NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	
STEVEN EDWARD SCALES, Appellant	No. 609 WDA 2011

Appeal from the Judgment of Sentence March 28, 2011
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0002213-2010

BEFORE: STEVENS, P.J., FORD ELLIOTT, P.J.E., and MUNDY, J.

MEMORANDUM BY STEVENS, P.J. Filed: February 11, 2013

This is an appeal from the judgment of sentence entered in the Court of Common Pleas of Allegheny County following Appellant's conviction by a jury on the charges of third-degree murder, attempted homicide, criminal solicitation, aggravated assault, persons not to possess a firearm, carrying a firearm without a license, and criminal conspiracy.[1] After a careful review, we affirm.

The relevant facts and procedural history are as follows: Appellant was arrested and, on January 10, 2011, represented by counsel, Appellant proceeded to a jury trial at which numerous witnesses testified. Specifically,

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[1] 18 Pa.C.S.A. §§ 2501(a), 901(a), 902(a), 2702(a)(1), 6105(a)(1), 6106, and 903(a)(1), respectively.

Pittsburgh Police Officer Craig Lear testified that, at approximately 4:00 a.m., on July 14, 2000, he was dispatched to an after-hours club, the Travelers Club, to investigate the shooting of two males, Timothy Raines and Kennya Simpson. N.T. 1/10/01 at 56-57. Upon arrival, Officer Lear saw Mr. Raines, who was deceased, lying facedown in a parking lot adjacent to the Club. N.T. 1/10/11 at 57. Officer Lear secured the scene in the parking lot until other officers could process it. N.T. 1/10/11 at 58.

Abdulrezak Shakir, M.D., a forensic pathologist with the medical examiner's office, confirmed Mr. Raines died on July 14, 2000, as a result of a gunshot wound to his upper chest. N.T. 1/10/11 at 119-120, 123.

Pittsburgh paramedic Anthony DeSantis testified he responded to the Club and treated Kennya Simpson, who had been shot in the upper left shoulder. N.T. 1/10/11 at 60. Mr. Simpson was conscious and alert and transported to a nearby hospital. N.T. 1/10/11 at 60-61. Mr. Simpson survived his gunshot wound.

Robert Levine, Ph.D., a firearms examiner in the forensics laboratory, testified that, in 2000, he examined two .22 caliber bullets, which were removed from Mr. Raines' body during his autopsy. N.T. 1/12/11 at 180-181. Dr. Levine was unable to determine whether the bullets were fired from the same gun since the bullets had been damaged upon entry into Mr. Raines' body. N.T. 1/12/11 at 182, 191. He also testified the police never submitted a firearm to him so he could attempt to match the bullets to a

particular firearm, and he indicated .22 caliber bullets can be fired from revolvers, semiautomatic pistols, and rifles of various types. N.T. 1/12/11 at 182, 187, 190. Dr. Levine examined Mr. Raines' clothes and concluded the firearm was not close to the garments at the time of discharge. N.T. 1/12/11 at 186-187. Dr. Levine examined nine discharged nine-millimeter caliber cartridge cases, which were found at the homicide scene. N.T. 1/12/11 at 182. Dr. Levine concluded the cartridges were fired from two different firearms. N.T. 1/12/11 at 183.

Arthur Willie testified that he has worked at the Travelers Club for fifteen years and, on July 14, 2000, he was the security manager. N.T. 1/10/11 at 64. At approximately 4:30 a.m. on the date in question, Mr. Willie was working as the security guard at the door when he heard shots being fired outside. N.T. 1/10/11 at 65. Mr. Willie looked outside and observed two shooting victims, one of whom was lying in the parking lot adjacent to the Club and one of whom was sitting on the curb. N.T. 1/10/11 at 67. Mr. Willie also saw a person, who was dressed all in black, running from the Club towards the back parking lot by the railroad tracks. N.T. 1/10/11 at 66. Mr. Willie, who carried a 9-millimeter handgun, fired a shot at the fleeing person. N.T. 1/10/11 at 67. Mr. Willie testified he did not inform the investigating police he had fired a shot because he did not have a license to carry a firearm. N.T. 1/10/11 at 68.

James Prince testified he worked as a security guard at the Travelers Club, and on July 14, 2000, at approximately 3:30 a.m., he heard shots coming from outside; however, he did not go outside to investigate. N.T. 1/10/11 at 72. Mr. Prince admitted that, at the time, he was carrying a 9-millimeter handgun. N.T. 1/10/11 at 73.

Tequila Harris testified she and her friend, Shanika Butler, were at the Travelers Club on July 14, 2000, and, at approximately 4:30 a.m., they left the Club. N.T. 1/10/11 at 75. As they were walking towards Ms. Butler's vehicle, which was parked in the adjacent parking lot, Mr. Simpson called out to speak to her. N.T. 1/10/11 at 76. As she and Mr. Simpson were talking, someone shot at Mr. Simpson. N.T. 1/10/11 at 76. Mr. Simpson pushed Ms. Harris and told her to run. N.T. 1/10/11 at 76. Ms. Harris ran and never saw anyone with a gun. N.T. 1/10/11 at 77. After the shooting ceased, Ms. Harris saw a man, later identified as Mr. Raines, lying in the parking lot and she ran to assist him. N.T. 1/10/11 at 77. She sat with Mr. Raines until the paramedics arrived. N.T. 1/10/11 at 78.

Allen White testified that, on July 13, 2000, at approximately midnight, he was sitting on the wall across from the front of the Travelers Club when Sean Greene approached him and asked whether Mr. Simpson was inside of the Club. N.T. 1/10/11 at 83-84. Mr. White noticed Mr. Greene was dressed entirely in black and had a revolver hanging out of his pocket. N.T. 1/10/11 at 86. Mr. White told Mr. Greene he was not sure whether Mr. Simpson was

inside of the Club, and Mr. Greene left, walking towards the back of the parking lot. N.T. 1/10/11 at 84-85.

Mr. White went inside of the Club, where he stayed until approximately 4:00 a.m., at which time he left the Club and sat in his vehicle, which was parked on the street near the Club. N.T. 1/10/11 at 87. As Mr. White was talking to a friend on the telephone, Mr. Greene approached and asked whether anyone had accompanied Mr. Simpson inside of the Club. N.T. 1/10/11 at 87. Mr. White responded, "No," and Mr. Greene walked away. N.T. 1/10/11 at 87-88. A few minutes later, Mr. Simpson left the Club, walked across the street, and then "all hell broke loose with the gunfire." N.T. 1/10/11 at 89. Specifically, Mr. White testified as follows on direct examination:

> **Q:** And you say all hell broke loose. Can you describe exactly what you say for the jury[?]
> **A:** Seen the boy body figure come out from where, like, the bushes are, come straight down, stutter steps, and then that's when I seen the first gunfire. And after that I duck[ed] because I didn't want to get hit by none of the bullets because I was in the direction that the gun was ready to get fired.
> **Q:** Who was firing the gun?
> **A:** Sean Greene.
> **Q:** And you recognized him?
> **A:** Yes, ma'am.
> **Q:** Now, was anybody else over there in the vicinity in the area where Mr. Simpson was?
> **A:** Yes, ma'am.
> **Q:** Who did you see?
> **A:** Tim Raines.
> **Q:** Did you know him at that time?
> **A:** No. I didn't know his name, none of that.
> **Q:** All right. Now, did you see if anyone was hit or shot at the time that you heard the gunshots?

> **A:** Tell you the truth, the way you're asking me, I still was down in my seat until I didn't hear anymore gunfire. Then I raised my head back up.
> **Q:** All right. And what, if anything, did you see?
> **A:** Well, what I seen was the guy Tim Raines laying head towards me in the parking lot almost up towards the wall.
> **Q:** All right. And did you see where...Kennya Simpson was?
> **A:** He was in front of him, and he ran back into the club.
> **Q:** All right. Now, did you hear any other—Was there any other gunfire after you heard these initial shots?
> **A:** Yeah. When Kennya Simpson ran back into the club, there was a female that came up, and she started firing a gun. That's when he ran from that area over into the club. Like halfway up onto the sidewalk before the sidewalk is where I seen the female firing a gun.
> **Q:** And, again, the person that you saw firing the shots was who initially?
> **A:** You said that was in the street firing after?
> **Q:** No. Before.
> **A:** Before?
> **Q:** The first shots that you heard.
> **A:** Sean Greene.
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> **Q:** All right. Did you see where Sean Greene went after he fired the shots?
> **A:** Right back into that corner right there.

N.T. 1/10/11 at 89-92.

Mr. White testified that, after the shooting, he left the area and did not speak to the police because he "didn't want to get involved[.]" N.T. 1/10/11 at 93. However, Mr. White later talked to the police in 2009, after he was arrested on charges related to burglary. N.T. 1/10/11 at 97. Mr. White informed the police Mr. Greene was the shooter; Mr. White testified the police did not make him any promises in exchange for his testimony. N.T. 1/10/11 at 98. Mr. White indicated that, in 2009, the police showed him a photo array, which contained the photograph of Sean Greene. N.T. 1/10/11

at 100. Mr. White identified Mr. Greene's photograph and wrote beneath it "I seen Sean Greene shoot Buddha[2] at Travelers Club." N.T. 1/10/11 at 99-100 (footnote added).

On cross-examination, Mr. White clarified the female fired at Sean Greene in retaliation, after Mr. Greene first fired his gun. N.T. 1/10/11 at 105. Mr. White did not recall Mr. Willie firing his gun at the shooter. N.T. 1/10/11 at 105.

Kennya Simpson testified he is currently serving a sentence in a federal correctional institution for distribution of crack cocaine. N.T. 1/10/11 at 126. Mr. Simpson testified that, in 2000, he was shot on two separate occasions. Specifically, the first time he was shot, in March of 2000, he was outside of Joe's Bar attempting to sell Ecstasy pills when people in a car shot him in the buttocks and testicles.[3] N.T. 1/10/11 at 127. In 2009, Mr. Simpson admitted to the police the people in the car included Appellant, Sean Greene a/k/a "Elbows," and a third man. N.T. 1/10/11 at 128. The second time he was shot, on July 14, 2000, Mr. Simpson was outside of the Travelers Club. N.T. 1/10/11 at 129. Specifically, the following relevant exchange occurred on direct-examination, regarding the July 14, 2000 shooting:

Q: And was that on July 14 of 2000?

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[2] Mr. White testified that Mr. Simpson's nickname was "Buddha."
[3] No criminal charges were ever filed in this case.

> **A:** Yes.
> **Q:** Tell the jury what happened to you on that occasion.
> **A:** Well, again, I was leaving a club, talking to some women, and I was standing in the middle of the street, and some guy started shooting. Well, he shot a friend of mine that was going somewhere else, and at that time I took off running. The girl ran. I ran around my car.
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> As I was running around my car, I got shot in the back. I made it to the door. I was able to draw my weapon and shoot back while the guy ran.
> **Q:** Didn't you pass your gun off to someone else?
> **A:** Afterwards, yeah.
> **Q:** But you're saying that you fired shots back at the person?
> **A:** Yes. Yes.

N.T. 1/10/11 at 129-130.

On January 29, 2009, Mr. Simpson picked Sean Greene's photograph from a police photographic array and, beneath the photograph, he wrote "Elbows shot me at Joe's and Travelers Club." N.T. 1/10/11 at 131. However, at trial, Mr. Simpson testified he chose Mr. Greene's photograph and wrote the statement beneath the photograph because the police told him to do so. N.T. 1/10/11 at 131-132. Mr. Simpson admitted that, on January 29, 2009, he made a verbal statement to the police in which he stated "Elbows" was the man who had shot him outside of the Travelers Club and, Appellant was the person driving the vehicle in which "Elbows" was riding when "Elbows" shot Mr. Simpson outside of Joe's Bar. N.T. 1/10/11 at 133. However, Mr. Simpson testified the police coerced him into making the verbal statement. N.T. 1/10/11 at 132-134. At trial, Mr. Simpson denied knowing who shot him or Mr. Raines outside of the Travelers Club and he stated Appellant is a friend of his. N.T. 1/10/11 at 136.

Pittsburgh Police Detective Scott Evans testified he is assigned to investigate "cold cases" for the homicide unit, and in January of 2009, he was assigned to Mr. Raines' homicide case. N.T. 1/12/11 at 148. Specifically, he was assigned to investigate Mr. Raines' homicide when Mr. White's attorney contacted the police to report he had information on the case. N.T. 1/12/11 at 148. On January 26, 2009, Detective Evans interviewed Mr. White, who, from a photographic array, chose Sean Greene as the shooter outside the Travelers Club and Joe's Bar. N.T. 1/12/11 at 149. Thereafter, on January 29, 2009, Detective Evans interviewed Mr. Simpson, who was then a prisoner at the federal correctional institute in Loretto, Pennsylvania. N.T. 1/12/11 at 152. On direct examination, Detective Evans testified the following transpired between him and Mr. Simpson:

> **Q:** When you talked with Mr. Simpson, was he cooperative with you?
> **A:** Absolutely.
> **Q:** And did he tell you about—Did you ask him about the incident at Joe's Bar and at the Travelers Club?
> **A:** Yes, we did.
> **Q:** All right. And did he identify for you anyone who had shot at him or shot him on those two occasions?
> **A:** Absolutely. He said that an individual by the name of [Appellant], Ellis Harris, who he referred to as Pete Rock, and an individual he knew as Elbows were inside of a black vehicle, he thought possibly a Nissan, driving past him at Joe's Bar and fired multiple gunshots at him. And he also identified the individual that shot both he and Tim Raines at the Travelers Club as this individual named Elbows.
> **Q:** All right. Now, as part of you interview, did you ask him to look at any photographs?
> **A:** Yes. I did a photo array.

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> **Q:** All right. And did he identify anybody from that particular array?
> **A:** Yes. He identified—again, he identified Mr. Sean Greene as Elbows, and he wrote "Elbows shot me at Joe's and Travelers Club," and signed below that photograph and also dated it.
> **Q:** All right. He put his signature there?
> **A:** Yes, he did.
> **Q:** All right. Now, he referred to Mr. Greene as Elbows?
> **A:** Yes.
> **Q:** And the person in that photo that he identified as Elbows is who?
> **A:** Sean Greene.
> **Q:** Sean Greene? All right. Now, did you in any way suggest to him who he should pick from this array?
> **A:** No, I did not.

N.T. 1/12/11 at 153-155.

Detective Evans denied telling Mr. Simpson to implicate Appellant in the shooting outside of Joe's Bar and he specifically denied threatening or coercing Mr. Simpson in any manner. N.T. 1/12/11 at 155-156.

Following Mr. Simpson's interview, Detective Evans arrested Sean Greene for the murder of Mr. Raines. N.T. 1/12/11 at 160. Subsequently, a female called Detective Evans, recommending he interview Appellant, who was in the federal penitentiary. N.T. 1/12/11 at 159. Therefore, on August 9, 2009, Detective Evans and his partner went to the penitentiary, entered a room where Appellant was sitting, and said, "You wanted to see us?" N.T. 1/12/11 at 161. Detective Evans testified Appellant made the following statement to the detectives:

> **[DETECTIVE EVANS]:** He stated that he had information in regard to the Tim Raines homicide, and he told us that back in that time in March of 2000, he said that cocaine in the City of

Pittsburgh was particularly scarce and very expensive and that he had made or was doing a drug deal with Kennya Simpson, that they arranged for two kilos of cocaine to be purchased, that he was going to purchase two kilos of cocaine from Kennya Simpson for $54,000.

He said that he did have—[Appellant] said he had an associate with him. They were in his car. He said that Mr. Simpson entered his car. He said that he remembered that Mr. Simpson was particularly nervous. He said he gave him—Mr. Simpson gave him the kilos and that [Appellant] gave Mr. Simpson the money and that right away Mr. Simpson got out of the car and left.

And when his associate tested the product he found out that it was flour, and they were pursuing Mr. Simpson through traffic but they lost him in traffic. He said that later on that evening he actually saw Mr. Simpson at the Travelers Club, and he described pursuing him in a vehicle, that the two exchanged gunfire but they lost sight of each other again.

[Appellant] said that as a result of this situation he put the word out on the street that he was to be contacted whenever Mr. Simpson was seen so that he could take care of Mr. Simpson.

He said that in March of 2000, that he, Ellis Harris, and Sean Greene, were riding around in a car looking for him on a particular night. He said that on this particular night they weren't having any luck. They decided to have a drink. He said they just happened to drive by Joe's Bar, and they said Mr. Simpson was standing outside the bar.

He said, "I literally said, 'Oh, shit. There he is.'" He couldn't believe it was him. He said that he, Ellis Harris, and Sean Greene each had pistols and they started firing at Mr. Simpson.

He said that later on that night they learned on the news that Mr. Simpson was shot but that they didn't know which one of them shot him. As a result of that, he said he was contacted by Mr. Simpson shortly thereafter and arrangements were made for Mr. Simpson to pay back this money.

He said that two independent payments of $5,000 were made. He said that after that there were no more payments. He said he called Mr. Simpson and Mr. Simpson said "Business is slow," that he couldn't make payments. He said then Mr. Simpson's cell phone was turned off and he lost contact with him. He said he put the word out on the street again that he wanted to be contacted if Mr. Simpson was seen on the street so that they could take care of him.

As he continued, he said in July this particular night in the Travelers Club he received a phone call from a barmaid at the Travelers Club and that the barmaid said, "hot soup." And I said, "What's 'hot soup'?" He said "hot soup" was his code phrase that Mr. Simpson was actually at the Travelers Club.

He said he got off the phone. He said in his apartment was Mr. Sean Greene and his girlfriend or—I think it was his girlfriend at the time. Rebekah Crux was in his apartment.

He said that Mr. Greene took [Appellant's] .380 and .357 and that Ms. Crux either took his .22 or .25 and that they jumped in a rental car and they headed out to the Travelers Club.

He said he also went to his Camaro and he followed them out to that location. He said that he stayed in the surrounding area around Washington Avenue around the club and kept in telephone contact with Ms. Crux as those two went to the club. At one point I asked [Appellant] why he didn't go down to the club. He said "Because I didn't have a gun," and he said "because I knew that they would take care of it."

He said that during the phone call with Ms. Crux she said that they were close or that Mr. Simpson was close to the car, was with another gentleman, and then he said he just heard a whole bunch of shots rung out. He heard screaming like "Sean. Sean. Elbows. Elbows. Get in the car. Get in the car," and that they left the area.

He said he pulled up next to them later on Washington Boulevard and that Ms. Crux threw all three guns into his car and that they met back in the apartment in New Kensington.

At that time [Appellant] said he gave Sean Greene $1,500 to get out of town and that Ms. Crux disposed of the guns, and I believe he watched television and learned that an individual by the name of Tim Raines was killed during the incident.

[ADA]: All right. Now, this information all came from [Appellant]?

[DETECTIVE EVANS]: Yes.

[ADA]: All right. You had not given him any information as to what you wanted to talk to him about?

[DETECTIVE EVANS]: No, ma'am.

N.T. 1/12/11 at 161-165.

Detective Evans testified that, after Appellant made this statement to him and his partner, they gave Appellant his ***Miranda***[4] warnings, and Detective Evans confirmed no threats or promises had been made to Appellant in exchange for his statement. N.T. 1/12/11 at 166. Appellant then made a tape-recorded statement, which was substantially similar to the statement discussed *supra*. Detective Evans confirmed that, after Appellant made his statement to the police, they attempted to interview Rebekah Crux; however, she would not speak to the police. N.T. 1/12/11 at 167.

Assistant District Attorney Michael Pradines testified that, on January 28, 2010, he met with Kennya Simpson in the sheriff's office in order to prepare for Sean Greene's preliminary hearing as it related to the shooting at issue. N.T. 1/12/11 at 195. After ADA Pradines informed Mr. Simpson he intended to call him as a witness in the upcoming preliminary hearing, Mr. Simpson told ADA Pradines "what he had told Detective Evans was a lie and that he indeed had not seen the defendant Mr. Greene's face on the night of the shooting." N.T. 1/12/11 at 196. Mr. Simpson told ADA Pradines everything in Detective Evans' report was accurate in the sense that Mr. Simpson had made the statements to Detective Evans; however, Mr. Simpson informed ADA Pradines he had lied to Detective Evans about having seen Mr. Greene's face during the shooting. N.T. 1/12/11 at 196. That is,

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[4] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

while Mr. Simpson told ADA Pradines "everything else in the report did happen and that it was very accurate," Mr. Simpson lied about seeing the face of Mr. Greene during the shooting. N.T. 1/12/11 at 196. ADA Pradines asked Mr. Simpson why he identified Mr. Greene if he had not seen his face, and Mr. Simpson told ADA Pradines that, while he had not seen Mr. Greene's face on the night of the shooting, "he was very convinced, very convinced that [Mr.] Greene actually was the person who shot him." N.T. 1/12/11 at 196. ADA Pradines indicated he told Mr. Simpson to "do the right thing and tell what [he] believed to be the truth and testify for [the prosecution] at [Mr. Greene's] upcoming preliminary hearing." N.T. 1/12/11 at 198. In response, Mr. Simpson told ADA Pradines he could not testify at Mr. Greene's preliminary hearing since "he has 12 kids out in the world and that he's in jail and he felt that in the position that he was, being in jail and them being out in public, that there's no way that he could protect them and he felt that they were in danger." N.T. 1/12/11 at 198. ADA Pradines offered protection for Mr. Simpson's family, and Mr. Simpson responded, "I just can't do it." N.T. 1/12/11 at 199. ADA Pradines testified Mr. Simpson did not tell him Detective Evans had forced him to make the statements contained in the report and, in fact, Mr. Simpson admitted everything in the report was accurate, except he would not now confirm Mr. Greene's identity as the shooter. N.T. 1/12/11 at 199.

The Commonwealth rested its case-in-chief, and the defense called James DePasquale, Esquire, to testify. Attorney DePasquale testified he represented Appellant with regard to drug charges in an unrelated case and Appellant was cooperative with the police, providing them information on two wholesale illegal drug dealers in California. N.T. 1/12/11 at 232. Attorney DePasquale admitted Appellant's wife was named Rebekah Crux. N.T. 1/12/11 at 234.

Appellant took the stand in his own defense. Appellant testified that, while he was an inmate at the Loretto federal penitentiary in January of 2009, he saw Mr. Simpson, who was also an inmate. N.T. 1/12/11 at 241. On direct examination, Appellant testified, in relevant part, as follows regarding his interaction with Mr. Simpson, as well as Detective Evans:

> **[APPELLANT]:** [Mr. Simpson] told me that he was involved with a—This is what he told me. He said he had got shot on two separate occasions. He said he got shot one time in March and he got shot one time—I thought it was June, but he told me it was July. Buddha said it was July also. And he said, "I can help you," you know what I mean? I said, "Well listen. They gave me 22 years." Okay?
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> I said, "I'm trying to get home to my son," you know what I mean? I tried everything I could possibly try. I tried to get [a] sentence reduction. I tried to corroborate [*sic*] with the officers, and they gave me so much time. My son's only three years old when I left. My son is ten years old now as we're speaking.
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> **[DEFENSE ATTORNEY]:** All right. [Appellant] we need to stay focused.
> **[APPELLANT]:** Okay.
> **[DEFENSE ATTORNEY]:** We're talking about Kennya Simpson. You started saying that he was telling you about some stuff that had gone on with him regarding getting shot?
> **[APPELLANT]:** Yes.

[DEFENSE ATTORNEY]: When you heard about that information, what did you do?
[APPELLANT]: Well, I asked him, I said, "Can you share that information with me" so, therefore, I could probably use it and take it to the detectives and try to get a time cut. If I'm successful with the information, if I corroborate [*sic*], I could possible get a time cut.
[DEFENSE ATTORNEY]: And did you reach out to the detectives?
[APPELLANT]: Yes, I did.
[DEFENSE ATTORNEY]: And were you successful in getting in contact with them?
[APPELLANT]: Yes, I was.
[DEFENSE ATTORNEY]: Now, we heard they eventually came to FCI-Loretto to meet with you. Do you remember that?
[APPELLANT]: Yes.
[DEFENSE ATTORNEY]: Could you describe that meeting.
[APPELLANT]: I believe it was August 5. Mr. Evans and his partner Smith, they came to meet with me. I had made several calls so they could come see me. Then they finally met with me. And as soon as I came in a little room, it was like—I don't want to say Intake area. It was a receiving area. That's what we call it in the federal jail where all the new inmates come through.

So we met there. So as soon as I came in the room, they looked at me and was, like—So I told them, the first thing I said, I said, "Listen. I want immunity because I don't want to say anything wrong that I might incriminate myself." I said, "I want a time cut out of this, and I want some help getting out of jail as soon as possible." They said, "We'll see what we can do."

So they said, "What do you got?" So I went on and made up a story, you know what I mean? First of all, I didn't know anything about this until Kennya told me what happened. He told me he got shot in March. Then he told me he got shot in July. He told me a little bit what happened in March, a little bit of what happened in July.

So me thinking we'll go to it I'll make up my own story to it, I'll tell a lie. If they believe the lie, it's good enough, you know what I mean? They can use me and I'll go ahead, testify for them. I could get me a time cut out of this, go home to my son.

So I told them in March that I was with a couple friends and...Well, no. I made up a lie, I told them a drug deal went bad with me and Mr. Simpson. And for one, he said that he sold me—No. Mr. Simpson could never sold me anything because I

> had kilos of cocaine to sell, you know what I mean? Why would you buy when you already have kilos of cocaine to sell, you know?
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> That's the type of business I was into at the time. I was selling drugs, and that's what I'm doing 22 years for now. So I made up a lie and I said we had a bad deal going down that went bad.
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> **[DEFENSE ATTORNEY]:** Did you ever engage in a drug transaction with Kennya Simpson that went bad?
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> **[APPELLANT]:** No, not at all. Not at all.
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> **[DEFENSE ATTORNEY]:** Did you have any reason to want Kennya Simpson dead?
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> **[APPELLANT]:** No, not at all.
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> **[DEFENSE ATTORNEY]:** [Appellant], did you order Sean Greene to kill Kennya Simpson?
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> **[APPELLANT]:** No, I didn't. Not at all.

N.T. 1/12/11 at 242-246.

On cross-examination, Appellant admitted he knew Sean Greene and Kennya Simpson, and that, prior to making a recorded statement to Detective Evans on August 9, 2009, Detective Evans read Appellant his ***Miranda*** warnings. N.T. 1/12/11 at 253-254. Appellant admitted he made the statements to Detective Evans on August 9, 2009; however, Appellant testified it was "a long lie." N.T. 1/12/11 at 256. Appellant admitted that, in 2000, he was a "big time drug dealer;" however, he denied ever carrying a gun to protect himself. N.T. 1/12/11 at 259-260. Appellant admitted Detective Evans did not make any promises or threats to Appellant in exchange for Appellant's statements on August 9, 2009; however, Appellant was hoping he would receive a reduction in jail time in exchange for his cooperation. N.T. 1/12/11 at 261. Appellant testified he lied to Detective Evans but he denied he was now lying to the jury. N.T. 1/12/11 at 264-265.

The Commonwealth called Detective Evans as a rebuttal witness, and he testified that, when he interviewed Appellant on August 5, 2009, Appellant never asked for immunity or a reduction in his sentence. N.T. 1/12/11 at 273. Detective Evans specifically denied telling Appellant what to say during the interview. N.T. 1/12/11 at 273.

At the conclusion of all testimony, the jury convicted Appellant of the offenses indicated *supra* but acquitted him on the charge of first-degree murder. On March 11, 2011, Appellant filed a counseled written motion for post-trial extraordinary relief alleging, *inter alia*, after-discovered evidence. Specifically, Appellant alleged two witnesses told him Allen White admitted to them he had lied during Appellant's trial when he implicated Sean Greene as the shooter. Prior to Appellant's sentencing, on March 28, 2011, Appellant presented the substance of his written motion orally,[5] the trial court denied Appellant's motion for post-trial extraordinary relief, and the trial court proceeded to sentencing. The trial court sentenced Appellant as follows: Count 1, third-degree murder of Mr. Raines, 200 months to 400 months in prison; Count 2, attempted murder of Kennya Simpson, 100 months to 200 months in prison, to run consecutively to Count 1; Count 3, criminal solicitation, merged with Count 2; Count 4, aggravated assault, no further penalty; Count 5, possession of firearms prohibited, 24 months to 48

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[5] As Appellant admits, a motion for post-trial extraordinary relief is generally made orally pursuant to Pa.R.Crim.P. 704(B).

months, to run consecutively to all other Counts; Count 6, firearms not to be carried without a license, no further penalty; and Count 7, criminal conspiracy to commit homicide, 100 months to 200 months, to run consecutively to Counts 1 and 2.

On April 1, 2011, Appellant filed a timely counseled post-sentence motion presenting numerous claims, and by order entered on April 6, 2011, the trial court denied the post-sentence motion. This timely counseled appeal followed on April 11, 2011, and counsel simultaneously filed a motion seeking an extension of time in which to file a Pa.R.A.P. 1925(b) statement. The trial court granted Appellant's request and, thereafter, Appellant filed a Pa.R.A.P. 1925(b) statement, and the trial court filed a responsive Pa.R.A.P. 1925(a) opinion.

Appellant contends the evidence was insufficient to sustain his convictions.[6] Specifically, he alleges the evidence was insufficient to prove his identity as a person who shot, aided and abetted, or conspired to shoot, Mr. Raines and Mr. Simpson.

> In evaluating a challenge to the sufficiency of the evidence, we must determine whether, viewing the evidence in the light most favorable to the Commonwealth as verdict winner, together with all reasonable inferences therefrom, the trier of fact could have found that each and every element of the crimes charged was established beyond a reasonable doubt. We may not weight the evidence and

[6] We have renumbered Appellant's issues for the ease of discussion.

> substitute our judgment for the fact-finder. To sustain a conviction, however, the facts and circumstances which the Commonwealth must prove must be such that every essential element of the crime is established beyond a reasonable doubt.
>
> ***Commonwealth v. Cain***, 906 A.2d 1242, 1244 (Pa.Super. 2006), *appeal denied*, 591 Pa. 670, 916 A.2d 1101 (2007) (citations omitted). Lastly, the finder of fact may believe all, some or none of a witness's testimony.

Commonwealth v. Bullock, 948 A.2d 818, 823 (Pa.Super. 2008) (citations omitted).

As indicated *supra*, Appellant's argument is specific in nature. Rather than challenging the sufficiency of the evidence to support any of the applicable elements of his convictions, Appellant contends the evidence was insufficient to prove that he was, in fact, the person who committed, aided and abetted, or conspired to commit the crimes. As such, we need not conduct a thorough review of the evidence to determine whether it can support a finding that all of the elements of Appellant's convictions have been met. Rather, we will focus on the specific issue raised by Appellant: whether the evidence was sufficient to establish Appellant was the person who shot, aided and abetted, or conspired to shoot the victims.[7] ***See Cain***, ***supra***.

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[7] Appellant admits the Commonwealth proved the elements of all of the crimes, with the exception of Appellant's involvement with the crimes. ***See*** Appellant's Brief at 30.

Here, Allen White specifically testified that, during the late evening hours of July 13, 2000, and the early morning hours of July 14, 2000, Sean Greene approached him outside of the Travelers Club on two separate occasions to determine whether one of the victims, Mr. Simpson, was inside of the Club. On one of those occasions, Mr. White noticed Mr. Greene had a gun in his pocket. As Mr. White sat in his vehicle, which was parked on the street near the Club, at approximately 4:00 a.m. on July 14, 2000, Mr. White observed as Mr. Simpson exited the Club and walked across the street. He then saw Sean Greene running from out of the bushes, firing a gun in the direction of Mr. Simpson, who was standing near Timothy Raines. N.T. 1/10/11 at 89-92. Mr. White did not initially report his observations to the police; however, in 2009, Mr. White informed the police that he saw Sean Greene shooting at Mr. Simpson, and he positively identified Sean Greene as the shooter from a police photographic array. N.T. 1/10/11 at 98-100.

Mr. Simpson confirmed that he was shot on July 14, 2000, as he stood outside of the Travelers Club, as well as in March of 2000, as he stood outside of Joe's Bar. Mr. Simpson did not initially inform the police that he knew any of the people involved in either shooting. However, in 2009, Mr. Simpson admitted to the police that Mr. Greene shot him from a vehicle in March of 2000 and Appellant was the person driving the vehicle. Moreover, regarding the July 14, 2000 shooting at issue, which occurred outside of the

Travelers Club, on January 29, 2009, Mr. Simpson positively identified Mr. Greene as the shooter from a police photographic array and he verbally stated Mr. Greene shot him.[8]

Detective Evans confirmed he interviewed Mr. White and Mr. Simpson separately in January of 2009, and both men identified Mr. Greene as the person who fired shots in the direction of Mr. Simpson and Mr. Raines on July 14, 2000, outside of the Travelers Club. He also confirmed that Mr. Simpson implicated Appellant and Mr. Greene in the earlier shooting outside of Joe's Bar.

Finally, Detective Evans testified that, in response to the statements made by Mr. White and Mr. Simpson, he arrested Sean Greene in connection with the July 14, 2000 shootings, and thereafter, Appellant, who was incarcerated on unrelated charges, requested an interview with him. Therefore, on August 9, 2009, Detective Evans met with Appellant, who made a recorded statement detailing his participation in the July 14, 2000 shootings. N.T. 1/12/11 at 161-165. Specifically, Appellant admitted Mr. Simpson had "ripped him off" in a March of 2000 drug deal, and therefore, Appellant put the word out on the street that he wanted to be contacted anytime someone saw Mr. Simpson. Appellant then explained how, in

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[8] The fact Mr. Simpson attempted to recant his statements to the police during Appellant's trial does not render the evidence insufficient. Rather, the jury, as finder of fact, was free to weigh Mr. Simpson's testimony and believe all, part, or none of it. ***See Bullock***, ***supra***.

retaliation, he, along with Sean Greene and Ellis Harris, found Mr. Simpson at Joe's Bar one night in March of 2000, and they all fired pistols at him. After he was shot, Mr. Simpson began making payments to Appellant to compensate for the poorly executed drug deal; however, at some point, Mr. Simpson stopped making payments, and Appellant again put the word out on the street that he was looking for Mr. Simpson. On July 13, 2000, a barmaid called Appellant to tell him that Mr. Simpson was inside of the Travelers Club, and upon Appellant's urging, Mr. Greene and Appellant's girlfriend, who were armed with guns given to them by Appellant, took a rental car to the Travelers Club. Appellant followed them in his Camaro, and he remained in telephone contact with his girlfriend, hearing the shots when Mr. Greene fired his gun. After the shooting, Appellant met up with the duo, and his girlfriend put the guns into the Camaro. Appellant gave Mr. Greene money to leave town and his girlfriend disposed of the guns.

Based on the aforementioned, we conclude the evidence was sufficient to establish Appellant's active participation in the July 14, 2000 shooting outside of the Travelers Club, which left Mr. Raines dead and Mr. Simpson wounded. ***See Cain***, ***supra***. We note we specifically find unavailing Appellant's contention the evidence is insufficient since, during his trial, he explained that he lied when he gave the August 9, 2009 confession to Detective Evans. That is, Appellant contends his trial testimony clearly demonstrates his motivation for making the confession was that he wanted

to obtain a lesser sentence in an unrelated federal case and his confession was incredible. ***See*** Appellant's Brief at 31-33. However, we conclude the motivation and credibility of Appellant's statement was properly for the jury, and this Court will not reweigh the evidence on appeal. ***See Bullock***, ***supra***.

Appellant's next contention is the jury's verdict is against the weight of the evidence.[9] Specifically, Appellant contends the following:

> [T]he unsettling nature of the convictions for the serious crimes in this matter based upon inculpatory statements made as part of a careless sentence-reduction ruse becomes clear and shocking such that a new trial should have been awarded to give right another chance to prevail. In addition to the circumstances surrounding [Appellant's] confession, Mr. White only came forward and told police what he allegedly observed at the Travelers Club on July 14, 2000, after Mr. White had pending charges...in an effort, presumably, to obtain favorable treatment on those pending charges.

Appellant's Brief at 34.

> Our scope of review for [a weight of the evidence] claim is very narrow. The determination of whether to grant a new trial because the verdict is against the weight of the evidence rests within the discretion of the trial court, and we will not disturb that decision absent an abuse of discretion. Where issues of credibility and weight of the evidence are concerned, it is not the function of the appellate court to substitute its judgment based on a cold record for that of a trial court. The weight to be accorded conflicting evidence is exclusively for the fact finder, whose findings will not be disturbed on appeal if they are supported by the record. A claim that the evidence presented at trial was contradictory and unable to support the verdict requires the grant of a new trial only when the verdict is so contrary to the evidence as to shock one's sense of justice.

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[9] Appellant adequately preserved his weight of the evidence claim in the court below. Pa.R.Crim.P. 607.

Commonwealth v. Santiago, 980 A.2d 659, 663-64 (Pa.Super. 2009) (quotation omitted). ***See Commonwealth v. Blackham***, 909 A.2d 315 (Pa.Super. 2006) (holding the weight of the evidence is exclusively for the finder of fact, which is free to believe all, part, or none of the evidence, and to assess witness credibility).

Here, Appellant initially contends the jury should have believed his trial testimony that his confession to Detective Evans was a lie and motivated by a desire to get out of prison on an unrelated federal charge. However, as indicated *supra*, the motivation for and veracity of Appellant's confession, which Appellant does not dispute he made to Detective Evans on August 9, 2009, is exclusively for the finder of fact, and we shall not disturb the jury's findings in this regard. ***Santiago***, ***supra***. Additionally, regarding Appellant's contention the jury should not have believed either Mr. White's 2009 statement to the police or his trial testimony, in which Mr. White implicated Appellant's co-conspirator, Sean Greene, as the shooter, we again find such was within the province of the jury. ***See id.*** The jury was free to consider Mr. White's motivations and determine how such affected the credibility of his out-of court statements and trial testimony.

In sum, the fact the jury apparently believed Appellant freely, voluntarily, and credibly confessed to his participation in the shooting, and Mr. White credibly related his observations of the shooting, does not result in a verdict shocking one's conscience. ***See Blackham***, ***supra***. Simply put, we

find no merit to Appellant's contention the jury's verdict is against the weight of the evidence.

Appellant's next contention is the trial court erred in admitting evidence of his confession to Detective Evan pursuant to the *corpus delicti* rule.

Our standard of review for a challenge to the *corpus delicti* rule is well-settled.

> The *corpus delicti* rule is designed to guard against the 'hasty and unguarded character which is often attached to confessions and admissions and the consequent danger of a conviction where no crime has in fact been committed.' The *corpus delicti* rule is a rule of evidence. Our standard of review on appeals challenging an evidentiary ruling of the trial court is limited to a determination of whether the trial court abused its discretion. The *corpus delicti* rule places the burden on the prosecution to establish that a crime has actually occurred before a confession or admission of the accused connecting him to the crime can be admitted. The *corpus delicti* is literally the body of the crime; it consists of proof that a loss or injury has occurred as a result of the criminal conduct of someone. The criminal responsibility of the accused for the loss or injury is not a component of the rule. The historical purpose of the rule is to prevent a conviction based solely upon a confession or admission, where in fact no crime has been committed. The *corpus delicti* may be established by circumstantial evidence. Establishing the *corpus delicti* in Pennsylvania is a two-step process. The first step concerns the trial judge's admission of the accused's statements and the second step concerns the fact finder's consideration of those statements. In order for the statement to be admitted, the Commonwealth must prove the *corpus delicti* by a preponderance of the evidence. In order for the statement to be considered by the fact finder, the Commonwealth must establish the *corpus delicti* beyond a reasonable doubt.
>
> Additionally, [t]he *corpus delicti* rule is an evidentiary one. On a challenge to a trial court's evidentiary ruling, our standard of review is one of deference.

> The admissibility of evidence is solely within the discretion of the trial court and will be reversed only if the trial court has abused its discretion. An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record.

Commonwealth v. Hernandez, 39 A.3d 406, 410-11 (Pa.Super. 2012) (quotations and citations omitted).

Initially, before addressing the merits of Appellant's contention, we note, as does the Commonwealth, that Appellant has failed to set forth any place in the record where Appellant objected to the admission of his confession on the basis of the *corpus delicti* rule. In fact, the Commonwealth and the trial court assert that Appellant made no such objection. ***See*** Trial Court Opinion filed 7/18/12 at 13; Commonwealth's Brief at 27-28. Thus, we find Appellant's evidentiary challenge waived on this basis. ***See*** Pa.R.A.P. 302(a) (indicating issues not properly raised in the lower court are waived).

In any event, we also find Appellant's contention to be clearly meritless since the record confirms the Commonwealth carried its burden of proving, by a preponderance of the evidence, that a crime actually occurred before Appellant's confession was admitted into evidence, as well as meeting its burden beyond a reasonable doubt before the jury considered the confession in assessing Appellant's guilt or innocence in the crime. ***See Commonwealth v. Otterson***, 947 A.2d 1239 (Pa.Super. 2008). Simply

put, the Commonwealth proved Mr. Raines died and Mr. Simpson was injured as a result of gunshot wounds they sustained when Sean Greene fired at them without provocation.

To the extent Appellant contends the Commonwealth was required to meet its burdens of proof specifically as to the crime of conspiracy prior to his confession being admitted by the trial court and considered by the jury, we note:

> Pennsylvania has adopted an exception to the *corpus delicti* rule. This exception, known as the 'closely related crimes' exception, provides:
>
> [W]here a defendant's confession relates to separate crimes with which he is charged, and where independent evidence establishes the *corpus delicti* of only one of those crimes, the confession may be admissible as evidence of the commission of the other crimes. This exception applies only where the relationship between the crimes is sufficiently close so as to ensure that the purpose underlying the *corpus delicti* rule, i.e., to prevent conviction where no crime has occurred, is not violated.

Otterson, 947 A.2d at 1249 (quotation omitted).

In the case *sub judice*, assuming the *corpus delicti* of conspiracy was not established by independent evidence, we nevertheless would affirm the trial court based on the "closely related crimes" exception. At the very least, Appellant's statement to the police, in which Appellant admitted he conspired with Sean Greene, was related to the other charges. The *corpus delicti* for those charges was clearly established. Therefore, since independent evidence established the *corpus delicti* of the other crimes charged, Appellant's confession was properly admitted by the trial court and

considered by the jury as evidence for the closely related charge of conspiracy.[10] ***See Otterson*, *supra***.

Appellant's next contention is he is entitled to a hearing and/or a new trial on his claim of after-discovered evidence, which Appellant presented in his written and oral motions for post-trial extraordinary relief.[11] Specifically, Appellant contends that, after his trial, he discovered Allen White told two people that he had lied on the stand because he had a personal vendetta against Appellant's co-conspirator, Mr. Greene. Appellant asserts Allen White's statements indicating he had committed perjury amounts to after-discovered evidence.

> After-discovered evidence is the basis for a new trial when it: 1) has been discovered after the trial and could not have been obtained at or prior to the conclusion of trial by the exercise of reasonable diligence; 2) is not merely corroborative or cumulative; 3) will not be used solely for impeaching the credibility of a witness; and 4) is of such nature and character that a new verdict will likely result if a new trial is granted. ***Commonwealth v. Boyle***, 533 Pa. 360, 625 A.2d 616, 622 (1993); ***Commonwealth v. Smith***, 518 Pa. 15, 540 A.2d 246 (1988). Further, the proposed new evidence must be "producible and admissible." ***Smith***, 540 A.2d 246, 263 (Pa.1988); ***Commonwealth v. Scott***, 503 Pa. 624, 470 A.2d 91, 93 (1983).

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[10] Appellant intertwines this claim with an assertion that the evidence was insufficient to sustain his conviction for conspiracy. However, for the reasons discussed fully *supra*, we conclude the evidence was sufficient to establish Appellant's guilt in the criminal conspiracy.

[11] Although the trial court denied Appellant's after-discovered evidence claim at the March 28, 2011 hearing, Appellant raised the identical claim in his post-sentence motion, which the trial court also denied.

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> Unless there has been a clear abuse of discretion, an appellate court will not disturb the trial court's denial of an appellant's motion for a new trial based on after-discovered evidence. ***Commonwealth v. Small,*** 559 Pa. 423, 741 A.2d 666, 673 (1999); ***Commonwealth v. Parker,*** 494 Pa. 196, 431 A.2d 216, 218 (1981). In order for after-discovered evidence to be exculpatory, it must be material to a determination of guilt or innocence.

Commonwealth v. Chamberlain, 612 Pa. 107, 163-164, 30 A.3d 381, 414, 416 (2011) (citation omitted). ***See Commonwealth v. Foreman***, 55 A.3d 532 (Pa.Super. 2012).

In the case *sub judice*, prior to sentencing Appellant on March 28, 2011, the trial court considered Appellant's after-discovered evidence claim. At the hearing, the trial court gave Appellant ample opportunity to develop his claim and present witnesses/evidence supporting his claim. Thus, we find no merit to Appellant's claim the trial court abused its discretion in failing to hold a hearing with regard to Appellant's claim of after-discovered evidence.

Additionally, we find no error in the trial court denying Appellant a new trial in this regard. The trial court concluded the testimony of two witnesses indicating Mr. White told them he had lied on the stand when he implicated Sean Greene as the shooter would have been used by Appellant solely to impeach Mr. White's credibility. Additionally, in light of the fact Appellant confessed to his role in the shooting in a detailed recorded police statement, the trial court concluded the testimony of the two witnesses was not of such

a nature and character that a new verdict would likely result if a new trial was granted. We find no abuse of discretion in this regard. ***See Chamberlain***, ***supra***; ***Foreman***, ***supra***.

Appellant next contends his conviction for attempted homicide (Count 2) should have merged with his conviction for third-degree murder (Count 1) for sentencing purposes.

"A claim that crimes should have merged for sentencing purposes raises a challenge to the legality of the sentence. Therefore, our standard of review is *de novo* and our scope of review is plenary." ***Commonwealth v. Quintua***, 56 A.3d 399, 400 (Pa.Super. 2012) (citations omitted).

Our legislature has defined the circumstances under which convictions for separate crimes may merge for the purpose of sentencing. Specifically, 42 Pa.C.S.A. § 9765 provides the following:

> **§ 9765. Merger of sentences**
> No crimes shall merge for sentencing purposes unless the crimes arise from a single criminal act and all of the statutory elements of one offense are included in the statutory elements of the other offense. Where crimes merge for sentencing purposes, the court may sentence the defendant only on the higher graded offense.

42 Pa.C.S.A. § 9765.

Regarding Appellant's claim his conviction for attempted homicide (Count 2) should have merged with his conviction for third-degree murder (Count 1) for sentencing purposes, the trial court aptly addressed the claim in its opinion as follows:

> It is clear that the prohibition against merger for sentencing purposes does not apply in the instant case. The criminal information at Count 1 charged [Appellant] with causing the death of Timothy Raines in violation of 18 Pa.C.S.A. § 2501(a). The jury was instructed on the elements of the offense necessary to find [Appellant] guilty of the death of Timothy Raines. [Appellant] was found guilty of Murder in the Third Degree in Raines' death.
>
> At Count 2, [Appellant] was charged with Criminal Attempt-Homicide. Although the criminal information does not state the name of the victim specifically, the evidence establishes that the victim was Kennya Simpson, as that is the person who [Appellant] knew was at the Travelers Club when [Appellant] sent [Mr.] Greene to the Club. The evidence establishes that [Appellant] did not even know Raines was present and only learned his identity later. In addition, the jury was instructed regarding the elements of the offense necessary to find [Appellant] guilty of Criminal Attempt-Homicide as it pertained to Kennya Simpson. Consequently, the charges relating to Count 1 and Count 2 do not merge for sentencing purposes[.]

Trial Court's Opinion filed 1/18/12 at 9-10 (citations to record omitted).

We agree with the trial court in this regard and note that, "[o]ur Courts have long held that where a defendant commits multiple distinct criminal acts, concepts of merger do not apply." ***Commonwealth v. Pettersen***, 49 A.3d 903, 911-12 (Pa.Super. 2012). Here, the record reveals there were distinct criminal acts against two different victims, for which Appellant was found to be culpable, and therefore, the sentences should not have merged on this basis. ***See Pettersen***, ***supra***.

Appellant's final contention is his conviction for criminal conspiracy (Count 7) should have merged with his conviction for attempted homicide (Count 2) for sentencing purposes. Specifically, Appellant argues merger is

required since the scope of his criminal conspiracy was limited to the attempted homicide of Mr. Simpson, and thus, under 18 Pa.C.S.A. § 906, the trial court illegally sentenced him on the two inchoate crimes (attempt and conspiracy).

Our legislature has defined the following regarding inchoate crimes:

> **§ 906. Multiple convictions of inchoate crimes barred**
> A person may not be convicted of more than one of the inchoate crimes of criminal attempt, criminal solicitation or criminal conspiracy for conduct designed to commit or to culminate in the commission of the same crime.

18 Pa.C.S.A. § 906 (bold in original).[12]

"Section 906 was designed to prevent multiple inchoate crimes that carry with them the same criminal intent." ***Commonwealth v. Welch***, 912 A.2d 857, 859 (Pa.Super. 2006) (quotation and quotation marks omitted). In applying Section 906, the appellate courts have held that "inchoate crimes merge only when directed to the commission of the same crime, not merely because they arise out of the same incident." ***Commonwealth v. Jacobs***, --- Pa. ---, 39 A.3d 977, 983 (2012) (Baer, J., plurality) (quotation

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[12] As our Supreme Court recently pointed out in ***Commonwealth v. Jacobs***, --- Pa. ---, 39 A.2d 977, 983 (2012) (Baer, J., plurality), a plurality opinion which we find to be persuasive, "[T]he Superior Court has interpreted 'convicted' in Section 906 to mean the entry of a judgment of sentence, rather than a finding of guilt by the jury." (citations omitted). As in ***Jacobs***, Appellant in the case *sub judice* does not dispute this approach, and his specific concern is not regarding the jury's guilty verdict for the two inchoate crimes, but the trial court's imposition of separate sentences for the two convictions.

and quotation marks omitted); ***Welch***, 912 A.2d at 859. Recently, in ***Jacobs***, our Supreme Court persuasively noted:

> In determining whether inchoate crimes are directed to the commission of the same crime, we have taken a narrow view of the object crime....Thus, a person may be convicted and sentenced for two inchoate crimes that arise out of the same incident which were not designed to culminate in the commission of the same crime.

Jacobs, 39 A.3d at 983.

In the case *sub judice*, while Appellant's culpability for Mr. Simpson's attempted murder was premised upon the conspiracy between Appellant and his cohorts, we agree with the trial court that the record demonstrates the criminal conspiracy also resulted in the third-degree murder of Mr. Raines. Specifically, in this regard, as the trial court noted in its opinion, "Count 7 charged [Appellant] with Criminal Conspiracy related to the murder of Raines. The verdict form specifically indicated that [Appellant] was found guilty as to 'Criminal Conspiracy-Homicide.'" Trial Court Opinion filed 1/18/12 at 10. Thus, we agree with the trial court that Appellant's convictions for the attempted homicide of Mr. Simpson and the criminal conspiracy for the homicide of Mr. Raines did not merge for sentencing purposes under Section 906.

For all of the foregoing reasons, we affirm.

Affirmed.