convictions.

In reviewing a sufficiency of the evidence claim, we must determine whether the evidence admitted at trial, as well as all reasonable inferences drawn therefrom, when viewed in the light most favorable to the verdict winner, are sufficient to support all elements of the offense. ***Commonwealth v. Moreno***, 14 A.3d 133 (Pa. Super. 2011). Additionally, we may not reweigh the evidence or substitute our own judgment for that of the fact finder. ***Commonwealth v. Hartzell***, 988 A.2d 141 (Pa. Super. 2009). The evidence may be entirely circumstantial as long as it links the accused to the crime beyond a reasonable doubt. ***Moreno, supra*** at 136.

Commonwealth v. Koch, 39 A.3d 996, 1001 (Pa. Super. 2011). Additionally, "[a] person is guilty of robbery if, in the course of committing a theft, he ... threatens another with or intentionally puts him in fear of immediate serious bodily injury." 18 Pa.C.S. § 3701(a)(1)(ii).

Instantly, Cesar is correct that the Commonwealth was only able to present witness identification testimony and/or physical evidence directly

linking him to seven of the nineteen robberies of which he was convicted. However, the Commonwealth proffered ample circumstantial evidence tying Cesar to the other twelve robberies, as detailed by the trial court in its January 6, 2012 opinion. Rather than reproducing that thorough analysis, we adopt it herein, and conclude that the evidence discussed by the court was sufficient to sustain each of Cesar's nineteen robbery convictions. **See** Trial Court Opinion., *supra* at 4-25.

Finally, Cesar challenges the trial court's discretion to impose an aggregate sentence of 95 to 190 years' imprisonment. His right to review of this assertion is not absolute. ***Commonwealth v. Coulverson***, 34 A.3d 135, 142 (Pa. Super. 2011) (citing ***Commonwealth v. Fiascki***, 886 A.2d 261, 263 (Pa. Super. 2005); ***Commonwealth v. Hoch***, 936 A.2d 515, 518 (Pa. Super. 2007) ("A challenge to the discretionary aspects of a sentence must be considered a petition for permission to appeal[.]")).

The Rules of Appellate Procedure mandate that to obtain review of such claims, the appellant must include in his brief a Concise Statement of Reasons Relied Upon for Allowance of Appeal. **See** [***Fiascki***, 886 A.2d at 263]; **see also** Pa.R.A.P. 2119(f). The defendant's Concise Statement must, in turn, raise a substantial question as to whether the trial judge, in imposing sentence, violated a specific provision of the Sentencing Code or contravened a "fundamental norm" of the sentencing process. **See *Fiascki***, 886 A.2d at 263; ***Commonwealth v. Ousley***, 573 A.2d 599, 601 (Pa. Super. 1990) (citations and internal quotation marks omitted) ("[A]ppeals from the discretionary aspects of sentence are not to be granted as a matter of course, but ... only in exceptional circumstances where it can be shown in the 2119(f) statement that despite the multitude of factors impinging on the sentencing decisions, the sentence imposed contravenes the sentencing code.") The determination of

whether a particular issue poses a substantial question is to be made on a case-by-case basis. **See Fiascki**, 886 A.2d at 263. If the Rule 2119(f) statement is absent or if the statement provided fails to demonstrate a substantial question, this Court may refuse to accept the appeal. **See id.**

Coulverson, 34 A.2d at 142.

Cesar's Rule 2119(f) statement reads as follows:

1. The sentence of [] [A]ppellant ... was manifestly excessive, and therefore unjust.
2. The trial court sentenced [] [A]ppellant to not less than five to not more than ten years on each of the 19 robberies and ran them consecutive to one another giving an aggregate sentence of not less than 95 to nor more than 190 years which, under the circumstances, was excessive.
3. The sentences were run consecutive making them the equivalent to a life sentence without parole in a case which did not involve bodily injury to any victim.
4. The trial court failed to give due consideration to mitigating factors presented by [] [Cesar].

Appellant's Brief, at 17.

Essentially, Cesar alleges that the consecutive nature of his sentences resulted in a manifestly excessive aggregate term of imprisonment in light of the particular circumstances of his case. This argument, combined with the term of incarceration at issue, compels us to conclude that Cesar has presented a substantial question permitting our review. **See Coulverson**, 34 A.3d at 143 (citations omitted) ("We have concluded in prior cases that claims of excessiveness may be justiciable as substantial questions based on the circumstances of the case and the extent to which the appellant's Rule 2119(f) statement suggests the trial court's deviation from sentencing

norms."); ***Commonwealth v. Dodge***, 957 A.2d 1198, 1200 n.1 (Pa. Super. 2008) (appellant's claim that consecutive nature of his standard range sentences, totaling 58 ½ to 124 years, was manifestly excessive and amounted to substantial question).

Our standard of review, and the rationale underlying it, is as follows:

Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.

Commonwealth v. Rodda, 723 A.2d 212, 214 (Pa. Super. 1999) (*en banc*) (quotation marks and citations omitted). ***See also Commonwealth v. Walls***, 592 Pa. 557, 926 A.2d 957, 961 (2007) (citation omitted) ("An abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest unreasonableness, or partiality, prejudice bias or ill-will, or such a lack of support as to be clearly erroneous.").

The rationale behind such broad discretion and the concomitantly deferential standard of appellate review is that the sentencing court is "in the best position to determine the proper penalty for a particular offense based upon an evaluation of the individual circumstances before it." ***Commonwealth v. Ward***, 524 Pa. 48, 568 A.2d 1242, 1243 (1990); ***see also Commonwealth v. Jones***, 418 Pa. Super. 93, 613 A.2d 587, 591 (1992) (*en banc*) (offering that the sentencing court is in a superior position to "view the defendant's character, displays of remorse, defiance or indifference and the overall effect and nature of the crime."). Simply stated, the sentencing court sentences flesh-and-blood defendants and the nuances of sentencing decisions are difficult to gauge from the cold transcript used upon appellate review.

Id. Nevertheless, the trial court's discretion is not unfettered. "When imposing a sentence, the sentencing court must consider the factors set out in 42 Pa.C.S. § 9721(b), that is, the protection of the public, gravity of offense in relation to impact on victim and community, and rehabilitative needs of the defendant.... [A]nd, of course, the court must consider the sentencing guidelines." [*Commonwealth v.*] *Fullin*, 892 A.2d [843,] at 847–48 [(Pa. Super. 2006)].

Coulverson, 34 A.3d at 144.

In the present case, Cesar concedes that each of his individual sentences were within the standard range of the sentencing guidelines. However, Cesar contests the court's decision to run each of those individual sentences consecutively, thus totaling what is necessarily a life term of incarceration, without the possibility of parole. *See* 42 Pa.C.S. § 9712(a) (individuals subject to this mandatory minimum "shall not be eligible for parole, probation, work release or furlough"). Cesar argues that such a severe sentence was not warranted, especially in light of the fact that he did not physically harm or kill anyone during the commission of the robberies.

In imposing this sentence, the trial court was required to consider the factors set forth in 42 Pa.C.S. § 9721(b), which states, in relevant part:

(b) General standards.--In selecting from the alternatives set forth in subsection (a), the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant. The court shall also consider any guidelines for sentencing and resentencing adopted by the Pennsylvania Commission on Sentencing and taking effect under section 2155 (relating to publication of guidelines for sentencing, resentencing and parole and recommitment ranges following revocation).

Id.

Furthermore, in assessing whether the trial court's sentence amounts to an abuse of discretion, this Court must adhere to section 9781 of the Sentencing Code. That section directs that we "shall vacate the sentence" and remand for resentencing where a sentence that is within the guidelines is "clearly unreasonable." 42 Pa.C.S. § 9781(c)(2). That statutory provision mandates that in evaluating the discretionary aspects of a sentence, this Court "shall have regard for" the following:

- (1) The nature and circumstances of the offense and the history and characteristics of the defendant.
- (2) The opportunity of the sentencing court to observe the defendant, including any presentence investigation.
- (3) The findings upon which the sentence was based.
- (4) The guidelines promulgated by the commission.

42 Pa.C.S. § 9781(d).

In ***Commonwealth v. Walls, supra***, our Supreme Court offered guidance as to how these two statutory sections, 9721 and 9781, impact an appellate court's review of the reasonableness of a sentence. The Court explained:

We are of the view, however, that the Legislature intended that considerations found in Section 9721 inform appellate review for unreasonableness. That is, while a sentence may be found to be unreasonable after review of Section 9781(d)'s four statutory factors, in addition a sentence may also be unreasonable if the appellate court finds that the sentence was imposed without express or implicit consideration by the sentencing court of the general standards applicable to sentencing found in Section 9721, i.e., the protection of the public; the gravity of the offense

in relation to the impact on the victim and the community; and the rehabilitative needs of the defendant. 42 Pa.C.S. § 9721(b).

Walls, 926 A.2d at 568-69. As we pointed out in *Coulverson*, this Court “has deemed these same considerations applicable to a determination that a sentence is ‘clearly unreasonable.’” *Coulverson*, 34 A.2d at 147 (citing *Commonwealth v. Moore*, 617 A.2d 8, 12 (Pa. Super. 1992)). Ultimately, we are mindful that “individualized sentencing remains the controlling norm of the sentencing process and that a sentence befitting one defendant may not benefit another.” *Id.*

After considering the above-stated statutory factors, we are compelled to conclude that the sentence imposed here was not “clearly unreasonable” within the meaning of section 9781(d), and the sentencing court did not commit a manifest abuse of discretion. *Walls*, 926 A.2d at 961.

An abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous. The rationale behind such broad discretion and the concomitantly deferential standard of appellate review is that **the sentencing court is in the best position to determine the proper penalty for a particular offense based upon an evaluation of the individual circumstances before it.**

Id. (emphasis added); *see also Commonwealth v. Druce*, 796 A.2d 321, 337 (Pa. Super. 2002).

It is well-settled that a sentencing court has the discretion to impose its sentences consecutively or concurrently. **See Commonwealth v. Marts**, 889 A.2d 608, 612 (Pa. Super. 2005); **see also** 42 Pa.C.S. § 9721. Here, the sentencing court had the benefit of, and considered, a presentence report. **See Commonwealth v. Devers**, 546 A.2d 12 (Pa. 1988) (where presentence report exists, there is presumption that sentencing judge was aware of and adequately considered information relevant to defendant's character, as well as mitigating factors).

Additionally, due to Cesar's decision to represent himself at trial and during his sentencing hearing, the court had more than the typical opportunity to observe him. It is also apparent that the court was aware of the relevant sentencing guidelines, and imposed sentences within the standard range for each of Cesar's nineteen robbery convictions. The judge considered the required statutory factors, the presentence report, the sentencing guidelines, the victims' statements and Cesar's demeanor. Cesar, even after conviction, was unwilling to take responsibility for his actions. He insisted he was "not a violent person." Sentencing Transcript, 12/20/2011, at 27-28. And yet, as the sentencing judge stated, "the jury convicted you of nineteen separate armed robberies where you put guns in peoples' faces, counted down how many seconds were left in their lives - - and demanded money." **Id.** at 28. Cesar preyed upon nightshift workers at convenience stores and hotels, terrorizing the victims and counting down the "death clock" in seconds as he "racked the slide" on the gun so they

would hurry and give him the money he demanded. *Id.* at 36. The findings on which the court based its sentence, therefore, do not render it “clearly unreasonable.” 42 Pa.C.S. § 9781(d).

In our view, the sentence is consistent with the protection of the public, the gravity of the offenses as they relate to the impact on the lives of the victims and the community, and Cesar’s rehabilitative needs. *See* 42 Pa.C.S. § 9721(b). The record as a whole reflects the court’s reasons and its meaningful consideration of the facts of the crimes and Cesar’s character. Cesar committed nineteen robberies with a firearm, and terrorized nineteen victims and an entire community for a whole summer. He is not entitled to a volume discount. *See Commonwealth v. Hoag*, 665 A.2d 1212, 1214 (Pa. Super. 1995) (stating appellant is not entitled to “volume discount” for his crimes by having all sentences run concurrently). *See Commonwealth v. Malovich*, 903 A.2d 1247, 1253 (Pa. Super. 2006); *see also Druce, supra. Cf. Commonwealth v. Dodge*, 957 A.2d 1198 (Pa. Super. 2008) (where court imposed minimum sentence of fifty-two (52) years’ imprisonment for thirty-seven (37) counts of receiving stolen property, nonviolent property crimes, sentence was manifestly excessive).

In conclusion, we do not find the sentencing court’s decision to impose consecutive sentences a manifest abuse of discretion in light of the criminal conduct at issue.

Judgment of sentence affirmed.

BENDER, J., files a Dissenting Memorandum.

Court is Defendant's Post Sentence Motion pursuant to Pennsylvania Rule of Criminal Procedure Rule 720. In his Post Sentence Motion, the Defendant filed a Motion for Judgment of Acquittal/Motion in Arrest of Judgment and for a New Trial. The Defendant also challenges the sufficiency and weight of the evidence. Additionally, the Defendant requests that this Court reconsider and modify the sentence imposed.

A. Challenging the Sufficiency of the Evidence

The Defendant alleges that the evidence presented by the Commonwealth at trial was insufficient to sustain finding the Defendant guilty of nineteen (19) counts of Robbery and one (1) count of False Identification to Law Enforcement Authorities. It is well-settled law in Pennsylvania that when reviewing the sufficiency of the evidence claim, the appellate court must review all of the evidence and all reasonable inferences drawn therefrom in a light most favorable to the Commonwealth as the verdict winner. Commonwealth v. Taylor, 831 A.2d 661, 663 (Pa. Super. 2003), *quoting* Commonwealth v. DiStefano, 782 A.2d 574, 582 (Pa. Super. 2001)(stating that the standard applied in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt); Commonwealth v. Klein, 795 A.2d 424, 426 (Pa. Super. 2002); Commonwealth v. Hall, 549 Pa. 269, 280, 701 A.2d 190, 195 (1997), *cert. denied*, 523 U.S. 1082, 118 S.Ct.

more than ten (10) years in a state correctional institution. In Case No. 5301/2010, the Defendant was sentenced on the charge of False Identification to a term of state imprisonment of not less than two (2) months nor more than twelve (12) months. In Case No. 5302/2010, the Defendant was sentenced on the charge of Robbery to a term of imprisonment of not less than five (5) years nor more than ten (10) years in a state correctional facility. All counts within Case No. 5299/2010 and Case No. 5302/2010 were ordered to run consecutively to each other.

1534, 140 L.Ed.2d 684 (1998). Moreover, the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Commonwealth v. Hunzer, 868 A.2d 498, 505 (Pa. Super. 2005). With that standard in mind, we must determine whether the evidence was sufficient to prove all of the elements of the crimes, which the Defendant challenges, beyond a reasonable doubt. Commonwealth v. McCalman, 795 A.2d 412, 415 (Pa. Super. 2002) (citing Commonwealth v. Passarelli, 789 A.2d 708, 716 (Pa. Super. 2001) (citations and quotations omitted)). Furthermore, a mere conflict in the testimony does not render the evidence insufficient, because it is within the province of the fact finder to determine the weight to be given to the testimony and to believe all, part or none of the evidence. Commonwealth v. Moore, 436 Pa. Super. 495, 501, 648 A.2d 331, 333 (1993). If the finder of fact reasonably could have determined from the evidence adduced that all of the necessary elements were established, then the evidence will be deemed sufficient to support the verdict. Hunzer, 868 A.2d at 505.

Initially we note that a person is guilty of Robbery under 18 Pa. C.S.A. § 3701(a)(1)(ii) if, “in the course of committing a theft, he threatens another with or intentionally puts him in fear of immediate serious bodily injury.” 18 Pa. C.S.A. § 3701(a)(1)(ii). Additionally, an 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. 18 Pa. C.S.A. § 3701(a)(2). Furthermore, a person commits the offense of False Identification to Law Enforcement Authorities “if he furnishes law enforcement authorities with false information about his identity after being informed by a law enforcement officer who is in uniform or who has identified himself as a law

enforcement officer that the person is the subject of an official investigation of a violation of law.” 18 Pa. C.S.A. § 4914(a).

After a review of the record, this Court finds that the evidence presented at trial was sufficient to support the jury’s verdict with regard to all of the aforementioned charges. Viewed in the light most favorable to the Commonwealth, as verdict winner, a summary of the specific evidence established at trial is as follows:

In the instant case, on June 2, 2010, at approximately 2:20 A.M., Ms. Cynthia Zack was working as a night auditor at the Holiday Inn Express located at 3620 Hamilton Boulevard, South Whitehall Township, Lehigh County, Pennsylvania. At that time, a 5’8”-ish male wearing a white mask, a dark hooded sweatshirt, dark gloves and brandishing a silver handgun came to the hotel reservation desk at which she was working.⁴ The lone gunman demanded that she give him money.⁵ Ms. Zack took the cash drawer and placed it on top of the reservation desk, and told the man to “take it.” The perpetrator took over Three Hundred Dollars and 00/100 (\$300.00) out of the cash drawer. Ms. Zack notified the police of the incident after the gunman fled the scene.

Thereafter, on June 3, 2010, at approximately 3:18 A.M., Ms. Judith Kane was working as a night auditor at the Fairfield Inn by Marriott located at 2140 Motel Drive, Bethlehem, Lehigh County, Pennsylvania. (C. Ex. 15). At that time, a 5’8” to 5’10” thin male wearing dark clothing and a black hood and brandishing a silver handgun in his left hand entered the motel at which she was working. The lone

⁴ The actor entered through the front door of the establishment.

⁵ The perpetrator stated, “Give me the money. You have ten (10) seconds.”

gunman demanded that she give him money.⁶ Ms. Kane complied with his demands and gave him approximately One Hundred Seventy Dollars and 00/100 (\$170.00) out of the cash drawer. After he left the hotel, Ms. Kane called the authorities.

Then, on June 7, 2010, at approximately 3:00 A.M., Mr. David Baum was working in the office as a desk clerk at the Red Carpet Inn located at 731 Hausman Road, South Whitehall Township, Lehigh County, Pennsylvania. (C. Ex. 30). At that time, a male wearing all black, including a black hoodie, black gloves, and brandishing a light metal handgun in his left hand entered the motel at which he was working through an open window.⁷ The lone gunman demanded that he give him money. Mr. Baum opened the cash drawer and gave the perpetrator approximately Seven Hundred Dollars and 00/100 (\$700.00) in cash in a trash bag through the reservation window. Mr. Baum was then ordered to lie down on the floor. After the incident, Mr. Baum called the police to report the crime.

On the same date, at approximately 3:26 A.M., Mr. Rajendra Patel was working as a cashier at the 7-Eleven located at 1362 Catasauqua Road, Bethlehem, Lehigh County, Pennsylvania. (C. Ex. 13). At that time, a male wearing a light colored mask, and brandishing a silver handgun in his left hand entered the convenience store at which he was working.⁸ (C. Ex. 14). The lone gunman demanded that he give him money. A security officer from the Westgate Mall, Mr. John Kebort,⁹

⁶ The perpetrator stated, "Give me the money." He then proceeded to give her ten (10) seconds to provide him with same, by commencing to count backwards from one (1).

⁷ The actor kicked out the screen to the window in order to gain access to the facility.

⁸ When the perpetrator entered the convenience store, Mr. Patel was mopping the floors. Mr. Patel heard the doorbell chime when the person entered the convenience store.

⁹ Mr. Kebort is employed by the Westgate Mall as a security officer. He was making his normal rounds on June 7, 2010, when he observed a man wearing a dark hoodie, blue jeans, beige work boots, black gloves and a cap pulled over his face enter the convenience store. Mr. Kebort saw the actor head in the direction of Mr. Patel. Realizing that the perpetrator was

was present in the convenience store, pulled out his firearm, and frightened the gunman off.

One week later, on June 14, 2010, at approximately 2:00 A.M., Mr. Richard Theis was working as a front desk clerk at the Best Western Hotel located at 1446 West Broad Street, Quakertown, Lehigh County, Pennsylvania. At that time, a male wearing all black, including a black gauze mask, black gloves and a black hooded sweatshirt, and brandishing a gray handgun in his left hand came into the hotel at which he was working. (C. Ex. 55). The lone gunman demanded that he give him money. As there was no cash in the register and Mr. Theis was unable to access the safe, the perpetrator demanded that Mr. Theis give him *his* money. The gunman took Twenty Dollars (\$20.00) from Mr. Thies' wallet. The Defendant then left the scene and Mr. Theis notified the police.

Thereafter, on June 18, 2010, at approximately 1:30 A.M., Mr. Majed Eilan was working as a night auditor at the Econo Lodge located at 2115 Downyflake Lane, Allentown, Lehigh County, Pennsylvania. (C. Ex. 24). At that time, a black¹⁰ male wearing a black mask, a dark sweatshirt, jeans and brandishing a silver handgun in his left hand¹¹ came into the hotel reservation area in which he was working. (C. Ex. 25). The lone gunman demanded that he give him money. When Mr. Eilan attempted to reason with the gunman, the actor racked the slide of his handgun. Mr. Eilan took the cash out of the cash drawer and gave it to him in his right hand. The perpetrator took between Ninety Dollars and 00/100 (\$90.00) and

armed with a silver handgun in his left hand, Mr. Kebort drew his weapon, and frightened the lone gunman from the convenience store.

¹⁰ Mr. Eilan testified, without reservation, that the skin of the actor was black.

¹¹ The perpetrator took the money with his right hand, as the gun was in his left hand.

One Hundred Dollars and 00/100 (\$100.00) out of the cash drawer.¹² Mr. Eilan believed that the individual fled to the adjacent bank parking lot after the incident. Mr. Eilan immediately called the authorities to report the incident.

On the same date, at approximately 3:41 A.M., Mr. Aziz Afif was working at the 7-Eleven located at 2324 Union Boulevard, Allentown, Lehigh County, Pennsylvania.¹³ (C. Ex. 26). At that time, a black male wearing a dark mask and a dark hooded jacket, dark clothing, black gloves, and brandishing a silver handgun in his left hand entered the convenience store at which he was working. The lone gunman demanded that he give him money.¹⁴ At first Mr. Afif thought that the actor was joking. However, after the gunman cursed and racked the slide of his firearm, Mr. Afif realized that he was serious. Mr. Afif took the cash out of the cash drawer and gave it to him. The perpetrator took approximately One Hundred Sixty-five Dollars and 00/100 (\$165.00) out of the cash drawer. The actor was not satisfied with this amount. Then the gunman inquired about lottery money. Mr. Afif indicated that he did not sell lottery tickets at night at that store. The perpetrator then instructed Mr. Afif to give him the change from the register. Mr. Afif complied and provided him with a bunch of quarters contained therein.

Thereafter, on June 20, 2010, at approximately 4:24 A.M., Ms. Gladys Hanna was working as the night auditor at the Hampton Inn located at 7471 Keebler

(C. Ex. 25).

¹² The Defendant also demanded that Mr. Eilan furnish him with his wallet. Mr. Eilan told the perpetrator that he did not have his wallet with him. Consequently, the gunman ordered Mr. Eilan to open the safe. Mr. Eilan explained that he was unable to comply with his request. Instead, Mr. Eilan provided the perpetrator with envelopes that, unbeknownst to the gunman, were empty.

¹³ Mr. Afif was eating his breakfast when the perpetrator entered the convenience store. He heard the front door bell chime when the man entered.

¹⁴ The gunman stated, "Give me the money."

Way, Upper Macungie Township, Lehigh County, Pennsylvania. (C. Ex. 17). At that time, a black¹⁵ male wearing a black mask, a black hooded sweatshirt, black pants or black jeans, gloves, and brandishing a silver (on top) and black (on the underneath) handgun in his left hand came to the hotel reservation desk at which she was working. (C. Ex. 18). The lone gunman demanded that she give him money. Ms. Hanna took cash from the cash drawer, and laid it on the counter. The perpetrator took approximately Two Hundred Seventy-six Dollars and 00/100 (\$276.00) in cash.¹⁶

Five (5) days later, on June 25, 2010, at approximately 3:25 A.M., Mr. Marcos Rosario was working as the front desk clerk at the Holiday Inn Hotel located at 904 W. Hamilton Street, Allentown, Lehigh County, Pennsylvania. (C. Ex. 7). At that time, a black male wearing a black mask, a black hoodie, black gloves, black pants, a hat and brandishing a silver handgun in his left hand came to the hotel reservation desk at which he was working. (C. Ex. 8; C. Ex. 9). The lone gunman demanded that he give him money.¹⁷ Mr. Rosario opened the cash drawer and gave the perpetrator less than Two Hundred Dollars and 00/100 (\$200.00) in cash, and approximately eleven (11) Dorney Park tickets.¹⁸ (C. Ex. 10; C. Ex. 11). The actor

¹⁵ Ms. Hanna identified the individual as African American based on his speech. She indicated that the perpetrator spoke in a whisper and "sounded black." The actor stated, "Give me all your money, including the safe" and "Hurry up."

¹⁶ It was estimated that the entire incident took less than five (5) minutes.

¹⁷ The actor stated, "I just want your money."

¹⁸ Ms. Jamie Birk, the Holiday Inn Hotel Administrator, is authorized to write checks and is familiar with Holiday Inn Hotel bank statements. The Holiday Inn Hotel often purchases blocks of Dorney Park tickets for packages for the guests. Ms. Birk purchases them from Weis Market on Cedar Crest Boulevard in Allentown, Lehigh County, Pennsylvania. (C. Ex. 17). The Dorney Park tickets are then kept in the cash drawer behind the front desk. On June 10, 2010, a company check from the Holiday Inn Hotel was made out to Weis Market for Four Hundred Eighty-eight Dollars and 00/100 (\$488.00) as payment for sixteen (16) Dorney Park tickets. (C. Ex. 75). This check was presented to Weis Market on or about June 23, 2010. (C. Ex. 75).

Kristie Ziegler, the customer service manager at Weis Markets on Cedar Crest

demanded Mr. Rosario's wallet, but Mr. Rosario explained that he did not have it with him. Then, Mr. Rosario was ordered to lie down on the floor. (C. Ex. 12). Mr. Rosario complied, and the perpetrator left the establishment.

Thereafter, on June 30, 2010, at approximately 2:56 A.M., Mr. Darryl Evans was working as a night auditor at the Holiday Inn Express located at 3620 Hamilton Boulevard, South Whitehall, Lehigh County, Pennsylvania. (C. Ex. 1). At that time, a male wearing a black mask, a black hoodie, black jeans, and black gloves and brandishing a silver handgun in his left hand came into the hotel reservation area in which he was working. (C. Ex. 2). The lone gunman pointed the gun, racked the slide, and demanded that he give him money.¹⁹ Mr. Evans opened the cash drawer and gave the perpetrator approximately One Hundred fifty Dollars and 00/100 (\$150.00) in cash. Mr. Evans inquired if the gunman wanted any Dorney Park tickets that were in the drawer. The actor was not interested in the Dorney Park tickets. After the perpetrator left the scene, Mr. Evans called the police and reported the incident. As the Defendant, acting as his own counsel, questioned Mr. Evans at trial about the voice of the perpetrator, Mr. Evans unequivocally testified that the voice of the gunman sounded like *the Defendant's* voice. Mr. Evans stated that he would never forget the voice.

Boulevard, Allentown, Lehigh County, testified that Weis Markets sells Dorney Park tickets. She further testified that the Holiday Inn Hotel is a regular customer of Weis Markets. Weis Market obtains the Dorney Park tickets from the Black Hawk Company, which then sends them to the corporate office of Weis Markets. In turn, the corporate office forwards the Dorney Park tickets to the local Weis Markets on Cedar Crest Boulevard. As the Dorney Park tickets are purchased, they are scanned via the individual barcodes, and a receipt is generated with the UPC on it. Weis Market has the ability to review its sales records through the UPC barcodes. A review of the Weis Market records revealed that seven (7) of the Dorney Park tickets recovered by the authorities were purchased by the Holiday Inn Hotel on June 23, 2010 at 8:50 A.M. (C. Ex. 76).

¹⁹ The perpetrator stated, "You have ten (10) seconds." Mr. Evans replied, "You can have

Subsequently, on July 5, 2010, at approximately 11:00 P.M., Ms. Jenny Foster was working at the Turkey Hill Store located at 1240 Lehigh Street, Allentown, Lehigh County, Pennsylvania.²⁰ (C. Ex. 31). At that time, a male wearing a black mask, a black hoodie, regular blue jeans, tan work boots, gloves and brandishing a silver handgun in his left hand came into the convenience store. (C. Ex. 32; C. Ex. 33). The lone gunman demanded that she open the register and the safe.²¹ Ms. Foster opened the cash register drawer, as well as the safe, and gave the perpetrator the money contained therein. The cash amounted to between Four Hundred Dollars and 00/100 (\$400.00) and Six Hundred Dollars and 00/100 (\$600.00). Ms. Foster was then ordered to lie down on the floor. The gunman inquired if there was a back door. Ms. Foster pointed him in the direction of the back door, but he eventually left via the front door, as the back door was locked. Ms. Foster testified that she suspected that the actor was African American or Hispanic based on his voice.

Thereafter, on July 11, 2010, at approximately 2:50 A.M., Mr. Tyrone Samuel was working as the night auditor at the Hampton Inn located at 7471 Keebler Way, Upper Macungie Township, Lehigh County, Pennsylvania. At that time, a male wearing a black mesh mask, black sweatshirt and black gloves, and brandishing a black and silver handgun in his left hand came into the hotel in which he was working. (C. Ex. 20). The lone gunman demanded that he give him money.²² Mr.

it in five (5) seconds.”

²⁰ Ms. Foster was in the back of the Turkey Hill Store washing out coffee trays when she observed the gunman enter the convenience store. He came towards her in the rear of the store.

²¹ When Ms. Foster was at the cash register, the actor asked Ms. Foster “if she wanted to die tonight”.

²² The gunman demanded, “Give me your money.” The actor inquired if there was a safe in the establishment, and Mr. Samuel replied that there was not.

Samuel opened the register and placed the cash drawer on the counter. The perpetrator took approximately Two Hundred Fifty Dollars and 00/100 (\$250.00) to Three Hundred Dollars and 00/100 (\$300.00) in cash. Then the perpetrator demanded that Mr. Samuel give him *his* money from his wallet that was in his pocket. Mr. Samuel threw his black Louis Vuitton wallet containing approximately One Hundred Dollars and 00/100 (\$100.00) and numerous credit cards, and the gunman retrieved Mr. Samuel's wallet and placed it in his pocket. (C. Ex. 19). Mr. Samuel was ordered to lie down on the floor. Mr. Samuels did not comply with the directive, and instead ran to the back of the Hampton Inn and immediately notified his sister hotel of what had transpired.

Then, on July 17, 2010, at approximately 2:20 A.M., Mr. Edward Lamar was working as a night auditor at the Best Western located at 5630 W. Tilghman Street, Upper Macungie Township, Lehigh County, Pennsylvania.²³ (C. Ex. 27). At that time, a black²⁴ male wearing a black mesh mask, goggles, dark clothing, dark gloves, and brandishing a silver handgun in his left hand came into the hotel in which he was working. The lone gunman demanded that he give him money.²⁵ Mr. Lamar opened the cash drawer. The perpetrator took approximately Three Hundred Dollars and 00/100 (\$300.00) in cash that was contained therein. The gunman inquired if there was a safe. Mr. Lamar explained that he was unable to open the safe. The actor kicked the safe a couple of times and then ordered Mr. Lamar on the ground. When

²³ Mr. Lamar was sitting at his desk when he saw someone approach rapidly with a gun.

²⁴ Mr. Lamar testified that he determined the perpetrator to be African American based on the way that he talked, and the physical appearance of his lips.

²⁵ The gunman demanded, "Give me the money" and "Open the cash drawer." He also stated that he was going to count down from one (1) to five (5), and if the cash drawer was not open, it would be the end for Mr. Lamar.

he was unsuccessful in his attempts, the perpetrator demanded that Mr. Lamar give him his wallet and withdraw Five Hundred Dollars (\$500.00) from the ATM machine in the lobby using Mr. Lamar's debit card. Mr. Lamar provided his PIN number to the gunman, but the ATM machine malfunctioned and no money could be withdrawn. However, there were numerous credit cards and about Seventy Dollars (\$70.00) in Mr. Lamar's wallet that the gunman seized. Mr. Lamar was ordered to lie down on the floor.²⁶ Again, as the Defendant, acting as his own counsel, questioned Mr. Lamar at trial about the voice of the perpetrator, Mr. Lamar, without reservation, testified that the voice of the gunman sounded like *the Defendant's* voice.

Subsequently, on July 25, 2010, at approximately 2:00 A.M., Mr. David Holsopple was working as a driver at Domino's located at 1826 Union Boulevard, Allentown, Lehigh County, Pennsylvania. (C. Ex. 28; C. Ex. 29). At that time, one (1) of the other Domino's employees opened up the exterior side door to retrieve the magnetic Domino's sign from her vehicle. When she was returning into the Domino's facility, an individual tried to pull the exterior employee side door open. The female employee screamed. Mr. Holsopple observed a masked person, covered head to toe in clothing, pulling on the door and he reacted by charging the door, thereby knocking him outside of the building.²⁷ Outside, the perpetrator pointed a handgun that he held in his left hand at Mr. Holsopple. The black²⁸ gunman demanded that Mr. Holsopple give him his money. Mr. Holsopple complied with this directive and he

²⁶ Prior to leaving, the actor inquired if there was security in the building. Mr. Lamar indicated that there was not.

²⁷ Mr. Holsopple tried to open the door, but he found it to be locked. The other employees locked the door to keep the perpetrator out.

²⁸ Mr. Holsopple determined the gunman to be African American based on his dialect.

handed the perpetrator approximately Eighty Dollars (\$80.00) in cash that he had in his front right pocket. The gunman inquired, "What else you got?" Mr. Holsopple indicated that he had nothing else on his person. The perpetrator fled toward the alleyway behind the Domino's building. The police were notified of the incident.

Thereafter, on July 31, 2010, at approximately 3:57 A.M., Mr. Aziz Afif was working at the 7-Eleven located at 2324 Union Boulevard, Allentown, Lehigh County, Pennsylvania.²⁹ At that time, the same black man that previously robbed Mr. Afif on June 18, 2010, entered the convenience store at which he was working. Mr. Afif recognized the perpetrator's black mask, black gloves and dark clothing (including a hoodie), the silver handgun, and the diction used. The lone gunman demanded that he give him money. Mr. Afif took the cash out of the cash drawer and gave it to him. The perpetrator took approximately One Hundred Sixty Dollars and 00/100 (\$160.00) from of the cash drawer. The gunman then fled the scene.

Then, on August 8, 2010, at approximately 2:42 A.M., Mr. David Miller was working at the 7-Eleven located at 1426 W. Broad Street, Bethlehem, Lehigh County, Pennsylvania.³⁰ (C. Ex. 16). At that time, a black male wearing a hooded black mesh mask, a black hooded jacket, black gloves, black jeans, black gloves, and brandishing a silver handgun entered the convenience store at which he was working. The lone gunman demanded that he give him money.³¹ Mr. Miller opened the cash register and gave the perpetrator the cash contained therein. (C. Ex. 2, p. 92). He

²⁹ Mr. Afif was having his breakfast when the actor entered the convenience store. Mr. Afif recognized the perpetrator from the previous robbery on June 18, 2010, and stated, "Man, not you again."

³⁰ Mr. Miller was stocking sodas in the cooler at the time that the actor entered the convenience store.

³¹ The perpetrator ordered Mr. Miller to "open up the register and the safe."

took approximately Thirty Dollars and 00/100 (\$30.00) cash out of the cash drawer and approximately Ten Dollars and 00/100 (\$10.00) in quarters. The gunman also inquired about a safe. (C. Ex. 2, p. 92). Mr. Miller explained that he did not have access to the safe. Mr. Miller was ordered to lie down on the floor. After allowing one (1) to two (2) minutes to elapse, Mr. Miller locked the doors and called the police.

On August 19, 2010, at approximately 3:49 A.M., Ms. Charlotte Sine was working as a clerk at the A-Plus Sunoco Gas and Convenience Store located at 2138 Hamilton Boulevard, Allentown, Lehigh County, Pennsylvania. (C. Ex. 3). At that time, a tall black male wearing a black mesh mask, a black hoodie, black gloves with fingers exposed, blue jeans and black sneakers, and brandishing a silver gun in his left hand entered the convenience store in which she was working. (C. Ex. 3); (C. Ex. 4); (C. Ex. 5); (C. Ex. 6). The lone gunman demanded that she give him all the money in the register. Ms. Sine took the cash out of the cash register and gave it to him. The perpetrator took three (3) packs of Newport cigarettes and approximately Forty-three Dollars and 00/100 (\$43.00) in cash. He also requested that Ms. Sine give him all of the quarters in the cash drawer. Ms. Sine put the quarters in his right hand. The gunman further demanded Ms. Sine's personal money. She looked him straight in the eyes and indicated to him that she did not have any money on her person. Ms. Sine was ordered to lie down on the floor. Then, the perpetrator fled around the corner of the building. As the Defendant, acting as his own counsel, questioned Ms. Sine at trial, Ms. Sine testified that as soon as he spoke she recognized the *Defendant's* voice as that of the gunman.³²

³² Ms. Sine stated, "the minute I heard him talk, I recognized his voice as the person who robbed me."

Then, on August 20, 2010, at approximately 5:15 A.M., Ms. Stephanie McEllroy was working as a night auditor at the Hilton Homewood Suites located at 2031 Avenue C, Bethlehem, Lehigh County, Pennsylvania. (C. Ex. 34). At that time, a black³³ male wearing a black mesh mask, a black hooded sweatshirt, black gloves and dark jeans and brandishing a silver and black handgun in his left hand entered the hotel at which she was working. The lone gunman demanded that she give him money. Ms. McEllroy opened the cash drawer and the gunman removed the money therefrom. The perpetrator took approximately Three Hundred Dollars and 00/100 (\$300.00) in cash and fled via the front door of the establishment.

Then, on September 5, 2010, at approximately 3:00 A.M., Mr. Luqmen Ahmed was working as a cashier at the 7-Eleven located at 11 East Susquehanna Street, Allentown, Lehigh County, Pennsylvania. (C. Ex. 22). At that time, a male wearing a black mask and gloves, and covered from head to toe in black, and brandishing a handgun in his left hand entered the convenience store at which he was working. (C. Ex. 23). The lone gunman demanded that he give him money. Mr. Ahmed opened the cash drawer and gave the perpetrator the cash³⁴ contained therein, including quarters. After the gunman fled, Mr. Ahmed notified the police of the robbery.

On September 5, 2010, at approximately 3:00 A.M., Officer Jose Lebron of the Allentown Police Department was assigned to a robbery detail due to a large number of armed robberies that recently had occurred at hotels and convenience stores in Lehigh County and the surrounding areas. Officer Lebron, along with the

³³ Ms. McEllroy believed that the gunman was African American based on his voice.

³⁴ The denominations of cash included ones and fives.

other officers and agencies investigating the matter, had been informed that the suspect involved in the subject robberies was a left-handed black male, wearing a black hoodie, black boots, a mask and carrying a silver handgun. Information also was related to law enforcement personnel that the suspect was utilizing a dark compact four (4) door sedan to facilitate the armed robberies.

Shortly after 3:00 A.M., the Communications Center sent out an alarm that an armed robbery had just been committed at the 7-Eleven located at 11 East Susquehanna Street, Allentown, Lehigh County, Pennsylvania. In response, Officer Lebron³⁵ traveled from his location at 17th and Tilghman Streets to Sumner Avenue and American Parkway based on information that after the robberies were committed, the suspect would go to a "safe house" in the vicinity of Ridge Avenue and Tilghman Street. From his vantage point, Officer Lebron watched for suspicious activity on the streets.

Officer Lebron observed a dark blue Saturn sedan travelling north on American Parkway at a high rate of speed, coming from the area of the 7-Eleven convenience store.³⁶ (C. Ex. 48); (C. Ex. 49). As this was the only vehicle on the road at the time, Officer Lebron watched the dark compact sedan with interest. The subject vehicle then made a sudden right hand turn onto Ridge Avenue southbound, causing the tires to screech and driving over the median divider with the rear tires. Officer Lebron observed the vehicle make another wild right hand turn onto Green Street. Ultimately the subject vehicle pulled into a parking lot just west of 2nd Street

³⁵ Officer Lebron was travelling in an unmarked police car and dressed in plain clothes.

³⁶ The 7-Eleven was approximately two (2) miles from the location where Officer Lebron first noticed the dark blue Saturn. Additionally, the robbery had occurred just minutes prior to Officer Lebron's sighting of the dark blue Saturn.

and north of Green Street. Officer Lebron parked his unmarked vehicle on the southeast corner of Green Street and ran the vehicle registration plates.³⁷ (C. Ex. 49).

Officer Lebron observed that the vehicle did not have any occupants other than the driver. Officer Lebron pulled his vehicle directly behind the blue Saturn. Additionally, Officer Lebron watched the driver remove articles of clothing from his person. Without pants on, the driver stepped out of the blue Saturn in order to put on a pair of pants that he was holding. It was at this point that the driver and Officer Lebron made eye contact.

As a result of his observations, Officer Lebron called for police assistance. Officer Corey Marsteller responded to the scene in full uniform and in a marked police cruiser. Officer Lebron and Officer Marsteller approached the driver³⁸ of the subject vehicle and identified themselves as police officers.³⁹ They asked the driver to exit the vehicle.⁴⁰ In plain view from the outside of the vehicle, Officer Lebron observed a black hoodie on the rear passenger floor of the vehicle, two (2) pairs of gloves with ripped fingertips on the front passenger seat, black boots on the floor of the front passenger seat, blue jeans with print on the pockets on the front passenger seat, a pack of Newport cigarettes located on the middle console between

³⁷ Officer Lebron was following the blue four (4) door Saturn because it matched the description of the vehicle utilized in the rash of armed robberies, it was driving erratically and at a high rate of speed, there were no occupants in it other than a driver, it came from the direction of the 7-Eleven on Susquehanna Street, and it was in close temporal proximity to the robbery at the 7-Eleven on Susquehanna Street.

³⁸ Officer Lebron noted that the driver of the vehicle was nervous and shocked to see the officers there. The driver was sweating profusely. Additionally, the driver of the vehicle had an odor of alcoholic beverage on his breath and on his person. However, Officer Lebron did not focus on the potential driving under the influence citation because a more serious incident had just occurred at the 7-Eleven that was of paramount concern.

³⁹ Officer Lebron was with a uniformed officer at the time of the stop. Additionally, Officer Lebron had his badge prominently displayed on his plain clothes.

⁴⁰ When the driver exited the vehicle, he was not wearing shoes.

the front seats, and a pair of State Street shoes on the rear passenger floor of the vehicle.⁴¹ (C. Ex. 50; C. Ex. 51; C. Ex. 52). Officer Lebron and Officer Marstellar believed the clothing in the vehicle to be consistent with the clothing that the suspect wore during the armed robberies.

With this information in mind, Officer Lebron and Officer Marstellar informed the driver of the vehicle that an incident had just occurred in which he fit the description of the suspected actor, and therefore they were going to handcuff him for officer safety reasons.⁴² A pat down search was conducted in which no weapons or contraband was located. Then, Officer Lebron requested that the driver identify himself. The driver indicated that his name was "Fresh." In response, Officer Lebron asked him for his legal/government name, not a street name. The driver of the vehicle provided him with the name, "Michael White." To verify and confirm this information, Officer Lebron requested identification from the driver. The driver consented to Officer Lebron's retrieval of his black Louis Vuitton wallet from his right rear pants pocket. (C. Ex. 19). Therein, identification was located that revealed the driver of the vehicle to be Defendant Philome Cesar.

At this point, the Defendant was placed under arrest for providing a false name to law enforcement personnel. A pat down incident to arrest was conducted in which Fifty-eight (\$58.00) Dollars and a stack of coins were located in the Defendant's right front pocket.⁴³ (C. Ex. 53; C. Ex. 54; C. Ex. 74). Then the

⁴¹ A street light was located at the corner of 2nd and Green Streets that provided lighting for the parking lot. Additionally, the headlights from Officer Lebron's vehicle assisted in illuminating the interior of the vehicle.

⁴² At that time, the Defendant was suspected of multiple armed robberies. Consequently, the Defendant was placed in handcuffs.

⁴³ Pursuant to the Property Inventory Form, the Defendant had 6-\$5.00's, and 28-\$1.00's,

Defendant was verbally Mirandized in English by Officer Lebron. The Defendant appeared to understand and acknowledge his Miranda rights. After being Mirandized, Officer Lebron inquired of the Defendant from where he had come. The Defendant indicated that he had just come from a friend's apartment approximately two (2) doors down on Green Street. However, the Defendant could not provide the name of his friend to the officers. He further stated he had been sitting in the car listening to music for a while, and that, in fact, a neighbor had come outside to ask him to lower the music because he was playing it too loudly. These statements were inconsistent with Officer Lebron's prior visual observations.

Detective Mark Boyer of the Allentown Police Department, also assigned to the armed robbery detail,⁴⁴ arrived on scene after the Defendant was arrested and placed in the back of Officer Marstellar's police cruiser. Detective Boyer approached the Defendant. He identified himself as a police officer⁴⁵ and verbally advised the Defendant of his Miranda rights.⁴⁶ Detective Boyer read the Defendant his Miranda rights from an Allentown Police Department form. The Defendant appeared to understand his rights and acknowledged that he understood same. At no point did the Defendant ask for an attorney.

Detective Boyer inquired of the Defendant if he was right or left hand dominant. The Defendant indicated that he was left handed.⁴⁷ Detective Boyer also

and ten (10) quarters, two (2) pennies and two (2) dimes on his person. (C. Ex. 53; C. Ex. 54; C. Ex. 74).

⁴⁴ Officer Lebron called Detective Boyer to respond to the scene of the 200 block of Green Street. Officer Lebron briefed Detective Boyer about the incident that had occurred.

⁴⁵ Detective Boyer was not in full uniform, but he had his badge visibly displayed.

⁴⁶ Officer Torres was present when he advised the Defendant of his Miranda rights.

⁴⁷ The Defendant's girlfriend, Kera Wheeler, also testified that the Defendant is left handed.

asked the Defendant questions with regard to where he had been prior to being stopped. The Defendant stated that he had just come from a friend's residence on Green Street, and he gestured toward same.⁴⁸ Detective Boyer went to the residence from which the Defendant indicated he had recently left, and determined that his statement was not true.

A search warrant⁴⁹ was ultimately obtained by Detective Boyer for the 1999 blue Saturn four (4) door sedan that the Defendant was operating.⁵⁰ A search of the vehicle yielded: a pair of blue jeans with gray and black on the pockets (front passenger seat) (C. Ex. 63); a pack of Newport cigarettes (front center console) (C. Ex. 64); two (2) pairs of black cloth gloves found one inside the other (front passenger area) (C. Ex. 65), (C. Ex. 66), (C. Ex. 67), (C. Ex. 68); black Polo boots (floor of front passenger seat) (C. Ex. 61); black State Street shoes (rear passenger area floor) (C. Ex. 62)⁵¹; Size 9 ½ tan Timberland boots (trunk of vehicle) (C. Ex. 59), (C. Ex. 60); a black Akademiks hoodie with lighter draw strings (rear passenger seat area) (C. Ex. 69); a black Citylab long sleeve shirt size 2XL that was co-joined to the sweatshirt to indicate that the shirt was worn over the sweatshirt (passenger rear side) (C. Ex. 70), (C. Ex. 71); a black doo rag tied in a knot at the end (rear of vehicle) (C. Ex. 72), (C. Ex. 73); a .40 caliber Smith and Wesson loaded handgun (underneath passenger seat

⁴⁸ The Defendant failed to provide the officers with an address for his friend's residence.

⁴⁹ The search warrant was executed on the vehicle that was towed to the Allentown Police Department towing facility.

⁵⁰ Kera Nicole Wheeler, the long time girlfriend of the Defendant, was the registered owner of the vehicle. Kera Wheeler allowed the Defendant to use her vehicle. Kera Wheeler and the Defendant lived together and have two (2) children together. Kera Wheeler testified that during the summer of 2010, they were experiencing financial problems. Indeed, the Defendant did not have employment since June 15, 2010. Nevertheless, the Defendant was gone in the evenings on a fairly regular basis.

⁵¹ These boots were sent to the Pennsylvania State Police lab for testing.

under articles of clothing) (C. Ex. 56); a Smith and Wesson magazine (C. Ex. 58); twelve (12) PMC brand .40 caliber bullets (C. Ex. 57); eleven (11) Dorney Park tickets (glove box) (C. Ex. 11); and assorted documents with the Defendant's and Kera Wheeler's names on them (C. Ex. 82).

Detective Daniel Gross, Jr. of the Allentown Police Department was the lead investigator of the series of armed robberies that had occurred in the Lehigh County.⁵² Detective Gross had previously responded to the scenes of the recent armed robberies and had secured the video surveillance footage relating thereto. A description of the lone actor included black male, 5'8" to 5'9" tall, 180 pounds, left handed, wearing dark colored jeans, black hoodie with drawstrings that appeared to be lighter in color, black or dark gloves, black footwear (except for two (2) incidents in which the perpetrator wore tan work boots), black screen mask (except for June 2, 2010 robbery) and wielding a silver and black semi-automatic handgun. Additionally, all of the armed robberies, with the exception of the robbery that occurred at the Turkey Hill Store located at 1240 Lehigh Street, Allentown, Lehigh County, Pennsylvania, occurred between the hours of 1:00 A.M. and 5:30 A.M. Moreover, all of the sites robbed were hotels or convenience stores and were on major corridors of Route 78 and Route 22.

At the time of the Defendant's arrest on September 5, 2010, the Defendant was in possession of a Louis Vuitton wallet. This wallet matched the description of the wallet that was taken from Tyrone Samuel who worked at the Hampton Inn located at 7471 Keebler Way, Upper Macungie Township, Lehigh

⁵² Detective Gross worked collaboratively with the Pennsylvania State Police, Bethlehem Police Department, South Whitehall Police Department, Quakertown Police Department,

County, Pennsylvania. Mr. Samuel was contacted and asked to view a picture of the Louis Vuitton wallet. Mr. Samuel identified that wallet as being his.

Additionally, the .40 caliber Smith and Wesson firearm that was located in the Defendant's vehicle contained .40 caliber PMC ammunition. This firearm legally belonged to Nelson Torres, a very good friend of the Defendant.⁵³ (C. Ex. 45). Mr. Torres allowed the Defendant to borrow the handgun in June of 2010. Specifically, Mr. Torres lent the Defendant the gun, the case, and the ammunition in the case. At the time that Mr. Torres provided the firearm to the Defendant, the ammunition was not loaded in the magazine, but was separate in the case.⁵⁴ Mr. Torres made several efforts to have the gun returned to him. However, the Defendant never returned the firearm to Mr. Torres. At one point, the Defendant returned the empty case and indicated that in his haste, he must have forgotten to return the handgun to the case. The Defendant stopped returning Mr. Torres' telephone calls in August of 2010.

A live round of .40 caliber PMC ammunition was recovered by Officer Andrew M. Bloomberg of the Allentown Police Department in the parking lot of Domino's located at 1826 Union Boulevard, Allentown, Lehigh County, Pennsylvania.⁵⁵ The firearm that was recovered from the Defendant's vehicle and the

Whitehall Police Department, Berks-Regional Police Department and the FBI.

⁵³ Mr. Torres indicated that in the winter of 2010, he purchased the firearm for protection because he worked as a manager at a night club at night.

⁵⁴ When conversing on the phone about the Defendant's desperate financial problems and his need for money in late August of 2010, the Defendant insinuated that he would do something illegal at a Best Western.

⁵⁵ Officer Bloomberg was dispatched to Domino's at 12:25 P.M. on July 25, 2010, in response to a call that an employee had found a bullet in the side parking lot of the restaurant, located in the area of the side employee door. When Officer Bloomberg arrived, an employee of the Domino's showed him the location of the bullet, and assured him that no one had touched, handled or moved the bullet. (C. Ex. 44).

intact bullet that was recovered from the parking lot of Domino's were sent to the Pennsylvania State Police Lab for analysis. (C. Ex. 44); (C. Ex. 45). Sergeant Kurt Tempinski of the Pennsylvania State Police Bureau of Forensics, an expert in the field of firearm and tool mark examination, performed the analysis on the subject firearm and bullet. Sergeant Tempinski opined to a reasonable degree of professional and scientific certainty, based on the chambering markings, that the intact bullet recovered from the Domino's parking lot had been chambered in the .40 caliber Smith and Wesson firearm that was found in the Defendant's vehicle. (C. Ex. 44; C. Ex. 45; C. Ex. 46; C. Ex. 47).

Furthermore, castings of three (3) footprints were made by Detective Robert Djevharian of the Berks-Lehigh Regional Police Department, who was investigating the armed robbery at the Hampton Inn located at 7471 Keebler Way, Upper Macungie Township, Lehigh County, Pennsylvania.⁵⁶ These castings, along with the State Street shoes located in the Defendant's vehicle, were sent to the Pennsylvania State Police Bureau of Forensic Services for analysis. Pennsylvania State Police Sergeant Daryl VanKirk of the Harrisburg Regional Crime Lab, Bureau of Forensic Services, an expert in latent print examination, analyzed the castings and the State Street shoes. (C. Ex. 77); (C. Ex. 78); (C. Ex. 79). Sergeant VanKirk concluded to a reasonable degree of professional and scientific certainty that the casting of the right footprint matched the right State Street shoe that was found in the Defendant's vehicle. (C. Ex. 42); (C. Ex. 62); (C. Ex. 80); (C. Ex. 81). Stated another

⁵⁶ Detective Djevharian viewed and photographed the footprints that led from the grassy and muddy area surrounding the hotel, across the parking lot, and to the sidewalk of the Hampton Inn. (C. Ex. 35); (C. Ex. 36); (C. Ex. 37); (C. Ex. 38); (C. Ex. 39). Then Detective Djevharian casted the footprints with dental stone. (C. Ex. 40); (C. Ex. 41); (C. Ex. 42); (C. Ex.

way, the right State Street shoe made the impression that was cast at the crime scene.

On September 5, 2010, Detective Gross⁵⁷, along with three (3) investigators from Bethlehem and one (1) uniformed Bethlehem police officer, went to the residence of Kera Wheeler, located at 1911 Gatewood Lane, Bethlehem. Ms. Wheeler and the Defendant lived together in this two (2) bedroom townhouse with their two (2) children. Ms. Wheeler indicated that the residence was leased and that the lease was in her name. Detective Gross explained that a series of incidents had occurred involving the Defendant and her vehicle and he wanted permission to search the residence for evidence relating to same.⁵⁸ Detective Gross read Ms. Wheeler the consent to search form and informed Ms. Wheeler that she had the right to refuse. Ms. Wheeler signed a Bethlehem Police Department Search and Seizure form. At no point in time did Ms. Wheeler revoke her consent.

A search of the subject residence was performed. The search yielded the following items: A telephone book located in a kitchen drawer in which several hotels were circled in pen (including the Hampton Inn which was robbed two (2) times) (C. Ex. 83); three (3) credit cards in the name of Tyrone Samuel that were located in a dresser drawer in the master bedroom (C. Ex. 21)⁵⁹; a receipt for a stay at the Staybridge Inn; newspapers including one (1) with an article about the series of armed robberies; a black sheer piece of cloth located in the children's bedroom closet (C. Ex.

43).

⁵⁷ Detective Gross was in plain clothes.

⁵⁸ Ms. Wheeler confirmed that no part of the residence was used exclusively by the Defendant.

⁵⁹ These credit cards included a Pennsylvania MasterCard and two (2) Bank of America Visas.

84); a white sheer piece of cloth located in the children's bedroom closet (C. Ex. 84); several pairs of men's jeans located in the master bedroom; several pairs of shoes of similar size to each other and to the shoes in the vehicle, two (2) pairs of adult gloves located in the children's bedroom closet (C. Ex. 84); a washcloth found in the children's bedroom closet (C. Ex. 84); and assorted documents with the Defendant's name and address printed thereon.

At the Allentown Police Department, the Defendant was provided with a Property Inventory Form with regards to items that were taken off his person at the Allentown Police Department. The Defendant signed this form with his left hand. (C. Ex. 74).

Viewing all the evidence and all reasonable inferences arising therefrom in the light most favorable to the Commonwealth, it is clear that the above-recounted evidence was sufficient to enable a finder of fact to conclude that all the elements of the offenses were established beyond a reasonable doubt. Indeed, at the conclusion of the jury trial on November 17, 2011, the jury had no doubt that the Defendant committed nineteen (19) counts of armed Robbery and one (1) count of False Identification to Law Enforcement.

B. Challenging the Weight of the Evidence

The Defendant also alleges that the verdict was against the weight of the evidence. This Court notes that a motion for a new trial on grounds that the verdict is contrary to the weight of the evidence concedes that there is sufficient evidence to sustain the verdict, but contends that it is against the weight of the evidence.

Commonwealth v. Widmer, 560 Pa. 308, 319, 744 A.2d 745, 751 (2000); Commonwealth v. Bennett, 827 A.2d 469, 481 (Pa. Super. 2003). Furthermore, a challenge that the verdict is against the weight of the evidence requires this Court to conclude in its discretion that “the verdict is so contrary to the evidence as to shock one’s sense of justice.” Lyons, 833 A.2d at 258. Indeed, for a new trial to lie on a challenge that the verdict is against the weight of the evidence, the evidence must be so tenuous, vague and uncertain that the verdict shocks the conscience of the court.” Commonwealth v. Shaffer, 722 A.2d 195, 200 (Pa. Super. 1998). See also Commonwealth v. Sullivan, 820 A.2d 795, 806 (Pa. Super. 2003).

From the evidence recounted above, it is reasonable to have concluded that the Defendant was the individual who committed nineteen (19) counts of armed Robbery of convenience stores and hotels in the Lehigh Valley and surrounding areas during the summer of 2010, and one (1) count of False Identification to Law Enforcement on September 5, 2010. In light of this evidence, the Defendant’s challenge to the weight of the evidence must fail.⁶⁰

⁶⁰ In his motion, the Defendant argues that most of the nineteen (19) counts of Robbery occurred on different dates and involved separate, unrelated victims. Therefore, the Defendant contends that consolidation of said counts severely prejudiced the Defendant, in that multiple charges tended to influence the jury that guilt in one (1) offense suggested guilt in a separate offense without sufficient evidence thereof. As outlined in this Court’s opinion of April 19, 2011, Defendant’s assertion lacks merit.

Indeed, this Court notes that it “may order separate trials of offenses . . . or provide other appropriate relief, if it appears that any party may be prejudiced by offenses or defendants being tried together.” Pa. R.Crim.P. 583. Additionally, where the defendant moves to sever offenses not based on the same act or transaction that have been consolidated in a single indictment or information, the court must determine: (1) whether the evidence of each of the offenses would be admissible in a separate trial for the other; (2) whether such evidence is capable of separation by the jury so as to avoid danger of confusion; and, if the answers to these inquiries are in the affirmative, (3) whether the defendant will be unduly prejudiced by the consolidation of the offenses. Commonwealth v. Nahavandian, 849 A.2d 1221 (Pa. Super.), *reargument denied, appeal granted, order vacated by* 585 Pa. 460, 888 A.2d 815 (2006), *on remand to* 902 A.2d 980 (2006), *appeal after new sentencing hearing*, 954 A.2d 625 (2008).

C. *Motion for Judgment of Acquittal/Motion in Arrest of Judgment/New Trial*

The Defendant contends that he is entitled to a judgment of acquittal or a new trial based on this Court's error in denying the Defendant's Omnibus Pretrial Motion, the insufficiency of the evidence,⁶¹ and "the information received during pretrial proceedings was of a sufficiently inflammatory nature to arouse a prejudice against the Defendant." We cannot agree with the Defendant's averments.

On April 19, 2011, this Court denied the Defendant's Omnibus Pretrial Motion in the form of a Petition for Habeas Corpus, Motion to Suppress and Motion to Sever. Specifically, this Court found the Defendant's contention that his stop and detention by the police officers of the Allentown Police Department was not justified in that the police officers did not observe any unusual conduct which could reasonably lead them to believe that criminal activity was in progress or that the Defendant was involved in same, to be without merit. Similarly, this Court concluded that the

In the instant case, the nineteen (19) Robberies involved strikingly similar *modus operandi* and therefore were deemed tightly linked by this Court. Indeed, the target of each and every crime was either a convenience store or a hotel, between the hours of 1:00 A.M. and 5:30 A.M. Further, the descriptions provided by the victims consistently indicated that the suspect in the subject robberies was a left-handed black male, wearing a black hoodie, black boots, a mask and carrying a silver handgun. In each instance, the lone perpetrator entered the aforementioned establishments brandishing a firearm in his left hand and demanding cash (including quarters in numerous cases) from the employees. In many instances, the gunman demanded the employee's personal money and/or ordered the employee to lie on the floor while he fled from the scene. Therefore, this Court determined that evidence of each of the offenses would be admissible in a separate trial for the other to demonstrate *modus operandi*. Additionally, this Court found that the evidence that would be presented at the time of trial was capable of separation by the jury so as to avoid danger of confusion. Moreover, any prejudice to the Defendant was clearly outweighed by the probative value and the judicial economy that a single trial afforded. In light of the foregoing, the probative value and judicial economy demanded that all the counts be tried together in a single joint trial.

⁶¹ In support of the Defendant's Motion for Judgment of Acquittal/Motion in Arrest of Judgment and for a New Trial, the Defendant asserts that the verdict was based upon insufficient evidence. This Court addressed the Defendant's challenge to the sufficiency of the

Defendant's assertion that the police officers did not have probable cause to search his vehicle was flawed.

Initially we noted that an investigating officer must have a reasonable belief that the person detained has been involved in criminal activity. Commonwealth v. Bennett, 827 A.2d 469, 477 (Pa Super. 2003). To establish grounds for reasonable suspicion, the police must articulate specific observations which, in conjunction with reasonable inferences derived from those observations, led them reasonably to conclude, in light of their experience, that criminal activity was afoot and that the person was involved in that activity. Commonwealth v. Wilson, 440 Pa. Super. 269, 927 A.2d 279 (2007), *appeal granted*, 543 Pa. 509, 673 A.2d 864 (1996); Bennett, 827 A.2d at 477; In re J.V., 762 A.2d 3765, 379-380 (Pa. Super. 2000). Mere hunches on the part of the officer are insufficient to meet this burden. Bennett, 827 A.2d at 478.

In the instant case, this Court found that Officer Jose Lebron was able to articulate specific observations that led him to conclude that criminal activity was afoot. Indeed, on September 5, 2010, at approximately 3:00 A.M., Officer Jose Lebron of the Allentown Police Department was assigned to a robbery detail due to a large number of armed robberies that recently had occurred at hotels and convenience stores in the Lehigh County and the surrounding areas. Officer Lebron, along with the other officers and agencies investigating the matter, had been informed that the suspect involved in the subject robberies was a black male, wearing a black hoodie, black boots, a mask and carrying a silver handgun. Information also was related to law enforcement personnel that the suspect was utilizing a dark compact four (4) door sedan to facilitate

evidence *supra*, and consequently will not discuss it within this section.

the armed robberies. Shortly after 3:00 A.M., the Communications Center sent out an alarm that an armed robbery had just been committed at the 7-Eleven located at 11 East Susquehanna Street, Allentown, Lehigh County, Pennsylvania. In response, Officer Lebron traveled from his location at 17th and Tilghman Streets to Sumner Avenue and American Parkway based on information that after the robberies were committed, the suspect would go to a "safe house" in the vicinity of Ridge Avenue and Tilghman Street. From his vantage point, Officer Lebron watched for suspicious activity on the streets.

Officer Lebron observed a dark blue Saturn sedan travelling north on American Parkway at a high rate of speed, coming from the area of the 7-Eleven convenience store. As this was the only vehicle on the road at the time, Officer Lebron watched the dark compact sedan with interest. Indeed, Officer Lebron decided to follow the dark blue four (4) door Saturn because it matched the description of the vehicle utilized in the rash of armed robberies, it was driving erratic, there were no occupants in it other than a driver, it came from the direction of the 7-Eleven on Susquehanna Street, and it was in close temporal proximity to the robbery at the 7-Eleven on Susquehanna Street.

The subject vehicle then made a sudden right hand turn onto Ridge Avenue, causing the tires to screech and driving over the median divider with the rear tires. Officer Lebron observed the vehicle make another wild right hand turn onto Green Street. Ultimately the subject vehicle pulled into a parking lot just west of 2nd Street. Officer Lebron parked his unmarked vehicle on the southeast corner of Green Street and ran the vehicle registration plates. Then, Officer Lebron pulled his vehicle behind the blue Saturn. Additionally, Officer Lebron watched the driver remove

articles of clothing from his person. The driver even stepped out of the blue Saturn without pants on to put on a pair of pants that he was holding. It was at this point that the driver and Officer Lebron made eye contact.

As a result of his observations, Officer Lebron called for police assistance. Officer Corey Marstellar responded to the scene in full uniform and in a marked police cruiser. Officer Lebron and Officer Marstellar approached the driver of the subject vehicle and identified themselves as police officers. They asked the driver to exit the vehicle. In plain view, Officer Lebron observed a hoodie on the rear passenger floor of the vehicle, gloves on the front seat, black boots on the floor of the front seat and jeans with print on the pockets. Officer Lebron believed the clothing in the vehicle to be consistent with the clothing that the suspect wore during the armed robberies.

With this information in mind, Officer Lebron informed the driver of the vehicle that an incident had just occurred in which he fit the description of the suspected actor, and therefore they were going to handcuff him for officer safety reasons. A pat down search was conducted in which no weapons or contraband was located. Then, Officer Lebron requested that the driver identify himself. The driver indicated that his name was "Fresh." In response, Officer Lebron asked him for his legal name, not a street name. The driver of the vehicle provided him with the name, "Michael White." To confirm this information, Officer Lebron requested identification from the driver. The driver consented to Officer Lebron's removal of his wallet from his rear pants pocket. Therein, identification was located that revealed the driver of the vehicle to be Defendant Philome Cesar. At this point, the Defendant was placed under arrest for providing a false name to law enforcement personnel. A pat down

incident to arrest was conducted in which a stack of quarters were located in the Defendant's front pocket. Then the Defendant was verbally Mirandized in English by Officer Lebron. The Defendant appeared to understand and acknowledge his Miranda rights. After being Mirandized, Officer Lebron inquired of the Defendant from where he had come. The Defendant indicated that he had just come from an apartment approximately two (2) doors down on Green Street. He further stated that a neighbor had come outside to ask him to lower the music because he was playing it too loudly. These statements were inconsistent with Officer Lebron's prior visual observations.

Detective Mark Boyer of the Allentown Police Department, also assigned to the armed robbery detail, arrived on scene after the Defendant was arrested and placed in the back of a police cruiser. Detective Boyer approached the Defendant. He identified himself as a police officer and verbally advised the Defendant of his Miranda rights. Detective Boyer read the Defendant his Miranda rights from an Allentown Police Department form. The Defendant appeared to understand his rights and acknowledged that he understood same. At no point did the Defendant ask for an attorney. Detective Boyer inquired of the Defendant if he was right or left hand dominant. The Defendant indicated that he was left handed. Detective Boyer also asked the Defendant questions with regard to where he had been prior to being stopped. The Defendant stated that he had just come from a friend's residence on Green Street, and he gestured toward same. Detective Boyer drove his cruiser to the residence from which the Defendant indicated that he had recently left, and determined that his statement was not true.

Based upon the foregoing, this Court found it to be clear that the experience of Officer Jose Lebron and the totality of the circumstances provided

reasonable suspicion that the Defendant was involved in the series of armed robberies that occurred in the Lehigh Valley area.

Additionally, the Defendant contended in his Omnibus Pretrial Motion that the officers did not have valid consent to search the residence that he shared with his girlfriend, Kera Wheeler, on September 5, 2010. Consequently, the Defendant sought to suppress the evidence found by the police in the subject residence, which he alleged was the product of the illegal search. We disagreed.

To establish a valid consensual search, the Commonwealth must first prove that the consent was given during a legal police interaction. Commonwealth v. Strickler, 563 Pa. 47, 57, 757 A.2d 884, 889 (2000). Where the underlying encounter is found to be lawful, voluntariness becomes the exclusive focus. Id. As articulated in Commonwealth v. Acosta, 815 A.2d 1078, 1083 (Pa. Super. 2003):

It is the Commonwealth's burden to prove that a defendant consented to a warrantless search. Cleckley, 558 Pa. at 520, 738 A.2d at 429 (citing Bumper v. North Carolina, 391 U.S. 543, 548, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968); Commonwealth v. Silo, 480 Pa. 15, 389 A.2d 62 (1978)). To establish a voluntary consensual search, the Commonwealth must prove 'that a consent is the product of an essentially free and unconstrained choice – not the result of duress or coercion, express or implied, or a will overborne – under the totality of the circumstances.' Mack, 568 Pa. at 334, 796 A.2d at 970 (quoting Strickler, 563 Pa. at 79, 757 A.2d at 901 (2000)).

Commonwealth v. Acosta, 815 A.2d 1078, 1083 (Pa. Super. 2003). Various factors were considered in evaluating the voluntariness of a consent, including the following: (1) the use of coercion, duress, or deception; (2) the defendant's belief that no incriminating evidence will be found; (3) the defendant's education and intelligence; (4) the extent and level of the defendant's cooperation with the law enforcement personnel; (5) the

defendant's custodial status; and (6) the defendant's knowledge of his right to refuse to consent. Commonwealth v. Cleckley, 558 Pa. 517, 521, 738 A.2d 427, 429 n.7 (1999); Commonwealth v. Blasioli, 454 Pa. Super. 207, 685 A.2d 151, 156 (1996), *affirmed*, 713 A.2d 1117 (Pa. 1998). Voluntariness is a question to be determined by the totality of the circumstances. Cleckley, 558 Pa. at 521, 738 A.2d at 429; See also Commonwealth v. Grosso, 448 Pa. Super. 552, 559, 672 A.2d 792, 795 (1996).

In the case at hand, on September 5, 2010, Detective Gross, along with three (3) investigators from Bethlehem and one (1) uniformed Bethlehem police officer, went to the residence of Kera Wheeler, located at 1911 Gatewood Lane, Bethlehem. Ms. Wheeler and the Defendant lived together at this residence with their two (2) children. Ms. Wheeler indicated that the residence was leased and that the lease was in her name. Detective Gross explained that a series of incidents had occurred involving the Defendant and her vehicle and he wanted permission to search the residence for evidence relating to same. Detective Gross read Ms. Wheeler the consent to search form and the contents of the form were explained to Ms. Wheeler. At no time was Detective Gross' demeanor threatening or coercive. Indeed, the police were cordial and polite to Ms. Wheeler. Detective Gross informed Ms. Wheeler that she had the right to refuse. Nevertheless, Ms. Wheeler signed a Bethlehem Police Department Search and Seizure form. At no point in time did Ms. Wheeler revoke her consent.

A search of the subject residence was performed. The search yielded the following items: A telephone book located in a kitchen drawer in which several hotels were circled in pen (including the Hampton Inn which was robbed two (2) times); three (3) credit cards in the name of Tyrone Samuel that were located in a dresser

drawer in the master bedroom; a receipt for a stay at the Staybridge Inn; newspapers including one (1) with an article about the series of armed robberies; a black sheer piece of cloth located in the children's bedroom closet; a white sheer piece of cloth located in the children's bedroom closet; several pairs of men's jeans located in the master bedroom; several pairs of shoes of similar size to each other and to the shoes in the vehicle, two (2) pairs of adult gloves located in the children's bedroom closet; a washcloth found in the children's bedroom closet; and assorted documents with the Defendant's name and address printed thereon.

Applying the facts of the within case to the above-mentioned factors, this Court concluded that Kera Wheeler's consent to allow the officers to search her residence was voluntary. Detective Gross did not employ coercive tactics to compel Ms. Wheeler to consent to the search of her residence. Consequently, Ms. Wheeler voluntarily, knowingly and intelligently executed the Bethlehem Police Department Search and Seizure Form which provided the law enforcement personnel with a valid consent for the subject search. The record was void of evidence to suggest that the consent was a product of coercion. Accordingly, this Court's denial of the Defendant's Motion to Suppress was legal and appropriate.⁶²

Finally, the Defendant asserts that "the information received during pretrial proceedings was of a sufficiently inflammatory nature to arouse a prejudice against the Defendant." While the basis for this bald assertion is not clear to this Court, this Court notes that during the voir dire process, the Defendant had the opportunity to question the potential jurors about any pretrial publicity of which they

⁶² This Court discussed the severance issue *supra*, and consequently did not address this issue in this section.

were aware. On November 14, 2011, the Defendant participated in the jury selection process. At the conclusion thereof, the Defendant indicated to this Court that the jury selected was acceptable to him. Consequently, this allegation does not provide a basis for a new trial.

D. Motion to Reconsider and Modify Sentence

Finally, the Defendant argues that the sentence imposed was harsh and manifestly excessive. The Defendant is challenging the discretionary aspects of sentencing. Commonwealth v. Bishop, 831 A.2d 656, 660 (Pa. Super. 2003). Initially this Court notes that:

Sentencing is within the sound discretion of the sentencing judge, and that decision will not be disturbed absent an abuse of discretion. Commonwealth v. Jones, 418 Pa. Super. 93, 613 A.2d 587, 591 (1992)(*en banc*). “To constitute an abuse of discretion, the sentence imposed must either exceed the statutory limits or be manifestly excessive.” Commonwealth v. Gaddis, 432 Pa. Super. 523, 639 A.2d 462, 469 (1994). Nevertheless, sentencing guidelines are merely advisory, and the court may, in its discretion, sentence outside the guidelines. When a trial court deviates from the guidelines, it must state its reasons for deviation on the record at the time of sentencing or in a contemporaneous written statement. Commonwealth v. Lawson, 437 Pa. Super. 521, 650 A.2d 876, 881 (1994). The court must also consider the guidelines as a starting point and deviate so as to impose a sentence consistent with both the public’s safety needs and the defendant’s rehabilitative needs. Id.

Commonwealth v. Shaffer, 722 A.2d 195, 198-199 (Pa. Super. 1998). If “the sentencing court proffers reasons indicating that its decision to depart from the guidelines is not unreasonable,” its responsibilities have been fulfilled and the appellate courts will not disturb the sentence. Commonwealth v. Gibson, 716 A.2d

1275, 1277 (Pa. Super. 1998).

In the instant case, the Defendant's minimum sentences were within the standard range of the guidelines. The maximum sentences were set below the statutory maximums. Unquestionably, the sentences imposed did *not* exceed the statutory limits. Therefore, the Defendant's sentence must be evaluated to determine if it was "manifestly excessive." To do so, the following considerations must be examined:

In determining whether a sentence is manifestly excessive, the appellate court must give great weight to the sentencing court's discretion, as he or she is in the best position to measure factors such as the nature of the crime, the defendant's character, and the defendant's display of remorse, defiance, or indifference. Commonwealth v. Ellis, 700 A.2d 948, 958 (Pa. Super. 1997). Where an excessiveness claim is based on a court's sentencing outside the guideline ranges, we look, at a minimum, for an indication on the record that the sentencing court understood the suggested sentencing range. 42 Pa. C.S.A. § 9721(b). When the court so indicates, it may deviate from the guidelines, if necessary, to fashion a sentence which takes into account the protection of the public, the rehabilitative needs of the defendant, the gravity of the particular offenses as it relates to the impact on the life of the victim and the community, so long as the court also states of record the factual basis and specific reasons which compelled him to deviate from the guideline range.

Commonwealth v. Mouzon, 828 A.2d 1126, 1128 (Pa. Super. 2003) (citations omitted).

Moreover, "[i]t is well-settled that appeals of discretionary aspects of a sentence are not reviewable as a matter of right." Commonwealth v. Ladamus, 896 A.2d 592, 595 (Pa. Super. 2006); *see also* Commonwealth v. Shugars, 895 A.2d 1270, 1274 (Pa. Super. 2006); Commonwealth v. McNabb, 819 A.2d 54, 55 (Pa. Super. 2003). The defendant must demonstrate that a substantial question exists

concerning the sentence. Commonwealth v. Lee, 876 A.2d 408, 411 (Pa. Super. 2005). Furthermore, a substantial question requires something more than an allegation that the sentences imposed are excessive or harsh. Ladamus, 896 A.2d at 595. Consequently, Defendant's assertion that this Court abused its discretion by imposing an excessive and harsh sentence fails to present a substantial question to justify a review of his claim.

Additionally, even if the merit of the Defendant's sentencing claim were addressed, Defendant's argument must fail. The Defendant's sentence must initially be evaluated to determine if there was an abuse of discretion. Commonwealth v. Walls, 926 A.2d 957 (Pa. 2007). The standard of review has been explained in the following manner:

Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.

Commonwealth v. Fullin, 892 A.2d 843, 847 (Pa. Super. 2006), *citing* Commonwealth v. Rodda, 723 A.2d 212, 214 (Pa. Super. 1999)(en banc).

In imposing the Defendant's sentence, this Court considered the "protection of the public, the gravity of the offense as it relates to the impact on the victim and the community, the defendant's rehabilitative needs, and the sentencing guidelines." 42 Pa. C.S.A. § 9721(b); Commonwealth v. Feucht, 955 A.2d 377, 383 (Pa. Super. 2008).

Prior to sentencing, this Court carefully reviewed the Pre-Sentence

Investigation Report prepared on December 19, 2011. Therefore, this Court did not fail to consider mitigating factors. Commonwealth v. Devers, 519 Pa. 88, 546 A.2d 12 (1988) (holding that where a pre-sentence report exists, there is a presumption that the sentencing judge was aware of and adequately considered information relevant to the defendant's character, as well as any mitigating factors). Indeed, this Court was cognizant of the Defendant's prior criminal history, his military background, his work history, his lack of a juvenile record, his prior paroles and probations, his lack of misconducts at Lehigh County Prison and his involvement with his children. Using its discretion, this Court imposed a sentence that was within the standard range of the guidelines and in compliance with the law.⁶³ Accordingly, the Defendant's Motion to Reconsider and Modify Sentence is denied.⁶⁴

Based on the foregoing, the Defendant's Post Verdict Motion for Post

⁶³ Additionally, it is axiomatic that the imposition of consecutive rather than concurrent sentences lies within the sound discretion of the sentencing court. Commonwealth v. Booze, 953 A.2d 1263, 1279 (Pa. Super. 2008). Long-standing precedent recognizes that 42 Pa. C.S.A. § 9721 affords the sentencing court discretion to impose its sentence concurrently or consecutively to other sentences being imposed at the same time or to sentences already imposed. 42 Pa. C.S.A. § 9721. See also Commonwealth v. Johnson, 961 A.2d 877, 880 (Pa. Super. 2008); Commonwealth v. Marts, 889 A.2d 608, 612 (Pa. Super. 2005). "A challenge to the imposition of consecutive rather than concurrent sentences does not present a substantial question regarding the discretionary aspects of sentence." Commonwealth v. Lloyd, 878 A.2d 867, 873 (Pa. Super. 2005). Indeed, the Superior Court of Pennsylvania has stated: "We see no reason why [a defendant] should be afforded a 'volume discount' for his crimes by having all sentences run concurrently." Commonwealth v. Hoag, 445 Pa. Super. 455, 665 A.2d 1212, 1214 (1995).

⁶⁴ Also, this Court notes that the Defendant requested to proceed *pro se* in the within matter, and consequently the Defendant's argument that he was prejudiced in proceeding *pro se* at sentencing is disingenuous at best. Indeed, on November 14, 2011, this Court thoroughly explored the Defendant's request for waiver of counsel. On the record, this Court reviewed the waiver of counsel form, the element of the charges, the maximum sentences that could be imposed (including concurrent vs. consecutive sentences), and the fact that he would be bound by the same rules and procedures of court as an attorney. This Court found the Defendant's waiver to be knowing, voluntary and intelligent. Nonetheless, in an abundance of caution and to protect his interests, this Court appointed Richard A. Webster, Esquire, as stand-by counsel on behalf of the Defendant.

Sentence Relief is denied.